Independent Commission on Freedom of Information: Responses from individual respondents to the Call for Evidence

This document combines responses from individuals to the Independent Commission on Freedom of Information's call for evidence.

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To note

The Secretariat to the Commission may have omitted a limited number of submission to the call for evidence from this document where, for example, they are not in a suitable format or contain high amounts of personal data.

Amendments to this document

There have been no amendments to this document.

Marjorie J Lewis

Dear Sirs,

I am writing to respond to the Independent Commission on Freedom of Information: Open consultation Call for Evidence and give my response below.

I would firstly like to say that I am disgusted with the short time that has been allowed for responses to be submitted to this consultation. In order to marshal constructive comments to changes to such an important piece of legislation much more time should have been given in which to submit replies to the consultation.

The Freedom of Information Act was introduced to make government more transparent, in that it requires public bodies, including government departments, local councils and the police, to answer questions submitted by the public. In that way, the services we pay for and the Governments we elect are answerable and accountable to us. I accept that some data, like medical records, are understandably excluded from the Act, but if a member of the public is unhappy about the response they receive, they can appeal the decision.

The Act is generally considered to have been a success and having found it necessary to use it myself, I can vouch for that.

Having said that, I feel that the FOI needs to be widened to include all companies that have contracts with public bodies; this would strengthen the Act, leading to greater accountability.

Measures which makes it harder to obtain information would encourage a culture of secrecy and means public authorities avoid scrutiny.

The FOI Act should reflect citizens' interests and rights in a democratic society to access information about the government.

The costs of FOI are far outweighed by the benefits, such as exposing and deterring wasteful public spending.

Introducing charges for requests would deter many people from using the Act.

I believe the FOI Act is an important tool to a more transparent democracy. The government must make it easier for citizens to access information, not harder.

The press has a right to ask for information under the FOI Act on behalf of the public, in order that where wrong doing exists they can expose it, however long ago that was. This is perfectly legitimate and reasonable in a democratic society.

In short, I would say that we need to strengthen accountability and make public services work better for people. In order to do that we need a strong FOI Act.

I hope you will take my views into account when considering the responses to the Consultati**on.**

Best wishes.

Yours sincerely,

MARJORIE J LEWIS (MRS)

M.Thornhill

Sir

Sadly freedom of speach and the free press are under attack in the UK by an increasing culture of secrecy and deception. For a democracy to function voters must be able to trust their elected representatives and be able to make an informed choice in order that electoral result is accepted by the majority, enableing Government to function.

The denial of trustworthy information may in the short term save embarrasment to some but quickly weakens good government by replaceing informed mature debate with endless internet speculation. This itself is fed by information available from other countries making the UK vulnerable to manipulation of public opinion by a foreign power.

The Freedom of Information Act does need to be updated to include all forms of modern comunication including text and mobile comunications. In addition the Act should be extended to cover all actions undertaken on behalf of the public including Charities etc. which presently fall outside the remit of the Act. The recent Kids Club is very much a case in point!

Yours faithfully

M.Thornhill

Malcolm Potter

Is it because most of you have all been found to be up to your old tricks that you want to make it harder to stop you being found out it's our taxes you are playing with and they pay your wages plus EXPENSES.

Remember the wheel

Margaret Campbell

A submission to the Independent Commission on Freedom of Information

Addressing the point about the balance between transparency and the burden of the Act on public authorities, I would like to explain how I've used the FOIA 2000 in a series of requests for information which I believe offer good value for the public purse.

In collaboration with the National Allotment Society, I used the FOIA 2000 to gather data on allotment waiting lists in England, Scotland and Wales in the years 2009, 2010, 2011 and 2013.

The aim of the surveys was to provide a measure and a trend of the unmet demand for allotments in order to inform local and national debates and policies around this issue. Data from this series of requests was summarised and published in reports on our local Transition Initiative website (www.transitiontownwestkirby.org.uk/allotment_surveys.html).

There has been huge general interest in the results of the requests, with 21,000 downloads of the reports from the website. In addition, the data has been used by:

- individuals and groups to campaign for increased local allotment provision,
- the DCLG to answer questions in Parliament, (www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140514/text/140514w0003.htm)
- the DCLG in its guide to growing food,(www.gov.uk/government/publications/space-for-food-growing-a-guide)
- other agencies looking at community growing. For example Greenspace Scotland in a scoping report on community growing, (www.communitygrowingsolutions.co.uk/wp-content/uploads/CommunityGrowinginScotland.pdf),
- many local authorities, to provide evidence for planning development and for allotment strategies. For example, Watford Borough Council's Allotment Strategy

  "In conclusion, waiting lists for allotments remain high. Even at a time of budgetary restraint, the study confirms a strong argument can be made for a large increase in allotment provision …" (www.watford.gov.uk/ccm/content/leisure-and-community/allotments-strategy-2013-to-2018.en).

Before our survey, the previous national allotment study was commissioned by DCLG and undertaken by the University of Derby. Of the local authorities surveyed as part of this study,

less than half responded to their questionnaire, and the survey was abandoned because the data was not sufficiently comprehensive.

By contrast, in our surveys:-

- the information requests, data collation and report writing were done from home without the need for funding;
- the website WhatDoTheyKnow.com was used to facilitate the requests and provide a permanent public record of the responses; and
- the FOIA ensured that the result was a complete record of local authority data.

The resulting reports, without the need to commission large (expensive) national studies, provide a solid evidence base, well-used by local and national policy makers, and by individual allotment campaigners. I believe that the modest financial burden for each local authority represents value for money in the overall process.

Margaret Campbell

Margaret Lynch

I am a very proud whistle-blower, and I will continue to be till I die. The human rights of the British people within the care services need to be addressed, we need to look after our own and stop taking praise for what we do for others.

Margaret Lynch.

Margaret Ritchie MP

Good afternoon

Please see below an enquiry from one of my constituents. I would appreciate if this information could be considered.

Yours sincerely

Margaret Ritchie MP

“ Dear Margaret Ritchie,

Having a strong Freedom of Information Act is one of the most important pillars of our democracy. It is one of the few worthwhile decisions of the Blair government. I'm concerned that the government is attempting to water down FOI laws as part of their Commission on Freedom of Information. Introducing charges for Freedom of Information requests, or limiting the information covered by the Act, would result in more secretive politics.

Please can you share my views with the Commission on Freedom of Information in their call for evidence that closes this Friday? As your constituent, I am concerned about any move to shut people out of politics. If anything, I'd like our Freedom of Information Act strengthened.”

Mark Bishop

Dear Sir or Madam,

I understand you are consulting on possible changes to the Freedom of Information Act, and in particular on the possibility of charging for requests for information under the Act.

I am strongly opposed to the notion that citizens making such requests should have to pay for them, as I am to the possible introduction of any other barriers to the application of the right to information.

My experience of using the Freedom of Information Act relates principally to my role as the leader of an action group representing victims of a financial services misconduct case. I have used the Act to obtain information from the Financial Conduct Authority.

Though a statutory body, the FCA is not funded by Government and enjoys a privileged legal position in that it cannot be sued, and a clause in the legislation that governs it provides it with an extensive, and often misused, ground for refusing to account for its conduct and performance. Submitting FoI requests and publicising the results is therefore about the only way that a member of the public can constructively challenge the organisation and encourage or embarrass it to improve.

If charges were introduced, I and others would make fewer or no FoI requests, and the consequence would be reduced pressure on the FSA and other public bodies to act prudently and perform effectively. In the long run, this would impose far higher costs on the public than those currently incurred dealing with FoI requests.

Yours faithfully

Mark Bishop

Mark Burgess

I am writing to express my hope that Freedom of Information legislation will not be watered down. I do believe that it is has provided some insight for journalists and the public that might otherwise have not been available, certainly in terms of the workings of government. I would also say that at a time of some scepticism towards the workings of government on behalf of the general public, this would be a very ill advised decision to curtail the workings of FOI. Having worked some time in local government, I am well aware of the need for transparency as well as the fact that there are already safeguards in place to prevent the act from being misused.

I think the past few years have demonstrated the importance of this act and would wish to see a commission that looked a little less like the inside of the Houses of Parliament.

Best wishes

Mark Burgess

Mark Cowling

Dear Sirs,

I write to express my view that Freedom of Information Act is doing an excellent job.

My comments are:

- the cost of administering the Act is a fraction of the corruption and incompetence that the Act has avoided - I believe £9million per annum and a fraction of other Government spending - £290 million on Government advertising per annum for example;
- If what I read in my local paper is to be believed, the Act is very much required to hold local Council and other public sector bodies to account, though I appreciate it would be a lot easier for public sector management to abuse their position if there was less rather troublesome transparency such as FOI requests;
- Most countries in the OECD have a Freedom of Information Act - examples including our good friends the USA and New Zealand;
- Secrecy always creates the fertile conditions for greater tyranny and corruption - the greater the state secrecy the less accountability, and the greater scope for abuse.
- The Freedom of Information Act should be expanded even further to cover more public bodies with less exemptions and criminal penalties for those who do not comply with its requirements.

I am sure you will agree greater State transparency in a democracy is vital. Thank you for taking these comments into consideration in your review.

Yours faithfully

Mark Cowling

Mark Devine

Dear Commission,

please expand FOI to cover more areas. The policy has helped democracy.

Regards,

Mark Devine

Mark Hockney

I would like to make this passionate submission to prevent changes to this Act.

The FoI Act is a key element to protect our civil liberties and access to information.

On this day when terrible attrocities were perpetrated by terrorists in France, David Cameron made a speech highlighting the need to uphold and defend our liberties and freedom. I agree it has never been more important to protect our civil liberties, rather than use these terrible events and other agendae as an excuse to diminish them!

At the time of conception, the Act was imbibed with ample safeguards to protect national security and other interests. There are strong arguements to justify they were too rigorous and to weaken and restrict the Act would be a retrograde step.

This is a valuable opportunity for the Government to support their fine words with deeds!

I beg you to prove them Mr Cameron and defend our liberties; not further undermine them!

Martin Dobson

To Whom It May Concern

I felt obliged to write after hearing of the consolation on possible changes to the Freedom Of Information Act.

I believe that all information at governmental level should be available without conditions and also free at the point of request - to change these principles will only make us a more closed society and will make it harder for officials to be held accountable.

I do hope you have sort opinion for others who feel likeminded about this subject.

All the best

Martin

Martin A Foulston

Dear Sir,

I wish to put on record my support for the FOI Act in its present form. I consider there to be no legitimate reason why the present rules should be changed. The Act serves an important means of holding those in positions of authority to account. To interfere with this valuable piece of legislation would be a retrograde step.

Yours faithfully

Martin A Foulston

Martin Lewis

The freedom of information act needs to be maintained in its current format as this Government and successive Governments need to be accountable.

Martin

Regarding Freedom of Information reforms.

The freedom of information laws as they stand at the moment should absolultely not be altered as they have been invaluable in helping me deal with the local-government discrepancies in relation to my council tax as well as being invaluable in uncovering various fraud and improper uses of public fundings and public offices as uncovered by various news media over the last 15 years.

FoI should absolutely not be "curtailed" or reduced and should also not be charged at a "fixed fee" as this fee will undoubtedly mean that I will not be able to get the information that does exist and should, by legal right, be available to me about why my [former] local council was overcharging me my council tax.

Please do not alter the Freedom of Information laws.

Cheers

Martin

Mary Anne Tree

Am being seriously abused after speaking out about serious corruption and abuse in the NHS especially the mental health sector and failings of local Police in the past to deal with child sex abuse. From Dec 2010 after speaking out I have been the victim of a hate campaign and discredited as mentally ill. I have since been placed in a very illegal damaging program via Madeline Yates CPN of Derbyshire Foundation Trust and Dr Tirugulla of Woodville Surgery, Woodville, Derbyshire. It involves the use of tetra/electro-magnetics and worse and often torture. M Yates claimed March 2013 she could not get me removed from the program and Dr Tirugulla has since claimed he has no record of it. Some of it came about due to an incident at Derby Royal Hospitals April 2011 in which I was nearly killed and the hospital and many other authority figures covered up.

The torture is ongoing and no-one so far will help me get my records, so that I can get my case of severe abuse and corruption dealt with and get it stopped. The Police/CID aren't helpful. Am hoping you will assist me in getting copies of my records from Derby Hospitals, Dr Tiruglla, Derbyshire NHS Foundation Trust and the DWP program Start Smiling Again, as I am being destroyed for simply having told the truth December 2010 to try and help others.

Many thanks

Mary Anne Tree

Mathew Archer

Dear Sir/Madam,

I am writing to express my concern about the proposed changes to the FOI act that this Government is currently organising.

In an open democracy, access to what Governments, ministers, civil servants, local councillors, public servants do, how they behave, what they cost the taxpayer, decisions that are made, discussion about these decisions and the like must be free, open, transparent, and seen by the public. To deny us access to this type of information can be summed up in one word – 'dictatorship'.

Without past FOI requests being met we would not know about, amongst others, MP's profligate expenses; the privatisation of part of our CDC fund for international development; rampant junketing by our public spending watchdog; the scale and size of the 'tax gap' and hence the amount of tax dodging in the UK; Whitehall mandarins being entertained to expensive dinners and the like that has forced the publication of hospitality registers; the disastrous, futile, reckless spending on projects like the NHS IT system; the scale of debt amongst NHS services, how many NHS services have been privatised; how many local councillors in an area have not paid their council tax (Bath & Avon, for example); the cracks in Hinckly point nuclear station, or a local councillor being subsidised by the tax payer whilst driving a Porsch to work, and many, many more examples of greed, waste, arrogance, and secrecy that must not be allowed to be hidden and should be exposed.

To limit FOI requests is not part of a Government's remit – it is here to serve, care, and protect the people it governs, not repress them, and it is my sincere hope that there will be no changes in limiting FOI requests at all.

Yours Truly,

Mathew Archer

Matthew Belmonte

Dear members of the Independent Commission on Freedom of Information

I was pleased to know of the 2012 Justice Select Committee's report that investigated the Freedom of Information Act and considered expert advice from senior politicians, civil servants, journalists and NGOs. I find it unlikely that the conclusions from that report - that the Freedom of Information Act `enhances the UK's democratic system' - can have altered so quickly and dramatically as to require another investigation, to the extent that another investigation is justified in this time of Government budget cuts.
Nonetheless, I would like to submit evidence to this investigation as I believe the Freedom of Information Act to be a crucial element of our modern democracy.

Please follow this link to the Justice Committee report and consider it my submission.
http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/9602.htm

As a university faculty member affected by potential freedom-of-information requests, I am all for sensible limits on frivolous or malicious applications of the Act that might waste resources, but I believe that the Act in its current form already appropriately limits such applications; in particular there is an explicit exemption for vexatious requests. In addition, the existing Justice Committee report contains sensible recommendations for changes to construal of the Act so as to include under the rubric of vexatious requests all frivolous requests, and also repeated requests from one and the same individual if that individual has established a pattern of vexatious requesting. What is needed is not yet another review, but rather sensible regulatory and/or legislative attention to the Justice Committee's 2012 report.

Although the Freedom of Information Act, like most tools of democracy, carries a potential for abuse, it remains a vital window for public scrutiny of government.

Kind regards
Matthew Belmonte

Matt Burgess

Background information

1. I am a journalist who currently works for a technology magazine and website, although the views below are presented as my own and not those of my employers.

2. Since 2012 I have created and run the FOI Directory website (http://foi.directory). The website posts examples of the Freedom of Information Act 2000 (FOI) being used in the media, has lists of email contract addresses for public authorities grouped in one place, and also has news articles about the development of the Act and its use in practice.

3. I have also written the book *Freedom of Information: A Practical Guide for UK Journalists* (Routledge, 2015), which acts as a best practice guide for journalists. During the production of the book I interviewed more than 60 journalists and information professionals about their usage and interaction with the Act during its 10 years of operation.

4. Due to the short timescale of the call for evidence, while being inside consultation guidelines, I have chosen to focus on a select number of the questions, which my experience is most applicable to. This is as well as making a number of other points and recommendations that are wider than the narrow scope of reference set out by the Commission.

Concerns with the Independent Review

5. The review panel is not independent to the FOI Act. Members of the panel have previously expressed explicit concerns with the operation and application of the FOI Act.[1] In particular panel members have publicly spoken about the areas of the terms of reference decided upon by the panel.[2] The content of these opinions clearly indicates that consideration to the areas of reference have previously been thought about, which is not a firm base to be starting an objective review on. The firm views of those already on the panel do not indicate an open mind on an issue.

6. The panel is not cross party. The Labour Party has said Jack Straw is not representing it on the panel[3] and the Liberal Democrats has said Lord Carlile does not represent it on the panel.[4] With this being the case the panel is unbalanced and does not reflect the positions of two major political parties.

[1] http://www.bbc.co.uk/news/uk-politics-17740465
[2] https://www.journalism.co.uk/news/jack-straw-we-made-mistakes-over-freedom-of-information-act/s2/a548808/
[3] http://www.independent.co.uk/news/uk/politics/labour-accuses-jack-straw-of-conniving-with-tories-to-dismantle-freedom-of-information-act-10470074.html
[4] http://www.theguardian.com/politics/2015/oct/09/freedom-of-information-commission-not-very-free-with-its-information

7. The terms of reference are written in a loaded manner. While the decision of the Supreme Court (in the HRH case, in 2015) does change the interpretation of the ministerial veto, although the judgment was clear and decisive, the decision has very limited application to the rest of the FOI Act. As such the terms of reference are very limited and focus on increasing restriction to information, rather than framing questions in an open-ended manner. The terms of reference contain no suggestions of increasing openness or looking at the publishing of more information. This point has been raised by more than 140 leading campaigning, press, and civil liberties bodies.[5] The terms of reference were not scrutinised by independent persons before they have been put out for open consultation.

8. The panel has not been open and transparent in its own dealings. Information about the terms of reference, meetings of the review, anonymous briefings[6] does not indicate an attitude, which reflects the principles of the FOI Act.

Question 1:

9. At present current the two exemptions section 35 and section 36, which can be used to protect internal deliberations of public bodies provide more than adequate protection to the information falling within their scope.

10. Both of the exemptions are qualified exemptions meaning that a public interest test must be applied before any non-disclosure can occur. Both of the exemptions offer the potential to cover a wide range of information and their increased usage as the Act has progressed reflects this. In 2012 S.35 was used by central government public authorities 76% more than it was in the preceding 12 months.[7] This indicates central government bodies believe the exemption is appropriate to offer protection to the information, which falls under the exemption.

11. Public authorities can take a broad interpretation of both the information covered by the exemptions. The exemptions use the word 'relate' when outlining information that can be covered. As confirmed by a tribunal decision relate, in the context of the FOI Act, is defined as having a "reasonably broad interpretation"[8]. As such the information covered by the exemption can wall within a wide scope and be interpreted on each individual request. This tribunal ruling allows for what relates to the S.35 and S.36 exemptions to change depending on the circumstances of the individual request and flexibly evolve offering protection to sensitive information when it is required. Also the FOI Act does not define government policy, allowing for a flexible interpretation when it is required. The broad interpretation of S.35 can also been seen in the O'Brien tribunal case which

[5] https://www.cfoi.org.uk/wp-content/uploads/2015/09/FOI-letter-to-PM.pdf
[6] http://www.theguardian.com/politics/2015/oct/09/freedom-of-information-commission-not-very-free-with-its-information
[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300909/foi-stats-q4-oct-dec-2012.pdf
[8] http://www.informationtribunal.gov.uk/DBFiles/Decision/i70/DFES.pdf

confirmed that information which engages the exemption does not have to necessarily be created before the formulation of the policy.[9]

12. The exemptions as with all of the exemptions included in the Act are, when their application is called into question, offered additional laywers of scrutiny by the internal review process, Information Commissioner's S.50 complaints process, the two-tier tribunal stage and beyond this courts of appeal. These additional layers offer additional protection to the decision making process of answering FOI requests. Public authorities are able to challenge the decision of the ICO when they believe it is incorrect. This is particularly relevant when considering whether either S.35 or S.36 should be offered the protection status of an absolute exemption – which, it should not.

