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

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

Table of Contents

To Note
The Secretariat to the Commission has excluded a limited number of submissions from this document for reasons because they contain considerable amounts of personal data.

Amendments to this document
There have been no amendments to this document since publication.

A F Maloney

I understand you are seeking views on the future of the Freedom of Information Act and I am certainly of the opinion that this is a vital tool in any democratic environment and if anything should be made a more open and accessible facility. It appears to me that the only reason to reduce the scope of this service is to protect the very people that ought to be made accountable, something any Government should be ashamed of.

The cost is relativity small compared with some non-important/vanity expenditure that seems to be available and spent by the Government. This was certainly not something that any politician raised as a policy during the General Election and as ever looks to be loaded with tame commissioners in an effort to undermine due process.

At least show some honesty and involvement as things are taken forward, openness is something to be proud of.

Regards

A F Maloney

A G Carter-Brown

Dear Sir,

Freedom of Information should be made easier, not harder, especially in the area of Government expenditure. We, the taxpayers, are the primary source of the money being spent by Government bodies. We need to be able to see how that money is spent, what it is spent on, who (companies, lobby groups/ex-ministers/MPs and civil servants) receive the money and whether or not the taxpayer has received the best value for the money. Media reporting using FoI provides an independent check on Government spending, especially where Government Departments are reluctant to divulge information and hide behind terms such as 'Commercial in Confidence' and/or 'National Security'.

Confidence in Government and its perceived legitimacy ultimately rests on the trust felt by the electorate. Successive governments have done little to earn that trust, with the public, rightly or wrongly, seeing government as remote and unaccountable. The actions being taken now by appointing Howard and Straw to look at FoI looks like another cynical ploy by the government to hide information from the public.

Yours sincerely

Mr A G Carter-Brown

A Hipsey

Dear Sirs

Please vote to EXTEND the Freedom of Information Act.

Yours Sincerely

D. A. Hipsey

A.K

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

I can't see why there should be any protection in the first place (outside of protecting members of the public's private identifying information). This seems ludicrous considering that this is about FOI in the first place. Calling things "sensitive" just because it's about them finding reasons to avoid giving the information is not right. The public elects and pays for the Government and all bodies instituted by the Government, we have a right to information we paid for. As it is there are bodies that abuse exemptions and keeping exemptions allows them to keep abusing them.

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

None. The Government is elected by the public and paid for by the public. Too many politicians are liars and they do not deserve any rights to keep discussions and agreements secret. We should see what we paid for.

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

None. The 'nanny state' has already gone on too long. Life does not come without risks. The public has a right to absolute transparency.

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?

No. The Government does not have the right to withhold information from the public.

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

That the public has the right in the first place to complete transparency and that if this is breached the body is heavily sanctioned and individual persons plus department head, refusing, delaying, altering or cherry-picking information should be subject to criminal charges.

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?

In the day and age of high technology there is no justification for not having accurate and detailed information which can be easily called up. This excuse that is all too often used about it costing too much to access the information required is not on. Even where paper records exist, so too do electronic ones. Bearing in mind the vast sums on supposedly amazing

technology by these bodies there is no excuse for not having the ability to access the information.

Yes the "burden" is justified, no controls should be in place (barring absolutely frivolous* requests by persons being vexatious** by a reasonable person's standards or otherwise impaired in their actions) on the information. There should be a reasonable limit imposed on how often an individual or organisation can make separate FOIA's from one body. * *and* ** *these terms must not be used loosely or in a blanket manner as they are currently probably being abused, there should be the ability for an independent body to intervene to determine in the event this is used and challenged by the requester.*

A Macleod

Lord Burns
Chairman
Commission on Freedom of Information
70 Whitehall
London
SW1A 2AS

9 October 2015

Importance of departments giving serious consideration to helpful suggestions

Further to my initial letter of 5 October to your Commission I enclose recent samples of many recommendations I have offered Departments for improving their procedures.

As I have already stressed, a Clause in the FOI Act **requiring** Public Authorities to consider positively any recommendation that would be of immense value.

Moreover, it would be naïve of Departments to object to such a Clause because it would add to their workload, because many recommendations could lead to streamlining or simplification of procedures, and therefore **less** workload.

Adam D G Macleod

[copies of information included in the correspondence have not been included in this document]

Adam Bowie

Dear Sir/Madam,
I am writing to you as a citizen who is concerned that the Independent Commission on Freedom of Information might see more restrictions placed on what can
I am especially alarmed when Chris Grayling, leader of the House of Commons, is quoted as saying that the Freedom of Information Acts was being used as a "research tool" to "generate stories" for the media.

Absolutely it is.

These are important stories that should be reported. The list of 103 stories published by the FoI Directory website is an excellent list that proves the point (http://www.foi.directory/featured/exposed-103-cases-where-journalists-have-misused-freedom-of-information-requests-in-2015/).

To at this point go back on what citizens believe should be in the public domain would be absurd and a travesty. The relatively low cost (in overall budget terms) easily justifies the importance of citizens' rights to know about our supposedly open government.

I therefore strongly oppose any measures that would see a weakening of the Act, or a reduction in bodies included under it.

Kind Regards,

Adam Bowie

Adam Walczak

Dear Sirs,

Please could you continue to keep open access to information privileged to the public under the Freedom of Information Act.

In particular, I have found recent uncovering of houses owned by companies based in offshore tax havens of interest.

At a time of austerity, such data must be made public so that pressure can be applied on those who do not pay their taxes - especially while funding is withdrawn from public services and instead spent on free stadia for cash-rich football clubs and a needless garden bridge across the Thames.

Your Sincerely,

Adam Walczak

Adil Bhatti

Dear sir
To put restrictions on the freedom of information is against the basic human rights in a democratic society. The Mps have not been empowered to vote against such rights.no such restrictions should be implemented without the vote of each and every citizen.

Adil Bhatti

Adrian Benton

I have no faith that the appointees to the commission can be independent.
Where someone is Rt. Hon, Dame or Lord somebody I feel they are too much invested in the establishment.
Without the FOI act it is doubtful that the expenses scandal would have come to light.

Lord(Terry) Burns. Non Exec. director Banco Santander.
Rt. Hon. Jack Straw. ex government minister.
Lord Howard of Lympne. Chair of Soma oil.
Lord Carlile of Berriew. involved in the drafting of the snoopers charter.
Dame Patricia Hodgson. Government appointee to Ofcom.

Alan M Dransfield

Dear Sirs
In response to your public advertisement calling for Public Assistance via written evidence to assist HM Government Inquiry. Please accept my written evidence as follows:

1.The current inquiry lacks any transparency, accountability and security (TAS) because it is not independent and has moved away from the tried and trusted Cross Select Justice Committee's on such matters. The selection of Jack Straw and other members of the FOI Commission fly's in the face of TAS and Common Law. At best this FOIA Commission is a KANGAROO COURT and at worst, it is a tool designed to assist the passage of fraud and theft of public funds and to cover up serious Sex/Heinous Crimes. I suggest the latter.

2. The recent FOIA commission report mentions VEXATIOUS only once in a 40 page report and section 14/(1) vexatious exemptions are being handed out on whim by the ICO and Rogue Public Authorities Nationwide. There has been approx 600 VEXATIOUS decsion handed down by the ICO since the Dransfield Case GIA/3037 in Jan 2013??!!

3. The leading vexatious alleged "court authority" is (2012) UKUT/440 (AAC) a.k.a GIA/3037/2011 Dransfield v ICO & Devon County Council which was upheld by the Court of Appeal C3/2013/1855 Dransfield v ICO and is still an active Court Case which is currently before the Supreme Court under ref UKSC/2015/1703.

It beggars belief the ICO have continued to hand down vexatious exemptions when they are fully aware that my case has progressed to the Supreme Court.

4. The ICO have cost impacted the Public Purse approx £1/4 million on the Dransfield FOIA case history. However, the ICO are completely oblivious to the public purse costs of each and every individual case which passes through their appeal system. A Cost Centre System should be established for each and every FOIA Appeal to the ICO.

5. The ICO are part of a wider conspiracy to Gag Joe Public and pervert the Course of Justice by their consistent abuse of their Vexatious Exemptions.

6. The ICO are in complete MELTDOWN owing to illegal use of a vexatious Court Authority,ie GIA/3037/2011 Dransfield v ICO.

7. The main aim of this FOIA Commission is to Compromise Lady Justice Goddard's Sex Inquiry and of course to GAG Joe Public.

8. Numerous Government departments and PA's have unlawfully applied the Dransfield Case GIA/3037 case as a Court Precedence, i.e Dept of Justice. CPS, Cabinet Office, Various Police Authorities, Met Office, Home Office, Dept of Justice, BBC and Uncle Tom Cobbly and all.

9.There is very little wrong with the FOIA 2000 apart from the Legal Definition of section 14 (1) vexatious. There is evidence on the ICO files that it is the Legal Custodians of the Act, which have failed their fiduciary duty of Care.In particular, there is a wider conspiracy between HM Judges/ICO/Cabinet Office/UT &FTT/Court of Appeal and the Devon County Council to pervert the course of Justice and in particular, section 77 of the FOIA 2000.

10. I suggest and recommend a Criminal Inquiry into the conduct of Mr Christopher Graham and his Mafia Cronies at the ICO and a Public Inquiry into the Court of Appeal decision C3/2013/1855 Dransfield v ICO.

Please do not hesitate to call me as a Prime Witness if you need to ask me any related questions.

For your information, action and files.

With thanks

Yours sincerely

Alan M Dransfield

Alan Rorrison

We must avoid sliding into a Big Brother state!

Our freedom's must not be restricted to our detriment, our human rights and liberty are things that we should value. Terrorism is undoubtedly a threat, but our basic freedoms and rights should not be curtailed so as to render them meaningless. We have a right to privacy, and we also have a right to view what information is held on us!

Alan J Giddings
Dear Sir/Madam,
I am most concerned with the apparent threat to the FOI Act that is being talked about and how that might affect the public's right to information about those who govern us and spend our taxes.
I have also written to my MP on the matter.
Sincerely,
Alan J Giddings

Alan Rumble

Dear Sir

I am appalled that consideration is being given to reducing the effectiveness of the Freedom of Information Act.

It is only under this act the we, the voters can discover what the elected do with our taxes and hence make an informed choice at forthcoming elections. The half-truths and promises unlikely to be kept uttered by politicians do not do this. Any government which reduces the effectiveness of the act must be seen as having things it wants hidden.

Open democracy demands that powers under the FOI are increased. The cost is small in the overall scheme of things and, in any case is a price that has to be paid for the electors and taxpayers to ensure that their money is being properly used.

Yours faithfully

Alan Rumble

Alan Shell

To maintain transparency the FOI must remain intact as it was originally formed.
For the public to regain trust in the Government this act must be maintained especially in light of past disclosures

Alan SHELL

Alan Southeran

I would like to register my concern that the present situation regarding freedom of information is in danger of being emasculated and diminished

My worry is that those deciding on the future of freedom of information could have a vested interest in watering down the present procedure.

Under its present guise many exposures including MPs expenses have been brought into the public domain and any reduction in its remit whether by weakening its scope or introducing punitive charges would be a retrograde step.
Alan Southeran

Alan Webb

If any changes to the FOI Act results in journalists being unable to expose some of the many items that they have found over the years, then I am totally against any change.

It would seem that the proposed changes would prevent such problems in all areas of government and government departments would go unchecked.

Just a concerned citizen with no journalistic background or friends

Regards
Alan Webb

Alasdair Kelly

The proposed changes from current Freedom of Information Act are too restrictive.
The response for a request of information will be hindered more by the judgement from the proposed act.

It's title Freedom of Information Act quite clearly describes and explains itself.
The British public votes for its parliament.

It is essential that the British public can find the work and actions by the parliament that represents them.

The Freedom of Information Act should remain without the proposed changes.

Yours Alasdair Kelly

Alec Walker-Love

Pound for pound (operating budget only +/-£9million a year) the right to FOI is the single most valuable public service we have & I value it greatly.
Trust and transparency go hand in hand.

Maintain, support and even expand this vital resource for citizens and journalists.

Alec Walker-Love

Alex Keal

To Whom it may concern,

Please find this email in support of upholding the existing FOI law. The law provides a vital mechanism to hold government and public bodies to account. Transparency is a key tenet of David Cameron's mandate to govern and being involved in any repeal of the the law would be regressive. I understand the ministers do need some safe space to consider policy but the Information Commissioner is there for this very purpose. Cost has also been highlighted as an issue but there is already a limit on total request costs and the proposal to charge for every FOI request will unfairly favour larger news organisations.

Yours Faithfully,

Alex Keal

Alex Rhodes

To whom it may concern,

I'm writing this to add to the no doubt clamorous support for the existing FOI system.

To propose a watering down of the system seems dishonest and cowardly. Frankly I have to admire the government's balls in appointing Jack Straw to any independent commission, let alone this one.

Mrs May told us that "if we have nothing to hide then we have nothing to fear" when advocating for new measures to access personal communications. It's a shame that this only applies to the Whatsapp and browsing history of private citizens and not official public business that affects us all.

We have a right to know this information. Yes, the civil service shouldn't be expected to spend hours digging out figures for every pointless request but to add blockades to a system that has been shown to work for the public good time and time again will just add to the current distrust of authority figures.

I'm sure the establishment would quite like a break from bad PR but this is not the way to do it.

Kind regards,
Alex Rhodes

Alice Parker

Dear Sir or Madame,

I strongly object the proposed the changes to the freedom of information act currently under consolation.

I believe that creating a "safe space" will further erode the transparency of the government and allow an increase in lobbying by private business and individuals without the public being able to hold politicians to account.

Further more I feel that by adding charges to members of the public or other bodies who request information under the act the government would be pricing out smaller organisations or less wealthy individuals creating a two tier system for information on bodies who supposedly work for the people they are hiding information from.

The current system already allows for denials based on cost (£450 or £600 for central government) and I do not feel further amendments add value to the public but only to politicians who wish to hide their behaviour from the public they serve.

Please protect the freedom of information laws that have allowed the public to hold decision makers to account.

Yours faithfully,
Alice Parker

Alison McClean

In response to the call for evidence from the Independent Commission on Freedom of Information, I am writing to oppose any attempt to limit public access to information under the Freedom of Information Act (2000), and to oppose any proposals to introduce fees or charges for such access.

The FOIA is essential to effective democracy by providing a means by which the press and, moreover, the general public can seek to hold the government and other publicly funded bodies to account. In doing so, the FOIA enables us all to scrutinise the actions of those who wield considerable power and influence and ensures that those who seek to exceed or abuse these powers can be exposed. Indeed, without the FOIA in its current form we would be unable to effectively scrutinise the full effects of government policies in respect of welfare reform, the NHS, education and other areas of considerable public interest or concern. Without the FOIA we would be entirely dependent on the Government of the day's willingness to share information – a willingness which, judging by the number of occasions the Information Commissioner has been compelled to intervene to direct Government departments to disclose information, is unlikely to be forthcoming in respect of material that might show their policies and practises in a less than flattering light.

My own interests in the FOIA are as a Historian and I have made several requests under the FOIA for access to historical files relating to the Anti-Communist and Anti-Extremist activities of the Metropolitan Police Special Branch during the 1930s and 1940s. This has revealed material of significant historical interest that would otherwise have remained unknown and unavailable to scholars. This includes the extent of surveillance of serving Labour MPs, legally constituted bodies such as the National Council for Civil Liberties, and even one or two fellow historians!

As the recent furore over the Foreign Office's failure to release swathes of historically important documents under the 30 year rule demonstrates, the Government and other public bodies are often loathe to release information that may be politically embarrassing, or may cause their actions to be called into question. This underlines the importance of the FOIA in ensuring open and transparent government, and of the role of the Information Commissioner in respect of adjudicating and enforcing our rights under it.

I would also like to oppose the introduction of fees and charges. As an early career researcher cultivating an academic profile without grant funding or a tenured faculty position, I would have been unable to afford to pursue this line of research. The imposition of charges would also fly in the face of the principal of open democracy and freedom of information in that it would render such freedoms and openness available only to those who could afford it. I would also note that the US government makes no such charges for those making FOI requests for the purposes of academic research, even for those who are not US citizens.

Finally I would also like to express my disappointment in the composition of the Independent Commission itself. Given that all of the members of the panel have been openly critical of aspects of the FOIA, I am enormously doubtful of its capacity to act impartially or independently. Furthermore, I cannot help but despair at the irony of the actions of a Government that, on the one hand, seeks to extend its "investigatory powers" over its citizens while, on the other, is seeking to restrict what few powers we citizens have to scrutinise the actions of our Government.

Thank you for your consideration of my submission.

Yours sincerely,

Dr Alison McClean

Alistair P Sloan

INTRODUCTION

[1] This is a formal response to the call for evidence by the Independent Commission on Freedom of Information. Over a period of 5 or 6 years I have built up a considerable interest in and knowledge of Freedom of Information across the United Kingdom. I am one of the volunteer administration team that runs the WhatDoTheyKnow website. This response is made entirely in my personal capacity and does not reflect the views of mySociety or WhatDoTheyKnow.

[2] I have been involved in Freedom of Information litigation, appealing one decision of the Information Commissioner to the First-Tier Tribunal and more recently was second respondent in an appeal against a decision notice brought by a Department of State.

[3] The Freedom of Information Act 2000 ('UK FOI Act') entered into force on 1 January 2005 and has since that date provided individuals with a right of access to information held by public authorities, subject to certain limited exemptions. The Act contains provisions for an independent review by the Information Commissioner and an appeal to the General Regulatory Chamber of the First-Tier Tribunal. Thereafter there are appeals to the Administrative Appeals Chamber of the Upper Tribunal, the Court of Appeal and finally the United Kingdom Supreme Court in appropriate cases.

[4] As I live in Scotland I have developed a great deal of experience of both Freedom of Information regimes in the UK. My response draws on my experiences of both of these regimes together with my experience of the First-Tier Tribunal.

[5] I am happy for my response, together with my name, to be published. I am also happy for the Commission to contact me in order to clarify anything herein or for any further information.

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

[6] I accept that the nature of Government means that there will be occasions when it would be entirely inappropriate and not in the public interest for information to be released. This was recognised by Parliament when they legislated by including a range of exemptions to the general requirement to provide information upon request.

[7] It is important that the internal deliberations of public bodies can be free and frank. This protection is provided for by sections 35 and 36 of the UK FOI Act, both of which are currently qualified exemptions (that is, they are subject to a balancing exercise of the competing public interest factors). The need for there to be a safe space for internal deliberations is recognised by the Information Commissioner, the Tribunals and Courts.

[8] To answer this question properly it is necessary to look at section 35 and section 36 separately.

Section 35

[9] This exemption is an extremely wide one that covers the formulation or development of government policy; ministerial communications; provision of advice by the Law Officers (or a request for such advice); and the operation of any Ministerial private office.

[10] The information need only "relate to" one of the activities listed in section 35(1). The requirement that it only need relate to can be interpreted broadly (see, for example, Department for Education and Skills v The Information Commissioner and the Evening Standard EA/2006/0006 at para 53). The result of this is that information need only have a connection to one of the activities listed in section 35(1) of FOIA and does not need to have been created for one or more of those activities nor does it have to be the main focus of the information in question. The exemption will also catch associated or incidental information.

[11] The reasoning that underlies such a position has been adopted by the Supreme Court in *Sugar v BBC and Another* [2012] UKSC 4. This case related to the derogation provided to the public service broadcasters in Schedule 1 to FOIA. However, it is my contention that it is relevant to considerations under section 35 of FOIA. The Court held that information held by the BBC for purpose of journalism, art or literature was covered by the derogation even when it was also held for another (possibly more important) purpose. The reasoning behind those comments in Sugar lies in a purposive approach to statutory interpretation.

[12] Once a decision has been taken on government policy, Parliament has legislated to the effect that statistical information used to provide an informed background is no longer caught by the first two paragraphs of section 35(1) (see Freedom of Information Act 2000, section 2(2)).

[13] The exemption is fairly easy to engage and it then comes down to the public interest test. The purpose of the public interest test is to assess whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in releasing the information. Unless the public interest in maintaining the exemption outweighs the public interest in disclosing the information the information must be disclosed.

[14] The Information Commissioner's website contains a database of all of the decision notices that he has issued in respect of section 50 FOIA complaints. A consideration of the decisions issued by the Commissioner in respect of section 35 shows that in the vast majority of cases the Commissioner decides that the public authority in question has applied section 35 correctly and does not require the public authority to disclose the withheld information.

[15] The First-Tier Tribunal has also on a number of occasions been called upon to determine appeals in respect of section 35. It is clear from a reading of those decisions that the Tribunal is also acutely aware of the need to protect the safe space and often dismisses appeals brought by requesters against ICO decision notices.

Section 36

[16] Section 36 is also potentially an exemption that is wide in nature and is able to catch a lot of things which the Government might wish to protect under the "safe space" argument. The exemption is easy to engage as it only requires that the qualified person possess a "reasonable opinion" and what, in law, is reasonable is quite considerable. If the case law is considered, such as *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223[1], it can be seen that what is reasonable is quite wide in nature. Where there is another reasonable conclusion that could be drawn which is favoured by others, it does not follow that the conclusion being challenged is unreasonable or irrational. Therefore, there is no risk of the Commissioner or First-Tier Tribunal preferring an alternative reasonable conclusion and ignoring the perfectly reasonable conclusion of the qualified person.