13. The appeals process has frequently upheld and ruled in favour of information not being disclosed: this is reflected in decisions by the Information Commissioner. For S.35 the Commissioner (from 1st January 2005 to 15 September 2015) had upheld 104 complaints relating either in full or in part to the exemption and refused 132 complaints. It should also be noted that the number of FOI requests which reach the ICO stage, let alone tribunal and higher courts, is a tiny percentage of all requests made and those that have the S.35 and S.36 exemptions applied to them. (For some context 2013 saw the highest amount of requests sent to central government: 51,696 (the figure for requests made to all public authorities across a year is unknown). If all of the S.35 complaints ever looked at by the Information Commissioner had come in this year it would only represent 0.5% of requests: if extrapolated to all requests from 10 years of the Act's operation the number of S.50 complaints relating to S.35 would be considerably smaller than this approximate percentage.)

14. Certain types of information covered by the exemptions, particularly those under S.35, will have an inherent strong public interest arguments for non-disclosure. This was confirmed in the Scotland Office tribunal (par 78).[10] The tribunal said the S.35 exemption should not be automatically being applied as an absolute exemption just because a certain type of information engages the exemption. Guidance from the Ministry of Justice[11] also states: "There is likely to be a strong public interest in maintaining the exemption in this respect when it comes to any balance of the public interest" in relation to Cabinet minutes.

15. In further relation to Cabinet minutes a tribunal involving the Cabinet Office[12] concluded that minutes which engage collective responsibility will rarely be disclosed within 30 years of their creation, although this is likely to decrease with the alteration of the 30 year rule. This further shows a strong protection of information, even though it is covered by a qualified exemption.

16. The Ministry of Justice also states that the public interest test for S.35 (and by de facto S.36 as they are closely related) can lead to what is "broadly described as good

[9] http://www.informationtribunal.gov.uk/DBFiles/Decision/i258/O'Brien%20v%20ICO%20(EA-2008-0011%20%5BFS50082127%5D)%20Decision%2007-10-08.pdf
[10] http://www.informationtribunal.gov.uk/DBFiles/Decision/i201/ScotlandOffice1.pdf
[11] http://webarchive.nationalarchives.gov.uk/20150730125042/http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-exemption-s35.pdf
[12] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61133/ic-westland-decision.pdf

government". As such this is something, which should be strived for, and extra protection of the information covered would lower the ability for good government to exist.

17. Overall the exemptions at S.35 and S.36 of the FOI Act provide adequate protection to the information that engages them. The public interest test allows for information that engages the exemptions to be disclosed in exception circumstances, and many of the subsections of the exemptions carry an inherent weight in favour of non-disclosure.

Question 5:

18. The enforcement system of the Freedom of Information and appeal system is adequate, at best, and at worst flawed.

19. Public bodies are not required by the law to have a system whereby they internally review requests where a complaint about a response has been made by the requester. However, for a complaint to be looked at by the ICO, it must have exhausted systems of complaint. This places a stronger level of obligation on the requester, who has to go through an additional stage before the request is reviewed by an independent regulator. It should be possible to expedite complaints straight to the ICO (beyond those which relate to timeliness of the response), as long as some conditions are met.

20. The ICO has issued more than 6,000 Decision Notices under the FOI Act. Decision Notices are not enforcement action by the ICO. The ICO has a duty under S.50 of the Act to investigate complaints and when a complaint is valid it is obliged to issue a DN. Therefore this does not count as enforcement action, as it is a statutory duty of the regulator.

21. Provisions for enforcement lie within S.51, 52, 54, 55: these convey the powers to issue enforcement notices, information notices, seek legal proceedings to enforce a decision notice which has not been complied with, and powers of entry and inspection.

22. During the 10 years of the FOI Act only four enforcement notices have been issued by the ICO. The details of all four, and documentation can be found here.[13] The notice have only come in exception circumstances and the ICO has been reluctant to use its enforcement powers in relation to the FOI Act.

23. The Cabinet Office is a public authority, which is often criticised for its poor performance in responding to FOI requests inline with the time limits set out by the legislation.[14] The ICO has been visibly reluctant to issue an enforcement notice telling the Cabinet Office to respond to requests in time. An email released under the FOI Act from the ICO showed that it did not publicise one of the four enforcement notices it has served because it would raise questions over why the Cabinet Office has not been issued with an enforcement notice. The email said publicising the enforcement action would: "provoke more questions and comment about lack of action against others, notably the

[13] http://www.foi.directory/featured/foi-enforcement-the-four-enforcement-notices-issued-in-10-years/
[14] http://www.bbc.co.uk/news/uk-politics-30898510

Cabinet Office".[15] The reluctance of the regulator to publicise its enforcement action is a clear sign the enforcement procedures are not appropriate.

24. Another example of unwillingness to issue an enforcement notice can be seen with the Metropolitan Police. The ICO runs a quarterly monitoring list whereby it works with public authorities that are not answering enough FOI requests within the statutory time limits in place. The Metropolitan Police has been on this list for more than two years as it has failed to improve its responses to requests.[16] [17] [18] Most public authorities stay on the list for one quarter before it improves its timeliness and is taken off the list. A period of being monitored (which effectively is being watched) does not provide confidence in the regulator. If it is unable to be able to force public authorities to respond to FOI requests in line with the law the enforcement system is not working and greater powers are needed.

25. Internal ICO documents surrounding enforcement and monitoring processes can be found in the document at the following link.[19]

26. One reason why the ICO is not able to enforce the FOI Act effectively is due to a lack of funding for FOI enforcement. In 2014 management board minutes from the ICO said the funding of FOI was critical.[20] The minutes said: "The issue of the ICO's future funding model was now thought to be critical. If grant in aid was cut further, action on anything other than routine freedom of information enquiries would be impossible." This indicates the ICO is not able to fully enforce the FOI Act and ensure that public authorities are fulfilling their legislator obligations.

27. While writing my book the Information Commissioner Christopher Graham said that the ICO has become vastly more efficient since 2010 but this "can't go on forever". The ICO also, in its evidence to the 2012 Justice Select Committee's Post-Legislative Scrutiny of the FOI Act said the funding it received is not adequate.

28. One way to counteract this problem would be to introduce financial penalties upon public authorities, which do not perform their duties under the Act. Any consideration of this proposal would have to be carefully considered and thought out. Simply imposing a financial penalty for an incorrect interpretation of the law would not be appropriate. However, a financial penalty for public authorities that do not respond to FOI requests in a timely manner may be appropriate in some circumstances. This would provide multiple benefits: it would ensure public authorities respond to requests in a timely manner and improve their systems to do so, making the FOI Act more effective in general, and it would also provide additional funding for the running of the ICO.

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[15] http://www.bbc.co.uk/news/uk-politics-30898510

[16] http://www.foi.directory/featured/met-police-foi-responses-still-a-concern-ico-says/

[17] http://www.foi.directory/featured/two-years-later-met-police-still-incapable-of-responding-to-foi-requests-on-time/

[18] http://www.foi.directory/featured/enforcement-action-against-mets-poor-foi-performance-not-off-the-agenda-ico-says/

[19] http://www.foi.directory/blog/details-behind-the-icos-enforcement-notice-to-the-department-of-finance-and-personnel-northern-ireland/

[20] http://www.foi.directory/blog/future-of-foi-funding-in-the-uk-thought-to-be-critical-by-the-ico/

29. If this is not possible, consideration as to how the ICO is able to effectively enforce the obligations of the Act, other than the mandatory DNs, should occur. Any introduced charge should be placed on the public authority rather than a requester, i.e. in the format of an appeal. At present the ICO is either not willing or not able to properly enforce the Act.

30. Appeals such as internal reviews and time extensions for conducting of the public interest are not appropriate in their current forms. The non-existence of statutory provisions requiring authorities to respond within a time limit should be replaced. As such there is no obligation for a public interest to be answered in a timely manner. This FOI request to the Cabinet Office, which is having the public interest in disclosure, has been unanswered for more than 1,000 days.[21] During research for my book several journalists told me that there should be time limits introduced for responses to internal reviews and public interest considerations. They said authorities could often take long times to respond to these stages, and this may have been to stall a request so it has moved outside of the news agenda.

Question 6:

31. The burden imposed on public authorities is justified by the information, which is and has been released under the FOI Act during the 10 years of its operation.

32. Over time the cost of FOI requests on public authorities is decreasing. As stated by Jim Amos, from UCL, during the Justice Select Committee's review in 2012: "In summary, my view is that FOIA costs are reasonable, are on a downward trend and there is scope for that trend to go much further with positive leadership, good management and with intelligent use of web publication." Appropriate records management systems that are able to extract and easily find information across public authorities are required for requests to be handled efficiently and, as such, reduce any burden placed upon authorities. The records management S.46 code of practice is in dire need of an update that places obligations on authorities to have effective systems in place. There have been too many examples of public authorities not knowing what they hold, losing information, or destructing files, which should not have been destroyed, [22] [23] or not transferring files to the National Archives.[24]
33. Proactive publication of information and Open Data schemes have allowed the number of requests being made to public authorities to be reduced. This can be seen from the Ministry of Justice's yearly reports on the number of FOI requests to central government. During 2014 the MoJ reported[25] a decrease in FOI requests to the public authorities it collects stats on, and this has continued during 2015[26]. The MoJ's annual 2014 report stated that there has been a decrease in requests partly because of "An

[21] https://www.whatdotheyknow.com/request/first_class_rail_travel_for_cabi
[22] http://lauramcinerney.com/2015/10/23/after-a-3-year-battle-the-dfe-now-claim-they-have-lost-41-free-school-letters/
[23] http://www.bbc.co.uk/news/uk-27786043
[24] http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150121/wmstext/150121m0001.htm
[25] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/423487/foi-statistics-oct-dec-2014-annual.pdf
[26] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462782/freedom-of-information-statistics-apr-jun-2015.pdf

increase in the amount of data proactively published by government departments… The availability of previously made FOI request archives online".

34. Other examples of information being published proactively or as open data can be seen from the identification and monitoring of FOI requests to identify information, which should be published proactively. Transport for London has reviewed all of its FOI requests and selected commonly requested information, which is now published.[27] In the first year of the FOI Act a request for a food hygiene report was refused but then later overturned by the ICO.[28] Now much of the data about hygiene ratings is published as reusable information by the Food Standards Agency[29]. Information about public toilets used to create a map of existing ones[30] (making them easier to find for those needing to use them) had to be requested by FOI. Months later the Local Government Association saw the importance of this information and encouraged public authorities to publish them information themselves[31]. If this and other sorts of information were required to be published by public authorities on a regular basis it would reduce the need for FOI requests on this level. There should be greater legislation and regulations surrounding the publishing of Open Data, rather than voluntary agreements to do so. Without enforceable regulation public authorities can get away with not publishing Open Data, which they have agreed to. For example the Cabinet Office, which is responsible for transparency issues, has not published its spending data (which it is meant to publish on a monthly basis) since the middle of 2014.[32] It should be noted that it is not my opinion that Open Data can replace the FOI Act, it is a supplement and both access to information systems have to operate in tandem.

35. Also the indication that FOI requests should have fees applied to them is one that should be disregarded. Placing a burden on FOI requesters, who already pay for the information to be created, would create a two-tier system of information access. Charging even small amounts for requests to be made, or appealed, would create an unequal system which discriminatorily places a financial obstacle in the way of accessing information. When costs for requests were introduced in Ireland the number of requests was cut in half, meaning less information of public benefit was published.[33]

36. Information which has been published under the Act during the 10 years of its operation has led to a more informed and knowledgeable society. During the last three years I have added more than 2,000 examples of the media using FOI requests to produce stories in the public interest that have informed the public of information which would not have been known without the FOI Act. These can all be found on: http://www.foi.directory/foi-in-the-media/. This is not a comprehensive list of all stories published by the media using FOI but the ones most in the public interest. I have also produced a list of 103 stories from the first six months of 2015 that have enlighten public

[27] https://tfl.gov.uk/info-for/media/news-articles/we-are-improving-our-transparency-and-accountability
[28] http://news.bbc.co.uk/1/hi/wales/south_east/4555148.stm
[29] https://www.google.co.uk/search?sourceid=chrome-psyapi2&ion=1&espv=2&es_th=1&ie=UTF-8&q=fsa%20hygiene%20ratings%20api&oq=fsa%20hygiene%20ratings%20api&aqs=chrome..69i57.67945j0j4
[30] http://greatbritishpublictoiletmap.rca.ac.uk/
[31] http://schemas.opendata.esd.org.uk/PublicToilets
[32] http://central-government.governmentcomputing.com/news/the-mystery-of-the-missing-cabinet-office-spend-data-4555523
[33] http://www.bbc.co.uk/news/uk-politics-18282530

debate.[34] During 2006 and 2007 the Campaign for Freedom of Information highlighted 1,000 media stories based on FOI requests.[35]

Other

37. The Commission should take into account and look at the relationship of the FOI Act with private companies. Providing contractual obligations to comply with FOI requests is not appropriate, as it has no legal recourse if the private company does not respond in an appropriate manner.

38. During the research and production of my book a number of journalists were interviewed about their use of the Act during its 10 years. General findings were as follows.

39. Those spoken to used the Act to find out specific targeted information, more than they are used for so-called 'fishing expeditions'.

40. Responsible newsrooms train their journalists to use the Act efficiently and responsibly. They also encourage journalists to attempt to obtain information through other official channels, i.e. press offices, before making FOI requests.

41. Requests for data are some of the most commons requests; this data is not published routinely already.

42. Many journalists are keen to have greater dialogues with FOI officers but this is not always possible.

Recommendations

1. Fees for Freedom of Information requests or appeals should not be introduced. It would create a two-tier right to information that favours those with greater financial resources and create a barrier to accessing information.
2. Public authorities should face financial penalties for prolonged failure to respond to FOI requests in time.
3. The Information Commissioner's Office should be adequately funded and encouraged to exercise its enforcement powers on a more frequent basis.
4. Internal Reviews of requests and public interest tests should be given statutory time limits to be completed in.
5. The S.35 and S.36 exemptions provide adequate protection for the information they cover, with strong public interests in protection of information, for many of their subsections. They should not be made into absolute exemptions.
6. Publishing of Open Data should be regulated and legislation created for this to be enforced to ensure data sets are published on a regular basis.

[34] http://www.theguardian.com/media/2015/oct/30/freedom-of-information-act-chris-grayling-misuse-foi
[35] https://www.cfoi.org.uk/2008/09/a-thousand-freedom-of-information-stories-demonstrate-acts-value/

Matthew Lockwood

I am responding as a member of the public to the call mentioned above.

Question 3: What protection should there be for information which involves candid assessment of risks? For how long does such information remain sensitive?

Outside of what can narrowly and credibly be construed as a high risk to public security, there should be no protection. The ability of the public to understand the way that government assesses risks in public policy is a key element of a democracy and should be open.

Question 4: Should the executive have a veto (subject to judicial review) over the release of information? If so, how should this operate and what safeguards are required? If not, what implications does this have for the rest of the Act, and how could government protect sensitive information from disclosure instead?

Absolutely not. This would totally transform the nature of the Act, and destroy the principle of Freedom of Information. The government would rightly be seen as anti-democratic and defensive; it would have an extremely negative effect on the credibility of government. The Information Commission should retain this veto power. If by 'sensitive' information is meant information that would damage public security or safety, then government should protect this by making an effective case to the Commission for not releasing it.

Question 5: What is the appropriate enforcement and appeal system for freedom of information requests?

The main problem with the current system is that the cost basis for refusing requests is set too low. The latest estimate of the cost to central government for operating the FoI Act is £9m a year. This can be compared with the £290m spent on central government advertising alone on 2014/15. The case for the government spending over 32 times as much on telling the public what to do than it spends on responding to public requests for information is not defensible. The maximum cost limit for requests should be at least doubled.

Question 6: Is the burden imposed on public authorities under the Act justified by the public interest in the public's right to know? Or are controls needed to reduce the burden of FoI on public authorities? If controls are justified, should these be targeted at the kinds of requests which impose a disproportionate burden on public authorities? Which kinds of requests do impose a disproportionate burden?

There are four questions here, which are clearly worded in a non-neutral way:

Is the burden imposed on public authorities under the Act justified by the public interest in the public's right to know?

This question asks whether the cost of complying with the Act is proportionate to its benefit. Public spending in the UK in 2014 was around £565billion. £9m represents 0.0016% of this. On the benefits side, from the point of view of the public interest and the quality of democracy, the FoI has made possible the exposure of the Parliamentary expenses scandal, the extent of tax avoidance, public scrutiny of the use of consultancy companies by government, and of the poor performance of the major NHS IT project, the extent of use of secondments from the private sector in government, the degree to which a member of the Royal family tried to influence policy improperly in what is supposed to be a consitutional monarchy, and many other examples. The cost is vanishingly small; while the benefits are very large. It is clear that some politicians do not like the use of the FoI Act by journalists to reveal aspects of government that the former would like to keep from public view, but this is precisely why the Act is so important. While some instances of its use may be trivial, this should not be a reason for watering down the Act in any way.

Which kinds of requests do impose a disproportionate burden?

The main problem with requests imposing a disproportionate burden is where requests are too broad. In these cases, often involving people making requests for the first time, the cost limit in any event rules them out. More advice could be given by the government itself on how to write requests to avoid this.

Matthew Lockwood

Max Harrison

At a time when government wants to monitor our every move, limitations cannot be put on FoI. Such a move will not be tolerated. FoI should be widened considerably.

Max Harrison

Michael Franklin

Dear Sir/Madam,

I am very busy at the moment and have only just been informed of this consultation so this email will be brief but my opinions are though out and precise. It doesn't seem to have been well publicised - intentional or not.

As a former law student and keen follower of academic discussion on freedom of information (in particular public interest v. national security) I feel that to further restrict the freedom of information would adversely affect an already fragile confidence in our government and associated bodies with regard to the subject.

Kind Regards,

Michael Franklin

Michael Gower

Dear Sirs/madam

I was wondering whether you would be looking at the impact of the foia on parish councils.

For a number of years the FOI was used as a “weapon” to attack and undermine the workings of a parish council in Suffolk – Walberswick

Full details of the proceedings and upper tier decisions can be found on the relevant websites.

I estimated that the cost of this row to the public purse was c£80k – all parties. All the requests were found vexatious. The typical income/precept of a Suffolk parish is £9k per year.

The parish was financially crippled by this experience and the stress/complexity of dealing with the legislation was so severe that 5 clerks resigned and up to 19 parish councillors. The “campaign” against the parish was led by individuals with expert knowledge of the legislation

The position now in Walberswick is that local clerks seem unwilling to work here and local people are intimidated and reluctant to volunteer as councillors. The village no longer has a quorate parish council and no meetings have taken place since the spring.

Yours sincerely

Michael Gower

The above email is written in my capacity as an individual living in Suffolk. I have in the past been a parish councillor, chair of the parish council and district councillor. If you were to take evidence I would need to go over the papers in a lot more detail

Michael McCormick Smith

I see that a commission has been set up to review the Freedom of Information Act. I hope that the commission will extend the operation of the Act to quasi-public bodies. It would be s sad day for democracy if the powers of the Act were to be in any way curtailed, particularly those powers that apply to the Government.

Michael McCormick Smith

Michael O'Connor

Call for Evidence - Question 6

Question 6: Is the burden imposed on public authorities under the Act justified by the public interest in the public's right to know? Or are controls needed to reduce the burden of FoI on public authorities? If controls are justified, should these be targeted at the kinds of requests which impose a disproportionate burden on public authorities? Which kinds of requests do impose a disproportionate burden?

Issue:

The availibility of information is not simply about a 'them and us' of monolithic government on the one hand and ordinary people on the other.

Government may hold data that it does not use to inform itself about matters of genuine public interest, and thus in terms of the Freedom of Information Act does not have information and/or it would breach the statutory cost limit to provide it. It is very important that the Act enables discovery of such information.