[17] In the same way that section 35 is, section 36 is also subject to the public interest test whereby it is necessary to weight the competing public interest factors. The information must be released unless the public interest in maintaining the exemption outweighs the public interest in disclosure; where the public interest in maintaining the exemption is equal to that in disclosure, the information must be disclosed.

[18] The Commissioner has taken a strong line in ensuring that there is adequate protection for the "safe space" and has taken account of the "chilling effect" in his guidance and decisions in relation to section 36. The Tribunal has also been keen to ensure that there is adequate protection. However, the Tribunal and the Commissioner have both stressed that these are not (as the legislation makes clear) absolute exemptions and information will be disclosed where it is necessary.

---

[1] Although this case does not directly relate to FOIA, and indeed pre-dates it by several decades, it is a frequently cited case in respect of the reasonableness of a decision taken by a public authority in judicial review proceedings.

General Comments on Sections 35 and 36

[19] There have been a number of high profile cases in the 10 years that FOIA has been operation in which the Government has lost in respect of its argument that information ought to be withheld under sections 35 and 36. These cases have attracted significant media attention. Both civil servants and ministers will undoubtedly have been very aware of them at the time (and will no doubt continue to be aware of them as time goes by). However, it is important that these cases are set in context and that both Ministers and Civil Servants are reminded that these are exceptional cases. In the vast majority of section 35 and section 36 cases the Government position is upheld and information is not disclosed.

[20] The "chilling effect" is a much cited argument that is largely the product of subjective evidence. Of course, subjective evidence can be perfectly legitimate. It could be argued that the constant talk of the "chilling effect" could itself be leading to the "chilling effect" – the more something is talked about, the more people are aware of it and the more closely they pay attention to it. This is important as there is little in the way of objective research on this point. The saying "if you say something often enough you might begin to believe it" could be said to be relevant here. Whether or not there really is a chilling effect might be getting clouded by a fear resulting from the fear itself.

[21] There has been some objective investigation of the "chilling effect". In 2009 the Constitution Unit at University College London published a report which aimed to understand the development and formulation of policy in the context of Freedom of Information. This report was produced for the Information Commissioner's Office and it stated:

> "Overall, however, none of the officials we interviewed thought that FOI was having or would have a significant impact on the nature of the decisions that the government was seeking to make (ie no actual decision would be different because of FOI concerns). And while, it might well lead to less being recorded in future, it was only one of a number of factors which were having a similar effect, including the greater informality of the relationship with Ministers and third parties, concerns about legal challenge; and resource pressures which were leading to less material being properly filed. In that sense, FOI was part of a general trend towards fewer written records rather than the dominant factor behind the trend. That said, the trend as a whole was not to be welcomed."[2]

This is an important finding as it stresses that if there is less information about decision making being recorded, then FOI is not alone in causing this (if it is at all). There are other considerations which will continue to exist even if the FOI dimension is taken out, such as leaks by civil servants and ministers as well as information being revealed during public inquiries and litigation in the courts.

[22] Historically, leaks from within Government have seen information unofficially released in an entirely uncontrolled manner with little or no consideration given to the wider impact of disclosure. The wider impact of disclosure is something that proper consideration can be given to as part of the process of considering a FOI request. It is not objectively possible to say whether the number of unofficial leaks from central government or other public authorities has decreased since the introduction of the UK FOI Act; however, what can be said is that the UK FOI Act has created a proper framework in which disclosure decisions can be taken weighing up all of the competing public interest factors. As a result a mature decision is reached whereby the most sensitive information can be withheld in appropriate cases and other information which is not as sensitive can be released thereby illuminating the decision-making process in the authority.

[23] The length of time that information ought to remain sensitive is not something that can really be prescribed with any degree of accuracy. This is something that needs to be determined on a case-by-case basis with a proper consideration of the relevant context of the information. Matters can develop, sometimes over a very short period of time, which fundamentally alters the public interest balance. It is therefore important that there is a degree of flexibility. The current provisions provide for the necessary flexibility.

[24] I do not consider that different protections ought to apply to different types of information covered by sections 35 and 36 of the UK FOI Act. The operation of the Act ought to be as simple as possible. The more prescribed it becomes the harder it will become to operate in practice; this will inevitably lead to increased levels of internal reviews, complaints to the Commissioner and appeals to the Tribunals and Courts in an effort to define the exact parameters. Although the UK FOI Act is a formal legal process, it has (rightly) been designed to be as technically light as is possible so as to ensure that members of the public are able to make use of the their rights as easily as possible. The Commission should, in my view, seek to ensure that they do not over complicate the Act unnecessarily.

[25] It is my submission to the Commission that the current protections are sufficient and that to amend them may work against (rather in favour of) the public interest.

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

[26] The constitutional doctrine of collective ministerial agreement is an important one. It enables Ministers to express free and frank views at Cabinet where important decisions are taken whilst allowing them to publically speak on a policy which they may well have disagreed with in Cabinet. It essentially enables Ministers to do their jobs irrespective of their views. It could become difficult for the Government and individual Ministers to be credible if the details positions of each member of the Cabinet were to be routinely known by the public.

[27] Such material is already given great protection under the UK FOI Act. It is exceptionally rare that the Information Commissioner will order the release records of cabinet discussions. In the 10 years since the Freedom of Information Act 2000 entered into force there have been a very small number of exceptional cases where the Government has been ordered by the Commissioner or Tribunal to release cabinet material, especially the minutes of Cabinet meetings.

[28] While it is right and important that this material be protected, it is also right and appropriate that it can be released under the FOI where the circumstances dictate that this ought to be the case. The situations where this would be the case are exceptional; however, it is conceivable that there will be circumstances where the public interest in knowing the discussions of the Cabinet will be so great as to confidently repel the public interest arguments in favour of maintaining the exemption.

[29] It has been suggested that Cabinet papers be absolutely exempt from the ambit of the UK FOI Act and that other jurisdictions have such provisions in their legislation. However, it is my submission that this is not a route that the UK ought to go down; it would be a retrograde step that would actively work against the public interest by removing the public interest balancing test from such information. While in the vast majority of cases the public interest will come down in favour of maintaining the exemption, there will be a very small minority where the public interest will not and as such framing the UK Act in this way would prevent those rare occasions from being

decided properly.

[30] Sometimes disagreements over Government policy have caused Ministers to resign in highly contentious areas. Of course such decisions may might somewhat undermine the process of protecting the confidentiality of cabinet discussions and agreements and a minister's resignation and subsequent discussion thereof might well weaken the public interest in maintaining an exemption in relation to such information (although in my view it would be extremely unlikely that a ministerial resignation over a policy disagreement would necessarily weaken the PI to such an extent that it results in full disclosure).

[31] The decisions of the Commissioner and the Tribunal are such that great weight is given to protecting collective cabinet responsibility. Indeed, it is possible for Ministers to refuse to neither confirm nor deny whether information is held. An example of this can be seen in decision FS50466327 (a decision in which I was the complainant). This decision related to a request for information made to the Cabinet Office seeking "the content of any minutes from Cabinet meetings and cabinet sub-committee meetings that" related to the 1985 riots which occurred in the Handsworth area of Birmingham. The Cabinet Office issued a refusal to confirm or deny whether any information was held and this was upheld by the Information Commissioner in his decision.

[32] At paragraph 34 of the Commissioner's decision the Commissioner stated that there is a "well-established convention whereby the level at which matters are discussed remains confidential unless the government decides to disclose that detail." The Commissioner also accorded weight to the terms of the Ministerial Code."

[33] This decision also shows that the protection for cabinet collective responsibility can last for a significant time. The riots in question had taken place in early September 1985 and the request for information was made on 18 May 2012. A period of 27 years had elapsed between the events and the request for information being made and the Commissioner determined that the Cabinet Office was correct to refuse to confirm or deny whether any information falling within the scope of the request was held.

[34] This is by no means an exceptional example; the Commissioner has frequently upheld decisions in respect of section 35 as it relates to cabinet collective responsibility long after the relevant time. This demonstrates that significant weight is already attached to collective responsibility.

[35] It is my submission to the Commission that protecting collective decision- making and responsibility in the cabinet is important and that the current provisions are adequate. The question of how long information ought to be protected is one which will turn on the facts of each specific case and trying to prescribe a timeframe would risk working against the public interest either by preventing information which ought to be released from being released or by causing information to be released too early.

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

[36] Sections 35 and 36 provide exemptions which enable public authorities to withhold such information. I would be reticent to suggest placing a specific time frame in response to the second part of the question. There will be circumstances where the public interest in disclosing the relevant information is such that it demands the information being released. For example, if the Government embarks upon a programme which results in extremely serious negative consequences despite having been well warned of that

particular risk then the public interest may well demand that this information is revealed to the public.

[37] Equally, there might be cases where the Government embarks upon a programme which results in extremely serious negative consequences without there having been any identification and/or consideration of the particular risk in a 'risk register'. It might be appropriate in such cases to demonstrate to the public that the Government was genuinely unaware of the potential for the particular risk to occur, of course such a situation might also raise serous questions about the process of identifying the possible risks in respect of a policy position.

[38] It is important that the Government can consider such matters in the context of a clear legal framework. Preventing such information from being released in appropriate cases may well return the situation to one where there are uncontrolled leaks. Whereas release under FOI enables the Government to release alongside the requested information such other information that contextualises matters, uncontrolled leaks from within Government does not allow this to happen and could work against the public interest.

[39] It is my submission to the Commission that the current protections are sufficient and that to amend them may work against (rather in favour of) the public interest.

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?

[40] It is my view that an Executive veto in respect of a decision by the Information Commissioner or First-Tier Tribunal requiring that information be released is inappropriate and that the relevant provisions of the UK Act ought to be removed.

[41] It might be worthwhile at this stage referring to the Environmental Information Regulations 2004 at this stage in order to compare the position under the two information access regimes. The Commission will no doubt be aware of the decision of the Supreme Court in *Evans v Information Commissioner and others* which concerned the use of the veto. The Court held (quite properly in my view) that the veto provision could not extend to information the release of which falls to be determined under the Environmental Information Regulations. This was as a result of the Regulations implementing an EU directive which contained no provisions allowing for the Executive to have any kind of veto over the decision of the Commissioner or a court or other such body.

[42] There are of course a number of differences between the Environmental Information Regulations and the Freedom of Information Act; however, it does seem odd that the Executive could veto the release of very similar types of information where that information is not environmental and not when it is environmental.

[43] That is not the only reason why I submit that the veto provision should be removed. My main reason for not supporting it is that it places the Executive as the final arbiter of whether the information is to be released or not. It effectively makes the Commissioner, the Tribunal and the Courts irrelevant, ineffective and pointless in such cases.

[44] Where a Minister exercises the veto following a decision by the First-Tier Tribunal, the information will have been considered independently of the Executive, with a full appreciation for the need to ensure a safe space, twice. At least one, if not both, of those independent considerations has determined that it is not in the public interest to maintain the exemption.

[45] It is a constitutional anomaly that the Executive can override the decision of the judiciary, especially when the Executive are taking their decision to veto the release of the information using the same grounds that have already been rejected by a judicial body. Essentially, the Department has put its case to the Commissioner and/or the Tribunal and been unsuccessful in persuading the Commissioner and/or the Tribunal that the public interest is in maintaining the exemption.

[46] If the ministerial veto is to continue to exist, it is my submission that section 53 be amended to provide that a certificate may only be issued once the relevant authority has exercised its right to appeal to the First-Tier Tribunal and the appeal has been dismissed by the Tribunal. Section 53 should not be able to be used in order to avoid a Minister from having to present their case fully before an independent judicial body. It is not uncommon for the State to employ Counsel to argue such appeals before the Tribunal and therefore the Executive, through the Government Legal Department, can obtain access to good quality advocacy to

persuade the Tribunal that the public interest is best served by maintaining the exemption.

[47] If the Department considers that the Commissioner has decided matters incorrectly, in the first instance, the Department should be required to utilise the appeal rights that exist to Tribunal. It should not be possible for the Executive to jump straight to the veto and force a member of the public to go to the expense of a judicial review; an expense that is considerably greater than responding to an appeal before the Tribunal.

[48] I note that whilst the UK Government has used the power in section 53 of the UK FOI Act on only a handful of times in the almost 11 years that the Act has been in force, the First Minister of Scotland has not to date used the equivalent provisions in the Freedom of Information (Scotland) Act 2002 ('the Scottish FOI Act').

[49] It is my submission to the Commission that there should be no Executive veto, and that in the event that it is to remain the case that the Executive has a veto it should not be permissible to exercise it before exercising the right of appeal to the FTT. Furthermore, in order to reduce costs in applications for judicial review of a decision to issue a certificate under section 53 of the UK FOI Act should be made to the Upper Tribunal as opposed to the High Court. This would make it more financially viable for an individual to challenge a certificate than if it is to be made to the High Court thereby providing access to justice.

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

[50] Having made use of both the UK FOI Act and the Scottish FOI Act over a period of about six years, I have experience of both of the appeal systems. I will draw on this experience in the submissions that I make in response to this question.

Internal Review

[51] Under the UK Act there is no statutory right to require a public authority to conduct an internal review. The Secretary of State issues a code of practice pursuant to section 45 of the UK FOI Act which includes provisions for an internal review by public authorities. It is a requirement that a requester exhausts any internal complaints procedure that exists before the Information Commissioner may consider a complaint under section 50 of the UK FOI Act.

[52] This position can be contrasted with the position in Scotland where sections 20 and 21 of the Scottish FOI Act set out the right to require a review and the technical requirements of that review, both from the requester's and authority's perspectives.

[53] The Section 45 Code of Practice requires that any complaints procedure "should encourage a prompt determination of the complaint"[3]. It goes on to state that "[a]uthorities should set their own target times for dealing with complaints" and "that these should be reasonable, and subject to regular review".[4] The Code of Practice does not elaborate as to what is meant by prompt.

[54] The Information Commissioner has issued guidance which states that, in his view, "a reasonable time for completing an internal review is 20 working days."[5] The

Commissioner recognises that there will be some situations where it is not possible to respond to requests for review within 20 working days and in those circumstances the Commissioner's view is that 40 working days are sufficient.

[55] One of the issues with this lack of statutory provision around internal reviews arises as a consequence of section 50(2)(a) of the UK FOI Act. This section provides that the Commissioner must investigate a complaint made to him unless it appears to the Commissioner "that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45". This could potentially cause problems where there is an excessive delay in an authority handling a request for review.

[56] It is not uncommon for internal review requests to take longer than 20 working days, and indeed it is not uncommon for internal reviews to take significantly longer than 40 working days. In my own experience of making requests I have experienced exceptionally long delays in respect of internal reviews. An example for which there is documented, publically available evidence for would be in respect for a request to the Home Office where the internal review took in excess of 9 months to complete. The Commissioner described this delay as "grossly excessive"[6] and the First-Tier Tribunal considered that the Home Office was "guilty of a deplorable delay"[7] in respect of this same internal review. In FS50481760, a decision in which I was the Complainant and the Cabinet Office was the public authority, the Commissioner considered that 42 working days was a failure of the Cabinet Office and that it "fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale."[8]

[57] The above examples are only two examples where I have been the requester, and do not represent all of the significant delays that I have personally experienced as a requester. Reading through decision notices issued by the Commissioner clearly shows that these are not isolated examples and that there are a great many examples of where public authorities have taken a considerable length of time to conduct internal reviews.

[58] It is not clear that a requester can competently complain to the Information Commissioner where a public authority has not issued a final response to a request for internal review. The Commissioner does accept such complaints as it is his view that a requester's right to complain to him under section 50 should not unreasonably be delayed. This seems to work; however, it is my submission that this is a wholly unsatisfactory position and may be open to successful legal challenge by a public authority.

[59] The position under the UK FOI Act can be contrasted with the Scottish FOI Act. The Scottish FOI Act sets out clearly that a public authority must comply with a 'requirement for review' (the statutory term used in the Scottish FOI Act for the right to request an internal review) "promptly; and in any event by not later than the twentieth working day after receipt".[9] Thereafter a requester has a right to make an application to the Scottish Information Commissioner pursuant to section 47(1) of the Scottish FOI Act. In such circumstances the Scottish Commissioner is only permitted to issue a decision notice that requires the authority to respond to the requirement for review and must give the public authority at least 43 days to comply (the public authority and applicant being able to appeal the decision to the Court of Session within 42 days). However, often the involvement of the Scottish Commissioner is enough to see an authority expedite things and these technical decisions often record that the Scottish public authority has issued a response prior

to the Scottish Commissioner's decision notice being issued. There of course exists a right to make a further application to the Scottish Commissioner to consider the substantive issues once a review response has been issued where that response withhold information held, refuses to confirm or deny whether information is held or is a notice that no information is held.

[60] The Justice Select Committee of the House of Commons considered the issue of delays in internal reviews during its post-legislative scrutiny of the UK Act. They recommended that the UK Act be amended to include a statutory time-limit for internal reviews. Their recommendation was for there to be a 20 working day limit, capable of being extended by a further 20 working days for exceptionally complex or voluminous requests.[10]

[61] The internal review processes offers an opportunity for public authorities to consider things afresh and provides authorities with an opportunity to correct any errors that may have occurred in the original handling of the request. Although authorities should always be striving to get it right on the first consideration, it is important to remember that the decisions are being taken by humans and as such are subject to the errors which humans inevitably make from time to time. They are therefore an important step in the FOI process.

[62] The Section 45 Code of Practice provides that reviews "should be undertaken by someone senior to the person who took the original decision, where reasonably practicable."[11] This should therefore enable the public authority to take a genuinely fresh look at the request, uninhibited by the views already formed by the person(s) who originally handled the request. This same principle can also be found in the Code of Practice issued by the Scottish Ministers pursuant to section 60 of the Scottish FOI Act. The Scottish Ministers' code of practice provides that reviews "should, where practicable, be handled by staff who were not involved n the original decision."[12] This is definitely a positive feature to the review process and is certainly something that ought to happen where it is at all possible. Of course, it may simply not be practicable in a small authority for a different person to conduct the internal review due to the smaller number of personnel available to the.

[63] The Coalition Government rejected the Select Committee's recommendation in its response to the Committee. It is my submission that the previous Government was wrong to reject that recommendation of the Select Committee. The Scottish experience does not suggest that having a strict 20 working day deadline prejudices public authorities in any real way. The Section 45 Code of Practice is, in my submission, a wholly inappropriate way to deal with something as important as internal reviews, especially given the lack of specification around timescales and the lack of certainty that this results in.

[64] The Scottish Commissioner has highlighted the importance of dealing with information requests and request for review timeously. The Scottish Commissioner said that "every failure is a denial of rights".[13] This is an important point made by the Scottish Commissioner: all delays by public authorities are in effect a denial of a requester's information access rights. The authority might get there eventually, but in the time that it has taken the authority to conduct a review (and as demonstrated above, those delays can be significant) denies people their right to information or to an explanation as to why they cannot have the information requested. The time it takes authorities to handle reviews is just as important as the quality of the review itself. Significant delays can also impact upon the usefulness of any information that is eventually released. A local campaign group or journalist making an information

request might be have a very short window in which the information will be of use to them. Any release of information will always be fulfilling the important principles of openness and transparency; however, the information eventually released might no longer be useful for the original purpose behind the request.

[65] Delays, either in responding to a request or an intenal review, could be used by a public authority to their advantage. If they know, or suspect, that the information being requested might be used against them to challenge a decision, such as by way of Judicial Review, the authority might actually be incentivised to delay responding. I will make no comment as to whether any authority may already have engaged in such practices as it would be unfair to do so without any evidence in support of such an allegation, but I mention it to highlight this as a possibility.

[66] I therefore suggest to the Commission that they recommend to the Government that the UK FOI Act be amended to include a statutory timescale in respect of internal reviews. Although I suggest that the Scottish model of a strict 20 working day limit is more than adequate, including an allowance for that deadline to be extended by a further 20 working days would address the Government's previously asserted unease about forcing authorities to make rushed decisions.

The Tribunal

[67] There exists a right under the UK FOI Act to appeal a decision of the Information Commissioner to the First-Tier Tribunal. Appeals are handled by the General regulatory Chamber of the Tribunal. The existence of the tribunal stage is another way in which the Scottish and UK FOI Acts differ.

[68] I have participated in two cases before the First-Tier Tribunal, one as Appellant and one as Second Respondent. I found the process to be generally good and straight forward to navigate.[14] It is my view that there are significant advantages to the Tribunal Process; however, there are also some disadvantages to the process.

[69] A three-tier appeals process, such as the one found in the UK FOI Act, is endorsed internationally as a principle of good practice in Freedom of Information.[15] The existence of the Tribunal permits a third review (and is in effect a fourth consideration) of the merits of the request. The Tribunal has full access to the information that is being withheld (where that is the case) and receives detailed written submissions (and where oral hearings are held, detailed oral submissions as well) on the merits of the case. Unlike the Commissioner, the Tribunal can hear evidence from witnesses in person with the benefits that brings. The ability to hear from witnesses in person, both under examination-in-chief and (perhaps most importantly) cross- examination puts it in a very strong position to assess the case for continuing to withhold the information.

[70] Onward appeal from the Tribunal is a complex process, but can only proceed with permission and on points of law only. Therefore, decisions of the First-Tier Tribunal are final in respect of questions of fact.

Requester's Involvement

[71] Appeals to the Tribunal and beyond are against the Information Commissioner's decision. This is the only sensible way to handle appeals as it is the Commissioner's decision that is enforceable and only the Commissioner could have locus to respond to an appeal against his decision. Making the appeal against the authority directly would be entirely unworkable and, in my view, absurd.

[72] The vast majority of appeals to the Tribunal are brought by requesters; however, authorities can and do bring appeals to the Tribunal. Public authorities can, of course, appeal any decision of the Tribunal, Upper Tribunal or Court of Appeal that they disagree with where they did not bring the initial appeal to the Tribunal. This does raise the issue of appeal proceedings continuing long beyond the point at which the requester is interested in pursuing the appeal; however, there are, in my view, public interest factors that mean that this is wholly relevant.

Disclosure to one is disclosure to the world

[73] It is long established that disclosure under FOI to an individual requester is in effect disclosure to the world. Many public authorities operate disclosure logs and the WhatDoTheyKnow website publishes all responses received to the unique E-mail addresses generated by each request that is sent through that service. So disclosure to the requester can be seen by a much wider audience.

[74] As disclosure to one is considered to be disclosure to the world there is a wider public interest. Even if the requester ceases to be interested in the information others might be and could obtain the information in a variety of ways. As decisions and judgments of the Tribunals and Courts are made public others will learn of the requests that way and can seek out the information, including obtaining a copy from the public authority itself.

Legal Precedent

[75] Decisions of the Upper Tribunal, Court of Appeal and Supreme Court create binding precedent. As such, all Courts/Tribunals below them are bound by their decisions as would the Commissioner and public authorities. These decisions clarify the law in respect of the various exemptions which can assist public authorities and the Commissioner in their application of the exemptions. This is undoubtedly a good thing for public bodies, the Commissioner and the public.

[76] Although the First-Tier Tribunal is not a superior court of record and therefore does not create binding precedent; its decisions are useful to public authorities, the Commissioner and requesters. They provide guidance on the Tribunal's view of how the exemptions ought to be applied and overtime patterns can be seen in the Tribunal's reasoning which assists public authorities, the Commissioner and requesters.

[77] The UK and the Scottish FOI Acts have been in operation for the same length of time. While the UK FOI Act has seen some minor amendment to the appeals process in the 10 years since the UK Act entered into force the actual appeals structure has remained largely the same in that time. The Scottish FOI Act has seen no amendment to its appeals process in that time.

[78] In terms of the appeals process in Scotland any appeal against a decision of the Scottish Commissioner is on a point of law only to the Inner House of the Court of Session. This means the appeals process is straight from the Scottish Commissioner to the highest civil court in Scotland, with an onward appeal to the Supreme Court of the United Kingdom (which now requires permission of the Court of Session or Supreme Court, but until only recently could be made with certification from two Advocates).

[79] In Scotland there have been comparatively few appeals against decisions of the

Scottish Commissioner. In my view the cost of bringing an appeal will likely be acting as a barrier to appeals being brought. Solicitors do not have rights of audience in the Court of Session ordinarily and therefore to bring an appeal requires either a solicitor with appropriate higher rights of audience to be instructed or both a Solicitor and at least Junior Counsel (although appeals may entail both the instruction of Junior and Senior Counsel as well as a solicitor). The UK appeals structure is such that should be possible for party litigants to act in appeals at both the First-Tier and Upper-Tier Tribunals. The complexities that begin to creep into the system when cases get to the Court of Appeal and Supreme Court will likely mean that a solicitor together with Counsel or a solicitor with appropriate higher rights of audience will need to be instructed. However, very few cases reach this stage of the appeals process.

[80] The simplicity of the Tribunal structure and the way in which such Tribunals are largely set-up to handle party litigants is a clear advantage to the appeals process. It is possible to go through both the First-Tier and Upper-Tier Tribunal stages without there being a single oral hearing (although a lack of oral hearing means that there is no "live" witness evidence given). The appeals system is therefore far more open to requesters than the Scottish appeals system; and in my view, is a significant advantage to the UK FOI Act.

[81] It is therefore my submission to the Commission that no amendments be made in relation to appeals against decision notices issued by the Information Commissioner.

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?

[82] Compliance with FOI undoubtedly places a burden on public authorities, but that burden is largely wholly justifiable. There are already provisions within the UK FOI Act which enable public authorities to adequately deal with requests which create an inappropriate burden on them. However, when the issue of the burden that FOI places upon authorities is discussed, particularly at the instigation of public authorities, there is rarely any consideration of this in the context of the benefits arising out of FOI and therefore there can often result in a rather one-sided argument being presented.

[83] On occasions since UK FOI Act entered into force, public authorities and representative bodies of public authorities have released press releases highlighting what they consider to be the wasteful use of resources in respect of FOI. However, those seemingly bizarre requests can have a serious purpose behind them. For example, in June 2014 the Local Government Association published a press release complaining about a request sent to Wigan Council requesting information on exorcisms.[16] A seemingly frivolous and vexatious request; however, when considered alongside the fact that in 2008 it was revealed that Easington Council paid half the cost of hiring a Medium to perform an exorcism[17] then it becomes a much more reasonable request. If that request to Easington Council in 2007/8 for information on the number/cost of exorcisms performed which had been dismissed off hand as vexatious and a waste of resources their use of public funds for this purpose might have gone unnoticed. I

am not going to comment as to whether or not I think Easington Council's use of public money was appropriate or justified in that case, it is not necessary. I highlight it only to show that these seemingly bizarre and wasteful requests have resulted in the release of recorded information held by public authorities.

[84] Arguably publicising these types of seemingly frivolous/vexatious requests does more harm that good; it may result in a wave of copy-cat requests being received by public authorities up and down the country and result in nothing more than an increase in the burden on public authorities. Therefore, it is possible that in an attempt to highlight a perceived misuse of the Act causing a burden on resources, public authorities have only increased the burden they face from seemingly frivolous and vexatious requests. It would, in my view, be perverse to restrict the rights of individuals as a result of a problem (if one does indeed exist) that could at least be partly be as a consequence of the actions of public authorities.

[85] It is my view that if a public authority cannot say for certain that it does not hold any policies or procedures relative to the handling of a zombie apocalypse (or similar) without undertaking lengthy and complex searches of its records, then the request for information is most certainly in the public interest – even more so when such searches discover relevant information.

[86] Some authorities have responded to such requests in a commendable way, such as releasing civil contingency plans although they do not specifically cover the situations detailed in the request for information. Others have sought to respond to requests with humour. I suggest that the latter of these responses is entirely inappropriate and may actually result in further such requests being made. Giving a response to an individual which affirms their behaviour can be counter-productive. A dry, technical refusal in accordance with the provisions of the UK FOI Act with no hint of anything to make the individual feel as though they're request has been anything other than a waste of everybody's time might dissuade the individual from making such requests in the future. If course, this will not work in every single case. Some individuals have a sincerely held belief in extra-terrestrial lifeforms, ghosts and zombies and these are matters which cause them genuine fear or concern. It is not for me to judge them and so I do not make any comment which seeks to judge them, I merely point this out as a relevant consideration.

The Appropriate Limit

[87] Section 12 of the UK FOI Act sets an appropriate limit above which a public authority does not need to comply with a request. The limits currently set by Regulations are £600 for central government bodies and £480 for all other public bodies subject to the UK FO Act. Public authorities are only permitted to include certain activities in the calculation of the appropriate time. Crucially, the time taken to balance the public interest and to perform redaction cannot be included in the cost calculations.

[88] The exclusion of the time taken to balance the public interest is, in my view, entirely appropriate. In a great many cases the balancing of the public interest is a difficult process which requires a great deal of thought and consultation. It would actively work against the public interest if the time taken to consider where the balance of the public interest rested. It would undoubtedly result in difficult cases being refused on cost grounds, even where (had a full consideration of the public interest been permitted) it would be in the public interest for the information to be released.

[89] The complexity of the balancing of the public interest is, I suggest, recognised in the

UK Act through the provision in section 10(3) of the UK Act which allows a public authority to extend the time to fully respond to a request by such time as is reasonable where it is necessary to consider the balancing of the public interest. The fact that the UK FOI Act allows an extension of time to consider the public interest demonstrates strongly that this is not a straight forward task.

[90] In respect of the exclusion of redaction time, this of course relates to the redaction of exempt material (as opposed to material that is out with the scope of the request). Again, by permitting redaction time to be included in the cost calculate on it could quite easily push up the time for compliance to such a point that information which would currently be released and which the release of would be in the public interest would be refused. This works against the public interest.

[91] Some authorities have, through releases, demonstrated an approach to redaction that would, if redaction time was to be included, be contemptuous towards the purpose of FOI. Instead of removing pages or extracting the one or two sentences from a page or document that are not exempt, authorities send whole pages of redacted information. This obviously takes much more time than it would to remove the page(s) entirely or extract the comparable small amount of information from a document that is not exempt.

[92] The UK FOI Acts position on the cost limit can be compared with the position in the Scottish FOI Act. In Scotland there is only one appropriate limit (known as the 'prescribed amount') regardless of the public authority and that is currently set at £600.[18] Furthermore, the Scottish Commissioner has decided that where an employee of the authority whose time is charged at a lower hourly rate could reasonably be expected to do the work, the cost calculation should be done using the lower hourly rate. This potentially expands the scope of the amount of information that could be disclosed in Scotland when compared with a request under the UK FOI Act.

[93] The UK Regulations have been drafted in such a way so as to significantly reduce and even eradicate the possibility of requesters getting round the appropriate limit. The Regulations allow the authority to aggregate requests. This ensures that an individual cannot break one very large request down that would breach the cost limits into multiple smaller requests, each of which would be under the limit. Furthermore, the Regulations are also drafted in such a way so as to prevent a group of people working together to defeat the cost limit by each submitting a small portion of a larger request.

[94] It is my submission to the Commission that the appropriate limit be set at £600 for all public authorities, failing which, my submission to the Commission is that there be no changes to the appropriate limit.

Vexatious requests

[95] I have already referred to the issue of requests which seem to be bizarre or vexatious in nature. There are adequate provisions in the UK Act to deal with requests which are vexatious in nature. The provisions within section 14(1) of the UK Act have been considered by both the Upper Tribunal and the Court of Appeal. The consequence of this means that there is binding judicial authority relating to the proper interpretation of section 14(1). I refer specifically to the cases of *Dransfield -v- The Information Commissioner and Devon County Council* and *Craven -v- The Information Commissioner and the Department for Energy and Climate Change*.

Both of these cases where considered together in both the Upper Tribunal and the Court of Appeal.[19]

[96] The effect of section 14(1) is that public authorities are able to protect resources by limiting the amount of time spent dealing with a request. While refusals pursuant to section 14(1) can be challenged through the Commissioner, Tribunals and Courts, it does enable public authorities to prevent themselves from having to expend considerable resources on the substantive consideration of these particular requests. Onward appeals or on the limited point of the applicability of section 14(1) to the request in question.

[97] The Commissioner's decisions database shows that he is sympathetic to the use of section 14 by public authorities to deal with vexatious requests. Public authorities should take comfort in that and become much more confident in using section 14 (whilst bearing in mind that section 14 is a high threshold and making use of it is in effect a denial of a person's information access rights).

[98] The Information Commissioner has the power to reject a complaint made pursuant to section 50 of FOIA if in his view the complaint is frivolous or vexatious.[20] It is therefore possible, in appropriate cases, for the Commissioner to take a view as to whether a complaint to him is frivolous or vexatious. This could relate to a request that has no serious purpose or value or to a situation where a public authority has applied section 14(1). How often the Commissioner has made use of this provision is not known, but it is certainly a tool open to deal with the burden to public authorities. In light of the Upper Tribunal's decision in *Fish Legal*, it is likely that such determinations will be appealable to the First-Tier Tribunal under section 54 of the UK FOI Act rather than amenable to Judicial Review.

[99] The burden of vexatious requests could also be reduced by making the provisions relative to the internal review statutory in nature. It would then be possible to legislate that in cases where a request has been deemed vexatious an authority is no obliged to carry out an internal review, thus meaning that one layer of the process is removed thereby reducing the burden on the authority.

[100] In Scotland, the Scottish FOI Act makes such a provision. A Scottish public authority is not required to carry out an internal review where (1) the request for review itself is vexatious[21] or where the authority was not required to respond to the original request because it was one which was vexatious or repeated.[22] It remains possible for the requester to then make an application to the Scottish Information Commissioner under section 47(1) of the Scottish FOI Act. The Commissioner would be required to determine whether the request was indeed vexatious. If the request was not vexatious the Commissioner would require the public authority to respond to the internal review. Thereafter the requester could make a further application to the Commissioner on a substantive issue should a refusal notice be issued citing an exemption other than section 14.

Fees

[101] There has been some suggestion that a fee ought to apply for making a request for information to help address the burden public bodies face in respect of information requests. There are a number of issues with such an approach which I shall address in this section of my submission.

[102] The first issue that I wish to address here is what purpose a fee would serve: cost

recovery or deterrence. I would argue that if the introduction of a fee for making a request for information is for the purposes of deterrence then this would be a perverse reason and would represent a backward step in openness and transparency. It would send out entirely the wrong signals form a Government that is publically committed to openness and transparency and one which participates in international open government programmes. Such a move would undoubtedly harm the reputation of the Government both domestically and internationally.

[103] If the purpose of the fee is to be one of cost recovery, then the fee would have to be significantly more than a nominal fee and would virtually remove information access rights from the vast majority of people. While it would be possible to provide for exceptions (such as for those in receipt of certain benefits, for example) the administrative burden that such a scheme would place upon public authorities seems counter-intuitive given the focus placed upon the burden FOI is reportedly placing on authorities.

[104] The experience from Ireland demonstrates the impact that fees can have in respect of FOI. Following the introduction of fees in 2003, the number of requests reduced sharply. If such an effect were to be seen here upon the introduction of fees, it would certainly assist with the burden issues which are being frequently cited by Ministers and others; however, it would be at the expense of the citizen's understanding of what is going on inside of Government and their ability to obtain information to hold public bodies to account. Ireland has now amended its Freedom of Information Act removing the application fee and substantially reducing fees for internal reviews and complaints to the Information Commissioner.

[105] The introduction of fees might have the perverse effect of increasing the burden on public authorities. If a fee is payable for a request a person might be tempted to ask for a lot more information than they might otherwise have sought. This might be for a number of reasons including avoiding the possibility of having to pay a further fee to make another request in the future spinning off from the original request (a request that might never be made were there no fee to be paid) or so that the requester at least feels as though they are getting the maximum return for the money that they are paying to the authority.

[106] Fees could also see the balance of who makes requests shift and result in requests largely coming from commercial entities and journalists who are more likely to be in a position to pay a fee and also more likely to have the desire to make a request despite a fee being payable[23]. Ministers and others often (wrongly in my view) criticise journalists and commercial organisations for making FOI requests and it is often these requests (along with those that are perceived to be bizarre or pointless) that get cited when discussing the burden of requests. If the Government is concerned about such requests, it would seem counter-intuitive for them to introduce a system which is unlikely to affect them to a great extent.

[107] While I have argued that commercial entities and journalists are more likely to continue making requests if fees are introduced than what might be termed as 'ordinary members of the public' the introduction of fees might impact some of the more significant public interest requests made by such organisations.

[108] An example of this might be a national newspaper investigating a particular issue on a national scale. Depending on the issue, this might result in requests having to be made to a significant number of authorities. Even with the resources available to such an organisation, the cost-benefit analysis might result in an issue not being

pursued because the cost might be a lot greater than the result given the uncertainty of the result. Therefore, important issues might go undiscovered as a result.

[109] A nominal fee is routinely charged for subject access requests under the Data Protection Act 1998. It is my view that the two situations are not comparable. The right of subject access under the Data Protection Act 1998 is a private one with an entirely private benefit; whereas, a request pursuant to section 1 of FOIA is of a wider public benefit. This wider public benefit (arising out of the disclosure to one is disclosure to the world principle referred to above) is sufficient to make the comparison an inappropriate one.

[110] The fees regulations in Scotland are different to those under the UK FOI Act. Under the Scottish FOI Act a public authority may impose a fee as a percentage of the prescribed limit. No fee can be charged for the first £100[24] and thereafter the authority may charge 10% of the difference (i.e. a maximum fee of £50).[25] Despite these provisions it is exceptionally rare for an authority to charge a fee even where one could be charged.

[111] Under the Scottish FOI Act the fee chargeable is based upon the projected costs. In the Scottish Commissioner's guidance she states that where "the public authority subsequently finds that it actually costs less to provide the information than anticipated, the authority should consider issuing a refund of any overpayment"[26] and goes on to note that she "is likely to order a public authority to repay a fee or portion of a fee where the Commissioner's view is the fee was inappropriate or excessive."

[112] I draw attention to the Scottish position simply by way of comparison. As already noted, the general position in Scotland is that public authorities elect not to charge fees where they are able to do so (although there have been occasions where Scottish public authorities have chosen to charge a fee). If the Commission is considering implementing a system of fees for requests then it might wish to look at implementing something along the lines of the Scottish system. Although my submission to the Commission is that no amendment be made to the current fees position under the UK FOI Act.

---

2 Peter Waller et al 'Understanding the Formulation and Development of Government Policy in the context of FOIA' (2009), University College London, para 7.23

3 Section 45 Code of Practice, para 39

4 Section 45 Code of Practice, para 42

5 Information Commissioner, *Freedom of Information Good Practice Guidance No. 5*, ICO, 2007, page 2

6 Information Commissioner; *Decision Notice FS50547904*, para 47

7 *Home Office v The Information Commissioner and Alistair Sloan,* EA/2015/0030, [6]

8 Information Commissioner, *Decision Notice FS50481760*, para 36

9 *Freedom of Information (Scotland) Act 2002*, section 21(1)

10 Justice Select Committee, 'Post-legislative scrutiny of the Freedom of Information Act 2000', HC 96-1 [111]

11 Section 45 Code of Parctice, para 40

12 Section 60 Code of Practice, page 23

13 Scottish Information Commissioner, 'Failure to Respond to FOI Requests: extend, impact and remedy', August 2014, page 11.

[14] I should declare that during my first appeal I was a final year undergraduate law student in Scotland (by the time the hearing came round I was mid-way through the Postgraduate Diploma in Professional Legal Practice) and during my second appeal I was a Trainee Solicitor in Scotland (as I still am). I therefore came at the process with some legal background, although from a separate legal jurisdiction. I cannot comment on how it is for a genuinely lay Litigant in Person to navigate this part of the appeals process.

[15] See Article 19's Principles on Freedom of Information legislation (https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf) which were endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression

[16] Exorcism inquiry sent to Council, Local Government Association, 6 June 2014, http://www.localgov.co.uk/Exorcism- inquiry-sent-to-council/36467

[17] Council pays Psychic for Exorcism, BBC News, 12 February 2008, http://news.bbc.co.uk/1/hi/7240405.stm

[18] Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, Reg.5

[19] Although I understand that Mr Dransfield is seeking to appeal the Court of Appeal's decision in his case to the UK Supreme Court. To my knowledge permission has not yet been granted by the UK Supreme Court.

[20] Freedom of Information Act 2000, section 50(2)(c)

[21] Freedom of Information (Scotland) Act 2002, s.21(8)(a)

[22] ibid, s.21(8)(b)

[23] Although, the experience from Ireland is that the overall number of requests made by the media also fell sharply upon the introduction of fees for making FOI requests.

[24] The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, Regulation 4(2)

[25] ibid, Regulation 4(3)

[26] Scottish Information Commissioner, 'FOISA/EIRs Guidance: Fees and Excessive cost of compliance' (2015), para 31

Allan Brown

Please note my strong opposition to any lessening of the provisions of the above act.

It is essential that in a free society. We have access to all relevant facts which may safely be revealed.

Allan Brown.

Andrew Bodman

Dear Sir or Madam

I am responding to the consultation on the Freedom of Information regulations which closes on 20th November 2015.

I would request that the existing Freedom of Information request system remains unchanged from the way in which it currently operates. In other words please maintain the status quo.

I do not believe it to be appropriate to apply a charge to such requests. I sent FOI requests to about ten councils at the same time. I would probably not have done so had a charge been applied. Furthermore, if the intention is to copy the FOI charging system used in Ireland, it should be noted that the basic charge for FOI requests has now been withdrawn and the charges for internal reviews or reviews by the commissioner have been reduced by approximately two thirds.

Much useful information has been released about the High Speed Two rail line through FOI requests. In many cases it should have been published without the need for making FOI requests, but that is a separate issue. The Major Projects Authority (MPA) reports from June 2012 and November 2011 were released in June 2015, following a period when the Government had applied a veto. The MPA reports contained information which should have been made available to MPs prior to the second reading of the HS2 Hybrid Bill as well as to the public. If the Government believed that such information should be withheld, then the case for HS2 is clearly holed below the waterline. MPs should know that position as well as the public. Eventually the FOI system worked, even if there was a delay of several years.

Information provided through FOI requests has also been used by petitioners to the HS2 Select Committee. That is perfectly right and proper as otherwise petitioners would be at more of a disadvantage when making their case against the HS2 position.

Yours faithfully

Andrew Bodman

Andrew Coleman

Dear Sir or Madam,

Please do not dilute the current FoI Act. It performs a vital function of holding public bodies and servants to account. I have used it myself to get information about potential pollution of beaches which wasn't but should have been in the public domain and it had been successfully used to expose many issues in the public interest such as MP's expenses.

I would argue that it should be extended so it also covers private companies that provide public services not just on behalf of the British state but also which are essential for the public's wellbeing and the economy, such as Internet providers and private utilities.