Proposal:

I suggest that the statutory limit on costs of providing information should be subject to a public interest test, and/or that a public body should be required to respond to requests that exceed this limit if the requester is prepared to pay for the full costs of doing so.

My own experience of getting information about the impact of immigration on the cost of benefits spending illustrates the need for this.

Background:

Immigration is a area of lively political and popular debate. It is a hotly contested area but one conducted on a fairly thin evidence base and characterised by assertion rather than assurance. One element of this debate has been about the existence or prevalence of the 'benefit migrant' or the 'welfare magnet'. It is also now a key element in the government's approach to renegotiation of the UK's relationship within the EU.

Ian Birrell writing in the Guardian in 2012, for example, wrote *Government statistics … show foreign-born people are less than half as likely to claim benefits as those born here (while paying the same taxes, of course).* http://www.theguardian.com/commentisfree/2012/jun/10/tories-nasty-party-immigration-families

When the excellent FullFact checked this out at the time they concluded *The notion that foreign-born people are less than half as likely to be claiming benefits as UK nationals is well founded in the available figures from the DWP and the ONS. They indicate that around 15 per cent of UK nationals are currently claiming working age benefits, compared to six per cent of foreign nationals.* http://fullfact.org/factchecks/migrants_foreign_nationals_benefits_claim_likely_UK-27395

So did Channel 4's FactCheck blog, saying *That means 6.6 per cent of working age non-UK nationals currently get a state handout, as opposed to 16.6 per cent of British nationals.* http://blogs.channel4.com/factcheck/factcheck-qa-how-many-migrants-are-on-the-dole/9148

While this appears quite a fact-based consensus, the Government statistics in question were in a report by the Department of Work and Pensions published in January 2012. And someone did pick up that this report had only looked at out-of-work benefits, and not in-work benefits like the tax credits that cost around £30 billion a year. The journalist Robert Winnett asked ministers that very question in December 2012 and reported in the Telegraph that they had said they did not know how many 'foreigners' were claiming these benefits.

Full Fact repeated the conclusions of their earlier analysis in a wider piece in March 2013 http://fullfact.org/factchecks/immigration_and_benefits-28846

Authoritative commentators regularly repeated this in the most reputable of reportage - for example BBC's PM programme on 14 October 2013 prominently featured Jonathan Portes, Director of the National Institute of Economic and Social Research (as he was then) saying that migrants were only half as likely to claim benefits as UK nationals. However, neither Jonathan nor the BBC made clear that this was based only on DWP analysis of their own 'key *out-of-work* benefits'.

This was nearly a full year after the Telegraph had brought the issue of *in work* benefits to the attention of Ministers and they had said that they did not know about them. It might be thought surprising not only that Ministers did not seem to have sought to find out anything about this, but that officials did not seem to have proffered anything to Ministers either.

I used the Freedom of Information Act to ask HMRC for details of who was claiming in work Tax Credits. Bearing in mind the fact-checked media and expert narrative that migrants were half as likely to claim benefits as the general population, the results were surprising. Applying the same methodology to the information provided by HMRC as the DWP did to its data on out-of-work benefits, showed that non-UK nationals were actually 20% *more likely* to be claiming this key working-age benefit than UK nationals.

This meant

- There were nearly half a million migrants to the UK claiming in-work tax credits,
- Migrants to the UK were significantly more likely to be claiming in-work tax credit than the rest of the population,
- More migrants claimed in-work tax credit than claimed all of the main out-of-work benefits put together.

This was rather different from ‘half as likely’ to claim benefits, and involved billions of pounds a year in welfare expenditure

Treatment of FOI requests on this subject:

I initially made a request to HMRC in May 2013, their response was that obtaining the information requested would exceed the cost limit and that while some information was held "Normally, HMRC would explore with you how you might be able to narrow down your request so that it did not exceed the fees limit. However, in this case, I cannot see any scope for doing this because of the huge numbers of records that would still need to be checked".

As all of the records are held on two computer systems for the administration of taxes and payment of benefits, the reference to 'a huge number of records' it is of course a little disingenuous, as the time taken to interrogate the system is not materially affected by the number of records on it.

My request had asked for a breakdown of the information by nationality at time of registration for National Insurance Number (as such a breakdown is provided in the DWP publication for out-of-work benefits), but I refined my request to ask for a simple distinction between UK and non-UK nationality. In response HMRC did provide simple aggregate figures of claimant numbers.

I wrote a short analytical paper based on these figures and this was picked up on and quite widely reported in the national press, for example in the Telegraph as well as in slightly less nuanced terms in the tabloid press.

Jonathan Portes then made a request under the FOIA for a more detailed breakdown between 'EU' and 'non-EU' migrants and including tax credits paid to those out of work. I understand that this was refused on cost grounds too, but after an internal appeal and some considerable period of time this further information was provided to him and also to me. By this time a year had passed since my original request. I published an expanded version of my paper using this additional information in July 2014.

The information had related to tax credits awards taken from a snapshot of HMRC systems as at March 2013 (when the 'year' ends for tax credits). As so much time had passed, by July 2014 information should have been available for the year ending March 2014, so I made a further request for this. HMRC responded quickly with the information as requested, and I published a new analytical paper based on this data.

This was all interesting enough for the House of Commons Library to combine my work (and the data within it provided to me by HMRC which I shared with the Library) with the DWP publication on key out-of-work benefits in producing a Standard Note for Parliament on migrants and benefits. The Library did this using my initial paper and then an updated version following my paper with the 2014 data.

The government's Migration Advisory Committee also noted this information in its major report on the impact of migration on low-skilled work in the UK.

Political impact:

The issue of migrants in the UK claiming tax credits has since assumed a very high profile indeed. Restrictions on these benefits is one of the key demands of the UK in its approach to EU renegotiation. There is no information in the public domain about the extent and amount of these claims other than what I (and Jonathan Portes) obtained through FOIA requests. It is quite conceivable that without the ability to obtain this information using the FOIA, the issue would simply not have arisen as the extent and amount of these claims would never have been known.

Relevance of evidence to Question 6:

From this it should be clear that there is data that government holds that is capable of producing information that might well be of considerable public interest yet government - for whatever reason - chooses not to inform itself. In these circumstances it is only the possibility of obtaining the data or information from government that allows the public to inform itself about these subjects.

I have subsequently asked HMRC for a further update to provide information for the year ending March 2015. This would enable interesting observation of trend and the current position. They replied that they had no plans to carry out a repeat analysis. I then asked whether a bespoke analysis would be possible and what this might cost.

HMRC's response was "We have not made any decisions whether or not to commission a further analysis to update the data we previously extracted as at 31 March 2013 and 31 March 2014 and will not be carrying out the bespoke analysis you request. If we were to carry out this

type of analysis it would be necessary for it to be commissioned from within Government departments and the publication of any such analysis would need to be authorised by Ministers.

So the situation is that HMRC possesses the data within its systems (including of course at a greater level of nationality detail than in the information provided so far) but unless it chooses itself (or is instructed to do so by Ministers) to make an extract from that data for its own purposes, no information can be provided within the cost limit. Bearing in mind the degree of public interest in this issue and indeed the political significance it has acquired in EU renegotiation, it seems absurd that a capped cost of £600 can prevent such information from being provided to the public.

Conclusion:

For this reason I believe that the statutory limit should be subject to a public interest test. I think it clear that in a case such as this the limit is quite disproportionate to the public interest.

If this were not possible, and very much as a second best, then where the statutory limit might be breached, it should be mandatory for the information to be provided at cost, and not at the discretion of the public body involved.

Mr M D Reader

Sir, as one who likes to think that we do have SOME democracy still left in this country, thanks to the fact that there are processes in place that enables citizens such as myself, the ability to find out about possible wrongdoings by public figures (i.e.) M.P's expenses etc. I sincerely hope that we will continue to be able to do so.

Regards,

Mr M.D. Reader.

Michael Sargent

My evidence that the FOI should continue includes the deviousness of our MPs in mulcting their expenses – which we out here would not have known but for exposures.

Then there is the deviousness of authorities in giving very little publicity about how we out here would be able to present views on the proposals to drastically diminish the usefulness of the FOI.

There are many, many more examples of the truth being exposed through FOI and the authorities asking for proofs to be presented on the website merely demonstrates their deviousness in trying to deter the public who only have proofs of scandalous actions exposed by FOI.

The Leader of the House is so out of touch in claiming that FOI merely produces stories in the press! With fools like that in authority, the FOI is essential so that we out here can access the truth.

FOI enabled us to learn how much and how many fiddle their taxes to the tune of many billions of pounds – and yet our chancellor of the exchequer wants to scalp the poor for a lesser amount in order to balance budgets.

Without the FOI with full powers, the public will never be able to extract the truth from our legislators – state and local, commerce, industry, and even charities. It will be shameful if access to FOI is reduced in any way – and it is shameful that the idea is being mooted covertly.

Michael Sargent

Michael Stewart

Dear Independent Commission on Freedom of Information,

I favour increasing the scope and ease with which the public can obtain information held by government.

Michael Stewart

Mike Clayton

Dear Sir

That we have such an act is amazing, therefore everything needs to to be done to preserve it.

Governments need to be transparent in their actions otherwise a democracy cannot function properly.

The extent of their of deviousness has been exposed by that brave man Edward Snowden.

The Conservatives, under David Cameron, like to treat voters as gullible fools, in this they are aided by a largely right wing press. Therefore it is essential that information can readily be accessed by open minds,thus the act must not be interfered with.

I also think that it is a disgrace that Prince Charles will be excluded from the act. We need to know what a man of such privilege, with such an exaggerated opinion of his of his own intellect, but with such limited knowledge, is seeking to influence from his unelected position.

Yours sincerely

Mike Clayton

Mike Heaton

Dear Sir/Madam,

Government governs by the people, for the people. Civil servants are servants of the civilian body. Information should be available to the public by default unless there are compelling reasons it should not be so.

Nobody is naive here. Certain classes of information have to be kept secret to ensure the effectiveness of government. I do not agree that policy discussions should be in this sphere though. The acceptability of public policy is a good yardstick for its justness. If a discussion cannot be allowed to see the light of day, it likely should not have occurred - and the few exceptions to this are already well covered by existing FoI.

Meanwhile, the excuse for safe spaces wrt policy discussions is an easy smokescreen for lobbyists and special interest groups to disguise their actions, which is patently against the public interest.

I am sympathetic to the cost concerns. Existing legislation has provisions for rejecting high cost requests. I would urge the committee to consider the intangible benefits of FoI and I would suggest that, when its many important successes are considered, it will be evident as money well spent.

Kind regards,
Mike Heaton

Mike Long

I have just become aware of the commission looking into the future of Freedom of Information requests in the UK.

At a time when the government is soliciting far greater powers to look into the activity of its citizens does it not seem ridiculous that it should at the same time be looking to protect itself from what is, after all, much less scrutiny by that same public?

Personally I'd like to see the FoI act EXTENDED. Nothing is more annoying to a member of the public than to be told that information can't be released because it is 'commercially sensitive'.

It is after all our money that politicians are spending.

The wrongdoings and waste of money that have been exposed via previous FoI requests should of themselves be sufficient justification for not reducing in any way the current right to information.

We do not want a government that is allowed to spy on its citizens but not subject to scrutiny itself.

That is the set-up in regimes we profess to deride.

Mike Long

Dr Mike Rowbottom

I am writing to say That I very much hope that the commission currently reviewing the Freedom of Information Legislation will leave it unchanged.

In the big scheme of things the costs of FOI are very small, especially in relation to the value of the information that has come into the public domain. For example, the revelations about the financial abuses, and criminality revealed in connection with MPs expenses, the discovery of the extent of entertainment being experienced by senior Civil servants and the publication of the extent and cost of management consultants in the NHS demonstrate very clearly the value to the UK democratic process resulting from FOI requests.

At a personal level I have been able to access information on local planning applications that the Council Officers would much rather have kept hidden, and which has prevented at least one major mistake being made in the granting of planning consent. I have also been a party to the disclosure of data on the incidence of bee diseases, that have revealed that official policy decisions have made at least one bad mistake, resulting in an increased incidence of a bee disease.

I can understand why Ministers, senior civil servants and other officials may wish their mistakes and misjudgments to be kept hidden yo prevent embarrassment, but from the perspective of the generation of improved governance it is essential that the FOI legislation remains as it is to prevent a return to the former practices of cover up and evasion on important matters.

Dr Mike Rowbottom

Mira Makar (Member, SME Alliance Ltd.)

Independent Commission on Freedom of Information

Response to call for evidence from Mira Makar MA FCA (Miss)

The witness thanks the Cabinet Office and the Commission for the opportunity to contribute evidence. She looks forward to further details being published during the life-time of this Commission in regard to the change in policy responsibility from MoJ to Cabinet Office with effect from July 2015 and also clarification in regard the fact that the work of the Commission is itself not covered by FoI. This appears an anomaly. She wishes to reserve the opportunity to supplement her evidence in the event that these clarifications are published during the life-time of the Commission.

1. What protection should there be for information relating to the internal deliberations of public bodies? (1.2) For how long after a decision does such information remain sensitive? (1.3) Should different protections apply to different kinds of information that are currently protected by sections 35 and 36?

1.1. The protections should include:

1.1.1. Adequate notice and public notification of pipeline deliberations and contact points such that (i) those with a useful contribution to make can make it; (ii) duplication across functions is avoided; (iii) mistakes are not repeated; (iv) output is published; (v) those entering the civil service and other public offices are adequately supervised to compensate for inexperience and poor quality work; (vi) there is cross referencing from dependencies and to dependencies; (vii) stats are captured; (viii) DPA and FoI are taken into account including storage and retrieval of data; (ix) extra hurdles and obstacles are identified such as the obligation to operate “digital by default” requiring higher levels of security and audit trails; and gov.uk with the massive overhead and disruption it has caused; and (x) continuity is preserved.

1.2. All data and subjects deliberated require classification as a matter of routine. There are few decisions that need “secrecy” or be regarded as “sensitive” bar staff ones. “Policy” in general should not be regarded as “sensitive” since it needs public input to ensure that any idea anyone has is properly road tested before being rolled out on the unwitting public. Disasters including wanting to stimulate activity by promoting borrowing and, instead of providing that benefit to traders, giving it to the banks. These are costly mistakes, can have effect for three decades or more and have no “fix” route. They would not be made if those

coming up with the idea were informed.

1.3. No, different protections should not be applied. MoD classification should apply. It should be a disciplinary matter to “over classify” to cover up on political issues, errors or partisan behaviour favouring the vested interests and others.

2. What protection should there be for information which relates to the process of collective Cabinet discussion and agreement? (2.2) Is this information entitled to the same or greater protection than that afforded to other internal deliberative information? (2.3) For how long should such material be protected?

2.1. The relevant standards which apply and the protocols should be the subject of a specific public consultation. One would expect that the outcome would be that a near verbatim account would be created which is not routinely made available immediately and that a record of decisions and deliberations would come out in accordance with the applicable protocols and timescales, again requiring consultation. The longer such is kept secret the more the opportunity for useful contribution is lost.

2.2. As above.

2.3. As above.

3. What protection should there be for information which involves candid assessment of risks? (3.2) For how long does such information remain sensitive?

3.1. There is no such thing as a “candid assessment of risk”. There is the huge opportunity and risk of getting things seriously wrong by operating in secret and informing on an incorrect basis, like war. The “financial crisis” could not have occurred had there been transparency and informed input.

3.2. Some risk material, as national security and intelligence, will remain classified for a long time, and some may never be released with no one knowing about it to ask. The risk to the public is that it is wrongly classified with no self correction mechanism.

4. Should the executive have a veto (subject to judicial review) over the release of information? If so, how should this operate and what safeguards are required? (4.2) If not, what implications does this have for the rest of the Act, and how could government protect sensitive information from disclosure instead?

4.1. No there should be no veto. Judicial review has been thoroughly discredited as inaccessible at least and in any event is discretionary UNLESS the person is accepted as

having an interest. This is all pretty random, unpredictable in outcome and uncertain in law. Public perception is that it is a tool to block criticism.

4.2. Paranoia on “sensitivity” is misplaced. Rational thought process backed by empirical evidence or witnesses is not “sensitive”. “Why is it being held back?” is the test for which there should be an audit trail and audit checking on classification. The benefits of exposure far outweigh the secrecy unless vested interests are in operation or there is an unstated agenda.

5. What is the appropriate enforcement and appeal system for freedom of information requests?

5.1. Line management and resolution. An appeal is a judicial process which is wholly inappropriate and can cause mental breakdown to the person requesting the information and needing it with no accountability on the tormentors.

5.2. Non delivery including on a timely basis on the part of those delivering FoI responses, with teams using their own names and contact details and not disappearing with tasks unfinished, should be a disciplinary matter. Anonymised emails and responses should properly be banned. These add confusion and are catastrophic to efficiency and accountability.

6. Is the burden imposed on public authorities under the Act justified by the public interest in the public’s right to know? Or are controls needed to reduce the burden of FoI on public authorities? If controls are justified, should these be targeted at the kinds of requests which impose a disproportionate burden on public authorities? Which kinds of requests do impose a disproportionate burden?

6.1. The burden is that on the public and the inefficiency of delivery of the right to know a well as the impact of wasteful reporting and too late reviews. Patrick Jenkins wrote in the FT on the HBOS report (19 November 2015):

> “What can you do in seven years? If you’re in the financial post mortem business, you can spend £7m compiling a 549-page report on the failure of Halifax Bank of Scotland — and add very little to the sum of human knowledge.”

6.2. The controls which are required are on the obstructive devises used to block delivery up of the information sought; the switching of SARa and FoI; and the speed with which a person is told “no” and sent off to the Information Commissioner. All such obstruction and deflection should be treated as a disciplinary matter.

6.3. Organisations should properly have an escalation process without recourse to the

Information Commissioner. Particularly weak areas are procurement (routinely by passed); policy; use of grants; use of contractors and outsourcers; allowing suppliers to copyright their effort; organisations which are subject to FoI and have supervision obligations but the FoI does not extend to those supervised; and confusion over data controller/data processor classification. The channels to ensure a transparent flow are not in place but should be.

6.4. The burden on the public is wholly unquantified and unquantifiable. The devastating loss of opportunity that results is wholly unevaluated. The burden on the provider and holder of the information is exacerbated in the case of local authorities as the Mayor & Commonality of the City of London. This operates in uncoordinated silos, where adverse decisions made in one silo create victims, thereby making demands on other silos. (for example to close the Citizens Advice Bureau making long term staff redundant and all client files and records disappearing “due to data protection” mid project) None have the mechanism to repair or restore (police; hospitals; home care; trading standards; competition directorate; social services; housing; estates management; security; FoI; SAR; legal departments; council tax etc).

6.5. The citizens have no ready access to the council management nor do they have the ability to escalate issues due to blockages and filters. At the time the decision is made no one is consulted with full consequences. As a result other developments such as the Adult Care Act are not capable of being implemented, enforced or monitored. It is to be presumed that it is the same story around the country but no stats are captured.

6.6. Benchmarking and performance monitoring are missing. The need for performance monitoring and appraisal becomes more acute in the cyber world of to-day. Those evaluations run in private sector areas show woeful non compliance.

“Launched earlier this month, the Ranking Digital Rights Corporate Accountability Index evaluates 16 of the world’s largest Internet and telecommunications companies on their disclosed commitments, policies and practices affecting users’ freedom of expression and privacy. Eight publicly listed Internet companies and eight publicly listed telecommunications companies operating around the world were assessed on 31 indicators across three categories – commitment, freedom of expression, and privacy – drawn heavily from international human rights frameworks, as well as from emerging and established global principles for privacy and freedom of expression. The research revealed a deep need for improvement:

- Only six companies scored at least 50 per cent of the total possible points;
- The overall highest score was only 65 per cent;
- Nearly half the companies in the Index scored less than 25 per cent, showing a serious deficit of respect for users’ freedom of expression and privacy.