Yours faithfully

Andrew Coleman

Andrew Cowley

Dear Sirs,

I write to express my concern at the mere possibility of the relaxation of any requirements in the obligations of the current FoI system

I find the current system is the bare minimum that is needed to manage any sort of relationship between government departments or agencies and the public affected by their actions (in our case particularly the delinquent organisation that trades as the Forestry Commission).

Without this mechanism any organisation would have free reign to plan and effect their high handed plans without any opportunity for those affected by the plans to understand either the aims or objectives of the plans they are subject to.

No other system could give a check or balance to government bodies plans. I plead for its strengthening rather than any dilution

Yours faithfully

Andrew Cowley BSc, CEng, CEnv, MICE, MCIWEM, MSocEnv Nutwood Low Dalby Pickering

Andrew Height

Sir,

It would appear that there are to be changes to the Freedom of Information Act and these changes may result in less information being made available to the general public of the United Kingdom. If this is so then it is wrong as the general public are also tax payers and voters and MP's were voted into government to WORK for the general public/tax payer/voter. Interfering with the FOI would make it appear that the MP's are now making the rules for themselves and are ignoring the general public/tax payer/voter.

Most of the information that is requested by the general public/tax payer/voter has been to do with the large amount of possible "fiddling" that seems to go on in government today and it looks as if the interference with the FOI is purely to stop the general public/tax payer/voter from knowing that this goes on.

Covering of backsides when the general public.tax payer/voter is footing the bill is not desirable and I would imagine also illegal and if changes are made to the FOI that result in less information about how government is run being made available then I would hope that the general public/tax payer/voter will act accordingly and sling out the government at the next possible chance.

Leave the FOI alone, or find yourselves out of a cushy job at the next election.

Andrew Height

Andrew Holley

I am writing to express my concern about possible changes to the Freedom of Information Act that might restrict the ability of journalists and other members of the public to investigate decisions made by public bodies. I believe that the FOI has been a major force for greater openness in public life since its introduction in 2000 and has been used by journalists and campaigners to expose wrongdoing and corruption. My view is that there are already sufficient safeguards in place regarding sensitive information and possible abuse by vexatious complainants. Please could you pass my comments on to the commission undertaking the review.

Yours sincerely,
Andrew Holley

Andrew Partridge

Dear Commission,

I am grateful for the opportunity to respond to your consultation. I am responding to your first question.

Summary

Changes to sections 35 and 36 are unjustified because there is already sufficient protection for the safe space, and additional protection would make it easier for public bodies to cover up incompetent advice. This is not in the public interest.

Background

In my role as head of Information Rights at the Department for Education (2006-2012) I had experience of formulating FOI policy in a government Department and in running day to day FOI delivery. I have, subsequently, had the experience of being an FOI requester, appellant to the First Tier Tribunal, and party to another appeal, including cross-examining a government witness. In the six years in which I ran FOI for the DfE I encouraged colleagues to answer requests straightforwardly and openly, but using exemptions where appropriate to protect information which needed to be protected, including within the safe space for policy formulation and development. Senior officials on the whole accepted my advice that compliance with the law was the best means of protecting the reputation of the Department. Where there was harassment and vilification, the application of the exemption at s14 was available, and effective, and lately it has proved effective (thanks to decisions at the Tribunal) where there is an undue burden on public authorities. While there were on occasion delays in meeting FOI deadlines due to weight of Departmental business or campaigns by pressure groups, my team had no difficulty in protecting what needed to be protected, and that included almost every instance where sensitive policy information had been requested. During my period as Information Rights Manager the Department appealed to the Information Tribunal only once, in 2007, in an attempt to protect information in DfES board minutes about a school funding crisis several years earlier. The Department appealed because the requested information was contained in the minutes of its top-level board, and because it was the first opportunity for the government to appeal a decision by the Information Commissioner concerning the s35 exemption for policy formulation and development (and involved arguments abut the 'safe space'). Despite evidence from a former Cabinet Secretary, Lord Turnbull, and two serving senior civil servants, the Tribunal dismissed the appeal. It became a landmark case (EA/2006/0006).

Two of the clear messages from that Tribunal hearing in 2007, at paragraph 75(vii), were:

7. *'In judging the likely consequences of disclosure on officials` future conduct, we are entitled to expect of them the courage and independence that has been the hallmark of our civil servants since the Northcote - Trevelyan reforms. These are highly – educated and politically sophisticated public servants who well understand the importance of their impartial role as counsellors to ministers of conflicting convictions.'*

And 75(ix):

7. *'Similarly, notwithstanding past experiences which were recounted to us with a proper anonymity, we are entitled to expect of our politicians, when they assume power in a government department, a substantial measure of political sophistication and, of course, fair – mindedness. To reject or remove a senior official because he or she is identified, thanks to FOIA or for any other reason, with a policy which has now lost favour, whether through a change of administration or simply of minister, would plainly betray a serious misunderstanding of the way the executive should work. It would, moreover, be wholly unjust.'*

By the time Mr Gove announced his intention to reform FOIA in June 2015, however, it seemed that the Government was worried that the hallmark of civil servants was one of timidity. He said:
'*I think we do need to revisit the Freedom of Information Act. It is absolutely vital that we ensure that the advice that civil servants give to Ministers of whatever Government is protected so that civil servants can speak candidly and offer advice in order to ensure that Ministers do not make mistakes. There has been a worrying tendency in our courts and elsewhere to erode the protections for that safe space for policy advice…*'
This sets the context for my response to the Commission's question 1 below. I am limiting my response to this question in the interest of brevity, and because others are better place to respond to the other questions.

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

Response

Under the more restrictive approach which the Commission seem to envisage, even inaccurate and misleading civil service advice would be concealed. I can provide an example of this from my own experience. In 2011 Mr Gove was revealed by the Financial Times as using a private email account for government business. Many FOI requests followed. As the DfE FOI lead, and in consultation with the Departmental Security Adviser, I advised Mr Gove repeatedly, via my Permanent Secretary and his private office, that the use of private email accounts for government business breached Departmental security rules, and risked concealing information from the public record and from requests under FOIA. I was clear that information held on private accounts could be subject to FOIA if it concerned government business. My advice reflected security advice, FOIA, and guidance published by the Information Commissioner in 2009. Ever since it came into force the Act has in fact covered all information which is the official business of public authorities, recorded in any form, including information held on behalf of a public authority by another person as section 3(2) says. But my advice was uncongenial. A second opinion was sought and eventually received from the Cabinet Office. Mr Gove stated in Parliament '*The advice that we received from the Cabinet Office was that anything that was held on private email accounts was not subject to Freedom of Information requests*' . The Cabinet Office advice said that because Departments do not have access to information in private accounts it *'seems obvious that they cannot "hold" it for the purpose of the Act'*. This was wrong. Mr Gove stated in Parliament that he preferred the Cabinet Office's advice to mine. In response to FOI requests from various parties the Cabinet Office at first argued that their advice was not

written down or not held by them so could not be released under FOIA. A year later they admitted to an MP that they held the advice but refused it under section 36. I requested it in late 2013 (after I had left the Department). The Cabinet Office again refused it. The Commissioner found against them. The Cabinet Office appealed. A Tribunal hearing took place in April this year, and on the very last day for closing submissions the Cabinet Office capitulated and released their advice.
It thus took nearly four years to uncover the incorrect advice which the Cabinet Office wished to sweep under the carpet. The delay helped to conceal the extent to which, and how, a blind eye was being turned by senior civil servants to Cabinet Ministers' use of private email accounts for government business. Other events exposed it, however. In 2012 Mr Hunt, then Culture Secretary, was forced to admit to the Leveson Inquiry that he used a private email account for this purpose, as did Mr Gove on the World At One programme several months after his exposure by the Financial Times. The Information Commissioner said at the time that he thought if was the 'standard behaviour of the political class.'

It turned out at the Tribunal hearing that the author of the advice (the head of the Cabinet Office's Propriety and Ethics Team) had had the request for it for five months, but that the request (which was from the DfE Permanent Secretary) had been 'put at the bottom of the pile'. Nor had legal or expert FOI advice been taken by the Cabinet Office during that time. Nor had the opinion of the Information Commissioner been sought. It cannot be in the public interest for advice like this from the centre of government to be concealed, while those who give correct advice are discredited. On the contrary it is arguable that prompt exposure of such advice will have a salutary effect on the standard of advice, by causing officials to stop and think - and perhaps take expert opinion (where, as in this case, there is ample time) - rather than making up advice which suits those in power. This reflects a serious shortcoming in the culture of senior civil servants at the Cabinet Office which it was in the public interest to reveal in order to bring about improvement. The Commission's implied intention to provide additional protections under sections 35 and 36 will have the opposite effect: that of facilitating the kind of cover-up that the Cabinet Office sought to get away with, and which is manifestly not in the public interest in a society which aspires to be open and democratic.

I note the Commission's intention to hold back the names of those providing evidence to it. I have no objection to my name and response being published by the Commission. I believe there is nothing to fear from FOI. I am therefore copying this response to the Campaign for Freedom of Information so that it cannot be air-brushed from the analysis. I do so partly because of the Commission's stated intention to suppress evidence as to who has contributed and partly because, as my experience has shown, confidence in the Cabinet Office (and by extension its 'independent' Commission) to handle matters fairly and openly would seem to be be misplaced.

Yours sincerely

Andrew Partridge

Andrew Powditch

Dear sir/madam
It is with great sadness that once again the British public are to watch those who are given the privilege and responsibility of public office Hide. They as usual DEMAND special privilege which we see in action in the present RIPA legislation , spy on those normal people (implication of little account) but not me I am IMPORTANT.

This move is to avoid responsibility and accountability and will only encourage LOTS more corruption which this country executive and public servants have been proven to be some of the most corrupt in the whole world, even the standards in public life committee is utterly corrupt hiding and obscuring know corruptions until exposed by the press. then they act.

Don't think that I am a great fan of the press as they seem to lack morals or ethics and tell blatant lies misleading the public on many important issues, it would seem to please their masters.
the BBC has been emasculated as a result of a couple of episodes where it did expose corruption; as this displeased the politicians and Westminster powers they kneecapped it in response.
(even though its usually a convivial lap dog)

This review is just to hide further corruption from the public and you are a central part of this. Don't do it. almost all parts of the establishment have lost the faith of the public.
the police the courts education and even where you hide this from the public its so bad that there are international complaints about the standards of public life and justice in this country.

Shame on you.

Andrew Street

Probably the best legislation of the last 20 years in my view.

Series Such as the Daily Mails headlines this week quite right to be brought to the publics attention.

Fact

Also, I suspect, many mp's are probably unaware of such abuses, and the journalists therefore act as an information tool, not only to the public, but to show the mp's how out of control the civil service is.

Opinion

In my opinion, one of the most important jobs of an mp is to control the civil service. I feel that without exception, the civil service has been hijacked, by the people that work for it, for the people that work for it and damn actually providing any service to people you are there to help.

It follows from those comments, that i believe civil servants lie / cover up about what they get for their so called service.

MP's cannot deny knowledge if a journalist has publicised.

Summary

Absolutely neccessary that if anything. foi is increased

Andrew Street

Angela Tammas

Question 1: What protection should there be for information relating to the internal deliberations of public bodies? For how long after a decision does such information remain sensitive? Should different protections apply to different kinds of information that are currently protected by sections 35 and 36? (Note: 'Sections 35 and 36' of the Act cover policy formulation, communications between ministers, and information that would affect the free and frank giving of advice or expression of views.)

It is important that decision makers are impartial and not making decisions that are not the best or most appropriate in order to serve their own interests.

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

Decisions with regard to national security may need to be kept secret in order to protect the innocent any thing else should be open and honest.

Sincerely,
Angela Tammas

Mr. A Frangeskou

To the Independent Commission on Freedom of Information,

The government should preserve and protect the FOI act. Any attempt to curtail the ability of members of the public and the news media (especially smaller/ local organisations) to make FOI requests, through fees or any other means, would be an attack on the right of the public to hold people in positions of power accountable. Democracy cannot function properly at the ballot box when the ability of the media to report on members of parliament, the civil service, and business leaders is curtailed.

I fear the lack of appetite for these matters by the public, too concerned with rising rents, housing costs and diminishing wages, is being exploited by the government unnecessarily. An attack on the FOI Act is a petty tactic and a terrible strategy for the United Kingdom as a successful democracy wishing (but slowly failing) to uphold it's international standing.

I urge the Commission to look at how FOI can be protected, and to make recommendations on how to establish practises that make it easier for organisations subject to FOI requests to fulfil them, rather than infringing on the rights of members of the public and journalists to make FOI requests in the first place.

Yours,
Mr. A Frangeskou

Anonymous Respondent 1

I write as a communications manager working in the public sector and as a former journalist of more than 10 years.

I oppose any proposed changes to the act. The arguments around transparency have been well rehearsed. Needless to say, attempts to restrict the act go against a rising public expectation of transparency in public life in an age where access to information is increasingly commonplace.

The comment I wish to make is on the issue of "burden".

Yes, FOI can be a burden - but it is a burden worth bearing.

Any significant piece of legislation worth putting into law will have some negative consequences but they remain in law because they serve important democratic principles, in this case the right for taxpayers to learn how their money is being spent and for decision makers to be held to account.

It could be argued people with drug and alcohol problems can be a "burden" on the criminal justice system, that children with behavioural issues are a "burden" on the education system or people who smoke are a "burden" on the NHS. However, we continue to spend public money on these problems because we have a moral obligation to do so.

The Freedom of Information Act is no different - the right for people to know is too important a principle to surrender to cost, a cost which is, in any case, negligible compared to total Government spending.

I appreciate the frustration of dealing with requests about seemingly inconsequential information or commercial information but important basic democratic principles such as the free flow of information in an open society must be the more important consideration.

Compared to other developed countries, Britain's progress towards greater freedom of speech and transparency has been sluggish. In recent years, the tide has begun to turn. Don't turn it back.

Anonymous Respondent 2

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

As a FOI practitioner in local government I can only comment on the application of section 36 as section 35 relates to the formulation of government policy and is not applicable to local government.
Section 36 provides an exemption for information if the disclosure would or would be likely to

- Inhibit the free and frank provision of advice, or
- Inhibit the free and frank exchange of views for the purposes of deliberation, or
- Would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs

Therefore S36 as currently framed offers a level of protection for information relating to the internal deliberations of public bodies. The section 36 exemption can only be applied by the qualified person. Because it is not an absolute exemption and is subject to public interest considerations it is often perceived that the burden of proof authorities must meet in order to rely on it is set too high.

However recent case law does suggest that perhaps there is a misconception about the burden of proof required to rely on the exemption. For instance in a decision notice issued in December 2014 the Information Commissioner's Office (ICO) in supporting Hampshire County Council's reliance on section 36 asserted in respect of early disclosure of internal deliberations:

"*it is not unreasonable to conclude that information would be less descriptive and couched in a more cautious manner. This would then be likely to have a harmful effect on the deliberation process….*

The ICO's guidance on section 36 states that "safe space" argument can apply if premature disclosure would lead to public or media involvement which would hinder free and frank discussion BUT that this was strongest when the issue was **live**. "Safe space" would no longer be required once the decision had been made, although in some cases "*there might still be a need for a safe space in order to properly promote, explain and defend its key points without getting unduly side-tracked*. The ICO's view is this should only be considered relevant for a short period after the decision.

Therefore currently timing is a big factor in using this exemption. It is difficult to answer the question: for how long after a decision does such information remain sensitive given that some decisions will be relatively straightforward and based on quantitative evidence; therefore disclosure shortly after the decision is taken will not be an issue.
Some decisions will be based on difficult discussion and contentious issues and may require a long period of time to lose their sensitivity even after the decision has been taken.

To give an arbitrary period of time for the disclosure **all** information relating to internal deliberations may have an adverse effect and lead to inhibition of officers during those discussions. Such requests should be assessed on a case by case basis.

In terms of whether different protections should apply to different kinds of information that is currently protected by section 36 one consideration would be to introduce an absolute

exemption in respect of internal deliberations relating to **live** issues. This would provide more clarity and give public authorities more confidence to apply the exemption to this class of information.

An absolute exemption would mean that as long as the information fell within the category described it is automatically exempt from disclosure without requiring the need to justify on public interest grounds.

I believe that the public interest considerations should still apply to requests for internal deliberations when the decision has already been taken.

I have not felt the need to rely on the section 36 exemption in many cases. However in the few cases I have used it and subsequently challenged my decision has been upheld.

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

This question seems to relate largely to central government Cabinet discussion and agreement. If so I can only comment from a local government perspective and would re-iterate my views for Q1.

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

In order for risk registers to be effective there needs to be a safe space where officers can identify risks and the management of them in a full and frank manner. The purpose of a risk register is to ensure that risks are fully identified, assessed and managed in order to mitigate the risk. Some risks will be sensitive and may not be recorded in full or indeed at all if there is a possibility that the register will be disclosed in full.

The non-identification of risks on appropriate risk registers would prejudice the effective conduct of the Council's business. Therefore the section 36 exemption would be applicable as well as other exemptions in relevant cases such as section 40 (personal data exemption), 41 (confidential information exemption) & 43 (commercial interests exemption). These exemptions already exist and have been used in order to refuse to disclose risk registers.

Case law shows that in order to apply the section 36 exemption to risk registers public authorities need to demonstrate that it is candid assessment of risks which is refused and not anodyne information which may be contained within the register.
Some authorities already publish very high level risk registers to demonstrate openness and transparency as well as effective working practices with no prejudice or harm as a direct result. Richmond Council, for example, publishes its Corporate Risk Register in Audit Committee papers
http://cabnet.richmond.gov.uk/documents/s57321/Corporate%20Risk%20Register%20-%20June%202015%20Update.pdf as does Warwickshire County Council and many others https://www.warwickshire.gov.uk/communityriskregister .Therefore it would be overzealous to blanket refuse this entire category of information.

However careful consideration does need to be taken in respect of the disclosure of risk registers which are likely to reveal sensitive information, for example those related to live change, development or procurement programmes.

The exemptions currently in place referred to above (with the addition of an absolute exemption for live issues as I have proposed) are adequate to protect contentious risk registers. The fact that the section 36 exemption requires a qualified person's opinion should reduce the amount of time anodyne information is refused.

In terms of how long some registers should remain sensitive, again this should be assessed on a case by case basis without an arbitrary set period.

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?

I believe an Executive veto would **seriously** undermine the effective operation of the Freedom of Information legislation which currently uses an independent regulator (ICO), Information Tribunal and the appeal courts for its appeal process. There would also appear to be a clear conflict of interest if the Executive Veto could be exercised. Thereby evading the rule of law.

It would be totally at odds with the aims and objective of the FOI legislation which is to hold public services, including government to account by way of transparency if the government was able to veto the release of information ordered by a court of law. It would also have the effect of reducing trust in the appeals process for FOI requests.

If the Executive are deeply concerned about the disclosure of certain categories of information it would be better to introduce an absolute exemption to apply to that category instead of invoking an Executive veto.

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

Currently the enforcement process does work well in that the ICO can order compliance by way of a formal Decision Notice or Information Notice and if not complied with action can be pursued through the courts. Most of the enforcement costs therefore sit with the ICO. We feel this works well in practice.
In terms of the appeal system an applicant must currently appeal initially to the public authority that issued the response, then complain to the ICO if dissatisfied, then to the Lower Information (or Upper Tribunal in complex cases) Tribunal if either party are unhappy with the ICO Decision Notice. Either party can then only appeal a Tribunal decision on a point of law. This limits to some extent the scope of the appeal after the Tribunal stage.

Although it can be very costly for the parties involved other than the complainant (who can lodge an appeal free of charge) evidence from the ICO suggests only a small number of applicants actually complain following the response received from the public authority.

There is some merit in introducing a fee for appeals following the Tribunal stage. Given that a Tribunal decision can only be appealed on a point of law, introducing a fee would also concentrate the minds of appellants, some of whom can become obsessed with the minutiae of the case which is often not in the public interest.

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?

As a FOI practitioner I fully support the aims and objectives of Freedom of Information and believe it is important to have legislation that allows members of the public to hold public services to account. However I also believe a balance must be struck in achieving these aims. Given the continued constraints on public sector finances and reduced central government funding it is important to acknowledge that transparency comes with a cost and that compliance with the FOIA does consume resources and management effort which could otherwise be used for the delivery of frontline services.

Below are the FOI figures for the local authority I work for since the introduction of the legislation.

Year	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Number of FOIs	222	273	337	492	706	720
% complied with within 20 working days	92%	96%	97%	96%	97%	96%

Year	**2011**	**2012**	**2013**	**2014**
Number of FOIs	1,029	1,094	1,451	1,505
% complied with within 20 working days	95%	95%	96%	96%

Whilst my local authority has taken a proactive approach to publishing information that is repeatedly requested under FOI and also publishes responses to requests in a disclosure log https://www.richmond.gov.uk/foi_log . There are early indications that this has resulted in a small decrease in FOI requests received, although further monitoring is required to be certain of this.

Although there are some controls in place to reduce the burden of FOI requests on public authorities I believe these controls can be tightened up and strengthened without weakening the FOI legislation or detracting from its aims. For example:

- Currently the appropriate limit which is the amount of time the local authority must spend locating information relevant to a request is set at 18 hours or £450. I believe this limit should be reduced to 10 hours. Given the significant reduction in government funding many public services are faced with I believe a significant reduction in the cost limit & time expected to locate information would go some way to reducing the current burden;

Please could you tell me how many female staff you have with the name beginning with the letter A
What are your safety procedures/plans in place in case a zombie apocalypse happens in Richmond?
The details of every time the council has paid for the services of an exorcist, psychic or religious healer

- Currently public authorities cannot take into account redaction time when calculating the 18 hour appropriate limit set. Only the time taken to search and collate the requested information can be taken into account. My experience is that in nearly 50% of cases it is redacting sensitive information from the material that is going to be disclosed that takes the longest time, not looking for the information, and redaction in some cases can take many, many hours. Including redaction and time required to consult with 3rd parties within the time limit would significantly reduce the burden on public authorities;
- Currently there is an exemption for vexatious or repeated requests (section

14). Although this exemption can be used to ward off some frivolous requests we believe it could be tightened up so that it is explicitly clear; the exemption could be titled 'Frivolous, Vexatious & Repeated Requests'. This way it would be clear that public authorities could refuse silly requests (such as the actual requests set out below) and much time and effort saved

- Although I accept it will be difficult to administer in practice and may go against the spirit of the legislation I do feel there needs to be some measures to address the number of requests made by journalists and companies in lieu of undertaking their own research, on a fishing exercise or trying to gain a commercial advantage. In essence local Council Taxpayers are funding journalists and private companies to do their jobs. My local authority monitors the origin of FOI requests and I have found that **50%** of all requests are from journalists or companies – the figure is likely to be higher as some requesters who appear to be private individuals may actually be acting professionally. Whilst I do not think refusing certain applicants access to information is the right way forward, I do believe that this needs to be addressed.

- If information is published there should be no additional requirement to tailor make it to meet nuanced requests. For example, if the Council publishes information annually, it should not be required to provide updated information every month. Where information is published on the topic requested public authorities should not need to do additional work to tailor the information to the specific question. It is disproportionate to then provide the information for specific dates requested under FOI. Although the S.21 exemption applies to information reasonably accessible by other means, this will not necessarily incorporate requests that ask for very specific

information where the headline information has been published. At the moment there is no exemption for proportionality i.e. the additional insight the information would provide on the topic taking into account the information already available vs the cost or time to comply (even if it does not meet the S.12 appropriate limit).

In terms of requests that pose a disproportionate burden some example requests are:

- http://www.richmond.gov.uk/17006_1.pdf request asked for amount spent on alcohol and Christmas parties. The local authority does not have a dedicated finance code called Christmas party or alcohol. However a great deal of effort was spent trying to ascertain what could be provided. Often officers try to be helpful in providing information from memory but this does not always represent the accurate picture and it became clear that there was no way of providing a definitive answer. The request was refused on cost grounds after a great deal of time was spent ascertaining what could be provided.
- http://www.richmond.gov.uk/home/council/open_richmond/freedom_of_information/foi_log/foi_case_details.htm?id=16176 request related to a contract for cashless parking (Ringo) provider. Although the contract was easy to locate the amount of time spent consulting with the 3rd party provider and the redaction time could not be taken into account when considering the cost limit.

There are clear arguments **against** the introduction of a nominal fee for all FOI requests;

- A nominal fee was introduced in the Republic of Ireland and it had the effect of deterring members of the public (not just journalists or companies) from making FOI requests. It effectively weakened the legislation so much that the aims and objectives of the legislation were being eroded.

- Tax payers already pay a great of tax including Council Tax for the delivery of public services and the introduction of even just a nominal fee would be yet another tax on services they already fund.

- One of the underlying principles behind freedom of information is that public services and the information they hold should be open and transparent and information should be **freely accessible** unless there is a good reason to refuse it. Introducing even just a nominal fee would go against this fundamental principle and also prevent information that is in the public interest from coming out as such MP expenses. Because many requesters would be deterred on principle from paying a fee for what should be free!

- **Other controls (such as those suggested above)** can be introduced which can reduce the burden on public authorities without the introduction of a nominal fee.

- Who will foot the bill in respect of the administrative burden any nominal fee would bring? There will be administrative costs of dealing with a nominal fee

  However if the overwhelming response to this consultation is that a nominal fee should be introduced I would respectfully suggest instead of a nominal fee for **all** requests, I would support the introduction of the Australian model whereby there is no

charge for the first five hours spent deciding whether to grant or refuse a request, including examining documents, consulting with other parties, making deletions or notifying any interim or final decision on the request, but after the first five hours the cost is £25 per hour. This would definitely go some way to reduce the current burden without weakening the legislation.

In summary;

- **Decisions about how long information remains sensitive once issues are no longer live should be taken on a case by case basis and not be subject to a single time limit.**
- **Consideration should be given to introducing an absolute exemption in respect of internal deliberations relating to live issues.**
- **The two points above should also be applied to requests for disclosure of risk registers.**
- **I do not consider that the Executive should have a veto (subject to judicial review) over the release of information. If the Executive are deeply concerned about the disclosure of certain categories of information it would be better to introduce an absolute exemption to apply to that category instead of invoking an Executive veto.**
- **I feel the current enforcement system works well in practice.**
- **The appeals system also works well and only a very small number of cases reach the Tribunal stage. There may be some merit in introducing a fee for these.**
- **Given the significant reduction in government funding many public services are faced with I believe a significant reduction in the cost limit & time allowed to locate information in requests would reduce the burden on local authorities and other bodies. I suggest reducing the time limit from 18 hours to 10 hours.**
- **Authorities should be allowed to take the time required to redact information into account when calculating the time limit.**
- **The exemption for vexatious or repeated requests should be extended to explicitly include frivolous requests.**
- **Consideration needs to be given to limiting the ability of journalists and companies to make 'fishing' requests.**
- **If information is published there should be no additional requirement to tailor make it to meet nuanced requests.**
- **I do not believe that a nominal fee should be introduced for all FOI requests**
- **Consideration should be given to the Australian charging system**

Anonymous Respondent 3

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

I strongly believe that protection should be in place for internal deliberations. The ICO and Tribunal have consistently disputed the existence of the chilling effect on the basis that there is no evidence – despite the absurdity of this given that once evidence can be provided it has already happened and has therefore failed to be protected. It is vital that the safe space is maintained for good governance. However, I believe the current legislation provides sufficient protection without the need to fundamentally expand its scope.

It is crucial that any protection to deliberative material be tempered by the overriding duty of transparency of the civil service, safeguarded from misuse and open to challenge. I would be concerned, for instance, were the exemptions to be made absolute – this would provide little recourse for those who disagree with an authority's decision and would be very open to abuse by those in positions of power in cases of wrongdoing as they are by definition intended to provide a stronger level of protection.

In my opinion, section 35 works well as a class-based qualified exemption. It provides a compromise between providing a definition as to what information is covered, yet still provide sufficient recourse for challenge.

I believe s36 should become a class-based exemption. It is important, however, that said class is defined clearly and strongly, and balanced by not being too prescriptive or generic. Much of the phrasing in s36 is ambiguous and subject to much debate, and has forced the judiciary to establish rules in lieu of legislative clarity. If the legislation is falling short of its original intentions, then it should be clarified. But this should not come at the cost of 'blanket' application, undermining the long-standing importance of treating requests on a case by case basis rather than on generic arguments and providing recourse and means of redress.

In terms of time for information to be protected, I think it is a substantial pitfall of s35 that the definition of 'formulating policy' has been defined so rigidly (generally once a bill receives royal assent), as this lacks the pragmatism sometimes necessary in long-running and constantly evolving policies. Again, I think a stronger definition (rather than 'formulation and development') would help clarify but must be considered carefully.
I would lastly caution with regards to the chilling effect that perception can be just as dangerous - if not more so - as reality. The commission will hear many arguments from those in government who argue that the chilling effect is real and harming deliberative space. I strongly believe, however, that this is a perception and a self-fulfilling one at that. The FOIA provides ample protection for internal communcations and the safe space, and that rather than damaging the legislation as a whole I would posit that a simple awareness campaign on FOIA might have the same effect.

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

I feel that the current legislation provides sufficient protection of risk assessments, and that the introduction of new exemptions specific to such information would not only be unnecessary but would detrimentally water down the legislation.

Sections 35 and 36 provide protection for such material already and the application of s35 in that instance was not in dispute at Tribunal – only the public interest was, and was only overruled in such an extraordinary case was. The exemptions still apply and are upheld frequently on appeal, and relying on an exception to judge effectiveness is disingenuous.

Practically, I suspect introducing a new class-based exemption for risk documents would likely lead to information management problems, such as documents being reclassified or renamed to bring them within this class, and a general decrease in accountability, rather than protecting any additional information from disclosure.

Given the protections are already in place I do not think that any further steps are needed in this area.

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?

I have no strong views regarding the veto either way – though as above I think that if it is not serving the purpose for which it was intended then it should be clarified in the legislation.

That said, I think it provides a vital tool – if used in extraordinary cases – in settling cases where there is no right or wrong answer and where a decision on disclosure should not be left to the judiciary. I would advocate a more specific and strict definition of the circumstances in which a veto be applied, including placing a very high bar on when it can used and who should authorise its use. I think the current requirement for Cabinet approval is a suitable level of accountability. Doing so would maintain the principles for which the veto was included whilst making it clear the exceptional cases in which it could be wielded by a Government.

It is also worth highlighting the less-reported facet of the Evans judgement – that a veto is not possible under the EIR. This places FOIA in a difficult position vis-à-vis the veto – why should one information access regime have an executive override but not the other? The practical implications of this are already visible; many applicants are turning to the EIR (often very tenuously) as they are perceived as tougher regulations, more likely to result in disclosure and providing less options for authorities to refuse. Maintaining a veto similar to the current will only make this shift more marked in the future and so it is important that the commission considers amending the veto in some form.

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

I believe the current system of appeals works well – it successfully strikes a tricky balance between giving due consideration to requests and ensuring that a robust and effective system of recourse is in place.

The only aspect I take issue with is the disproportionate ease with which an applicant can appeal when taken against how laborious it is for public bodies to review. Currently, simply responding to a public authority with “I want an Internal Review” is sufficient to set the process in motion, requiring a great deal of care and consideration – as well as legal support – being mobilised, even though no reason for doing so is given. The same is true of the ICO – they have a statutory to investigate each complaint made to them, even where it is blatantly disruptive, disingenuous or flippant. An ICO complaint requires a very high threshold of compliance on the part of public authorities, yet very little from an applicant. It might be helpful, for example, that a requirement is placed that suitable grounds are

necessary before appeals are heard.

One idea that I feel should be strongly considered would be to provide the ICO with the power to refuse leave to appeal to the Tribunal. Many organisations will have stories of being taken to the Tribunal over relatively trivial matters such as not held responses and vexatious requests, even where common sense indicates the applicant is in the wrong. And Tribunal cases are tremendously costly for authorities - not only do they require legal representation but the hearings are held in the local court of the requester, sometimes requiring said legal support to be sent from London to, in two examples I've come across, as far afield as Yeovil and Belfast. Nor would such a step set a precedent – other courts already have the powers to refuse leave to appeal.

As the independent regulator of information rights law, I believe the ICO has a possible role to play in making executive judgements as to whether an applicant should have right of appeal, similar to those found in other courts, whilst maintaining independence from the machinery of Government – an essential requirement. This would need to be handled very carefully (as the adage 'Quis custodiet ipsos custodes' springs to mind), and must be in close consultation with the ICO, but could help reduce the numbers of costly and often frivolous Tribunal hearings.

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?

The cost of FOI compliance across the public sector is miniscule given the scale of the measures being taken and in my opinion a reasonable price to pay for openness and transparency.

I would, however, discourage any changes to the cost regime not just out of ideology but practicality. The simple fact is that there is no simple way of amending the FOIA to reduce the financial cost, as in practice they would be, at best, ineffective, or at worst, prove more expensive. Numerous measures have been proposed, as outlined below, alongside with my arguments as to why in practical terms they would prove ineffective in reducing cost or burden:

Charging for requests: The introduction of a charge for making FOI requests would, in reality, prove more expensive for authorities – the infrastructure needed for processing payments is costly, and would be unlikely to cover the payments it would receive. It would also disproportionately affect smaller bodies – local councils, universities and ALBs – who deliver frontline services without the scale of resources available to central government. It may even jeopardise the basic principle of applicant blindness – making the FOIA subject to ability to pay is thin ice to tread on in this respect given that the heaviest users of FOIA are likely to be small campaigners, charities and freelance journalists. The chilling effect on applicants in this case is also powerful – in Ireland, the introduction of a fee regime resulted in a 50% reduction in requests made. Some in Government would consider that a victory – I would consider it detrimental to public engagement with its elected officials.

Broadening the cost limit: Inclusion of either 'thinking' or redaction time into the activities used to calculate the cost limit at s12 would, in theory, apply only to very few cases. It is rare that a case requires vast amounts of time where the current s12 does not apply – I can think of only a handful out of the five years' worth of cases I have led on where it would have made a difference. In reality, broadening the scope of activities would simply encourage officials to dismiss cases out of hand with little quantitative evidence, leading to a general

chilling effect on needing to comply with requests, dubious decisions and refusals by public bodies, and more appeals through the system on an arcane point of law (and likely more losses).

Limiting the number of requests an applicant can make: Not only would this strike at a core principle of the FOIA – that it is applicant blind – but in reality would simply encourage applicants to either rely on pseudonyms or to ask others to make requests in their name. The reality of this would simply be for people to find a way around rather than comply.

I believe there are, however, practical steps that could be taken to reduce the burden as is on public bodies.

Of particular issue in addressing burden is s14, which relates to vexatious requests. This has traditionally proved very difficult to successfully defend on appeal, and a number of authorities no longer consider it a viable option for difficult or repeat requestors. Although the ICO and Tribunal have of late been more amenable to its application, the use of s14 is still something I personally do not recommend to officials in any but extreme examples, as it rarely succeeds. I imagine across the public sector there are many circumstances in which it may well be applicable but is steered clear of due to the potential cost of an appeal. This is exacerbated by the obvious fact that a 'vexatious' applicant is precisely the kind who will have no reluctance to appeal at every step with little or no justification except personal grievance (especially if you accuse them of being 'vexatious') – as it stands, s14 is unusable.

It would therefore be a useful step in reducing burden to amend s14 - at the very least by clarifying what constitutes 'vexatious' in the context of FOIA, making it easier and clearer when it does and does not apply, but possibly by broadening the scope of the exemption altogether. It may, for example, be worth bringing it in line with the analogous exemptions under the EIR, which relate to requests which are "manifestly unreasonable" – this seems a clearer and fairer reading than 'vexation', achieving the same result but in a clearer, fairer fashion.

What would also help reduce the burden would be to bring the FOIA into the 21st century. The legislation was passed in 2000, drafted in the years prior, and in many ways shows it age and technological developments have rendered it increasingly unfit for purpose for the manner in which government conducts business. Emails were still a new concept, and were never considered in the FOIA – that they have become so routine poses difficulties in interpreting the legislation. As the ICO has to make clear in its guidance, websites have largely taken on the role intended for publication schemes, and yet there are still a raft of legal requirements under the FOIA for maintaining one that prove onerous for bodies to comply with. Social media was in its very infancy during the drafting of the legislation, and there was no way of predicting its pervasion in modern society. Many tricky questions FOI officers face relate to how to deal with requests made via these formats.

The FOIA is in dire need of housekeeping in terms of its interactions with modern technology, many of which would help reduce the bureaucratic burden on authorities. For example, amending the publication scheme requirements to better reflect website use, and making clearer legislative clauses om digital media and social media would be of immense use to authorities operating in a very different world from the late 1990s.

Many of the smaller bureaucratic changes that could be implemented are not sweeping, nor are they especially 'sexy', but the compound effect of such changes to the day-to-day implementation of the legislation would, in my opinion, be substantial, and should be given consideration by the commission.

Recommendations

In summary, some practical improvements to the FOIA I would support are:

Clearer definitions of some of the more ambiguous exemptions (such as s35 and s36)
A broader, or at least clearer, s14
A suite of changes to address aspects of the FOIA that have become outdated (such as publication schemes, email/social media)
More power to the ICO to dismiss further appeals

The changes I would strongly urge the commission to avoid are:

Changes to the cost limit
Charging for requests
Removal of the 'qualified person' requirement under s36 without a stricter definition
Making s35/s36 absolute rather than qualified
Making s36 class based where that class was particular prescriptive or generic

Anthony Corbett

I am writing to register my suuport for the current FOI regime. Information on government should be freely available without charge.
Regards,

Anthony Corbett

Anthony Jones

Dear Sirs,

I notice from this week's Private Eye you are considering watering down the transparency of the current "freedom of information act". I think the list of scandals that they record is evidence enough that it should remain the way it is.

I am not slavish follower of the magazine's opinions – in fact, I'm a increasingly depressed Tory voter as this Government (and it's New Labour predecessors) have relentlessly turned this country into little more than a Banana Republic. The idea that this commission is made up of impartial members seems most improbable - it doesn't seem to have even one 'middle of the road ' journalist on it.

As we know, in all forms of UK government, Greed is watchword these days – I live in Hampshire so we should know.

I believe that Tony Blair said that this Act was the single piece of legislation he most regretted – which says it all really. Someone needs to clean up the Augean stables and it's certainly not going to be our elected representatives , either local or national . Leave it as it is.

Though you are a quango, so presumably the fix is in before you start..

Yours faithfully

Anthony Jones

B. O'Brien

To whom it may concern,
As an independent commission it will be clear that the only people to benefit from making FIOs more difficult and/or expensive to obtain will be those that have something to hide.
I object in the strongest terms to a change in this Act.

Mr B. O'Brien

Barnaby Beere

Dear Sir/Madam

I am writing to register my opposition to any weakening of the existing Freedom of Information (FOI) legislation.

Since the Act came into being, there has been a much greater opportunity for the public to find out about the workings of government, both good and bad. The opportunity for outside scrutiny has, I am sure, let to a greater degree of circumspection in those in the business of government, both local and national.

I believe that the societal benefits of openness greatly outweigh the costs incurred. Whilst it may be inconvenient for government departments to respond to FOI requests, and to submit themselves to challenge, it is far better than the alternative whereby all government activities are kept secret.

Furthermore, whilst the United Kingdom does enjoy the benefits of a liberal democracy (with or without the Act), there are many nations around the world with much less enlightened governing regimes. It would set a poor example to the rulers and citizens of those nations if the UK were to reduce its checks and balances on those in power.

Accordingly, I would be very opposed to proposals to charge for FOI requests, or to make it easier for requests to be refused on cost or content grounds.

Please could you ensure that views such as mine are taken into account.

Yours faithfully

Barnaby Beere

Barry Howard White

I have just been informed by a colleague that there is a right of comment, so please excuse the late submission.

FOI has proved the most powerful tool in uncovering scandals, scams, and crimes since its introduction.
It is the most effective way of extracting information from official sources that exists.

There is a tendency in all large organisations, particularly official local and central government ones, to keep problems and errors hidden, or to make it very difficult to obtain information.

Many minor matters can be brought to light, and certainly vastly important scandals – MP's expenses being one of many have been exposed.

I am battling with Barnet Council on disclosure of highly paid staff, and only the FOI has forced them to disgorge information (or at least not to have it so well hidden it is not accessible). This in spite of the government requirements to make disclosure.
Try and get the high paid salaries by searching their website www.barnet.gov.uk and searching on "salaries" then click on "Freedom of Information Requests" to see my request. The response is that the information is there, see the link given – and it is, but it would be impossible to find had I not put in the FOI request. Even so, they have muddied the waters by calling the information "Salaries…. 2014-15" when it is in fact 2013-2014, as a further FOI request confirmed. For a member of the public trying to find the data, the nearest he will get is to find the data for 2012-2013.

To in any way reduce the effectiveness of the existing arrangements would be highly detrimental, and not what the government promised when FOI was introduced – that it would encourage a free and open society.

As for cost, the saving on matters exposed have easily outweighed the costs, and indeed there is already a get-out if a demand is excessively costly.

Barry E Robinson

Dear Sirs,

Please accept this as my contribution to the consultation on proposals to change the terms of Freedom of Information.

Quote

I believe that ex-PM Blair was responsible for the introduction of the Freedom of Information Act. How he must have regretted that decision! But, the public bodies to whom it applies are still able to make it almost impossible to obtain the information that one needs to show what a waste of space they are. They just have to claim that the information is too confidential to be made public, and you've got a real uphill battle to obtain that information. I seem to remember that it took nearly three years before the Commissioner for Information was able to force my council to reveal how much the waste management company, WRG was charging to accept our household waste.

Our rights to information should be strengthened, not, as is intended, weakened. Perhaps then our MPs would have to stop treating us like mushrooms, (feed 'em lottsa hoss-dung and keep them in the dark); stop pretending that the proposed trade agreement between the EU and USA, (the now notorious TTIP), is anything other than an attempt to rob the ordinary citizen of yet more rights..

Ben Lotz

Concerning: FOI Consultation

I would like the commission to consider the following:

On the scope
In a democracy, the people should be involved in + at the heart of decision-making. + for that, they need to be well-informed. In fact, the people need to be as well-informed as possible, otherwise they are likely to fall victims to demagogues, + will make bad + stupid choices, + will vote for bad/corrupt/selfish officials + detrimental policies.
Transparency in government is the best means to prevent corruption. The FOIA has proven to enable transparency in places where the public feels that it is lacking. It is vital for ensuring that those in power are not acting outside + above the law.

On fees
Information that falls within the scope of the FOIA will always be already publicly owned. + it is common knowledge that all fees are prohibitive. Imposing fees for simple access would be similar to charging fees for voting in the general election.