On the project’s interactive website you can peruse the analysis of company performance on every indicator, as well as in-depth analysis of every company’s performance. A full narrative report as well as all the raw research data used to compile

company scores can all be downloaded here."
Rebecca MacKinnon, Director of the Ranking Digital Rights Project LSE Media Policy Project blog.

Mira Makar MA FCA (Miss)

N Saunders

Sirs

I would like to request that you do not water down the Freedom of Information Act.

It is ironic that at a time when HM Government is looking for more powers to pry into the on-line lives of UK citizens that you are considering limiting the powers of the same citizens to discover some of the more dubious activities of those with power and influence in the UK.

It must remain a right of UK citizens to be able to discover how those in power use taxpayers' money and to expose people who abuse their positions for personal gain or to hide abuse. In my view this is one of the foundations of a free society.

Faithfully

N Saunders

P. N. Dore (Mr.) and C. C. Dore (Mrs.)

Dear Sir or Madam,

We wish to make a submission to the Commission on Freedom of Information.

Accountability is essential if government is to be seen to work for the benefit of the state's citizens as a whole and not for vested interests or selfish motives.

Accountability requires openness and a willingness to communicate effectively and freely with those who request information, with an equally effective and open appeal process should information be deemed to be inappropriate for sharing.

The Freedom of Information Act has worked very well; it has been used to hold public bodies, M.P.'s and lobbyists to account. It should be widened to include all companies that are contracted to do work on behalf of local and national government bodies or agencies.

Secrecy has been at the heart of the public's lack of support for M.P.'s and government generally – openness is an encouragement for more democratic engagement.

The cost of FOI requests is minimal by comparison with the waste that has occurred in the past when agencies and government have not been held to account and is a small price to pay for ensuring that government works for the benefit of all, efficiently and effectively. There is no excuse for hiding behind the attitude that "we know best and you do not need to know why we do what we do".

Good investigative journalism is the hallmark of a free and democratic society and will be stifled by restrictions on freedom of information and by charges for requests, and such charges will make it much more difficult for ordinary citizens to obtain information - charging should not be imposed.

There has been a growth of a culture of concealment in government by failing to use recordable means of communication. This must stop. It is essential that the way in which decisions are reached and the grounds on which they are made are recorded and available for scrutiny.

Yours sincerely,

P. N. Dore (Mr.) and C. C. Dore (Mrs.)

Neil Gellard

Sirs,

Having heard of this public consultation via Private Eye magazine, I hoped you would kindly consider the following points from myself, as a humble member of the general public.

1. We are regularly told by government ministers during every round of policy change on matters of Privacy, specifically the right of the government to intercept our mobile phone data, phone calls and internet history, that those who have nothing to hide have nothing to fear. Will the government practice what it preaches with regard to the Freedom of Information Act, which, since its enactment, has been nothing other than a benefit for the general public?

2. The fact that the Prime Minister who introduced this legislation has gone on public record as saying it was one of his biggest regrets in government is all the justification one needs to retain the legislation exactly as it is.

3. Please, do not make this matter an issue of cost. If funding is needed for the provision of the data to which those who already pay for it (the taxpayer and voter) are entitled, then it is for the legislators to come up with those alternative finance initiatives that avoids a situation where the general public (and smaller, independent publishers) are, in effect, being asked to pay for data that is already rightfully theirs and/or face the prospect of being priced out of seeing this data by prohibitive costs.

With regards,

Neil Gellard

Neil McDonald

We need more Freedom of Information, not less.

The more open and transparent a government is, the more fit it is to serve its people.

Any UK government is only in power because of its citizens, and there to serve them. The government is therefore answerable to its citizens and has a duty to be as open and transparent as possible to prevent bad governance.

Regards,

Neil McDonald.

Neil Rhodes

Dear Sirs

I understand the issues that there will be some people who abuse the Freedom of Information Act (FOIA), however I do not believe that the FOIA should be restricted to the point where it bars the Public from accessing information, particularly when it relates to a problem/issue they are having, or becomes a service that is only available to those who can afford it.

My experience is solely with County and District Councils.

My Mother became ill and unable to continue living in her own home, so came to live with my wife and I. We did not have a very good experience with Social Services and Carers. I had to use the FOIA to get information, simply because the Council and its employees would not answer questions. We also experienced Council employees giving us and others information that wasn't true. The worst example was a Social Worker telling a Care Company that I'd had a car crash and frontal lobe damage, when the truth is I haven't had a car crash and do not have any brain damage. Recently I found out that the Councils Senior Customer Experience Manager lied to the Local Government Ombudsman. The FOIA has been invaluable in helping me prove that this Council is incompetent and, whilst my mother was alive, had a hidden agenda. Without the FOIA I would not have been able to give evidence of their mistakes or prove that the comments they made about me were incorrect.

I understand the cost issues but I would say it's not the Public who are the cause of the FOIA being a financial burden, it's those who refuse to answer reasonable, pertinent, legitimate questions. For example I had a question related to what our family could do regarding building a one bedroom and wet room extension for my mum, which she would finance. My question could only be answered by the Council, yet it took over 12 months to receive an answer, given to us one month before my mother passed away. When I complained I was told I had to progress to 'Stage2' of the complaints process, at which point I asked for the rules and regulations relating to this 'Stage2' and didn't receive answers. To get answers which should've simply been given to me by the Councils Customer Experience Team, I had to submit a number of FOIA requests.

I have had two years of dealing with this issue and could not have progressed without using FOIA requests. In my experience Councils don't want the Public to have access to information, because it proves their failures. Councils don't want the FOIA to continue in its current form, so as to protect them from being 'found out' in their lies and failures.

With regard to paying for FOIA requests I believe this wrong and it would be another block to the Public achieving 'justice'. My Mother couldn't take legal action against the hospital that failed her because Legal Aid was withdrawn from those seeking compensation. The cost

would've been prohibitive. Now someone is suggesting that due to the failures of someone not doing their job, not answering questions, the Public would have to pay for information held by an organisation funded by the Tax Payer? How is the ordinary person going to afford to challenge failures and access information they are entitled to?

It concerns me that, as I am experiencing now and in the future, organisations would be in a position to hide their failures and actually stop the Public from accessing services, information or funding they are entitled to and also see what is being said about them. With regard to the last point, I believe that some FOIA requests could be avoided if a law was passed requiring any organisation to give copy of any information, that is written or stored about them, at the time that information is stored. This gives clarity and allows an individual the opportunity to immediately challenge what's been said/written, if it's incorrect. I have to wonder whether being told I was brain damaged, affected how people treated me. If I would've known about this comment I could've defended myself and taken legal action against the Social Worker who made the comment.

I would be happy to discuss my experience with the commission or be questioned on my experience and views.

Yours sincerely

Neil Rhodes F.R.G.S.

Neil Tague

Hi,

I'd just like to register with you my belief that the Freedom of Information Act must stay.

In its time, it has done the public a wonderful amount of good, exposing some pretty shabby behaviour by public bodies.

It would be shameful if this Act were to be cut, or curtailed.

We're supposed to be a democracy after all, aren't we?

Many thanks

Neil Tague

Neville V. Ward

Dear Commission members,

I wish to recommend in the strongest terms that no changes are made to the Freedom of Information Act.

The Act has been an enormous force for openness and transparency. This is clearly the basis of good governance. It is also a way to silence conspiracy theorists.

There are improvements that could be made: taxes paid by large corporations are often kept secret. The amounts of money lost to the Treasury can only be guessed at, but could end austerity many times over.

The burden on authorities, local and national Government is tiny compared to the money saved or reclaimed, the rise in public trust and the justice achieved. At a time when the public's trust in the Government is low, the Act is a huge help.

Yours sincerely,

Neville V. Ward

Nicholas A Smith

Dear sir/Madam,

It has been highly publicized within social media and within 'mainstream' media that this current government intends to put forward a bill to 'dilute' the current 'freedom of information act'. The new bill proposed intends to curtail access to ministerial accountability through the use of FOI requests. In addition to this the bill in my understanding also intends to make the process of a FOI request to be so expensive as to place it beyond the purse of the average citizen. Since the purpose of government is to act in the interests and for the benefit of the British people and is 'voted' for by the British people such changes and 'watering down' of the current act would result in the denial of access and ability to hold the government and any public sector organisation. In my mind this would allow any government to act without any degree of accountability or exposure regarding risk, finical accountability and irregularities, a primary case being the exposing of ministerial conflicts of interest and abuse of expenses.

Private Eye magazine states that... 'Among the "stories" that would not have come out were it not for the legislation, and might not again if it were watered down or subject to financial charges, are MPs' expenses and several exposed in the Eye over the past ten years, including: the recent mapping of English and Welsh property owned by offshore companies; the "shameful" (the Coalition's word) privatization of part of the UK's international development fund CDC; rampant junketing by the country's public spending watchdog; the scale of the "tax gap" (extent of the tax dodging in the UK); the schmoozing of Whitehall mandarins that forced the open publication of hospitality registers; and New Labour's prolific and ruinous spending on management consultants and the disastrous NHS IT project - to name just a few.'

This in my mind is nothing short of imposing a dictatorship on the British people and is morally wrong. It pervades an atmosphere of deceit, cover up's and lies that would allow the British government and other organisations a free hand to impose their own interests while removing any chance to challenge or seek a reason for their actions or even exposure of such deceit.

I am against any such change to the current FOI bill and believe that if the new proposals go through, it is the British people who would suffer at the hands of a 'secret state'.

Yours Sincerely,

Nicholas A Smith

Nicholas Gilby

Submission to the Independent Commission on Freedom of Information

Mr Nicholas Gilby

Background

I am what Frontier Economics called in their October 2006 report an "experienced" and "serial requester". Since the Freedom of Information Act ("the Act") came into force on 1st January 2005, I have made around 70 requests for information; almost all were made before 2012. On many occasions I asked for an internal review or complained to the Information Commissioner following an internal review.

I have appealed to the Information Tribunal/First-Tier Tribunal (Information Rights), either myself or acting on behalf of someone else, on three occasions, with mixed results:

- I brought an appeal against the Information Commissioner and the Department for Business, Innovation and Skills (BIS). I had asked for information relating to several expired export licences[36], and eventually withdrew my appeal[37].
- I brought an appeal against the Information Commissioner and the Foreign and Commonwealth Office ("FCO"). I had asked for 243 pages of historical documents to be declassified. I was successful at the Tribunal and obtained almost all the information I had asked for[38].
- I brought an appeal on behalf of an NGO, Campaign Against Arms Trade ("CAAT"), against the Information Commissioner and the Ministry of Defence. CAAT had asked for some historical documents to be declassified. I agreed to represent CAAT at the Tribunal. A small proportion of the information requested was disclosed by the Ministry of Defence, but the appeal was dismissed[39].

More recently (in April 2015) I gave evidence on behalf of Mr Richard Brooks in his appeal to the Tribunal against the Information Commissioner and the Ministry of Defence. Mr Brooks' appeal was dismissed[40].

Outside of my full-time paid employment, I have been an active supporter of CAAT, and all of my requests relate to some aspect of the international arms trade.

I have had no legal training. I hope my evidence can help the Commission view the issues from the perspective of an ordinary citizen who also has a good deal of experience of using the Act.

[36] See ICO Decision Notice FS50086622 at https://ico.org.uk/media/action-weve-taken/decision-notices/2007/403298/DECISION_NOTICE_FS50086622.pdf.
[37] Information Tribunal case reference EA/2007/0057.
[38] *Gilby v Information Commissioner and Foreign and Commonwealth Office* (EA/2007/71/78/79).
[39] *Campaign Against Arms Trade v Information Commissioner and Ministry of Defence* (EA/2011/0109).
[40] *Brooks v Information Commissioner and Ministry of Defence* (EA/2014/0261).

The appropriate balance between transparency, accountability and the need for sensitive information to have robust protection

Although the Commission interprets its terms of reference to mean that it must not consider "more general questions about the Act", it is "interested in the balance between transparency and the burden of the Act on public authorities more generally". In other words, are the benefits the Act brings worth the time and costs imposed on public authorities?

The problem with answering this question is that it is very easy to see what the burdens to public authorities are (time, cost, inconvenience) but it is much less obvious what the benefits are. This is not because there are no or few benefits but because the usefulness of any information disclosed depends on the motive of the requestor and what they choose to do with any information that is disclosed. In many cases public authorities must be unable to appreciate the usefulness of the information disclosed to a requestor or must be unaware of what use is made of it. More often, perhaps, the public authority may have a very different perspective to the requestor, and so whether they are any benefits from disclosure might be contested.

Let me give you an example of where I think the Act has been of great benefit to me and I believe the wider public.

I appealed to the Information Tribunal against the decision of the Information Commissioner (on the advice of the FCO) to deny me sight of 243 pages of historical documents. The documents described (I now know) a deal a UK company was attempting to negotiate with the Saudi Arabian National Guard in the late 1960s and early 1970s. The company, with the full knowledge of officials, proposed to use corrupt practices to secure the deal. Further, officials proposed this corrupt deal should take place under the umbrella of a Government-to-Government Memorandum of Understanding with the Government of Saudi Arabia.

At the time I made the three requests for these documents (at the end of 2005 and early 2006) the Serious Fraud Office ("SFO") was investigating payments made by BAE Systems to secure contracts in Saudi Arabia and other countries. The investigation was terminated in December 2006, following a series of "Shawcross exercises" in Government, dating from 2005, and in which one of the Commission's members, Mr Straw, was at one point involved (in his capacity as Foreign Secretary).

The fact of the SFO investigation of BAE Systems was well known and received a great deal of media and Parliamentary attention. Unsurprisingly one aspect of the affair which interested the media was the historical context for the investigation and possible UK Government knowledge of dubious practices over a very long period. This was of particular interest because the Ministry of Defence had oversight of the BAE Systems contract being investigated by the SFO, because it was made under Government-to-Government

Memoranda of Understanding with the Government of Saudi Arabia. Further, the two leading figures in the Saudi Royal Family at the time of my three requests, King Abdullah and Crown Prince Sultan, had been key decision-makers in Saudi military procurement for decades, going back to the early 1960s.

My aim in appealing to the Information Tribunal for the 243 pages of historical documents was to inform public debate properly. I also aimed to set a precedent as I had made five other complaints to the Information Commissioner about the FCO's refusal to disclose a further 723 pages of similar documents. Without a full understanding of the context in affairs such as these, properly informed by documents, debate can descend into unhelpful speculation and unsubstantiated rumour. Plainly this is not in the public interest.

Although ultimately I obtained the documents I asked for with very minor redactions made, towards the end of 2008 long after the SFO investigation had been terminated, it was not until I published a book in 2014 called *Deception in High Places: A History of Bribery in Britain's Arms Trade* that the information obtained entered the public domain (other than being placed in an archive). This was partly because the media were now less interested in the material due to the passage of time.

It is plainly in the public interest that corruption is exposed where possible, as well as any official involvement in it. This is particularly so in cases of so-called grand corruption. The disclosures made in the Tribunal case I describe (as well as the disclosures following the other related requests) have brought a very large amount of information about the UK's long relationship with Saudi Arabia as regards military procurement into the public domain. That is, the background to the SFO investigation of BAE Systems is now in the public domain and can the public can understand the historical context and issues in a way that would not have been possible without the Act.

The public is now far better informed than it was previously about one very important aspect of the UK's relationship with one of its key allies, again enabling public debate about it to take place on a much more informed level.

The public interest I believe is wider than that. The documents enable (at least in part) a more informed assessment of the role of officials in corrupt practices in military deals with Saudi Arabia and thus the disclosures promoted accountability. The documents also provide evidence about the nature of the international arms trade, and the circumstances in which corrupt practices can flourish.

I accept that there are some people who do not share my perspective. But I believe that the Act has enabled much more transparency and accountability in this particular case than would have been possible otherwise. Further, the Act enabled me to shed light on some extremely unsavoury conduct which is precisely what the Act ought to enable the citizen to do.

Question 5: the appropriate enforcement and appeal system for freedom of information requests

The consultation paper rightly says that “an appeal can be a lengthy, drawn-out process in some cases. Cases that are not resolved can take years to complete all of the appeal stages, by which time the information may have ceased to be of value to the requestor”.

The statistics in your consultation paper suggest to me that there is a justified need for multiple layers of appeal. In one in five requests to central government, an internal review results in a different decision; of cases that are investigated by the Information Commissioner, the Commissioner reaches a different view (partly or wholly) in 38 per cent of cases. As for appeals to the Tribunal, the Tribunal reaches a different view to the Commissioner in 23 per cent of cases. In other words, were it not for these multiple layers, significant errors would be made at every stage of the process, resulting in sub-optimal decision-making, and unfairness biased towards the requestor. The reason unfairness would be biased in this way is because public authorities inevitably almost always have far more resources than the requestor and therefore usually have the option of taking the case to the next layer in the appeal process to correct wrong decisions. The requestor does not have this luxury to the same extent; in my experience going through the appeal process is a considerable test of time, ability, resources and patience, and one many requestors will understandably not wish to go through.

It is clearly in the public interest (on grounds of cost and timeliness) that public authorities should have the opportunity to review their decision, at a senior level, before an independent investigation is begun. Again, on grounds of cost and timeliness, it is in the public interest that a stage of independent investigation can take place before formal legal proceedings commence. The Act does both of these things, minimising the burden and the cost of the appeal system.

The consultation paper says “the First-tier Tribunal carries out a merits-based review of the Information Commissioner’s decision, and thus it performs a similar role to that of the Information Commissioner”. However, it is crucial to understand that the role of the First-tier Tribunal does not duplicate the role of the Commissioner, for the very important reason that the Tribunal is the first forum the requestor comes to where she enjoys something approaching equality of treatment with the public authority.

This is important because the Commissioner, is, perhaps inevitably, bound to be lobbied strongly by public authorities, who will have access and therefore influence that the requestor will not enjoy. Further, the requestor has no opportunity during the Commissioner’s investigation to test the public authority’s arguments, which in my experience are often expressed only briefly in correspondence. The Commissioner, who must deal with an extremely wide range of complaints, may understandably not be able adequately to test the arguments the public authority is making in every case.

By way of example, consider the Commissioner's Decision Notice FS50102198[41], in particular paragraphs six to nine. In this case CAAT had asked the FCO for historical documents concerning UK military deals with Saudi Arabia. The request was refused by the FCO at the initial and internal review stages and CAAT complained to the Commissioner.

CAAT complained by letter to the Commissioner, and around two months later he began his investigation. Whereas CAAT had its opportunity to influence the Commissioner in the letter asking for an investigation, it played little or no part in the Commissioner's investigation. The FCO, however, appears to have subjected the Commissioner to sustained pressure, by taking four opportunities to express its views, including during at least two meetings.

As the Decision Notice says:

> "On 12 March 2007 the Commissioner began his investigation. On 11 April 2007 FCO told the Commissioner that relations between the United Kingdom and Saudi Arabian governments remained extremely sensitive with respect to any aspect of defence issues: it was therefore continuing to withhold the information.
>
> On 8 May 2007 the Commissioner's staff reviewed FCO's papers, comprising four paper files all of which are classified as either secret or confidential. FCO said that the section 27 exemption remained its main ground for refusal. FCO added that its relations with Saudi Arabia were vitally important and had argued strenuously that the information should continue be withheld in its entirety for the foreseeable future.
>
> At a further meeting with FCO on 24 May 2007, its officials emphasised to the Commissioner's staff their strongly held conviction that the request concerned matters that raised extreme sensitivities with regard to HM Government's relationship with the Government of Saudi Arabia…On 1 June 2007 FCO made further representations to
>
> the Commissioner."

In fairness to the FCO, they did nothing illegal or improper. They were taking strenuous steps to protect what they perceived to be the public interest. The problem is the effect of a system where such behaviour is possible. On 8 January 2008, the Commissioner ruled in favour of the FCO by issuing a Decision Notice. CAAT subsequently informed me that on 29 January 2008 they appealed to the Tribunal (EA/2008/0009), and that on 12 February 2009 the FCO informed them that "the majority of the information is now releasable". Indeed I now possess all the information CAAT asked for, which was released almost in its entirety.