For these reasons,
- policy under consideration should not be exempt from disclosure,
- there must not be an extension of the ministerial veto-powers,
- + since the respective information is (already) publicly owned + of interest, it needs to be freely accessible –without any fees for simple requests.

Yes, democracy comes at a cost, + providing the public with free access to publicly owned information is a small price to pay for that.
In a dictatorship on the other hand, there is no freedom of information; + totalitarian regimes may have proven to run very cost-efficient bureaucracies --aside from the usually extensive corruption that goes hand-in-hand with the abuse of power. But is that really what Britain is aiming for?

Kind regards

Ben Lotz

Ben Morgan

At a time when my privacy is being eroded seemingly daily by the security services I fervently believe that any restriction of the Freedom of Information Act would be a cruel blow to the structure and nature of British society and would imply that there was right for the proles and one right for those in power, this would be a very poor example to show. Open government is fair government. There have been too many stories to emerge from Whitehall but to FOI requests for this power to be curtailed.

Yours

Ben Morgan

Ben Shingleton

To Whom it May Concern,

The Freedom of Information legislation has been too successful for this government.

Without it we would not know about MP's expenses, how the freehold for much of Britain is now owned by overseas companies, How corrupt the CDC had become, and many other scandals.

FoI must remain unchanged.

With thanks, Ben Shingleton

Dr Ben Worthy

Birkbeck College, University of London

FOI Commission Evidence

All Freedom of Information laws are dynamic and uncertain. Over time they are changed by use, legal rulings and political decisions. The effect of any FOI law is both administrative, in terms of changing how the law works, but also political, in terms of having consequences for government. The complexity of the laws mean any reforms can have unpredictable effects.

Q1. Internal Deliberations

1.1. In terms of numbers, most FOI requests seek factual information and few that go either to local or central government concern 'decision-making' processes.[1] Those that do are likely to attract disproportionate attention and shape views. Looking at the section 35 and 36 exemptions, there remains, and may always be, uncertainty.[2] However, the Commissioner and Tribunal have sought to protect 'safe space', dependent on the time period and sensitivity of the information. As the Information Commissioner recently pointed out, a 'significant percentage' of decisions favours withholding.[3]

1.2 Judging the working of exemptions is problematic but two pieces of evidence indicate relatively stable functioning. First, looking at the frequency of exemption use since 2005, section 35 and 36 have been used at a steady rate and, after an early burst of concern, have not risen or obviously 'spiked'. In 2015 they were the 10th and 11th most used exemption, in 2014 were 8th and 11th with similar levels before going back to 2007. [4]

1.3 Second, the constrained use of the veto may also be an indicator of exemption stability. The Justice Committee recommended s.53 use to 'protect' space

---

[1] See Hazell, R., Worthy, B., & Glover, M. (2010). *The Impact of the Freedom of Information Act on Central Government in the UK*. Palgrave: London and Worthy, Ben (2010) 'More Open But Not More Trusted? The Effect of FOI on the UK Central Government'. *Governance* 23 (4) 561-582

[2] Justice Committee (2012) http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120327.htm q267,

[3] ICO speech Oct 2015 http://blogs.lse.ac.uk/mediapolicyproject/2015/10/01/working-effectively-lessons-from-10-years-of-the-freedom-of-information-act/

[4] See IFG analysis http://www.instituteforgovernment.org.uk/blog/12423/foia-fighters-how-departments-dealt-with-freedom-of-information-requests-in-the-first-quarter-of-the-new-government/ and http://www.instituteforgovernment.org.uk/blog/11258/fighting-foia-with-foia-freedom-of-information-statistics-for-2014/, the Ministry of Justice [MOJ] (2011). *Memorandum to the Justice Select Committee*. TSO: London and Hazell et al (2010).

> ...we remind everyone involved in both using and determining that space that the Act was intended to protect high-level policy discussions. We also recognise that the realities of Government mean that the ministerial veto will have to be used from time to time to protect that space[5].

1.4 In terms of the Public Interest Tests built in to section 35 and 36, as Professor Peter Hennessy pointed out in 2012, the two PITs are a symbol of the openness of the UK FOI regime:

> The question is, can you so delineate the safe area that the uncertainty goes and everybody knows where they stand? It is very difficult because there has to be a public interest defence in all this-there has got to be-but, also, there has to be a safe house.[6]

1.5 Given the uncertainty of evidence around any 'chilling', these parts of the Act should, by default, remain as they are. The alternative would be to reach for an over restrictive change that could leave out any possibility of access.

Chilling Effect

1.6 The discussion of safe space links to that of a chilling effect. This has been a persistent story around FOI since at least the 1980s, when it was used as an argument against the FOI policy being developed in Australia.[7] It is a term for a bundle of claimed effects including:

- Non-use of formal recording (i.e. minutes) and move to informal modes or those outside the ambit of the Act (particularly the telephone or post-in-note)
- Reduction in 'free and frank' discussion
- Reduction in free and frank advice
- Erosion of the anonymity of civil servants

UK

1.7 The Justice Committee 'was not able to conclude, with any certainty, that a chilling effect has resulted from the FOI Act'.[8] Research highlighted some nervousness and shifts in

[5] Justice (2012) http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/9609.htm#a46 para 201
[6] Justice Committee (2012) http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120327.htm q255
[7] See Hazell, R. (1989). 'Freedom of Information in Australia, Canada and New Zealand'. *Public Administration*, 67(2), 189-210.

behaviour at local government level in Scotland and a MORI survey for the MOJ indicated 'that some people were recording less information and that internal communications had become less detailed and informative than before FOIA'.[9]

However, other research across local government in England pointed to a few cases but no general trend.[10] A 2009 study of central government policy making discovered some negative views and concerns but no 'change in the substance of government policy making or decisions'.[11]

1.8 Our own studies across central and local government between 2008 and 2011 were able to discover only a few clear examples, which were minor and isolated. There was no systematic or large scale changes to either minutes or free and frank discussion as a result of FOI.[12] Some officials were more concerned over the consequences of not having a record should there be a judicial review.

1.9 Our own studies and others found FOI also had a positive effect, professionalising records as a 'disciplining' rather than a 'chilling' effect.[13] The MORI survey also identified

> ...evidence to suggest that FOIA has had benefits for public authorities in encouraging more professional communications, more focused record-keeping and adherence to best practice in decision-making.[14]

Our 2010 study concluded FOI has had no impact on the anonymity or advice of officials. It also found that the Phillips Review of 2000 into BSE revealed identities at a lower level than any FOI request.

---

[8] Justice Committee (2012) http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/9609.htm#a46 para 180-200

[9] Justice Committee (2012) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217339/post-legislative-assessment-of-the-foi-act.pdf para 216

[10] See Taylor, J., & Burt, E. (2010). 'How do public bodies respond to freedom of information legislation? Administration, modernisation and democratisation'. *Policy & Politics*, 38(1), 119-134 and Shepherd, E., Stevenson, A., & Flinn, A. (2011). 'Records management in English local government: the effect of freedom of information'. *Records Management Journal*, 21 (2), 122-134.

[11] See Waller, P., Morris, R.,Simpson, D. and Hazell, R (2009). *Understanding the Formulation and Development of Government Policy in the context of FOI*. London: Constitution Unit. Waller et al https://www.ucl.ac.uk/constitution-unit/research/consultancy/ICO_-_FOI_and_Policy.pdf p.60

[12] Hazell, R., Worthy, B., & Glover, M. (2010). *The Impact of the Freedom of Information Act on Central Government in the UK*. Palgrave: London and Worthy, Ben (2010) 'More Open But Not More Trusted? The Effect of FOI on the UK Central Government'. *Governance* 23 (4): 561-582

[13] Richter, P. & Wilson, R., (2013). '"It's the tip of the iceberg': the hidden tensions between theory, policy and practice in the management of Freedom of Information in English local government bodies—evidence from a regional study'. *Public Money & Management*, 33(3): 177–184.

[14] MOJ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217339/post-legislative-assessment-of-the-foi-act.pdf , p48

Elsewhere

1.10 Similarly, evidence from elsewhere points to an occasional 'chilling' but one that is not systematic. One study in New Zealand found some changes in politically sensitive cases and there was evidence in Canada.[15]

1.11 However, an early study of Australia, Canada and New Zealand discovered no change to ministerial advice or any 'post-it-note' culture while noting it was a persistent myth. In the largest study of transparency laws yet undertaken in the world there was 'little evidence' for any alterations to files or records across all levels of government in India.[16]

1.12 There were also signs of a positive, professionalizing effect. The ALRC in Australia found FOI had helped 'discipline' communications and 'focused decision-makers minds' and in New Zealand 15 years of the Official Information Act had 'improved the quality' of policy advice.[17] Even when asked directly, those within public bodies appear uncertain. A survey of Irish local government found 30 per cent of local officials claimed a chilling effect and just fewer than 50 per cent denied it.[18]

Is there an effect?

1.13 There are two problems with offering any firm conclusions. The first is the measurement problem of proving or disproving that a 'chilling' is taking place. Anecdote is plentiful but finding hard evidence for such an effect is by its nature very difficult, as it requires proving a 'negative' and asking interviewees to admit unprofessional conduct.

---

[15] White, Nicola. (2007). *Free and Frank: Making the Official Information Act Work Better*. Wellington: Institute of Policy Studies and Roberts, A. S. (2005). 'Spin control and freedom of information: lessons for the United Kingdom from Canada'. *Public Administration*, 83(1), 1-23.

[16] Hazell, R. (1989). 'Freedom of Information in Australia, Canada and New Zealand'. *Public Administration*, 67(2), 189-210 and in India see the Right to Information Assessment and Analysis Group and National Campaign for People's Right to Information (Raag/NCPRI) (2009) *Safeguarding the Right to Information – Report of the People's RTI Assessment 2008*. New Delhi: NCPRI

[17] See the ALRC/ARC [Australian Law Reform Commission and Administrative Review Council Committee]. 1995. *Open Government: A Review of the Federal Freedom of Information Act 1982*. Canberra: AGPS and in New Zealand Law Commission (New Zealand). (2010). *The Public's Right to Know: A review of the Official Information Act 1982 and Parts 1–6 of the Local Government Official Information and Meetings Act 1987*. Wellington: Law Commission [and later 2012 report].

[18] See McDonagh, M. (2010). 'Access to Local Government Information in Ireland: Attitudes of Decision-Makers'. *Open Government: A Journal on Freedom of Information*, 6 (6), 1-20[18]

1.14 Second, more importantly, the claim of a direct link between FOI and a 'chilling' ignores the many other powerful forces acting upon record quality and decision-making. The effects of FOI are frequently conflated, for example, with leaks. Gus O' Donnell spoke of how for some records 'we tended to put it in rather plain prosaic language because there could be *leaks*'.[19] Our studies found emails and electronic communications have had a huge effect on the nature of record keeping, far greater than FOI. Many interviewees were keen to point out the impact of the broader politics of what is recorded, relating to decision-making styles and natural political caution. As the Justice committee pointed out, the Butler report of 2004 raised concerns over informal meetings and sofa government before FOI became operational.

1.15 Consequently, the balance of evidence is that a chilling happens occasionally at the margins but it is not widespread. The difficulty is that the story of a chilling itself may influence behaviour change and becomes self-reinforcing and, as the Information Commissioner called it, a 'self-confirming myth'.[20]

Q2. Collective Discussion

2.1 Few FOI requests are made for Cabinet documents and very few are released. FOI appears to have had no effect, with one detailed study concluding that, while influencing abstract discussion, it had no impact on how records were kept.[21]Gus O' Donnell also observed that at 'a formal meeting like a committee meeting or a Cabinet meeting…we did not reduce the coverage of...minutes. They were accurate'.[22]

2.2 Generally, our 2010 study found that Cabinet discussion was far more likely to be opened up by leaks than any FOI. As Gus O'Donnell pointed out, Cabinet confidentiality

> ....is affected by all sorts of things: first, the amount of leaking that goes on from different Cabinet members; and, secondly, the propensity of a number of the Cabinet members to write their memoires rather quickly and include things they probably

[19] See Gus O'Donnell's evidence to the Justice Committee http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120327.htm q260
[20] ICO speech Oct 2015 http://blogs.lse.ac.uk/mediapolicyproject/2015/10/01/working-effectively-lessons-from-10-years-of-the-freedom-of-information-act/
[21] Waller, P., Morris, R.,Simpson, D. and Hazell, R (2009). *Understanding the Formulation and Development of Government Policy in the context of FOI.* London: Constitution Unit.
[22]See Gus O'Donnell's evidence to the Justice Committee http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120327.htm 260

should not.[23]

A further difficulty is that the principle of Cabinet confidentiality and unanimity is not a 'rigid dogma' but a flexible instrument, famously summed up James Callaghan's phrase: 'You know the difference between leaking and briefing. Leaking is what you do and briefing is what I do'.[24]

2.3 Given the lack of evidence of any decisive change in Cabinet operations, and the move by the appeal systems to mirror the 20 year rule, the protections should remain as they are.

Question 3: Risks

3.1 Given the lack of evidence, it is unclear what effect release has upon risk assessments. It is likely there would be similar uncertainty as there is around proving the 'chilling' more generally.

Question 4: Veto

4.1 The veto was the lynchpin of the FOI revisions during the laws development.[25] Looking across the last decade, the UK veto has been rarely used, especially when compared with other FOI regimes. This may be as a result of the successful functioning of exemptions elsewhere lower down the system. Jack Straw argued to the Justice Committee that there would be a political reluctance to use what is the 'ultimate' power. The veto has a clear 'backlash potential' as it naturally draws attention to the particular topic, generating headlines and making the government appear secretive.

Comparative Veto use in the First Four years of FOI systems[26]

Jurisdiction	**Veto use in first four years**
Australia	48

[23]See Gus O'Donnell's evidence to the Justice Committee http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120327.htm q266

[24] See House of Commons Library (2004). *Collective Responsibility of Ministers*. London: TSO.

[25] See Worthy, Ben (2016) *The Politics of Freedom of Information: How and Why Governments Pass Laws That Threaten Their Power*. Manchester: MUP

[26] See Hazell et al 2010 and CFOI paper on the veto https://www.cfoi.org.uk/pdf/vetopaper.pdf as well as House of Commons Library (2014) *FoI and Ministerial vetoes*. London: TSO.

New Zealand	14
Ireland	2
UK	0

4.3 Vetoes are common, in various forms, across different systems. New Zealand effectively removed its veto power in 1987 and Australia similarly abolished their equivalent in 2009. While former PM Geoffrey Palmer felt the veto change in New Zealand had no effect the consequences of the changes in Australia are still being examined.[27]

4.4 Before the Supreme Court ruling the veto worked in a sparing way. Any future veto power should be kept as close as possible to the precise, limited and 'exceptional' model that existed previously.

Q5. The Appeal System

5.1 The UK appeal system had suffered a series of problems common across FOI regimes, especially over delays. However, it appears to have developed into a robust and powerful part of the FOI process. International research has shown how all the varied approaches bring costs and benefits and, given the lack of any obvious better model, the UK appeal system should be kept in its present form.[28]

Q6. Burden

6.1 Measuring the 'cost' of FOI is problematic as it involves balancing administrative resources against democratic benefits. Moreover, the exact cost of FOI is very unclear and any figure, high or low, can be challenged.

Attempts to Measure the Cost of FOI in the UK 2004-2011[29]

[27] See on New Zealand Palmer, G. (2007). *A Hard Look at the New Zealand experience with the Official Information Act after 25 years*. Paper presented at the International Conference of Information Commissioners Wellington. http://www.lawcom.govt.nz/ and in Australia see Moon, Danielle (2015). *A Matter of Balance? Freedom of Information and Deliberative Documents*. Macuire University: MA thesis.

[28] See the debate in Holsen, S., & Pasquier, M. (2012). 'Insight on Oversight: The Role of Information Commissioners in the Implementation of Access to Information Policies'. *Journal of Information Policy*, 2, 214-241.

[29] Colquhoun, A. (2010). *The Cost of Freedom of Information*. London: Constitution Unit. https://www.ucl.ac.uk/constitution-unit/research/foi/countries/cost-of-foi.pdf

Study	Estimated cost per request
A pre-Act estimate	£350
Frontier Economics	£293
Cornwall council	£150
Bexley council	£36 with most requests costing around £19.
Scottish government	£193
MOJ estimate	£164

6.2 FOI requests are also a moving target as, on the one hand they become more elaborate but, on the other, public authorities deal more efficiently with them - annual surveys by UCL between 2005 and 2010 found a sharp drop in time taken for organisations to process requests, falling by more than 50% in 5 years.[30] Other studies sought to calculate any costs savings emerging from FOI requests through, for example, resources saved from cancellation of policy. There is also the issue of context and, famously, the claims of costs triggered indirectly by US litigation launched by FOI were found to be the equivalent of the amount spent by the US military each year on marching bands.[31]

Fees

6.3 The UK Freedom of Information Act is currently, more or less, free to use. Most FOI regimes, from India to the US, have a standard application fee that is charged for most (but not all) requests. However, almost all these charges have been part of the system from the start. Although some regional or state level openness regimes have introduced a fee, only one country, Ireland, went from having no charge to charging in 2003 and then abolishing fees again in 2014.

6.4 The difficulty with fees for governments are both practical and symbolic. One clear practical effect in Ireland after 2003 was, according to the Irish Information Commissioner, a

[30] See the summary of the UCL's local government surveys 2005-2010 https://www.ucl.ac.uk/constitution-unit/research/foi/foi-and-local-government/foi-localgovt-6-year-summary.pdf

[31] O'Connor, N (2010): *An Economic Argument for Stronger Freedom of Information Laws in Ireland, TASC Discussion Paper* http://www.tascnet.ie/upload/file/An%20Economic%20Argument.pdf and Wald, P. M. (1984). 'Freedom of Information Act: A Short Case Study in the Perils and Paybacks of Legislating Democratic Values', *The. Emory Lj*, 33.

steep fall in [non-personal] requests of 75% in a single year. [32] Certain groups such as MPs and journalists saw a particularly sharp decline. A decade later in 2013, a year before fees were abolished, requests remained at only half of their pre-fee level and represented a 'tangible barrier' to ordinary requesters.[33]

6.5 It's not clear whether a government can claw back any costs. Governments make the case that FOI costs money so the fee goes towards offsetting the resources used but in Ireland, Nat O'Connor concluded that the fees recouped only 1.6 % of the estimated cost.[34]

6.6 There are also questions about implementation. In a number of Australian states public bodies simply didn't bother to charge if a request was small, as it was cheaper simply to send it out.[35]. Evidence from the UK at local government level, which is the focus of 70-80% of all FOI requests, is that charges for FOI in any form are very rare and it is likely that any 'fee' would not be charged. Our research discovered that few local authorities strictly abide with cost limits and most simply process anything reasonable-so changes to cost limits may face a similar non-operability problem.[36] Equally, some requesters may seek to find ways around innovative ways around a fee or even, a seen across the world, crowd-fund requests.[37]

6.7 Politically, as one academic put it, transparency is a 'contested political issue that masquerades as an administrative tool'.[38] The introduction of up-front fees would be

---

[32] See OIC (2004) *Review of the Operation of the Freedom of Information (Amendment) Act 2003* http://www.oic.gov.ie/en/Publications/Special-Reports/Investigations-Compliance/Review-of-the-Operation-of-FOI2003/Up-front-Fees.html and this piece by Martin Rosenbaum http://www.bbc.co.uk/news/uk-politics-18282530 . The read across between UK and Irish FOI is limited as Ireland does not have a Data Protection law with subject access rights so FOI is heavily used to get personal records-hence the distinction between personal and non-personal.

[33] O'Connor, N (2010): *An Economic Argument for Stronger Freedom of Information Laws in Ireland, TASC Discussion Paper* http://www.tascnet.ie/upload/file/An%20Economic%20Argument.pdf

[34] O'Connor, N (2010): *An Economic Argument for Stronger Freedom of Information Laws in Ireland, TASC Discussion Paper* http://www.tascnet.ie/upload/file/An%20Economic%20Argument.pdf

[35] O'Connor, N (2010): *An Economic Argument for Stronger Freedom of Information Laws in Ireland, TASC Discussion Paper* http://www.tascnet.ie/upload/file/An%20Economic%20Argument.pdf

[36] See Worthy, Ben, Hazell, Robert, Amos, Jim and Bourke, Gabrielle (2011) 'Town Hall Transparency? The Impact of FOI on Local Government in England'. Constitution Unit: London

[37] See Worthy, B. (2013). "Some are More Open than Others": Comparing the Impact of the Freedom of Information Act 2000 on Local and Central Government in the UK. *Journal of Comparative Policy Analysis: Research and Practice*, *15*(5), 395-414 and for more on local government see Worthy, Ben, Hazell, Robert, Amos, Jim and Bourke, Gabrielle (2011) 'Town Hall Transparency? The Impact of FOI on Local Government in England'. Constitution Unit: London. You can see examples of FOI crowd-funding in this article http://www.freedominfo.org/2014/03/crowdfunding-foi-requests-gains-use-seems-work/ and this US FOI Machine.

[38] See Fenster, M. (2012). 'The transparency fix: advocating legal rights and their alternatives in the pursuit of a visible state'. *University of Pittsburgh Law Review*, 73(3).

politically difficult and, as occurred in Ireland, would be seen as a ‘signal’ of a government’s negative attitude towards openness. In Ireland fees rapidly became a contentious, party political issue and were reversed when the opposition parties came into power.