It is obvious that the prospect of a Tribunal, where the arguments and evidence of both sides are fully tested by an independent part of the judicial system, prompted the FCO to withdraw their objections to the release of the information CAAT had asked for. Had an Ombudsman-style system been in operation, I believe the wrong decision would have been reached. I

[41] https://ico.org.uk/media/action-weve-taken/decision-notices/2008/424760/FS_50102198.pdf.

believe that like this case, it would have been reached following a period where the FCO was repeatedly able to lobby the Ombudsman in private, without the knowledge of the requestor, and where their arguments were far less likely to be robustly examined, because they would not be tested by the requestor.

The Commission should be under no impression that the multiple layers of appeal somehow mean that it is easy for requestors to harry public authorities. My experience of the Tribunal process, and those I know who have also been through it, is that it is extremely daunting. Like me, most requestors are not trained lawyers, nor Parliamentarians or from another profession where adversarial proceedings are normal.

Putting a case to a Tribunal demands a great deal of time to prepare statements, evidence and, if there are witnesses, to manage the witnesses so that they are able to make useful statements and also agree to appear before a Tribunal. In my own experience the amount of time involved is many days of preparation, as well as the one or more days of hearings. In my experience Tribunal chairs take care to ensure timetables are generous to the requestor, but even so, given the normal demands of home and working life requestors face, the burden is considerable.

The requestors are fully aware from the very start of the process that they face an uphill struggle, and this is so whatever previous experience of the Tribunal they have. The public authority will always have more resources it can bring to bear, and the more determined it is to prevent release the more resources it will spend. In the cases I have been involved in the public authority usually has at least one solicitor and one advocate (often an eminent one), and sometimes more than that. In the most recent case I was involved in, Mr Richard Brooks represented himself with assistance from a colleague. The Ministry of Defence was represented by the Treasury Solicitor and two counsel, one a QC. Frequently the public authority calls witnesses, often very senior and distinguished ones. It takes time to analyse their well-prepared statements and to devise effective lines of questioning.

In my view the current UK enforcement and appeal system is the optimal one. It is not the case that it imposes an unfair burden on public authorities. The evidence is that multiple layers of review are necessary to prevent a lot of wrong decisions being made. Further, the Tribunal stage is very important, ensuring as it does a decision made on a level playing field where all the arguments and evidence can be heard and challenged by both sides. Lastly, an appeal to the Tribunal is not something any requestor would consider embarking on lightly. They may not be liable for the costs of the Tribunal or the public authority, but in my experience to succeed requestors need time, ability, commitment, stamina, luck and, in some cases, help from others.

Nicholas Gilby

WRITTEN EVIDENCE TO THE INDEPENDENT COMMISSION ON THE FREEDOM OF INFORMATION ACT (FoIA)

I. Submitted in a personal capacity by Mr Nicholas Gould.

PERSONAL INTRODUCTION AND REASONS FOR SUBMISSION

II. I have had experience of using the Freedom of Information Act in recent years. I am retired. I worked in the public and voluntary sectors. In the last ten years of my working life, I was involved in national policy formation and implementation. I retain an active interest in citizen engagement - especially the need for openness and transparency. I support democratic trade unionism.

III. I wish to contribute to the '*Call for Evidence'* because of my concerns that:

- The status and health of our UK democracy is absolutely essential not only to our liberties but also to our economic survival. The UK economy depends for its success mainly on financial and legal services that in turn depend on 'The Rule of Law' and the strength of our parliamentary democracy.
- Maintaining our economy and democracy depends crucially on striking a balance between secrecy and confidentiality on the one hand and openness and transparency on the other.
- My opinion is that the '*Call for Evidence'* represents a dangerously one-sided view of possible changes to the Freedom of Information Act (FoIA), with the potential for harm to our democracy and economy.
- The '*Call for Evidence'* with its talk of burdens and protections shows a fundamental hostility to openness and transparency. There is no hint of the benefits stemming from a culture of progressive information access & sharing.
- My view is that the focus on 'protections' is in effect a proxy for increased protectionism - a move to drastically reduce the potential for scrutiny of powerful vested interests, for instance, senior NHS managers and civil servants.
- The distorted agenda set by '*Call for Evidence'* also disregards the most pressing need of the public sector workforce for improvements to information handling, notably in respect of record keeping and retrieval. It seems to me that many of the problems of the FoIA - and the Data Protection Act - stem from inefficient information and data practices. A lack of workforce confidence and competence in information handling is a source of far-reaching problems, including workplace accidents and loss of productivity.
- The ICO's own submission to the Burns Commission indicates that government already has more than sufficient powers to deal with putative abuses of the FoIA.
- The '*Call for Evidence'* completely disregards the alternative view that the main problem with the FoIA is that it is already 'over friendly' to government.
- A current lack of public engagement and trust in government is an even more fundamental problem. The '*Call for Evidence'* sets an agenda that could make that problem far worse.
- In that respect, I present evidence of my own experiences of using the FoIA in recent years in connection with public sector trade union and workforce issues.

SUMMARY OF RESPONSES TO QUESTIONS 1 TO 6 IN THE 'CALL FOR EVIDENCE'

IV. In respect of Questions 1 to 4, I am not presenting any evidence; hence, detailed responses would be inappropriate. Drawing on my own experiences, I would like to record:

- Different policy domains have different requirements for the protection of deliberative spaces.
- Obviously, policy and strategy discussions in relation to national security and defence require considerable protection.
- When undue protection is present in policy domains such as health, social services or transport, then concerns about protectionism and corruption will intensify.
- The answers to many of the putative problems cited in the '*Call for Evidence'* are straightforward: better government; more open government; and, more transparent government.
- The actual problems are clear and have been the same throughout the wonderful history of our country. Those problems are: reactionary and protectionist elements in government; vested interests; and, insidious corruption.
- In respect of these actual problems, the Freedom of Information Act needs strengthening in the direction of openness and transparency - the '*Call for Evidence'* points in the opposite direction.

V. The document attached contains the evidence used in support of my responses to Questions 5 & 6. My concerns centre on public sector workforce information matters, especially trade union issues. My view is that what really counts for people in the UK as far as government is concerned is the quality of everyday public services. In this time of austerity, it is particularly important that people have confidence that the government is acting - and is seen to be acting - fairly. In that respect, it is vital that information about the public sector workforce is openly available. Pay-roll can be a used as an information access point - with due regard to the Data Protection Act - but with the out-sourcing of pay-roll functions, access is not straightforward. In any case, workforce information should be easily and openly available, for instance:

- the number of Whitehall civil servants who have private medical insurance - paid by the tax-payer or self-paid;
- the details of all secondments to and from the private sector into public authorities; or,
- the percentage of the workforce in a department who went on strike.

Citizens should not have to apply for such information. They should not have to appeal when that information is denied to them. They should not be accused of being vexatious or obsessive when they persist in what are legitimate information requests.

My responses to Questions 5 & 6 are:

Question 5: What is the appropriate enforcement and appeal system for freedom of information requests?

My evidence is concerned with the appeal system.

I have made a reasoned argument supported by hard evidence that the use of Section 50[2] of the Freedom of Information Act and the role of the Parliamentary and Health Service Ombudsman are the sources of considerable concern. The denial of any meaningful appeals for certain cases represents a denial of justice and democracy.

There needs to be a full review of the use of Section 50 [2] and the role of the PHSO.

Question 6: Is the burden imposed on public authorities under the Act justified by the public interest in the public's right to know?

I have questioned the pejorative use of the word 'burden'.

Given the centrality of the openness and transparency to a healthy democracy, tens of millions of pounds spend on safeguarding information and data rights represents exceptional value for money.

Of course, some individuals will abuse 'the right to know'. But the rights of the responsible majority of public at large should not be jeopardised by the abuses of a small minority.

Or are controls needed to reduce the burden of FoI on public authorities?

The controls are already too strong.

If controls are justified, should these be targeted at the kinds of requests which impose a disproportionate burden on public authorities?

My evidence suggests that the information requests which are controversial or troubling may be classified as a 'disproportionate burden' - but the reality is that the public body is uncomfortable with the request because it has something to hide.

Which kinds of requests do impose a disproportionate burden?

As above, "disproportionate burden" = probably got something to hide.

(Evidence starts on the next page)

The ICO & Accountability - Trade Union and other Workforce Information

1. OVERVIEW

From Tragedy to National Disgrace

1.1 Hillsborough - Morecambe Bay - Mid Staffs

Three place names that have become associated with unnecessary deaths and serious failures on the part of public sector services. The suffering of bereaved families didn't end with the tragedies - it was only the beginning. As families tried to find out what went wrong they were confronted by powerful institutions determined to prevent the truth about appalling workforce practices from coming out. The families had to face delay, obstruction and lies in their quest for truth and justice. They were also accused of being vexatious and obsessive as they tried to obtain informational evidence that would support their cases.

1.2 Reading the '*Call for Evidence*', I was sickened by the sanctimonious language used to support even greater restrictions to information held by public bodies. If this 'new information regime' actually occurs, then it is even more unlikely we will hear of future Hillsboroughs or Morecambe Bays or Mid Staffs - information will become thoroughly sanitized in order to protect the public sector workforce.

1.3 The '*Call for Evidence*' in itself represents a disgrace - compounding the national disgrace of those three terrible tragedies … and the ones we never get to hear about. At a time when our democracy and whole way of life are being threatened by insane external forces, we would do well to examine the extremely dubious rationale that is driving the proposals for making changes to the Freedom of Information Act. Even in these embattled times, the emphasis has to be on 'Freedom'. The '*Call for Evidence*' is not only a disgrace but is also a threat to the openness and transparency that are central to the life of a meaningful democracy. Changes in the existing legislation based on the '*Call for Evidence*' would be to proceed from disgrace to disaster.

Organisation of submission

1.4 This submission begins by providing hard, factual evidence about my recent information experiences with the Information Commissioner's Office (ICO) and the Ministry of Justice (MoJ); those experiences centred on information requests about trade union issues. This personal factual evidence is complemented by a further evidential section that examines issues of accountability. The total evidence base is then considered in relation to the questions posed by the consultation. I contend that there is a range of public sector workforce information issues that pose inherent conflicts of interest for public sector employees concerned with administration related to the Freedom of Information Act (FoIA). I conclude with suggestions about how these inherent conflicts of interests can be addressed.

The 6 Questions posed in the '*Call for Evidence*' - summary of my positions

1.5 My position is that I fully support the legitimate needs of any elected UK government to limit access to some forms of information, especially in the earliest stages of policy formation. That is, by and large, I support responses to questions 1 to 4 in the '*Call for Evidence*' that would set limits to information access - with necessary safeguards.

1.6 However, when those legitimate information limitations are used by elements of the standing non-elected government - notably ideologically motivated trade unionists - to prevent scrutiny of public sector workforce issues, then that amounts to the corrupt use of the exemptions in the FoIA in the pursuit of sectional self-interests and protectionism. That is, I am profoundly concerned about the potential abuses stemming from 'anti-democratic responses' to questions 5 and 6 in the '*Call for Evidence*'.

Major problem with the ICO dealing with trade union and public sector workforce issues

1.7 In particular, the Information Commissioner's Office is a highly trade unionised organization that cannot be wholly trusted to deal objectively with information requests involving trade union issues - legislation is only as sound as the people responsible for its implementation and enforcement.

Openness and Transparency for all Public Sector Workforce Data (aggregated)

1.8 All public sector workforce data - appropriately aggregated to avoid breaches of the Data Protection Act - needs to be fully available.

2. RECENT EXPERIENCE - A TRADE UNION CASE HANDLED BY A MILITANT TRADE UNIONIST ICO GROUP MANAGER

2.1 The following fact-box and commentary raise serious concerns about the capability of the ICO to assess trade union information issues impartially - the conflicts of interest are obvious and real.

2.2 Fact Box (1)

- I had a complaint about trade union issues that was assessed on appeal by an ICO Group Manager and rejected under Section 50 of the FoIA.
- There is no direct right of appeal for complaints rejected under Section 50.
- This ICO Group Manager was also the Chair of the ICO's PCS Branch and had 'starred' in the 'Socialist Worker' during one of this year's periods of industrial action at the ICO.
- I wrote directly about this state of affairs to the Commissioner, Mr Christopher Graham, who considered the matter 'regrettable'.
- Intending to proceed to Judicial Review - as directed by the ICO Group Manger / PCS Branch Chair - I sought legal advice. My solicitor informed me that Counsel's view was that by the time the Group Manger had directed me to Judicial Review the maximum of three months time limit

Brief Commentary

2.3 All the facts recorded in the box can be supported with hard evidence if required.

2.4 The '*Call for Evidence*' portrays civil servants, NHS managers and other public sector workers struggling to deal with a tidal wave of unnecessary information requests at an enormous cost to the taxpayer.

2.5 In contrast, the fact-box above indicates a rather different picture to that presented in the c. This picture displays behaviour by an ICO employee towards a legitimate requestor that - at the very least - is regrettable. Further, my legal expenditure on this one case alone is proportionately thousands of times more than the UK Government spends annually on administering the FoIA.

2.6 The origins of the above case lie in long-standing and related disputes with my trade union and the Ministry of Justice (MoJ); recording any details would be inappropriate in this context. Suffice to say - at a time when there is considerable public sector trade union opposition to the elected government - I felt there was trade unionist bias against me.

2.7 It is an undeniable fact that an ICO Group Manager who is also the PCS Branch Chair acted directly in a long-running case that raised serious questions about irregular trade union issues. That fact raises concerns about handling of my case and the number of other trade union cases decided by this manager.

2.8 It needs to be emphasized that I am not questioning the legality of the ICO's interpretation of the FoIA in its use of Section 50. I am questioning Section 50 as law that permits the FoIA to dismiss complaints without appeal and without even the requirement to direct complainants to Judicial Review.

How many cases like mine are there?

2.9 How many cases like mine are there? That's a difficult question to answer; here are some of the reasons:

- The above account is a very brief overview of events that took place over about 5 years and have involved thousands of hours of effort and thousands of pounds in legal expenses. I'm retired. I couldn't have done this when at work. I don't suppose many people could. It's been a huge personal burden - one shared by my family.
- Given such a burden, 'giving up' is very tempting. But in addition to the burden of effort and financial cost, there's the frustration of dealing with government officials who can be less than helpful and are backed by the huge resources of the State.
- There's also the highly significant issue of the extent to which active trade unionists have considerable influence on everyday work practices. Of course, that's hard to quantify. But here's an indicator. Many of my letters and complaints feature the words "trade union" in the subject heading. The replies usually do not contain the words "trade union" in the subject heading, or the body of the text for that matter. Need I say more?
- And, finally, there's the point that the ICO evaded accountability for their use of Section 50 with the result that all record of my complaint was eliminated without it leaving any trace.
- In summary, recorded cases like mine are probably few because they are extremely difficult to pursue in terms of personal resources, and, moreover, 'air-brushing' of trade union problems is likely.

3. APPEALS & ACCOUNTABILITY - CONTROVERSIAL CASES

3.1 Clearly, the evidential focus of my concerns in responding to the '*Call for Evidence*' is what I termed above as 'controversial cases' - often described as troubling, intractable or complex. One of the main features of this type of case is that someone perceives that 'something wasn't right' - a perceived injustice - has occurred. On complaining about the injustice, the person feels their concerns have not been properly addressed - and that might be the start of a long and painful process of seeking the truth … many years later … that person has generally lost all interest in getting justice for their family or themselves - it's all about 'preventing this from happening to anyone else'. Some of the most controversial cases - tragedies - do eventually get public exposure, for example, the Francis Report on Morecambe Bay, but there are many others (evidenced by accessing http://phsothefacts.com) that continue unresolved.

3.2 When responding to the questions about appeals and burdens in the '*Call for Evidence*', it needs to borne in mind that controversial cases may have a considerable public interest because they could inform public sector service improvements.

3.3 However, there is a documented cultural tendency within the public sector to regard complaints as burdensome or stepping stones to litigation. Of course, there is 'ambulance-chasing' and that needs to be condemned.

3.4 Where does the ICO come into this? Because of the pivotal importance of information and data in making a complaint the ICO occupies an especially powerful position in the system of UK governance. Without evidence, there is no accountability. In essence, holding any public body to account depends ultimately on the accountability of the ICO. Put another way, if the ICO cannot be held to account for its decisions on information held by public bodies, then in turn those public bodies cannot be held to account. This fact becomes particularly acute when the cases are controversial.

3.5 I consider this issue of ICO accountability and appeals in two ways. First, I expand on the comments made about Section 50 of the FoIA; this is the issue of a perceived lack of accountability of the ICO in respect of its foundational legislation, the FoIA. Second, I present evidence concerning the accountability of the ICO's administrative conduct as overseen by the Parliamentary and Health Service Ombudsman (PHSO).

Consideration of Section 50 of the FoIA

3.6 The Commissioner can close requests on whether a FOI application to a public authority was properly handled by using section 50[2]. Under this section requests can be classified as: vexatious, frivolous, without internal review, having undue delay, abandoned, or withdrawn. Should the Commissioner decide that any of these categories above are applicable, the case is closed. In such cases a Decision Notice is not issued and the requestor has no right of appeal to an Information Tribunal.

3.7 There is no requirement on the Commissioner to inform the requestor what legal routes of appeal are available to them, for instance, a Judicial Review. However, Judicial Review is beyond the means of the ordinary citizen, financially and otherwise. No section 50[2] decisions have ever been contested using Judicial Review proceedings. There have been two instances where Judicial Review proceedings were initiated but both applications to proceed were refused by the court. No details are available.

3.8 In summary, cases closed under section 50[2] have no meaningful routes of appeal.

3.9 The number of cases closed by the ICO under Section 50[2] is not negligible. In the 6 years,
2009 to 2015, the cases finished under Section 50[2] totaled 14, 988.

3.10 Other than their sector, e.g. Local Government, no further details are available about any of these 14, 988 because they are closed without meaningful rights of appeal. There is also no way of knowing whether any of these are contentious or controversial cases and whether they are 'closed down' for that very reason. Lack of data about the subjects of these requests is not compatible with openness and transparency and fuels suspicion and distrust.

3.11 Suspicion and distrust only increases when the Commissioner in his submission suggests that public bodies should make more use of Section 14 (vexatious and repeated requests) of the FoIA. This could be interpreted: 'You use Section 14; the ICO will finish the job with Section 50[2]' - burden very much eased.

Consideration of complaints about the ICO received by the PHSO

3.12 Complainants dissatisfied with the service provided by the ICO are able to take their concerns to the PHSO. This is a route I have used - unsuccessfully. It needs to be emphasized that the PHSO will not deal with complaints that call for it to make assessments about the legality of ICO decisions - that's entirely understandable. However, despite spending thousands of pounds on legal advice that enabled me to frame my complaint specifically to avoid any demands on the PHSO to come to any legal decisions, the PHSO referred me back to the ICO as the public body responsible for information rights. In this way, the PHSO completely side-stepped my allegations of maladministration and failures in service delivery.

3.13 I am not alone in my failure to hold the ICO to account by appealing to the PHSO. An FoI request to the PHSO reveals that in the years 2005 to 2014 there were 739 complaints about the ICO - only 2 (two) of those complaints were fully upheld.

3.14 On paper, the PHSO can hold the ICO to account for the conduct of its staff in respect of maladministration - but, in reality, the 'accountability bar' seems to be set high.

3.15 Given this is issue of 'how high is this accountability bar', the natural question that arises is: "In the 2 complaints upheld by the PHSO, what was the nature and form of the complaint?"

3.16 However, any attempt to answer this question or find out any information at all about the 737 complaints that were unsuccessful, will be repulsed under a combination of Section 44 of the FoIA and two statutes of the Health Service Commissioner's Act.

3.17 So, out of 739 complaints about the ICO to the PHSO, there is no information that is in the public domain and there is no prospect of any information entering the public domain. That is, we have no idea what people were complaining about - maybe they were all complaining about trade union bias. Who knows?