6.8 Given the evidence, fees are too blunt an instrument. It would be recommended to keep FOI free, given the practical and political difficulties and, most importantly, the unintended effects on large groups of requesters of limiting public access.

Bernard Clucas

Evidence for the Independent Commission on Freedom of Information

Dear Sirs,

Particular problems of the First Tier Tribunal – The Bell Case

The First Tier Tribunal has a particular difficulty with appeals where the Information Commissioner's Decision Notice is so faulty that it needs more investigation before a proper decision can be drafted. This is know as the “Bell case” problem. Tribunal Decision EA/2014/0006[39] spells out the problem in one specific example.

The basic issue is that the Tribunal cannot simply strike-down a faulty Decision Notice, so that the Information Commissioner is obliged to complete the investigation and issue a new report. It has been established that the Tribunal can only substitute its own Decision. The problem is that the Tribunal has no mechanism to carry out for any sort of investigation itself.

The obvious answer would be to give the Tribunal an explicit power to strike-down a faulty Decision notice, so that the Commissioner is obliged to complete the investigation and issue a new report.

Bernard Clucas

Bernard Clucus (Submission 2)

20 November 2015

Dear Sirs

I attach a short statement about the particular problems that Parish Councils have with Freedom of Information law, with a few suggestions for improvements to legal provision.

It is based on practical experience. and is as simple as I can make it.

To see examplars of the problems mentioned, a seach of ICO Decision Notices about Goring Parish Council, and their associated First Tier Tribunal decisions, will give all you need. Please bear in mind that the Information Commissioner usually "talks-down" misbehaviour by public authorities. He confines himself to the specific legal provisions, no matter how obstructive the public authority has been.

Other parish Councils are similar, but enquirers are often bullied into giving up their information requests.

Bernard Clucas

---

39 http://www.informationtribunal.gov.uk/DBFiles/Decision/i1442/Clucas,%20Bernard%20EA.2014.0006%20(23.12.2014)%202nd%20Decision.pdf

Bernard Lewis

Good evening.

I worked for over 40 years for a local authority (Swansea) and spent the last 20 years of my career at principal officer level (the level below assistant director of a department). I actually wrote a guide to the then new-fangled FOIA for our section managers when the Act came into effect.

I have to say that at the innumerable departmental meetings that I attended over the years FOI was not seen as a major problem. Enquiries were received and naturally took some time (on occasion) to answer but, in the main, it was not a major issue or a deflection from the main work of my department (environment, covering e.g. highways, waste disposal, trading standards, food safety, pollution control, burials and cremations, planning etc.) People should be able to ask questions of their local authority etc without having to jump through hoops or pay a fee (as you know there is already an exemption from disclosure for requests that are too costly to process; what more do local authorities need?).

Here is a link to the sort of requests that are made to Swansea council at present; in the main they are NOT concerned with the plans in place to counter an attack by zombies etc. and I hope that the odd, frivolous request will not result in a watering down of the act as it stands at present:

https://www.whatdotheyknow.com/body/swansea_council

Politicians frequently talk about 'openness' or 'transparency' and I believe that it is indeed important that our local authorities need to know that most of their operations are and should be open to public scrutiny. The fact that it might be inconvenient or embarrassing to be ''open' or transparent' about problem areas should not be used as an excuse to restrict access to the act by introducing a charge or adding further hoops for people to jump through.

I am against charging for using the provisions of the act. We live in an information age. Lets open it up.

Regards,

Bernard Lewis

Bill Priestly

Keep the freedom of information act unchanged

Brian Murray

I approve of the current freedom of information laws and and I think they should be extended into more government bodies and should be less costly to use.

Foi is a very good use of public money as it is an important part of our democracy and freedom and gives us a means of assuring that our public bodies and representatives are acting honestly and to account.

Foi has been important in uncovering corruption and scandals, in particular the robbery of public funds by M.P.s abusing their expenses and 'junketing' by public officials.

The Foi system must be maintained otherwise secrecy and corruption will increase even more in this country.

Brian Murray

Brian Osborne

Dear Sir,
To coin a phrase, if there is nothing to hide there is nothing to worry about.
The Act should be strengthened not weakened, since ordinary people do not have the resources to expose law breaking and corruption.
People already view the establishment as holding the ordinary citizen in contempt, any weakening of the Act will only serve to confirm this view.

Yours faithfully,

Brian Osborne

Brian Screaton

Dear Sirs,

I wish to state that the provisions of the Freedom of Information Act should not be changed in order that less information is capable of being revealed. It is vital that there is as much openness as possible in Government and other public bodies to provide accountability and prevent wastage of money and resources, as well as to expose criminality and venality.

Your appointments to the commission so far give little hope that the current openness will be maintained. It is important that people who wish there to be at least as much, if not more, openness as prevails at present should also be appointed. Appointing ex-MPs who are not known for supporting Freedom of Information is not a good start.

Yours faithfully,

Brian Screaton

Briony Hall

To whom it may concern

I am strongly against any amendments to the Freedom of Information Act. Bodies which are funded by the public should be transparent and open with where their money is spent and who people speak with for a start.

The level of hypocrisy with this proposal when looking at the the new snoopy laws being forced upon the country is staggering. Government apparently can't be questioned or held accountable and yet everyone else's every detail of digital life is being recommended to be snooped upon, how is this right? Clearly it's not and government want to hide from the public what it's really doing, when it should be leading by example! They are here to serve the population and they should remember that!

Don't not change the Act unless it's to allow for even more transparency!

Regard

Briony Hall

Cameron Goldie-Scot

Hi,

I strongly believe that the FOI act is an important tool for the public and journalists and contributes to better governance. I do not believe that this should be restricted, or that charges are attached to requests, since this would reduce transparency.

Although I understand that these requests often take time, it is an important way to increase transparency and the government should embrace this. There are numerous examples of the FOI being used to uncover stories of where the local or national authority was in the wrong, and changes were subsequently made.

The idea that it should not be used for media stories is genuinely worrying as this is a key way of holding governments to account and uncovering problems in the system.

Yours,

Cameron Goldie-Scot

Carol Guyatt

It is really important that the people of Britain can have access to Freedom of information. It is only through open government that we can have true democracy. We need more freedom not less. History has proved that when the truth is in the open, true despots cannot take over government.

Carolyn Whitehouse

Dear Sirs,

I understand that the FOI Commission is looking at if, or how, the rules of the Freedom of Information Act should be changed and that any response should be sent to you by close of play on Friday, 19 November 2015.

I am a firm supporter that in a democracy, all people should be able to access information – free of charge - about those who affect the lives of all in this country. People in or with power understandably want to keep business links and vested interests out of the public eye. But as a voter, my "X" makes me an investor in any government and its policies so, as an investor, I need to consider:

- MPs' salaries and expenses
- The cost of 'fact finding' visits, which countries are visited and when
- Government hospitality
- the extent of using expensive management consultancy
- The selling off of UK assets – property, health care etc – to overseas people and businesses
- Civil servants and politicians moving seamlessly from the public to the private sector

My concern is that the first move of a totalitarian regime is to restrict the flow of information to the general public: any such moves by this country would make the United Kingdom less of a democracy. Yes, the media use FOI to support stories, but if the story is a lie, we have a legal system in place to deal with lies - libel and slander laws. Any watering down of the FOI Act would be about hiding truths.

Keep the Freedom of Information Act in place and undiluted.

Yours faithfully

Carolyn Whitehouse

Cathy Fox

1. Freedom of Information has been essential in the uncovering of evidence across the country in regards to child sexual abuse. This is information paid for by the public in Reports on Child Sexual Abuse which are stuck or deliberately hidden in the depths of the filing
2. systems of local authorities, police authorities, inspection authorities or central government.

   2. FOI requests I have made have unearthed information essential to the understanding of the extent of the nationwide abuse, and due to this information, more people have come forward, some to give information to the Goddard inquiry.

   3. I believe that there is much much more information still to come out. Part of the reason that information remains hidden is that it is very tempting for authorities to regard keeping the information hidden as desireable as it may be against the authorities economic interest. This needs a robust FOI Act to be extended not curtailed.

   4. Another reason for essential information being not available in digital form, is that it was published before the widespread digital era, and as such the nation is catching up in getting this digitally released.

   5. Essential information to child protection of which just one is the Warner Report - Choosing with Care, is not freely available digitally. Unnecessary unavailability walls and paywalls are thus still in place requiring, which prevent the efficient understanding of the history the implementation of already published but generally unavailable recommendations. This is evidenced time after time, with Report after Report noting that previous reports have not been implemented.

   6. Again a robust FOI Act should not be curtailed but extended to make sure that authorities are more proactive in publishing digital information in their control.

   7. Many authorities do not keep to their responsibilites under the act, especially on timing, and stricter control should be kept on these errant authorities.

   8. There is a tendency amongst authorities to hide behind an unsigned response from a "FOI team" . This minimises the accountability of these organisations as requestors cannot find who is responsible. This again requires stricter policing of authorities.

   9. The ICO itself gives a far more advice on their pages to authorities rather than the public and some information useful to teh public is only available via the authority orientated pages. This imbalance should be addressed.

   10. Some authorities eg National Crime Agency are not subject to FOI and they should be.

11. Authorities are getting round FOI by setting up sub organisations, that are not subject to FOI, this needs to be prevented.

11. Overall the FOI Act powers should not be curtailed but extended to give more access for the public to information, to make more authorities subject to FOI , and to make authorities more proactive in releasing more information as well as more accountable in doing so.

https://cathyfox.wordpress.com/

Charles Murray

A cynic might wonder about the motives behind the “independent” review. Is it to prevent the populace from discovering the details and individual responsibilities for iniquities that have been visited upon them? Government agency misbehaviour (NHS, MoD, Police, local authorities, HMP, Treasury, Conservative Central Office et. al.) springs immediately to mind.

A cynic might wonder about the “independence” of a commission comprising individuals whose responsibility for iniquities merits the bright light of the Freedom Of Information Act (British participation in the kidnappings called extraordinary rendition; secret expenditure on whistleblower sackings; ministerial benefits from privatisations; plain bribery of Government officials) spring to mind.

I am such a cynic and I do not believe I am alone.

If you must have a review of FoI, let it be conducted by a High Court judge, with powers to compel testimony under oath, and punish liars.

Then put his report on the shelf alongside Levison.

Charles Murray

Charmaine Rodrigues

Submission to the
United Kingdom Independent Commission on Freedom of Information

Charmaine Rodrigues[40]

19 November 2015

1. It is commendable that the Independent Commission on Freedom of Information (FOI) is taking the opportunity presented by the 10-year anniversary of the commencement of the UK *Freedom of Information Act 2000* (FOI Act) to identify options for fine-tuning the law and its implementation processes to ensure it is operating effectively. In doing so, it is useful to reflect that while the England and Scottish Information Commissions have been active in attempting to entrench the right to information across the jurisdiction over the last decade, nonetheless, bureaucratic efforts to implement access to information have been variable and political resistance to disclosure has been on the rise. In this respect, the UK is encouraged to reflect on good practice from other jurisdictions which have recognised that right to information is at the heart of good governance and participatory democracy, by itself continuing to actively implement the public's existing right to know and extending that right through legislative and administrative reform in key areas (in particular, by limiting the current extensive grounds for exemptions).

2. Implementing an effective freedom of information regime is recognised as Target 16.10 of the new UN Sustainable Development Goals which were endorsed by the British Government in September 2015, and is required by Article 10 of the UN Convention Against Corruption, which the UK has ratified. Accordingly, it is imperative that the UK continue to push forward in strengthening the law, by improving its proactive disclosure requirements and building a bureaucratic culture which is committed to open government. Restricting the right to information should be resisted by the UK at all costs, not only because democracy in the UK requires implementation of a strong right to access information, but because as a leader within the UN Security Council, G7, G20 and the Commonwealth, it is imperative that the UK implement a strong, effective standard of disclosure from which other countries across the world can learn.

The value of the right to information

3. Over the last decade, the commitment to FOI by the UK and global leaders has grown considerably. The UN recognised freedom of information as the "touchstone of all other rights to which the UN is consecrated as far back as 1947. More recently, the human rights charters of the African Union, Organisation of American States and European Union all recognise the right to information; the UN Convention Against Corruption commits its 177 States parties to implementing access to information as an anti-corruption measure; and most recently, the 2030 Agenda for Change agreed by world leaders at the United Nations Sustainable Development Summit in September 2015 recognised the need to "ensure public

[40] Charmaine Rodrigues is an international development consultant. She was a governance and accountability specialist at the United Nations Development Programme from 2007-2015. Prior to that, she was the Right to Information Programme Manager at the Commonwealth Human Rights Initiative from 2003-6 and a Programme Officer at the Australian Agency for International Development from 2001-3. Charmaine trained in law and has a Master of Social Science (International Development). She can be contacted at charmainer99@gmail.com

access to information and protect fundamental freedoms, in accordance with national legislation and international agreements" as one of the targets in support of Sustainable Development Goal 16 (on governance and peacebuilding).

4. These commitments recognises the inherent value of the right to information to democracy, good governance and sustainable development – all of which the UK government has committed to as a member of the UN and of the European Union. The right to know what the government and its organs have been doing is central to the ability of the public to participate in their own governance and hold their government accountable for the decisions they make, money they spend, services they provide and programmes they implement. The UK, both in its capacity as a national sovereign state and as a major international development donor, has an obligation to entrench and implement a strong right to information, which will enable its own citizens to more effectively access information in order to participate in their own democracy while at the same time contributing to setting a high global benchmark for transparency.

Specific questions raised by the Independent Commission

5. When the UK passed the *Freedom of Information Act 2000*, it was following the lead set by a number of other Commonwealth governments, which had long established FOI regimes. Ten Commonwealth members had implemented legislation earlier than the UK, with many of these leading the world in passing FOI legislation so early. Across Europe, the end of the Cold War saw a wave of democratisation sweep across the region, and with it came the passage of numerous FOI laws across Eastern Europe in recognition of the need to immediately entrench transparency as a foundation-stone for good governance. In fact, it is worth recalling that Europe is the home of FOI, with Sweden credited with passing the first ever right to information more than 200 years ago.

6. Many concerns raised by government officials as part of this review are similar to those being debated elsewhere in the world, by governments balancing openness and secrecy. That said, while many governments – including those in undemocratic countries – continue to resist FOI, the value of FOI in exposing public corruption, improving participation in government and holding governments to account has been repeatedly demonstrated by national activists and journalists. While the effectiveness of FOI can sometimes be uncomfortable for governments, FOI is nonetheless recognised as being at the heart of democratic government. The UK has been a leader in developing and promoting the new SDGs – in particular, SDG-16 on inclusive and accountable governance – and is also at the forefront of global efforts to implement the *2005 UN Convention against Corruption*. In this regard, it is essential that this review clearly endorse the value of the right to information and encourage a stronger regime which is designed to enable simpler, cheaper access to information and guard against the instinctive tendency of many Ministers and officials to resist scrutiny of their actions; although this is understandable human nature, it should not be legally permissible.

7. Any action by the UK Government which would appear to reduce the scope and effectiveness of FOI should be strongly resisted, as it could severely undermine its stated pledges (within the Commonwealth, the European Union and the United Nations) to spread this pro-transparency, anti-corruption legislation globally. Arguments by the UK for more state secrecy or which are based on the "inconvenience" or cost of responding to citizen requests for FOI reverberate among more secretive and/or unaccountable government

departments in other countries and will undermine the UK's own UN and EU commitments to supporting accountable and transparent government around the world. As the UK looks towards the 2013 Agenda for Change endorsed by leaders at the Sustainable Development Summit in September 2015, it is imperative that the UK continue to commit to good practice benchmarks for transparency and accountability. In that respect, this Submission offers the following specific comments on the questions raised by the Commission.

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

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

8. Questions regarding the aim and scope of exemptions should always be considered first in the overall context of the "public interest". At the heart of any FOI regime, officials should be required to balance the public interest of disclosure against the public interest in withholding information. In the early days of FOI, blanket exemptions were more common, with FOI laws simply referring to "classes" of information. However, today, good practice supports a much more nuanced approach, with consideration given to the impact of releasing a particular document rather than simply assuming that all documents of a typical type are sensitive and should be exempt. In this context, an exemption for all documents which "relate to internal deliberations" or "risk assessments" is simply too broad and much too open to abuse. Is a deliberation about a marketing campaign for a particular policy or a deliberation about whether to implement a particular programme really always *so sensitive* that it should automatically be withheld? Is assessing a risk of a measles outbreak always harmful to the public interest or could it in fact promote a public health debate about vaccination?

9. Rather than imposing a blanket exemption, consideration should be given to imposing a two-part test – first asking, does the information relate to the internal deliberations of the public bodies and second, asking whether disclosure of those deliberations or risk assessment would be against the public interest. Notably, at the point that the document is being considered for disclosure, the public interest would be assessed. In this context, the timing element is important – at the time a decision is being deliberated upon or a risk being assessed, disclosure may be too sensitive, but months or years later, disclosure may be in the public interest. Consider for example, the famous case of the US Presidential Daily Briefing in August 2011 which warned of a plane being used in a terrorist attack, which was classified as one of the most sensitive internal documents of the US Government, but which years later was released to the public because the public interest in knowing what had happened outweighed any possible harm at that stage. More generally, while most FOI Acts require automatic release of all documents 20 or 30 years after their creation, consideration could be given to introducing a schedule for release, with only the most sensitive information withheld for that period, and all other information available for release within 5-10 years.

Question 2: What protection should there be for information which relates to the process of collective Cabinet discussion and agreement? Is this information entitled

to the same or greater protection than that afforded to other internal deliberative information? For how long should such material be protected?

10. Answering the second part of the question first, it is important to recognise that, in this day and age, Cabinet information is no more important that other government information in terms of its requirement for secrecy. Back in the colonial age, when the executive was seen as a single, faceless and largely unaccountable black hole of decision-making, Cabinet was treated more exceptionally that it deserved in a truly participatory and accountable democracy. Today, Cabinets are merely a collection of MPs, who are still supposed to be responsive to their constituents. Where they and their decisions once sat far above the people, now many Ministers are held directly accountable via Twitter and other social media and they are much more likely to participate in TV panels where they are questioned on their conduct and decisions openly. CHRI would draw attention to Dr Hawke's view in Australia that officials should be happy to publicly defend any advice given to a minister, and if not happy should rethink the advice. In many Commonwealth parliaments, including the UK, it is also common for officials to be questioned by MPs and committees in public on the advice they tender.

11. As with decision-making processes discussed in relation to Question 1, Cabinet decisions should be subject to a 2-part test which assesses first whether the general exemption applies and then second whether the public interest in withholding nonetheless overrides the public interest in disclosure. There should be no automatic assumption that all Cabinet information is sensitive – many Cabinet documents are standard reports or uncontroversial papers. In Wales, Cabinet minutes and other documents are routinely published on the government's website. In New Zealand, the *Official Information Act 1982* requires balancing the interests of collective responsibility in Cabinet with the need to ensure that significant documents are not unduly withheld. Removing any blanket exemptions is essential to avoid abuse; such abuse can be particularly perverse with Cabinet documents, as seen one jurisdiction where it was anecdotally shared that public servants used to wheel trolleys full of documents into Cabinet meetings so that they could be classed as Cabinet documents and thereafter receive a blanket exemption. Good practice recognises that some disclosure of some Cabinet documents might be in the public interest, but where the national interest warrants secrecy, the documents can be withheld (for example, because it would harm national security or the economy).

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?

12. In absolutely no circumstances whatsoever should an executive veto be permitted in relation to access to information. In any country with a separation of powers, that separation is reflective of a commitment by the original constitutional drafters to checks and balances and the reassurance that no single arm of government can take action on its own, without any possibility of oversight. An executive veto severely restricts the role of the courts in adjudicating disagreements between the state and its citizens, and sets up a troubling primacy of the executive over all other branches, as well as as an arbiter of its own conduct under the law. Even within an entitlement to judicial review, citizens are left only to argue about the finer points of the law, rather than the substance of the information at question.

Experience from other jurisdictions (particularly Australia) demonstrates that such a narrow scope of review gives comfort to Ministers and officials willing to take their chances that their decision will not be appealed. Judicial review is complex and beyond the capacity of the majority of applicants; mostly only opposition MPs or large media houses are able to challenge such decisions.

13. These so-called "Ministerial vetoes" – most notably seen in the Australian FOI Act which was drafted more than 30 years ago – are relics of an age past, when the executive (often a colonial executive) was dominant. They should be removed where they exist and should definitely not be reintroduced where they are absent. Within the Commonwealth, for the UK to support such power being given to the Executive could be calamitous, giving dictators and autocrats unassailable power to withhold information from their citizens on their actions, decisions and expenditures. As noted earlier, at the heart of any information regime should be the principle of the public interest – balancing upon, on the facts and at the particular time of the request, whether or not disclosure would be in the public interest. Blanket vetoes and blanket exemptions are a lazy way of making such an important decision, which should instead of weighed up carefully and in the wider democratic context.