3.18 Given that the ICO is the organization responsible for furthering openness and transparency, I believe any reasonable person will consider this an alarming state of affairs. Hence, there is a similar picture to that recorded above in regard to Section 50.

3.19 The UK government is highly secretive. The '*Call for Evidence*' suggests it is likely to become even more secretive.

4. ICO INDEPENDENCE - CAN THE ICO BE TRUSTED TO ASSESS COMPLAINTS RELATED TO TRADE UNIONS?

4.1 In 2011, I made an information request to the ICO about trade union issues. That request was fulfilled.

4.2 This is unambiguous evidence that the ICO can deal with trade union information requests. There is also evidence that the ICO have dealt with appeals connected to trade union matters in an independent way.

4.3 Not all people have an 'ambulance-chasing' mentality. Not all trade unionists are militant. As above, I have had trade union matters dealt with fairly by the ICO. However, when I have taken controversial trade union matters to the ICO, I have doubted their fairness and impartiality. For instance, I have a copy of an email between an ICO member of staff and the data-controller at my trade union that indicates a high degree of comfortable familiarity.

4.4 As for the results of my 2011 information request, the ICO can be described as a unionised organization: out of 204 members of staffs (f/t & p/t), 135 (66%) were trade union members. However, at the relatively senior staff grade E (grades run A to H), 43 out of 43 (100%) of staff were members of a trade union. Given this degree of concentration of trade union membership at an important managerial level, there are likely to be implications for the extent of trade union activism. The ICO has seen industrial action in recent years. As already recorded, the PCS ICO Branch Chair is on record as having given an interview to the 'Socialist Worker' this year.

4.5 In the present context of ideological trade unionism, the question arises as to whether the ICO can be trusted with cases that are controversial in respect of trade union or public sector workforce issues.

4.6 However, if there was true openness and transparency about public sector workforce information, there would be no need for the ICO to be involved in controversial cases coloured by conflicts of interest.

4.7 The argument is that there are controversial cases - such as mine - in which informational evidence is essential for their resolution - denial of access to this information then involves the ICO in disputes between citizens and public bodies when the ICO itself is such a strongly trade unionised organisation with public sector sympathies.

5. THE ISSUE OF BURDEN - BRIEF NOTES

5.1 Characterising the requirements placed on public bodies by the FOIA solely as a 'burden' fails to acknowledge the essential role played by the FOIA in a well-functioning democracy.

5.2 The focus of Question 6 on cost moves the debate away from a wider cost-benefit discussion in which FOIA compliance is viewed as having benefits for democracy and transparency.

5.3 But even the financial costs associated with FOIA compliance are not straightforward to measure and calculate. Different studies have used different methods with very different results. The text that supports Question 6 in the Call for Evidence does not acknowledge even these recognised difficulties.

6. RESPONSES TO QUESTIONS 5 & 6 IN THE 'CALL FOR EVIDENCE'

Question 5:
What is the appropriate enforcement and appeal system for freedom of information requests?

My evidence is concerned with the appeal system.

I have made a reasoned argument supported by hard evidence that the use of Section 50[2] of the Freedom of Information Act and the role of the Parliamentary and Health Service Ombudsman are the sources of considerable concern. The denial of any meaningful appeals for certain cases represents a denial of justice and democracy.

There needs to be a full review of the use of Section 50 [2] and the role of the PHSO.

Question 6:
Is the burden imposed on public authorities under the Act justified by the public interest in the public's right to know?

I have questioned the pejorative use of the word 'burden'.

Given the centrality of the openness and transparency to a healthy democracy, tens of millions of pounds spend on safeguarding information and data rights represents exceptional value for money.

Of course, some individuals will abuse ‘the right to know’. But the rights of the responsible majority of public at large should not be jeopardised by the abuses of a small minority.

Or are controls needed to reduce the burden of FoI on public authorities?

The controls are already too strong.

If controls are justified, should these be targeted at the kinds of requests which impose a disproportionate burden on public authorities?

My evidence suggests that the information requests which are controversial or troubling may be classified as a ‘disproportionate burden’ - but the reality is that the public body is uncomfortable with the request because it has something to hide.

Which kinds of requests do impose a disproportionate burden?

As above, “disproportionate burden” = probably got something to hide.

because it gives the public insight into the workings of government and public bodies. It should be extended to include all aspects of contracts awarded to private companies undertaking public business (it cannot be right that we can measure the performance of public bodies such as the prison service but we cannot measure the performance of a company providing an identical service. How do we know if we are getting value for money?)

Unfortunately the days when you could say “trust the government / civil service / your local council, we know what we are doing and we are doing as well as we can” are long gone.

Best regards,

Nick

Nick Hall

Hello

I would like to urge the commission to consider FOI in the wider context of what it means to society as a whole. It is not simply about cost or practicality.

Freely available information on what OUR government is doing on OUR behalf is an important part of the link between the electorate and politicians. In the absence of data there is more likely to be suspicion and mistrust.

There are numerous examples where parts of government have been either inefficient, inept or even corrupt and these instances must continue to come into public purview. It is a fundamental part of democracy. We, as citizens, have a duty to hold our government and politicians to account but can only do so when we know the truth.

The cost of FOI is, I suspect, inflated by the attempts of the various bodies to restrict access. If FOI became an inherent part of daily life.

With the expectation that information will always be readily available by default, then the cost of provision would reduce.

FOI needs to be expanded and opened up even more than it is now.

Government is done on by behalf, with my money, and in my name. I am entitled to know the details.

Regards

Nick Hall

Nick Harwood

Dear sir/madam

The FOI Act needs be protected because it is used to hold the Government to account on the public's behalf.

I am concerned about the Government's planned changes to the Freedom of Information Act because I believe that information needs to be made available to the public as matter of principal, honesty and transparency.

A great deal of this this information is already freely available in many other countries. Journalists have used the Act to uncover and publish important information that the public have a right to know.

I believe that we will all benefit as a result of this transparency. If anything, I believe that the Act should be strengthened rather than weakened. It is outrageous and completely unacceptable that the Government's Independent Commission on Freedom of Information isn't covered by the Act it was created to examine.

How is it ethical that we don't know what they are discussing or when they meet. As I understand it, the Government wants to overhaul the Act because it would rather operate in secret – TOUGH, that is not their decisions or their right – they are there to serve US.

The argument, from politician Chris Grayling, that the Act is "misused" to "generate stories for the media" clearly reveals that the Government's wants to water down the Act because it would rather be free from public scrutiny or any accountability.

In my opinion, any attack on FOI is an attack on the idea and practice of having an 'open' government.

Regards

Nick Harwood

Nick Jordan

To whom it may concern:

Watering down or otherwise weakening the existing Freedom of Information legislation would be a step backwards. We like to preach to the world of the virtues of democracy; surely dispensing with a key piece of legislation enabling the public to hold our politicians to account would be inconsistent with this message.

Yours,

Nick Jordan

Nigel Gale

Dear FOI Commission,

My comments do not easily fit in your website boxes. They relate to the last of your sets of questions, particularly if a charging regime is advocated as a device to manage demand.

The following brief narrative sets the scene for my concerns, comments and suggestions. They relate to the local level, rather than the higher level, central policy making context from which your consultation sprang.

Background narrative: I rang a local health trust to ask where on their website (which I had already searched carefully) I could find their Capital Budget. The person on the phone agreed that the website is a challenge for that sort of thing and is being rewritten and re-indexed soon, and that someone would get back to me. I then received a letter saying that my question was being treated as an FOI request (subject to a standard check-list of considerations) and that I would be written to with a substantive response within a stated timescale.

At about the end of that timescale I had another letter saying that they were 'still collating' response information and it would take longer than the timescale stated. Later I was sent a link to a document on their website. It was a 279 page PDF 'pack' for the Board meeting, within which was a very brief (and inadequate) reference to the subject of my telephone call. The document was not searchable (using 'capital budget') from within the Trust's website, let alone externally. Indeed, even within the PDF document, it was not searchable.

Later, upon having to re-iterate my original question, I was told that that information could not be disclosed to me. That was about week 6 or 7 since my telephone call.

My comment. This experience was only a minor irritant for me, with some sense of sympathy for the Trust employees who were plainly up against poor understanding, poor information, poor training and inappropriately complex procedures for handling simple questions.

However, if I had been charged even a nominal fee - simply because the Trust had decided to call it an FOI request, when it was not - I would have been seriously concerned and would not have accepted this treatment. I would have sought redress.

If you propose a fee for all enquiries, I would suggest the following:

My suggestions.

1. Bodies must maintain readily searchable websites of all information which a member of the public might reasonably expect to be accessible. [This is to prevent bodies using FOI fees, non-publication and awful website design/management as means to frustrate transparency, scrutiny and accountability.]
2. Bodies must operate a free service to help members of the public to find information on the body's website that is not readily searchable. [This is to prevent bodies operating an unwarranted 'cash-cow' by presenting web site content that is not readily searchable.]
3. Bodies must not categorise as FOI requests, simple enquiries by members of the public. [For both of the reasons stated in the above two paragraphs.]
4. Bodies's refusal to offer such a free service must be capable of being appealed without charge to the Information Commissioner.
5. Bodies must not categorise as FOI requests, and seek to charge, in any case where the information sought is necessary as part of an appeal against a body's decision relating to (but not limited to) housing allocation.
6. Bodies must not categorise as FOI requests, and seek to charge, in any case where the information is sought as part of an elector's exercise of rights to 'object' to the accounts of a local authority (Local Audit and Accountability Act 2014). [For the avoidance of new modes of frustration of transparency, scrutiny and accountability.]
7. Bodies must not charge where a request for information is made by an elected representative of that body, a superior body or a subsidiary body.[For the avoidance of new modes of frustration of transparency, scrutiny and accountability.]
8. Where a fee is charged for a request for information that the body has chosen to designate as an FOI request, and the body subsequently declines to reveal the information for reasons that were reasonably foreseeable by the body at the outset, twice the fee charged shall be returned to the original fee-payer within 20 days of the 'declining' response by the body. [To counter exploitation by public bodies]
9. Where a body charges a fee and exceeds its timescale for a proper response, the fee shall be repaid in full and the information supplied free of charge, unless agreed otherwise with the enquirer in advance. [Good commercial practice for a charged service, and a stop on public body inefficiency]
10. Bodies shall demonstrate by a note in their audited accounts that their charges for FOI enquiries have not exceeded their costs, that their costs are reasonable, and are not inflated by unnecessary or inefficient processes. [Akin to parking fee regulations.]

Referring to your question to public bodies: That a local authority complains about too many FOI requests may well be a signal of problems about its lack of enthusiasm for transparency and accountability, rather than being about over-zealous members of the public, journalists and activists.

I recognise that this is not the focus you had perhaps hoped for.

An alternative approach to the local level problem would be to exclude explicitly from any changes you propose, those classes of public bodies where there is currently no significant problem related to policy formation information requests.

Nigel Gale

Rt. Honorable Norman Baker

Dear Lord Burns

Thank you for your letter dated 10 November but actually received by me yesterday (18th November). Given the short timescale. I hope you will understand both why this reply comes via email and is shorter than would otherwise have been the case. I welcome the opportunity to comment.

It is my view that in general, the Freedom of Information Act 2000 has been a valuable addition to our democracy, both in empowering the citizen and holding public bodies to account. That in turn has allowed practices to be questioned and reformed in a way that simply would not have occurred had they remained out of the public domain.

There appear to be three concerns implied by the terms of reference for your review.

The first is that the "safe space" necessary within government for policy development and advice has been compromised. I agree that such a safe space is necessary but I do not agree that the operation of the Act has compromised it. I spent four and a half years as a minister, first at the Department for Transport and then at the Home Office, and was aware of, indeed had to input to, a number of freedom of information requests. These resulted in information being released that would otherwise not have been, at least until such information became available in the normal course of events. I cannot think of a single occasion when this damaged or undermined the "safe space".

The second, and you refer to this explicitly, arises from what have commonly become known as the "spider letters" from Prince Charles. There is, of course, special protection already in place for members of the Royal Family under the Act, but the fact remains that senior members of the Royal Family are part of the constitutional arrangements of this country, they do exert influence, and therefore it is not unreasonable in my view that letters of this nature, which seek to offer unsolicited advice, should be considered for release. Obviously much will depend on the contents in any particular case, but the extent to which Prince Charles, or indeed any other senior royal, feels able to stretch their constitutional remit is a legitimate matter for public debate.

The third is the implication that the operation of the Act has generated costs to the public purse that, at a time of stringency, need to be reviewed. While the balance sheet will indeed show a cost, it will also show savings generated by the Act. For example, the opening up of MPs' expenses (and I was the first person to submit a request in respect of this matter under the Act) led to a thorough review that eliminated expensive and unjustified practices, thereby producing an ongoing saving to the public purse. The same may be said of information requests relating to PFI contracts. It would be simplistic and misleading merely to assess the cost of answering FoI requests without also costing the savings that changes to policy have produced, following the submission of FoI requests. I think it highly likely that the savings considerably outweigh the costs.

I am not therefore persuaded of the need for any changes to the Act or the operation of the Act.

As I say, the short notice I have had has necessarily meant a truncated reply in order to meet your deadline, but I should be happy to take you up on your offer to meet to discuss this issue in more detail, and look forward to hearing from you accordingly.

I would be grateful if your office would acknowledge this email.

Yours sincerely

Rt Hon Norman Baker

Pam King

Dear Sir/Madam

I am writing to express my concern that there will be serious amendments to the FOI Act.

Numerous stories which have undoubtedly been in the public interest have been published in this way. In a mature democracy we need information in order to hold our leaders to account.

Surely, if you have nothing to hide you should have nothing to fear....

Yours sincerely,

Pam King

Pamela Wood

INDEPENDENT COMMISSION ON FREEDOM OF INFORMATION

Sirs

I am writing in a personal capacity to submit evidence to the Independent Commission on Freedom of Information. However, I am an NHS employee with responsibility for the administration of the FOI Act in an acute NHS Trust in London.

Although I acknowledge the benefits that FOI has brought by disclosure of uses and abuses of public expenditure, I now consider that the Act is at real risk being abused by those who are seeking information for personal gain, rather than for its original purposes.

In our Trust the volume of requests has increased by 15% over and above that received in 2014. Our administrative resources have not increased at all and we are only maintaining our compliance rates by increasing our pressures on colleagues (many of whom are front line NHS staff) to respond to FOI requests in a timely manner

Of particular concern are

- increasing requests from commercial companies (including drug companies and employment agencies) for details of our usage of certain products, and for evidence of comparative usage in past years (Often as far back as 10 years) Such market research might previously not have been afforded high priority by those who now receive these requests, but the companies concerned now receive valuable information, free of charge, within 20 working days
- Research projects. These are, by their very nature, requests for specific data on specialist subjects. Simply by phrasing their questions and pressing the “send” button a student can expect a large part of their thesis to be delivered to their desk within 20 working days.
- Those seeking information that they can then sell on for commercial gain (inc. contract expiry dates, values of contracts and future dates when tenders are due to be sought)
- From Campaigning organisations and/or those seeking information to advance personal agendas, including requests for supplementary information to support a legal case or complaint against the Trust or for information relating to a very specific medical condition. By their very nature these are detailed, and specific requests – often from potentially aggrieved people.

Possible ways of easing the current position might include

(a) Levying payment from commercial companies and campaigning organisations

before a request can be processed

(Although I accept that this might be difficult to monitor as many companies no

longer provide their business address but send requests from anonymous gmail accounts)

(b) Increasing the time limit for responding to requests from 20 working days to ?40 working days

(c) Reducing the time limit for processing individual requests from the current 18 hours (i.e 2+ working days) to 8hours (i.e. 1 day). It is simply unrealistic to expect front line NHS staff to dedicate the equivalent of 2 working days to respond to a single FOI request. Alternatively, if this proposal did not proceed, then the 18hours should be reviewed to include the time taken to process requests, including the time taken to apply redaction tools.

(d) Alternatively, would it be possible to permit greater flexibility in applying the term “vexatious” to repeated requests received within a short timeframe – or to those who submit supplementary, or follow up requests of a very specific nature

As you will note, I have limited my comments to area where I have personal knowledge and experience.

There are other concerns to be addressed, including requests for the release of sensitive information or for the deliberations of committee. If strict timeframes for the release of such documentation were not to be imposed, then the minutes of such meetings might well be written as a decision sheet rather than as a full record of historic debate.

I hope that my observations will be of value. As the FOI Act has been in place for ten years – during which the demand, and supply of information – and the role of investigative journalists - has grown beyond recognition, it is now time for review. However, whilst I feel that, overall, the Act is a valuable tool to promote transparency and in holding public authorities to account, it is vital that steps must be taken to reduce the workload that is placing upon public authorities who cannot resource it adequately and to ensure that that it is not used for commercial or financial gain for individuals.

With thanks

PAMELA WOOD

Professor Patrick Birkinshaw

Re: Call for Evidence

Dear Commissioners,

We write, in response to your call for evidence, to submit for your consideration the attached paper, which will be published by the think tank Policy Exchange on 3 December 2015.

In our paper we argue that Parliament made a deliberate choice in enacting the Freedom of Information Act 2000 (FOIA) to include an executive override provision in section 53(2). The result of this was that, in regard to information subject to qualified exemption, an appropriate Minister of the Crown would have the final say in assessing whether the balance of public interest lay in favour of disclosure or in favour of not disclosing that information.

It seems to us that this executive override is undeniably "a central feature of the Act" (Lord Wilson in his dissenting judgment in Evans, below) and that in enforcing the Act the courts should give effect to the choice which Parliament made. But the majority of the Supreme Court in their judgments in Evans v The Attorney-General [2015] UKSC 21 (the case about the disclosure of the Prince of Wales's correspondence with Ministers) gave effect to section 53(2) in a way that deprives the executive override of any significant meaning. This failure to show appropriate fidelity to the scheme of the FOIA means that, if the judgment stands, the nature of the FOIA will have changed but without any Parliamentary warrant.

It is thus appropriate that there should be a legislative response. Accordingly, our paper includes a draft Bill that we consider would, if enacted, reinstate section 53(2) and restore the FOIA to the legal position that Parliament intended.

Our concern is grounded in constitutional principle: specifically, we consider that the Supreme Court exceeded the proper limits of judicial power in the Evans case. We take no view on whether the public interest called for the disclosure of the Prince of Wales's correspondence with Ministers or whether the public interest lay in keeping that correspondence confidential. We simply consider that under the scheme of the Act that was a question for the appropriate Minister to decide. While sympathetic to the values of openness and transparency that underlie freedom of information legislation, we take the view that the way in which that legislation imposes limits on disclosure in the public interest is a matter to be determined by Parliament.

Yours sincerely,

Professors Richard Ekins and Christopher Forsyth

Ministry of Justice: Independent Commission on FOIA Call for Evidence

1. I am grateful for the opportunity to respond to the Commission's call for evidence on FOIA. It may assist the Commission to know I was one of two advisers appointed by the Public Administration Select Committee in 1997 to advise on the White Paper Your Right to know (1997) and then on the draft FOI bill and Consultation document. I was involved in this process for over two years. My feeling then, and now, was that the eventual Act, which was subject to considerable modification during the pre-legislative and legislative process, and which did not confer access rights on individuals until 2005, achieved a careful and proper balance between the public's right to know and the requirements of secrecy and confidentiality in government and public life.

2. The Commission has sought evidence on specific points. The first is in relation to internal deliberations. My opinion is that ss 35 and 36 achieve the right balance. Some of the widely phrased exemptions under s 36 have not led to abuse as a result of Information Commissioner (IC) and Information Tribunal (IT) and Upper Tribunal (UT) rulings and restrictive interpretations on eg s 36(2)(c). I have been in positions of professional life when I would not have wanted internal deliberations involved in decisions affecting institutions and others to have been published prematurely. The guiding test is: is disclosure damaging to the public interest? I cannot say that in all cases the IC, IT and UT have got the assessment absolutely right but I am not aware of any situations where their decisions have not been made according to careful, fully balanced and well reasoned judgments. Sometimes a 'safe space' may come to an end after the decision is finalised. In others not. It depends upon the facts and context. In conveying the impression that there is one overarching test I believe the paper is misleading. Various researchers have reported that the Act has not imposed a 'chilling effect' on advisers, a view which the Justice Committee adopted in 2012.

3. In terms of collective responsibility the courts have long recognised (Crossman Diaries) that while it may be possible to form a duty of confidence in law from such a convention, the convention itself cannot be judicially enforced. The law of confidentiality was adapted to be applicable to a public setting where the public interest in disclosure or non-disclosure was the key consideration. Context is everything. Court orders to prevent publication could only be issued where there was clear evidence of damage to the public interest. There are numerous examples of where the convention is not uniformly followed by Ministers including the Crossman Diaries example itself.42 I start from the basis that it is an important convention and assists effective government. But it should not be simply trotted out as a routine mantra to protect vital aspects of information which a democratic society has a right to know. I include, for instance, as an example of the latter a disclosure that would

[1] In 2006 I assisted PASC in its inquiry into *Political Memoirs* where it was felt that the law did not provide adequate means to prevent ministers, civil servants, diplomats and special advisers from making disclosures which could seriously disrupt the process of efficient and effective governance but which the law as it then stood could not prevent. The Committee sought a solution that protected the legitimate requirements of free speech and the legitimate needs of professional and effective government against indiscrete and profit seeking publications. The government acted to bring changes to the controls over officials and private advisers but not ministers: *Whitehall Confidential?* Fifth Report 2005-06 HC 689 I.

have revealed the paucity of discussion in Cabinet to go to war in Iraq, a truly world-changing event, a disclosure that would have had no security implications. The veto was issued by a member of the Independent Commission conducting the present inquiry. I see no ground for removing the public interest test on the grounds of protecting collective responsibility per se. As in the above paragraph, it is context and fact specific.

4. Once again in relation to 'risk assessment' protection of information depends upon who is subject to the risk? How significant is the risk? Has the risk passed? Are there any or no potential victims? If there are potential victims, should they have a right to know for their own protection? If there is a danger to public security by releasing information prematurely that speaks for itself. Under the ECHR rights under Art 2 (life), 3 (torture, inhuman or degrading treatment/punishment), 6 (access to justice), 8 (private and family life) and 10 (freedom of expression and possibly including a right of access to information which is soon to be heard in the Grand Chamber of the Strasbourg court: Bittsozag v Hungary) may be protected by a right to know about risks (especially 2,3 and 8). An essential question is why is it against the public interest – as opposed to the government's interest – for information about a risk or risk assessment to be published? My experience of the IC and tribunal decisions would not lead me to doubt their ability to make sensible judgments on the public interest.

5. Question four raises the subject of whether there should be a veto. The answer is of course there is one in s 53 FOIA. If the ECJ agrees with the UK Supreme Court in Evans then the veto is a dead letter under the Environmental Information Regulations (EIR). In relation to FOIA my own feeling is that Lord Mance in Evans (the litigation involving Prince Charles' correspondence with ministers) reached a preferable and more accurate conclusion on s 53 and vetoes under FOIA than did Lord Neuberger. One more judge agreed with Neuberger than with Mance but my belief is that the veto should not, as Neuberger argued, be confined to where an error of law has been made or where there is new evidence. But a disagreement with the IC or tribunals should be fully and carefully reasoned. The decision of the Upper Tribunal in Evans took place over six full days and heard expert and other evidence. The judgment of the UT was fully and carefully reasoned. It required more than the reasons given by the Attorney General to override an independent judicial decision of a superior court of record. Perhaps the reasons were there, perhaps not. In another case if a challenge were made to the courts against a veto under FOIA I believe Mance's approach may be preferred and a veto which is fully and properly reasoned may satisfy the test in s 53 even though no error of law or new evidence is present. It is up to government to raise the arguments at a suitable opportunity. If the arguments are there and cogently supported, I feel confident they will be respected. I have no doubt that the courts respect the fact that government has its job to do, just as government must respect the legitimate role of the courts. But the jobs must be performed properly.

6. The case does raise in an acute manner questions of the separation of powers in the modern British constitution. I have to say, however, that I disagree with the statement that the 'judgement' (sic) raised serious questions about the rule of law and the will of Parliament. Whatever one may think, the case is a striking illustration of the maintenance of the rule of law and judicial independence. Our constitution has always worked on the understanding that judges determine the meaning of statutes not government nor Parliament. There is an aspect of peevishness in this statement, which informs much of the paper. There is more

than a passing suggestion of resentment that others (judges) may disagree with the government's interpretation of the powers Parliament has given them.

7. In relation to the enforcement process, I think the government and Parliament established an admirable set of institutions and tribunals to handle complaints and appeals. Of course there were, largely initially, some odd decisions on technical points of law. There are the widest grounds of appeal to the first tier tribunal against an IC's decision notice whether in favour or against a public authority. Thereafter appeals are confined to points of law. I also think it right that there is an internal review process before a complaint can be made to the IC. I am aware that others believe this allows too much of an opportunity for public bodies to 'kick requests into the long grass'. In my view it is right that public authorities should be given the opportunity to correct errors of judgment before an outside body is resorted to. The external avenues of redress are there. In an appropriate case the Parliamentary Ombudsman may investigate an aspect of maladministration.

8. In relation to question 6, the Commission will perhaps not be surprised to read that I think the Act achieved the right balance in relation to costs and fees. Requests costing over the fee limits do not have to be met without costs safeguards. The fees limits have remained the same since 2005 and there is a strong case for saying they should be increased in line with inflation. Government would receive an enormous amount of credit for doing this. There is a vast bulk of case law on vexatious requests under s 14 and the rulings are to the effect that 'vexatious' is context sensitive and cumulative, an interpretation favouring public authorities. The government in 2000 received much credit for a system that was free up to a point and one which did not involve almost immediate intervention by expensive lawyers and courts as in the USA.

9. FOIA should not be seen as a grudging and resented concession to openness and transparency in governance. The Prime Minister has on several occasions proclaimed the British government as the most open and transparent in the world. I believe there is much evidence to support this claim. FOIA is the flagship of that policy guaranteed in law. It would be difficult to maintain such claims if FOIA were curtailed because of executive sensitivity.

Patrick Birkinshaw

Dr Patricia Kumar

Dear Sir,

The Freedom of Information act allows accountability of the government to the people.

Any inconvenience to ministers of the government brought about by the FOI act is minimal compared to the repercussions if there is no accountability. Time after time throughout the world we have seen the results where the people have no say in their own governments i.e.. where democracy has failed.

Do we really want to risk losing a healthy democracy because of ministers' annoyance that their policies could be challenged or criticised?

Yours faithfully,

Dr Patricia Kumar.

Patrick Henaghan

To whom it may concern,

I'm writing in regards to the FOI Commission and the possible changes made to the FOI Act.

Freedom Of Information is a vital tool for the people the government represent. I don't mean that in the sense that we should use it as a weapon against them at any possible opportunity and assume there is corruption taking place 24 hours a day. However, if the FOI Act means we are able to expose things that should not be happening then it is essential we leave it as it is.

What sort of message does it send to the country when you attempt to restrict what the public are allowed to find out through FOI requests?

All it suggests is that the government has no interest in transparency or being held accountable for their actions. I know it might seem irritating or inconvenient to be asked what is going on behind closed doors, but it's our right to know. It's government not a privately run business.

It says "Nothing in this process is predetermined." on gov.uk but it's very hard to have any faith in that statement when the commission is made up of people who are either on record as being against Freedom Of Information or have been the subject of bad press as a result of it.

There was already an extensive report in 2012 that said in it's conclusion: "The Freedom of Information Act has been a significant enhancement of our democracy. Overall our witnesses agreed that the Act was working well. The right to access information has improved openness, transparency and accountability."

So what has changed in three years? Other than the majority in parliament?

In the case of Lord Howard, putting him on the commission simply looks like a chance for him to exact revenge on an act that enabled his gardening expenses to become public knowledge now that the Conservatives are safely established as a majority government. There's nobody who strongly opposes those at the head of the commission to balance it out.

Just what evidence could there possibly be that convinces the commission that FOI needs to be changed, it's scope reduced, and the interests of the country put second to those of the people in office? What reason is there for this commission other than to perhaps ride roughshod over the findings of a 2012 report that say FOI is a GOOD thing and finally give the Conservatives the answer they want?

For all the complaints governments may get from the public, fairly or not, we should all be able to agree that the FOI Act is an incredible thing given to the country. A way of ensuring our country remains a democracy and that we are able to access information that affects us all. How is that a bad thing?

To quote David Cameron of all people: "Use this information, exploit it, hold your public services to account."

Why would the same David Cameron allow such an important thing to be watered down? Why is there talk of putting roadblocks in the way such as fees? This is a disgraceful idea and the only reason anyone would possibly suggest this is to put people off attempting to access information that they're well within their rights to.

The people of Great Britain should be allowed to make FOI free of charge and without unncessary obstacles that only serve to protect people involved from embarrassment. If I'm ever in a position where I need to make an FOI request, I don't expect the needs of people with vested interests to come first. To quote Mr Cameron again: "They are there for you, so make them work for you."

Please have the sense to make the RIGHT choice on this matter. The right choice for the country and people you represent.

Patrick Henaghan

Paul Burland

I wish to register my concern that the Freedom of Information Act could be watered down, scrapped or subject to a financial charge.

I have yet to see any argument for changing what has been a useful piece of legislation that has given a modicum of oversight to the people of the U.K. Public organisations should be subject to the highest levels of scrutiny and any changes in the law should only bolster the rights of the public instead of taking them away.

Paul Burland

Paul Campbell

Dear Sirs

I am writing to object to any watering down of the provisions of the Act. The review should provide an opportunity to cut back the exemptions that government and the Civil Service try to hide behind. At an estimated cost of £9M, the cost of the Act is negligible against a central government advertising spend of £290M.

Yours sincerely

Paul Campbell

Paul Clein

Consultation Response re possible changes to the Freedom of Information Act 20.11.15

I understand that the government is considering significant changes to restrict the scope of the Freedom of Information Act (hereafter referred to as FOI) and thus further reduce the already lamentable level of democratic accountability in the UK of those in political power, our public institutions and those who service those power brokers. I will declare an interest of sorts, in that I have occasionally in the past used FOI to obtain relevant information from various public bodies, in many cases after requests through normal channels were ignored or stonewalled.

I was a member of Liverpool City Council for 19 years between 1992 and 2011 and so experienced periods when FOI did not exist and when it was later in place. As an opposition Councillor for my first six years in elected office, without FOI, my subsequent experiences lead to believe that I would have been better able to fulfil my role in serving the interests of the public if that legislation had been in place at that time.

I held the Education, then latterly the Children's Services portfolio between 1998 and 2008 and my attitude was that part of my public duty was to ensure within that portfolio area as much openness to information as possible to those we served. In other words there was a presumption towards disclosure unless there were cogent reasons – usually those laid out within Data Protection legislation – not to disclose. Nothing happened in that 10 year tenure to disabuse me of this notion. The basic principle here is that our political masters and institutions and their servants must not only be democratically accountable to those they serve, but must also be seen to be so.

I contrast this with the increasingly begrudging attitude towards FOI disclosure demonstrated by some ministers in the current government and by some in the previous Labour government which first introduced this legislation. Look at the situation in the USA, in many respects the exemplar from which UK FOI legislation emanated. Has the apparatus of the state there been undermined or suffered existential threat because of their FOI legislation, which to this observer seems more open than ours? I think that not only is the answer to that a resounding "No", but also that it is arguable that there appears to be a greater level of respect among its citizenry for those institutions because of that relatively robust layer of FOI accountability. Shouldn't the UK state feel some discernible level of embarrassment at the number of times the people of this country have learned of certain actions of our own government because of disclosures made through USA FOI enquiries?

It is believed by many observers – including me - that one the drivers of the proposal to severely dilute current FOI legislation is the repeated political embarrassment experienced by those who are supposedly democratically accountable to the public. Apparently, some of our political masters think it's just not cricket that some members of the fourth estate have used FOI requests to generate stories. The traditional modus operandi of the British state for

many centuries has been rooted in a paternalistic mindset which deems that the people are basically children who need to be kept as ignorant of the realities of this harsh world as much and for as long as possible, only to be given information at a time and in a way that won't rock the boat and will maintain the high managerial index of the state apparatus. Unfortunately for our government and public institutions, we live in an era of 24/7 rolling news cycles and wide access to social media. This inevitably leads to repeated situations where space and time in those disparate media is filled with speculation passing itself off as news. I would argue that diluting FOI would actually make that situation worse for those nominally accountable. It may well be apparent that on occasion FOI disclosures have caused embarrassment to politicians and public institutions, usually only short term. One thing I learned in my years as an elected representative was that, like having children, if you couldn't stand some occasional embarrassment in public life, you shouldn't have signed up in the first place. Block or severely dilute FOI and you will see more and more media pieces based on salacious gossip, partial disclosure and whisperings in back corridors with only a tenuous relationship with reality, further bolstering the already jaundiced and cynical view of the powers that be held by an increasing number of UK citizens.

I am not naïve or foolish enough to believe that there are no circumstances in which the public interest may be reasonably judged to be best served by withholding relevant information from public view. On the contrary. However, my conclusion is that the current legislation gets the balance about right and requires marginal or, preferably, no changes at all. If anything, I would argue that the government should consider widening some of the parameters of FOI – with appropriate clearly defined safeguards to counter vexatious FOI requests – which might go some way to help restore a little more faith in our political and public institutions. I would suggest that this is something which should be particularly considered for application to those private or public/private agencies engaged in delivering public services which too often hide behind spurious claims of "commercial confidentiality" in order to avoid public accountability.

Submitted by Paul Clein,

Paul Duployen

Dear Freedom of Information Commission,

I am outraged at the proposals to restrict Freedom of information. If they are implemented the message will be that secrecy is to be the norm to cover up shameful practices from the public.

I need to remind you that FOI meant exposure of MPs criminal expense claims, enabled the mapping of English and Welsh property owned by offshore companies, exposed the shameful privatisataion of part of the CDC, the extent of tax dodging in the UK, the wining and dining of civil servants by lobbyists, New Labour's ruinous overspending on management consultants and the disastrous NHS IT project.

The idea that FOI should be restricted to prevent exposure of such information must be rejected.

Yours faithfully,

Paul Duployen

Paul Gill

Dear Sirs

I am writing to register my opposition to the attempts by the political parties and others to rein in the terms and effect of the Freedom of Information Act.

Its provisions have exposed to date a considerable number of matters which those in positions of authority would have preferred, no doubt, to keep concealed from public view.

The present intention appears to be an attempt to fetter the operation of the Act under specious pretexts.

The constitution of the commission, coupled with comments by members of the government and the opposition, does not inspire confidence that the operation of the Act will be reviewed in a fair and balanced manner.

The very fact that those in positions of authority are expressing concern about the operation of the Act emphasises forcefully what a useful tool it has been so far in exposing wrongdoing. Its provisions should be left intact.

Regards,

Paul Gill

Paul Hopkins

Dear FoI commission,

The FoI act has been used over the last few years for many examples of public good, exploding and shining the spotlight of integrity on a wide range of organisations including MPs, NHS, schools, HMRC and many others. The watchword of any democracy should be openness and transparency especially where there is use of public money. As someone engaged in spending public money in education I would expect this to be open and clear to those who are providing this funding (the taxpayer) and all public institutions should be open to this scrutiny.

The proposed changes are an affront to these core principles and also ironic in light of the Investigatory Powers Bill which is campaigning for greeter access to information. I hope that you will consider carefully and chose ultimately not to restrict Freedom to Information.

Paul Hopkins

Paul Lawrence

Dear Sir/Madam,

As there is a current review going on, I would like to add my view that I believe the Freedom of Information Act is an overall good for society allowing public access to information that would otherwise not be available.

The cost to the public finance is a price that is worth paying for this ability, and this access should not be restricted through extra cost or extra rulings,

regards,

Paul Lawrence

Paul Thornton

Dear Sirs

I am writing to respond to the independent commission on freedom of information call for evidence. I regret that I became aware of this recently and only further aware of the deadline for providing a response such that this response is somewhat prepared in haste. I would be pleased to elaborate further for the benefit of the commission.

I have used the powers of both the Freedom of Information act and of the Environmental Information Regulations and a number of the various requests that I have submitted are accessible online at the following link on the ”what do they know.com” website.

https://www.whatdotheyknow.com/user/paul_thornton

My requests have particularly related initially to the proposals for the National NHS database and more recently to the proposals for the HS2 rail line.

The call for evidence document refers to a request submitted to the Major Projects Authority in the Cabinet Office for the Project Assessment Review in respect of the HS2 rail program. This is on page 12. I was the applicant for that information.

Because the requirement to publish it was unequivocal the Secretary of State dragged out the litigation process as long as possible and withdrew from the hearing before the tribunal just 24 hours before the hearing was scheduled before exercising the veto. I subsequently initiated judicial review of that decision and the Office of the Information Commissioner followed suit.

That judicial review was stayed behind the decision in Evans in respect of Prince Charles' letters. At a preliminary hearing however the Secretary of State, through his barrister, had conceded that if the Evans case was lost by the government then they would also lose grounds for withholding information in my case.

As a consequence the Major Projects Authority report was ultimately published though the government held it back until a day when there were already generating substantial bad news in respect of the recent cancellation of the electrification of the Midland mainline and the trans- Pennine line.

The published report confirmed that at the time the secretary of state was claiming the merits of the HS2 proposal and it's financial security, the MPA report revealed that, in

secret, there were grave concerns about the affordability of HS2 and its impact upon other departmental expenditure, particularly the development of the other rail lines. This wholly illustrates the purpose of, and need for, proper robust Freedom of Information legislation to expose hypocrisy and double standards. The arguments set out in the call for evidence are an unsubstantiated self-serving justification for the perpetuation of such secrecy and any attempt to water down, degrade or otherwise reverse the effects of the legislation should be robustly obstructed.

I would welcome the opportunity to elaborate further.

Yours sincerely

Dr Paul Thornton MPH, FRCGP

Paul Wilkinson

Hello

Since 2006, I have headed a team responsible for handling FoI requests for a Government Department. I would like to respond to question 6 of the consultation, the burden of FoI placed on public authorities.

On average my organisation handles 200 requests per year, the requests are becoming more complex and we are seeing an increase in round robin requests, in particular information about IT systems. Requests for contract information is also on the increase and in my view the requestors of such information are using FoI to obtain information which they then sell on. Many of the round robins are repeated every six months, contact information can involve many documents all provided by third parties, resulting in you having to consult with the third parties on possible disclosure of their information. This can and has affected working relationships with some third parties who provided the information to us in confidence and also produced additional requests..

I believe in the values of FoI however the current Act favours the requestor, I would like to see the name of the requestor be disclosed and a fee charged for making the request. An alternative for not charging to make a request would be to review the cost limit, and include in the limit, the time estimated for redactions, photocopying, and putting the information together e.g. extracting email correspondence into a Word document. This would reduce the number of frivolous enquiries allowing to concentrate on the genuine requests. Many departments and local authorities have transparency programmes and publish a wide array of information on their web sites, the publication scheme required by the ICO receives very little attention from requestors.

We receive very few internal reviews, the recent ones we have received have been for very petty reasons, e.g. refusing that we should have extended the deadline to consider the public interest test, arranging and providing all the evidence to the internal review, takes time and resource, in my opinion a nominal fee of £10 should be charged for an internal review.

If no changes are made to the current FoI legislation, the predicted cuts in the public sector to be announced in next week's spending review will have a detrimental effect on departments ability to respond appropriately to requests.

Please note the comments above are my personal views.

Yours sincerely

Paul Wilkinson

Dr P Hettiaratchy

Dear Sir

My Experience of use of the FOIA

I wish to submit evidence and would be happy to give oral evidence if called to do so on my experience of the use of The Freedom of Information Act.

I worked as a Medical Member of Mental Health Review Tribunal for 20 years and my request for extension of service was not granted in August 2014. At that time it was custom and practice that all Medical Members of the Tribunal were granted an annual extension from the age of 70 to the age of 75 (4 such extensions). I was surprised and dismayed by the decision as the reason given did not accurately reflect the true need for Medical Members at that time. In order to understand why this seemingly perverse decision was made, I attempted to seek information under the FOIA.

I initially applied to the Tribunal itself for the information and although I was informed that the information was available, the Tribunal were unhappy to release it. I was asked to seek an Independent Review and following this I was given information on the total numbers of Doctors who applied for renewal with a breakdown on gender and once again told that they were unable to give any further information. I was asked to appeal to the Information Commissioner. This I did and the Information Commissioner made it clear that their role was to assess if the Public Body in question had applied the criteria correctly and dealt with my request appropriately. I also requested the Information Commissioner to comment on the interaction between the FOIA and the Equality Act 2010. The Information Commissioner was unable to give me any information. I then appealed the decision and the General Regulatory Chamber heard the case on 17th September 2015. Their decision was finally promulgated on 26th October, 2015 partially upholding my appeal. The Panel also partially found in my favour. The case was "Dr. Pearl Hettiaratchy v The Information Commissioner" www.informationtribunal.gov.uk/public/search.aspx. The Panel requested the Tribunal to provide some of the information I had requested within 20 days of the decision.

My case involved the MHRT's lack of openness and transparency on appointments and extension of service. It took 15 months as a Member of the Tribunal to obtain information pertaining to the process that in any case should have been in the public domain in view of the requirements of the Equality Act 2010. Some of the information has now been made available to me as requested by the General Regulatory Chamber Hearing in their "Open Appendix" to the decision. The information in no way is informative and does not add to the transparency of the appointment processes. This together with the lack of an appropriate appeal process (other than to the Chamber President of the same Chamber) makes the MHRT a very closed Public Body.

It is clear from the GRC decision that the Information Commissioner could have dealt with my request more appropriately and provided the information requested in such a way so as not to breach Section 40.2 of the Freedom of Information Act. Having worked for the NHS and many Health related organisations I am of the view that the Freedom of Information Act should give appropriate access to individuals who feel they have been treated unfairly by a Public Body. The fact that my request was not complied with in any way by the Information Commissioner and had to be appealed is a source of concern. This is especially so when Public Bodies lack open, transparent and fair processes in how they conduct appointments, reappointments of Members to their organisation.

The GRC Hearing gives full details of my case. In no way was I seeking information with a view to being reappointed to the Tribunal. All I wanted was to understand why my term of Office was not extended when most / all Doctors including my Husband were granted extensions annually until the age of 75. In my case my first request for an extension at the age of 72 was turned down.

I am more than happy to give evidence to the Hearing as I have in my 50 years of clinical practice adhered to openness, transparency and fairness in all work I have undertaken with Patients and Colleagues.

Yours faithfully,

Dr. P.Hettiaratchy OBE DL FRCPsych

P.S. - A hard copy is in the post. I have already emailed Lord Carlile who was a former colleague when we both served on the General Medical Council.

Peter Bowles

To whom it may concern,

I have just completed the consultation (response ID ANON-S98V-684T-G), but had a little more that I wished to say.

It seems to me that private companies or charities, which are carrying out work under a contract with a public body, such as G4S running prison services, should be required to respond to freedom of information requests in the same way that they would if the work that the contract covers were done by a public body. If this doesn't happen the result could well be that, as the public sector outsources work to private bodies, the information which might once have been free would suddenly be shrouded in secrecy. This is a particular problem when private companies are involved, as their motives are to make a profit rather than to serve the nation.

Freedom of information is a phenomenally important issue. The recent issue regarding HRH Prince Charles' letters to various government departments is a wonderful example of how good it can be. Whilst many have hoped for sign of scandal or skulduggery they revealed nothing but suitable concern on various issues from a future monarch. Such things should be vigorously encouraged rather subjected to protracted legal battles which do nothing more than give the impression that there are a substantial number of skeletons in the closet.

Yours sincerely,

Peter Bowles

Peter Ehrhardt

I ask the Commission to extend the scope of the FOI Act. The scope of the FOI Act should not be tightened up.

As the world becomes more complicated, it becomes ever more difficult for the individual citizen to hold those who govern us to account.

The FOI Act has enabled numerous matters to be brought into the open, which otherwise would not have become public knowledge. It is good that members of the public can establish, for example, what property in their local area is owned by overseas companies, and especially if those companies are registered in tax havens; and it is good that Government blunders such as NPfIT - the monumentally expensive and eventually abandoned NHS IT scheme - be in the public domain; this may make it less likely that the same blunders are repeated in the future.

One area to which the FOI Act should be extended is to cover public activities now carried out by private companies. The public has the same, entirely reasonable, interest in knowing what is being done, on their behalf, using taxpayers' money, whether the activity is being carried out by a public body, such as HMRC, or by a private body receiving Government funding, such as a train operating company.

It is perverse that the public's ability to get such information should be determined by a quirk of ownership of the organisation doing the job.

I ask to be kept informed of the Commission's work.

It would be most helpful to know that this email has been read and that its contents will be considered by the Commission.

thank you

Peter Ehrhardt FRCP FRCPCH

Peter Goulding

Dear Sirs

I Understand from our local newspaper that the Government is undertaking a review of the working of the FOI Act and that they are thinking of introducing charges and the right to refuse on costs grounds. The paper says we can use this email address to voice our concerns in this consultation. If this is not correct please let me know.

I would like to say the following:-

I live in Thanet and over the past five years there have been a number of issues / scandals involving Thanet District Council (TDC) that would have been very difficult to uncover without the FOI Act as it stands.

Most of those trying to obtain the information are private individuals with very limited resources. I for one do not have any income. I know a number of different people who have obtained (or not) information from TDC, and I would say that most of the "cost" to TDC is actually the amount of time they spend trying to think up excuses for covering up information and looking for legal loopholes instead of just getting the information out. Secondly they can also be covering up for the shambles of their record keeping which means that records they should have, often under a 6 year legal obligation, are missing, or minutes of meetings were not taken etc. I.E. covering up maladministration.

Please consult your own ICO office for the number of cases they have had to handle re TDC and see for yourselves how hard it already is to obtain information without costs for the applicant being added as well.

I know that for many this would stop them trying to do the good they can do in the public interest because people simply do not have money to fight these battles. This would be totally against the public interest.

Local Government is bad enough already being a law unto itself for the most part, and secrecy has been and remains a huge problem that usually ends up costing us council tax payers £millions every time some idiotic actions of the council goes wrong (eg.Transeuropa Ferries £3.4million), and they try to cover it up.

If anything needs to change re the FOIA it is to restrict their use of "commercially sensitive" as an excuse for not providing information. When everyone claims to want more openness why is so much still bound up in secret deals? It is our money after all, and when these deals go badly wrong the officers get a lucrative pay-off, while the rest of us pick up the cost for years. My guess would be the next major issue here will be the cost of the Dreamland

CPO. I expect the ICO will hear about that one, and we need to be able to do this free of charge.

Yours faithfully

Peter Goulding

Peter Smith

FOIA

The FOIA effectually is a channel of some utility which ensures a possibility for reasonable measures of practical and actual accountability to continue being placed on persons and organisations working in the public service.

In the public service are local and national government offices and employees, and crucially the elected and non-elected representatives of the people; whom together form in a broad sense the legislature and executive of the British government. Thus the term 'public service' includes Her Majesty's Opposition and governmental special advisers and similar parties.

The public service as a unity is pledged to act to the general benefit of people living in Britain. The raison d'être for a public service is to represent and to serve the general public. Much of this general public will be an electorate which has chosen the legislative, executive and policy-making parts of the public service to be its representatives.

The purpose of representative democracy in Britain demands that the party chosen to govern in elections takes actions and holds aims which are representative of the electorate who chose it to govern. For this governing party of the day the representational function is normally carried on by it adhering to applying during its term of office a manifesto of policies. This is a manifesto that had been published especially so that an electorate might endorse it and its Party on the general election date.

Now when a governing party chooses not to honour the policies which it had proclaimed as its own for the people in a manifesto, policies which can be the only proper measure of justification why it has been returned to power; then the confidence and assurance which an electorate placed in a now governing party is obviously and rightly shaken. The awareness of that electorate fears by inference that those who would lie and deceive in public in a manifesto and so obtain power will be even more likely to lie and to deceive in private behind closed governmental doors.

It is a commonplace of fact, and it is a fact able to be verified by simply looking into details in recent months, that The Conservative Party, now the party of government, has in the course of a few months since being elected to govern, jettisoned many flagship policies and pledges which were included in its pre-election manifesto.

The point is not about The Conservative Party as such. An example like the Labour Party, when in government during the run up to the second Iraq war, might well have been taken instead of the Conservative Party manifesto. History and evidence seem strongly to be indicating now that a similar renegade behaviour, of lying and deception was practiced at that time by that government also.

The point, which concerns FOIA, rests in the fact of actual occurrences of governments, regardless of their political colour, having reneged to a great extent on their representational governmental duties to their electorates. I doubt these have been isolated instances; and I am assured instances are likely to happen again; and that political colouring has little to do with the issue.

There has been no effectual calling to account of the present government for its breaking of manifesto pledges. The government remains very much in business as usual. Had the

present government been a private enterprise company like Volkswagen or Wonga it would have been suffering on the stock markets and losing sales and brand credibility. The public, including the electorate, would have voted with its wallets and its custom.

There is then great and actual cause for the public to fear that a government having sailed relatively easily through such a series of breaches of pledges, will be emboldened in and more blasé about taking the next steps and using untruth and deception even more wantonly. These steps will be easier psychologically for such a government to consider and to execute.

In his 'Republic' Plato asked of his readers concerning their political rulers 'Who is to guard the guardians?' He was assured that unless the guardians were guarded in some effective way that the guardians would inevitably seek to serve ends of their own and other than those of the public welfare. In the case of Britain we can say that a government which is not regulated by a form of guardianship would seek to put in place measures other than those being their duties required of them as elected representatives working to the benefit of their public and in public service.

Much of the remainder of the public service, other than the government per se, is administered bureaucratically, which means that necessarily in practice there is much scope within it for allowing a dissolution by diffusion of specific responsibility in persons or in sections, for decisions, spends, and so on. Accountability is easily fudged by and in bureaucracies. These assertions of mine are general knowledge. They are not 'urban myths'. They are the case, and to deny things are so is to deceive oneself.

All public servants of any kind, elected or non-elected, administrative or executive, are funded by, and their employees draw salaries found from, and some stand in command of money budgets being great sums drawn from, the public purse. This public purse hold money mostly got from taxation of the people. The people thus pay for these public services and for the livings of the public servants who provide them. The people has an imperative right that these sums are spent properly and are spent wisely, and spent in some degree at least, according to public wishes.

The highest card in the hand of those who argue for mitigation or even abolition of FOIA, is perhaps the argument that its presence on the statute book inhibits and deters governments and other public servants from taking decisions which are unpopular or in some way punitive, but which, the caveat runs, are necessary for the good of the country. Thus, as the argument continues, governments and others become eclipsed under the shadow of FOIA, and effectively are hamstrung and are unable to apply measures, which they claim to be strong medicines, with dreadful aftertastes, to the care of the nation.

The refutation of these claims is simple and self-evident. The claims are founded for the most part on an understanding that the general run of people in a nation are unable or unwilling, when presented with truth, say, disclosed in an FOI answer, revealing details behind, perhaps, the formulation and application of a government policy which is hardly palatable to them; to discern the necessity for that policy at a given time, or else to discern why it might have seemed to have been necessary at that time.

The validity of the law courts has stood upon a footing of a jury system over hundreds of years, and stands yet. The very basis of judgement belongs to twelve men and women. Is this rationale justified and justifiable then, which is being proposed for an attenuated or blanket non-disclosure from a government or the public service, of the means of arrival at and the ways of implementation of 'difficult' or unpopular decisions of policy and action? On such a basis jury decisions on court judgements are to be considered generally flawed.

Truth has a clear conscience; and is acceptable however bitter, however grudgingly received, to the generality of men and women. And to be seen to be willing to disclose, and actually to disclose, and so offer publicly, truth, to the people regarding issues of their legitimate concern, which have been managed in their behalves by their representatives, needs no curb to inhibit its scope or to protect its protagonists.

There is no rational, legal, ethical, psychological, or other sound reason for curtailing or for repealing FOIA. It is a hallmark of a nation functioning laudably.

Who might consider endorsing a proposal whereby there was removed a strong check and balance working for reasonable accountability which is presently functioning effectually across the breath of the public service – in legislature, executive, policy and administration areas - when such a removal is viewed in the light of the recent political events noted, in the light of the lessons of history in general, in the light of from whom the funding of these services and of these servants comes, in the light of for whom these services and persons are pledged to work and to serve?

This is after all the public service. It is service for and in behalf of the public: unless one believes the term to be a euphemism, an economy with the truth; and that in essence political power is there to be wielded as seen fit by its holders (as Plato denigratingly called it ‘ might as right’).

Retaining a strong and effective FOIA is part of a general assurance that Britain remains a nation where freedom of speech is aimed at and treasured as a principle of life and action; and that Britain remains a place where ‘life, liberty and the pursuit of happiness’ has a chance of realisation for perhaps more people dwelling here per capita than maybe is the case in nearly any other nation.

The onus of duty stands clear. It is to continue to lay down, and to retain robustly in continuance, a framework which allows to prevail a social environment which itself admits facility to flourish all necessary, and many innocuously desirable, activities and freedoms. Even the graven image of The Economy rests on such principles for its health, strength and continuance.

Just a few pages of ‘The Gulag Archipelago’ are sufficient to give a flavour of where leads an easy slope taken towards curtailing freedoms, involving closing down informed choice and liberal autonomy in a nation’s citizens.

(A NOTE: Do just see whether you can do something to prevent misuse of FOIA by those who would milk its privileges solely for their own commercial gain. These guys deliberately and wilfully are freeloaders aiming to soak the general welfare at large.)

Peter Smith

Peter Stone

I write to say how much I deplore the suggestion that the Freedom of Information Act be watered down. If it were not for the Act many important facts would not have come to light. The scandal of the MPs expense claims is an example of one such story.

Peter Stone

Peter Wormington

You have asked for comments about the working of the Freedom of Information Act in three specific areas:

1. whether there is an appropriate public interest balance between transparency, accountability and the need for sensitive information to have robust protection

· Any contract that involves public money should be published – too much is currently hidden as 'commercially confidential'. As more spending is outsourced, the effect is to prevent the public knowing how their money is spent, whether it represents good value and whether any of the parties are benefiting corruptly.

For instance the contract for the Gloucestershire 'Javelin Park' incinerator is 'commercially confidential'. Arguments about the incinerator are a waste of time because based on estimated figures, so no one can agree on anything; and the lack of transparency leads to suspicions of corruption.

2. whether the operation of the Act adequately recognises the need for a 'safe space' for policy development and implementation and frank advice

· Arguably it is the failure to release as much information as possible that leads the media and others to distort alternatives raised in policy development and discussion. If unpalatable alternatives are visible as a matter of course then they are less newsworthy.

For instance the Gloucestershire incinerator debate might be less poisonous if information about all alternatives considered had always been openly available.

3. the balance between the need to maintain public access to information, the burden of the Act on public authorities and whether change is needed to moderate that while maintaining public access to information

· In the long term the act should be enhanced to make all public information available unless there is a compelling reason for it not to be. This would shift the burden for sifting and analysis on to the users.

For instance MPs expenses would be in the public domain and would NOT need to be fetched by FoI requests. This is cheaper and provides clarity for everyone.

I would like to remind the commission that

"The Justice Select Committee said during its post-legislative scrutiny exercise of the Act in 2012 that it had 'contributed to a culture of greater openness across public authorities, particularly at central Government level' and that it 'is a significant enhancement to our democracy... it gives the public, the media and other parties a right to access information about the way public institutions... are governed'. "

FoI is a significant enhancement to our democracy.

Yours,

Peter Wormington

Phil Baker

Dear Sir or Madame,

I am strongly opposed to any restrictions to the freedom of information act being made, both on grounds of cost and ethics. We have seen too often atrocities such as various expenses scandals and the illegal use of the RAF in Syria being revealed by this power and there is no reason to put a stop to that, even at a cost of £9bn per year.

We are the tax payers and we want to know what our money is being spent on.

Regards

Phil Baker

P D Nunn

Attempt to Destroy Freedom of Information Act

I write to express my outrage and I do not use that word lightly, the government's attempt to neuter the Freedom of Information Act.

I feel strongly about this issue, which I see as a blatant attempt to hide what is going on. If all is above board then there is no need to hide the procedures.

I have great doubts that those chosen to discuss the matter have the people's best interest at heart and will manipulate the process to fit their own agenda.

Short but to the point, "Get it right" people power is here to stay.

PD Nunn

Phil Swain

Ask yourself why would a Government not want to be accountable to the people whose tax they collect and spend.

It was fought long and hard for and should be retained.

The MPs don`t like it because they don't like scrutiny (eg expenses) - well don't behave badly then…. We demand that you are held to account

Also, Local Authorities & Government Departments have abused their power for years and only the existence of the FOI act prevents power-mad civil servants from behaving like despots in contravention to the laws laid down by Parliament

Lastly, as police numbers decrease and security risks increase CCTV is on the increase. We are the most CCTV observed country in the world. That CCTV gets used as evidence against us and we need the right to also be able to use CCTV footage to defend ourselves or to back up reports of crime being committed. The police are assisted by the footage too.

Don`t let Freedom of Information or Freedom of Expression become illegal.

You can do away with Freedom of the Press if you like though as they abuse it daily….

Philip Richards

Although I have no evidence to offer to the Commission, I am totally opposed to any additional restrictions on the FOI Act. Since its introduction I believe that it has provided so much information that the "great & good" of the nation would prefer should not be in the public domain. In fact I would ask the Commission to consider removing some of the present restrictions.

Yours sincerely,

P.Richards

Philip Welch

I think the Freedom of Information Act provides an invaluable tool for the maintenance of open democracy in our country.

We all make mistakes and we all waste money but as citizens we have a right to know how our taxes are spent or misspent.

However national and local government departments, big companies, the NHS, Network Rail and thousands of other organisations hire press officers to tuck away mistakes and present their employers in the best, if misleading light. There are now more press officers than trained journalists working in Britain. This make the FOI Act ever more important as it allows the media (an essential part of a free society even if it sometimes behaves badly) and members of the public to learn relevant facts which have not been disclosed.

I am a retired editor of local newspapers and we made occasional FOI requests whose results gave our readers information they were grateful to receive.

Of course some information must be restricted, for example if it affects national security, but I would like to see the FOI Act strengthen to make it easier for the public to access information which may affect their lives or show how their taxes have been spent.

The cost of administering FOI is very small when balanced against the value of FOI to our democracy, a democracy incidentally that ISIS and other terror groups seek to destroy.

Philip Welch

Phoebe Arslanagic-Wakefield

Dear Members of the Commission,

I write simply to ask you to find for and uphold FOI in its current form. We do not need less transparency in this country. FOI increases public trust of government bodies and indeed, other institutions, it is the enemy of apathy as it encourages an engagement with information that effects our future as a nation and our daily lives and reduces the gulf of information between politicians and ordinary citizens. All these are healthy and have formed a UK that I have been proud to grow up in and has had FOI for the vast majority of my life.

In times of difficulty created by factors such as terrorist threat it is easy to find the excuse to sacrifice openness of government function. It is often a quiet altar victim in the face of national security concerns. To do so is a victory for no one but the enemies of the UK. A less accountable government is a poorer government both in terms of innovation and effectiveness. I am 19 and a university student and I would like to spend the rest of my life in a Britain that has FOI.

Yours,

Phoebe Arslanagic-Wakefield