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

14. The UK has been at the forefront of good practice in establishing an office of the Information Commissioner to handle intermediate appeals. In early iterations of FOI regimes, when governments were first becoming accustomed to releasing information, a two-step system was often used, with an internal appeal allowed followed by an appeal to the courts. This was found not to be very efficient however, as allowing bureaucrats within the same agency to review their colleagues was a clear conflict of interest, and second stage appeal rights to the courts were very expensive. The mechanism of an independent intermediary appeal body was a good compromise – enabling the cheap, timely and impartial review of initial bureaucratic decisions. Information Commissions (or other administrative offices and tribunals) are increasingly commonly included in FOI regimes (including in Australia, Canada and India (including in their states)). In order to ensure their efficacy, it is important that they are well resourced (financially and in terms of staffing) and ideally have the power not only to review decisions on issues of both fact and law, but also to compel disclosure as appropriate (as opposed to simply returning the decision with a recommendation for reconsideration).

15. In terms of enforcement, the Indian FOI regime is a particularly interesting case study, as India is one of the unusual jurisdictions which included penalties in its FOI law. Financial penalties can be levied on individual public servants, where the Commission or courts in a number of cases. Section 20 of the Act allows for the imposition of penalties where an official has, without any reasonable cause: refused to receive an application; not furnished information within time limits; mala fidely denied the request; knowingly given incorrect, incomplete or misleading information; destroyed information subject to a request; or obstructed the process. During the drafting process of the Indian FOI Act, consideration was also given to introducing a provision whereby the appeal body could also levy a fine on the offending institution itself, for issues of repeated failure to apply the Act properly and/or demonstrating a resistant culture of secrecy. Although this fine would be largely symbolic and simply be returned to the general budget, it would also need to be disclosed in the

institution's annual report to parliament and the Minister would accordingly likely face questions about its imposition.

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?

16. The allegation by many officials that the FOI Act is an unjustified "burden" on the public service is simply disingenuous. Ensuring transparency of public decision-making, service delivery, programme management and expenditures, and instituting procedures which promote public accountability, are a core part of the public service's duties to its citizens. FOI is not a luxury nor is it an "add-on" – it is at the heart of the democratic commitment to transparent and accountable government. As the UK reflects upon the resources needed to administer its Act, it should contemplate the experience of Commonwealth countries which rated higher than the UK in the Global RTI Ranking referred to above; both India and South Africa rate higher but have implemented their Acts with considerable less financial resources at their disposal. All Commonwealth governments and their public authorities have to work within tight financial parameters, but a commitment to implementing FOI is simply a financial cost that needs to be accommodated in departmental budgets, the same as salaries and office equipment. Certainly, public advertising and marketing costs by departments should be reviewed and reduced before any funding spent on FOI should be assessed for reduction.

Summary of recommendations

17. Drawing on good practice and lessons learned from other democracies which have FOI regimes, this Submission encourages the UK Independent Commission on FOI to:

- Use the opportunity presented by this inquiry to clearly reiterate the benefits to the British government and democracy from the operation of its FOI regime. This recognition has value both in the UK and across the world. The UK should demonstrate that ten years of implementation have not diminished its commitment to open government, but has instead cemented its understanding of the value of transparency to its democracy;

- Recommend that the FOI Act remove blanket exemptions (including for classes of documents such as Cabinet document, risk assessments and internal deliberative documents) and introduce instead a 2-step test focused on harm, namely (1) is the document covered by a particular exemption and (2) does the public interest in withholding the document outweigh the public interest in its disclosure. Introduction of this test should be accompanied by explanatory text making it clear that disclosure should be the norm and secrecy is only required in cases where disclosure would genuinely be likely to cause harm to the public interest of Britain;

- Recommend improvements to the administration of the FOI Act to ensure that current bureaucratic process do not undermine the original aims of FOI, including by recommending more resources be dedicated to supporting the England Information Commission (IC) to discharge its oversight and education duties, to strengthening the

IC’s powers to compel disclosure following appeals and to enabling more training of public officials to break down the culture of secrecy.

Cheryl Fox

Dear Commission

Please consider, when reforming the above act, the incredible burned it places on the NHS. For instance we currently receive around 60 requests every month, and whilst some are straightforward and don't take too much time to answer, a lot of them do. We are fully aware of the 18 hour limit but realistically, it would only take two FOIs to come in that take all of that time and that is a working week gone for whoever is answering them – surely not a good use of time. We get a lot of enquiries from companies who are purely looking for sales leads.

This again was not the original purpose of the FOIA. If I can be so bold as to suggest that maybe requests are restricted to the media and to the general public, but that all such requests do have to explain why they want to see the information so that it is no longer motive blind, and maybe add some recourse that if the requester is found to be asking on behalf of a company we are able to refuse the request on the grounds that it is an unreasonable burden. As most procurement goes out to tender there is no point in companies asking for information as they won't be considered on the back of a 'cold call' and will be directed to the tender sites in any case, all that happens is that again they become a nuisance to someone's precious time.

I would also ask, when considering what reforms you intend to make, that you ask all of the FOI leads around the NHS in England to get their points of view, as they are the ones at the coalface.

Thank you
Mrs Cheryl Fox

Chris Corby

Basically it comes down to "if you are taking decisions which affect the way I live, then I should know the basis upon which those decisions are made."

Chris Corby

Chris Fox

Hello,

I'd like to register my view that the current FoI act has proved invaluable in exposing inefficiency and malpractice in public bodies. Its applicability should be if anything extended by reducing the exemptions currently allowed.

In my view there would be no public interest served by reducing or restricting the provisions of the current Act

Yours sincerely

Chris Fox

Chris Jarman

Freedom of Information Consultation

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

a) Advice from civil servants, and legal advice to the body responsible for making the decision which would be privileged under the general law, should be protected, as should the deliberations of those directly responsible for the taking of the decisions in question. Advice from (politically-appointed) special advisers should be disclosable. Corresponding provision for local government and other public bodies would generally be appropriate.

b) All information comprising or relating to submissions by and discussions or other contact with external bodies should be disclosable. The growing culture of lobbying must be made more transparent.

c) The trend for public bodies to hide material connected with procurement in all its guises on grounds of alleged commercial sensitivity, even after a contract etc has been entered into, is regrettable and there needs to be a sufficient mechanism for enforcing authorities/tribunals to scrutinise and restrict the information that is withheld; potential harm to the interests of the outside party to such contracts etc is not sufficient reason for a blanket ban on disclosure. If they want to undertake work for public bodies that are subject to FoI obligations such outside parties must accept transparency for details of their relationship with the public body.

d) Wherever material is protected from disclosure under the above, that protection should in principle cease when the decision has been made. A qualified exception would be legally privileged material – its disclosure should not be compellable, but public bodies should be reminded (regularly) that, as the client in respect of such advice, they have discretion to waive the privilege, and should consider exercising that discretion unless there is a real public interest in not releasing the material.

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

I reluctantly accept that the long-standing tradition of (central government) collective Cabinet responsibility raises special considerations. However I do not consider that any different principles should apply in this context, other than in relation to the duration of protection for material which is protected from disclosure by my principles above. I see no reason to depart from the 20-year rule that is being introduced.

The introduction of cabinet systems in local government is however different – and comparatively recent – and I do not see that it should create any greater protection for material relating to local authority decision-making than in cases where a cabinet system has not been adopted. The same should remain the case even if a time were to come when every single local authority was organised on a cabinet basis.

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

If those responsible for making decisions are doing their job properly they should see through "anodyne" risk assessments and insist on the issues being examined more frankly. Risk assessments are part of the advice given to decision-makers, and there is no obvious ground on which to distinguish them from other advice. Indeed, where highlighted risks might not have been sufficiently heeded by politicians (or public bodies generally) seeking to drive through a controversial project there is arguably all the more reason for the material they had before them to be disclosed once the decision has been taken, in order for the decision-maker to be held to account for the appropriateness of his decision or for the failure to enquire further into areas that might have been insufficiently covered. So the same principles described at 1 above should apply.

By the same token, if advisers paid (internally or externally) to produce a risk assessment can be shown to have disregarded or downplayed serious risks then it would not be out of order to question their suitability for the job they are meant to be doing – and, if the persons ultimately responsible for their appointment/management fail to question that suitability, then to question the appointer/manager's own suitability for his position.

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?

If appellate tribunals have ruled on the issue of public interest in the face of evidence on the issue from the public authority concerned, then in principle it is hard to justify any rule which allows the executive to rule, in effect, that its own opinion on public interest is better than that reached under due process of law by an appellate tribunal. There might be a role for a carefully-circumscribed exception for matters of national security – but where information is ultimately withheld on that ground this should be open to review periodically (as indeed is the case with a system which requires fresh requests for the same information to be considered on their merits and not denied merely because a previous equivalent request has been turned down in the past.

Still less is there any justification for permitting the executive to interfere with a veto before the arguments, and available evidence, have been considered by the relevant appellate authorities charged with making decisions on the matter with due process of law.

As to the last part of the question, the fact that information may be merely "sensitive" is no ground for withholding it without consideration of what sort of sensitivity is involved. If it merely affects the accountability or potential reputation of the public authority or individuals holding office within it, then it is surely a proper part of the democratic process for them to be prepared to justify their position rather than hide away material which might open them to

censure, and to conduct themselves in such a way as not to open themselves to justified criticism in the first place.

On the other hand if the executive believes that the information in question is so sensitive such that its disclosure is genuinely against the public interest, then they should be able to make the case to relevant appellate bodies. There are procedures in place, independently of the FoI context, that protect evidence whose disclosure (in court etc) would harm the national interest – that should be sufficient in the present context too.

I am similarly unimpressed by the Commission's apparent wish to find "how the information vetoed previously could otherwise be protected". If there is a justification for its suppression in the light of the Supreme Court's ruling, then that can be tested on any fresh application for disclosure. If not, then the Commission should not be seeking to protect material just because it was thought to be protected on a now discredited view of the law. Proper principles – as to which see my comments above – should decide whether disclosure should be made or not; for the reasons given in 3 above I think it deplorable that risk assessments should be considered ipso facto appropriate for suppression by executive action, by definition after appeal tribunals have decided that the public interest favours disclosure – it would be a travesty if Ministers can railroad a project through in disregard of the risks without the possibility of holding them to account for want of tangible evidence that they had been warned.

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

In principle there is nothing wrong with the present system of appeals and enforcement. At first sight the sending of cases back to the First-tier Tribunal from the Upper Tribunal may seem odd, but that is a long-standing feature of our courts, and latterly tribunals, system, whereby it is for the court/tribunal of first instance to receive and assess evidence and for the higher appellate court/tribunal to deal only with matters of law (including whether the first-instance conclusion of fact was not a conclusion that was open to it in the light of the evidence). There is no reason to make FoI cases any different from others within the Tribunal system. If the "missing" evidence was available and should have been produced by one or other party at an earlier stage of the proceedings then that fault can be recognised in a costs order.

The consultation document appears to suggest that appeals ought not to be pursued if the information sought might have ceased to be of interest or use to the original requestor. Where the appeal is by the requestor then it will be his decision whether to pursue it or not. But if the matter has become effectively between the public authority and the Information Commissioner it is not unreasonable for the Information Commissioner to pursue a matter (even if the particular item of information might be "spent") in order to clarify the basis on which he should be making decisions on similar cases in the future – thus reducing the future burden on the Tribunal system; and if that involves taking the appeal to and then beyond the First-tier Tribunal then there is nothing wrong with that. Having said that, there might be justification for a rule that he should ascertain at each stage whether the requestor still wants the information in question, and if not then should be prepared to justify his continuance of the case (eg by demonstrating the point of principle on which he sees a need to establish a precedent).

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?

No additional controls are required –freedom of information is central to an effective democracy and the (gradual) rise in case numbers is merely indicative of a greater familiarity with the system and a greater appreciation of its value in holding public bodies and public servants to account.

If there is thought nevertheless to be a need to impose fees then these must not be such as to deter requests for material – particularly given that the requestor may not be in a position to know when making his request what cost he might be letting himself in for. In particular fees should not seek to recover cost incurred by the public body; a flat fee no higher than £100, with a discount if the material can be extracted at a lesser cost, should be the maximum. One possible exception to the capping of fees might be requests made for commercial purposes other than genuine journalism – but policing such a distinction could create more difficulties than it solves, and such rules should be viewed with distinct caution. Having said that I do not consider that there should be any greater restriction on disclosure by reference to the cost of providing it than is provided for by the law at present. Indeed if a case is above the present cost threshold then the requestor should be given the option of paying the difference, rather than the public body being able to suppress the information absolutely.

In any event there must be no question of any profit element in any charges or assessments of cost, and persons affected must be given a means of disputing (via an independent assessor, and on payment of a further fee not greater than £100) the reasonableness of the time, and hourly rate, used to assess any cost involved.

Chris Jarman Herefordshire

Chris Jezewski

Dear Commission,

It is worrying that the government seems to be seeking to dilute the Freedom of Information Act. It is also very surprising. In 2010 Prime Minister David Cameron was talking about ripping off the "cloak of secrecy" around government and public services - and extend transparency as far as possible. He is quoted as saying: “Greater transparency is at the heart of our shared commitment to enable the public to hold politicians and public bodies to account.”

What does this actually mean: ‘Prime Minister David Cameron has championed open government in the UK with a pledge to make the government “the most open and transparent in the world”’

http://www.opengovpartnership.org/country/united-kingdom

Are these empty words or a complete fiction? Another U-Turn from a politician. Just some more convenient and meaningless “sound bites” to further a desired public perception and subsequent votes.

It is widely reported that the FOIA is now under threat. Apparently and simply because it causes too much embarrassment for the government.

Many years ago, there were unwritten standards of behaviour. Trying to do the decent thing was not an aspiration it was fundamental to many roles. It was understood that people in high positions had responsibilities to the wider society. Those in power were respected. Bankers could be trusted. Civil Servants acted with propriety. The NHS was the envy of the world. The BBC had an enviable and world class reputation for quality.

That world no longer exists. Society has changed. Nowadays there is a greater need for public accountability. It is the “selfie” generation.

Personal interests seem to trump other wider considerations. Riding the system for individual gain now seems to be the main objective. There is no obligation for what could be called moral behaviour.

Politicians were found wanting as revealed by the VARIOUS expenses scandals. There seems to be a revolving door from a high level position in the Civil Service into a commercial company vying for public services and profiting from the largesse of taxpayers. Bankers with their ridiculous salaries and bonuses – ironically justified because of their high quality – crashed the world’s financial systems causing massive government debts. The NHS is being reduced to Third World levels as money is leeched from the system by commercial companies. Private Finance Initiative rolls on despite the fact that it is an expensive joke. The BBC’s reputation hangs in tatters after a never ending series of scandals and mismanagement. Paradoxically the latter, as is often the case, brought on by the growth of multi-layered managers.

These are issues that affect the national interest. Tax-avoidance through technical juggling into off-shore accounts and companies, the abuse of LLC status and the explosion of off-shore property ownership all JUST designed to divert funds AWAY from the Treasury. This all places more burden on hard-working tax-payers. Plus, it offers corrupt and criminal organisations/people in other countries to launder their funds through these convoluted and non-transparent mechanisms. Serious issues.

What can be done? Clearly reducing the scope of the FOIA will only aggravate the problems since there will be less accountability. The only thing that should be done is to INCREASE the powers of the Act. Remove the Royal Charter cloak of invulnerability from the BBC. They are a funded public service and it is a CRIMINAL offence not to pay the licence fee. It is also well established that the BBC is dysfunctional and unaccountable to anyone. If (rightly) criticised by MPs the BBC often shouts this is violation of freedom of speech. Anonymous offshore ownership and control of assets and profits should be prevented. There is a vicious cycle where the big accountancy firms dance around the legislation to benefit their clients whilst also providing advice to government. It seems to be pervasive.

Public bodies MUST be accountable to the PUBLIC. Councils and other organisations (Health Trusts) should not be able to hide behind “commercial” or “contractual” excuses that prevent openness and accountability. There should be nothing that needs to be hidden. Sadly, there often is. Procedures and finances are abused. This is not in the public interest and it is against the principles of a democracy.
Which is the better and moral scenario: 1) Some MPs (and Lords) should not have fiddled their expenses or 2) Fiddling of expenses is a perk of the job. Without the FOIA we would not be asking these questions. There are many examples where the FOIA has caused some belated and much needed accountability. This is surely in the public interest.

Dilution of the FOIA will turn the UK (England and Wales) into a parody of a Soviet or Chinese regime. There is no democracy since those in control are always correct and cannot be questioned. The Commission has an opportunity to take the UK on a more democratic rather than repressive route. Please do not make the Prime Minister into a hypocrite.

Sincerely,

Chris Jezewski

Richard Ekins & Christopher Forsyth

19 November 2015

Re: Call for Evidence

Dear Commissioners,

We write, in response to your call for evidence, to submit for your consideration the attached paper[41], 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,

Professor Richard Ekins,
Associate Professor,
Faculty of Law,
University of Oxford

Professor Christopher Forsyth,
Professor of Public Law and Private International Law
Faculty of Law, University of Cambridge

[41] http://www.policyexchange.org.uk/publications/category/item/judging-the-public-interest-the-rule-of-law-vs-the-rule-of-courts

Christopher Whitmey

Dear Commission,

Independent Commission on Freedom of Information: call for evidence

I respond with my background of having made several FOIA requests via the WhatDoTheyKnow website. In particular with regard to my two requests to the Department of Education in August 2014 and August 2015. The first was refused under sections 35 and 36 of the Act. The refusal was upheld by the ICO. I agreed with the ICO's Decision Notice and did not appeal it. The second (same information 12 months later) was refused by the DofE but only under section 36. It is now pending an internal review. If still refused I will appeal to the ICO. Full details, including ICO's Decision Notice, available via the above links.

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

Response 1: (a) I would have no objection to ss.35-6 applying to other public bodies. They need the same 'safe space' protection.
(b) For 12 months following the decision to which the information relates.
(c) No.

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

Response 2: (a) As at present under the Ministerial Code. Save that when released under FOIA the names/identifiers of ministers should be redacted. There should be no wish to 'name and shame' but just to find out what factors were taken into account or omitted when a decision was made
(b) No: save where matters of national security or protection from criminal activity are concerned.
(c) 5 years: where matters of national security or protection from criminal activity are concerned 20 years.

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

Response 3: (a) Fully protected so long as the, or a very similar, risk is involved.
(b) 20 years or longer if the, or a very similar, risk is still present. e.g. protection from terrorism.

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?

Response 4: (a) No. Judicial review is an expensive risk for the citizen. Appeals to the ICO and Tribunals are cost effective.

(b) It would be reasonable for the Tribunals to have to give leave to appeal after written submissions from the appellant and the executive to avoid hopeless hearings.
(c) Sensitive information: as Response 3 above.

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

Response 5: As at present save for judicial review and as in Response 4 (a) and (b) above.

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?

Response 6: (a) Yes. As in America in the 1750s to 1760s: No taxation without representation, so in the United Kingdom in the 2000s: No accountable representation without freedom of information. As a taxpayer national and local I'm willing for reasonable costs to be incurred. Public authorities should have efficient digital date storage that facilitates cost-effective information recovery.
(b) Present cost controls are reasonable for the questioner. I would not be averse to a small charge of say £15 on personal enquiries and a higher one on businesses (including journalism) as a form of check: do I really need this information? For personal enquiries it might be reasonable to require say five named persons (to show 'public interest') to make the request.
(c) What is 'a disproportionate burden'? As noted in the Consultation document section 12 of the Act already provides a safeguard.
(d) No being a public authority I do not know.

If evidence in person would help I am willing to attend.

Yours sincerely,

Christopher Whitmey

C M Willson

Dear Lord Burns

VEXATIOUSNESS

In your Review it is essential you consider the appropriateness of allowing a defence of "vexatiousness" for withholding the release of requested documents.

It stands to reason that **if** it is necessary to invoke the Freedom of Information Act to obtain perfectly legitimate access to documents, there must be a disinclination on the part of an authority to release them (or the authority would just let an applicant have copies without the need for that applicant to have recourse to legal measures).

Hence it is all too easy (without having to provide any meaningful evidence whatsoever) for an authority to claim that "vexatiousness" (ie "intention to harass" by my dictionary's definition) is involved in a Freedom of Information application to enable the authority concerned always to conceal dubious practice, dishonesty, illegality etc on their part which releasing those documents would reveal.

Therefore the "vexatiousness" defence is unacceptable and is, moreover, impossible for an applicant to counter. It should be removed and access to documents denied hitherto to applicants in that way, legitimised retrospectively.

Please confirm that this issue will be included in your review and that discussion of it along the lines in this letter will feature in your final Report and, if the recommendation is for that defence to continue, that the Report will explain how that can be justified.

Yours sincerely

C M Willson (Mr)

Ciaran Rowe

Dear Sirs/Madams,

I write concerning your commission and share worries with many others that a charge to access the rights laid forth in the act is undue.

If you must charge, assume a person on minimum wage could still make a few requests a year, without impacting their living, I.e. keep the charge affordable. A charge scale as such is only fair since the act bona fide should be accessible to everyone.

There are also concerns regarding attempts to enhance the "wiggle room" on for non disclosures. Is it not bad enough that all the governmental outsourcing does not allow FOI requests against private corporations holding government contracts? How dare anyone attempt to further conceal the workings of public services... It is outrageous to think that further restrictions are needed.

Thank you for your time and consideration.

Yours sincerely,

Ciaran Rowe

Clive Hopper

Dear Sir/Madam

I am completely against any watering down of the excellent FOI Act as it stands. Of course some politicians and judges would rather have their abuses and expense fiddling hidden from the public eye, but there is absolutely no reason whatsoever for it to be amended in any way. It doesn't cost much to administer FOI requests and the more openness by government the better or do we want to have the secrecy of the old communist countries?

Mr C Hopper

Dr Clive R Sneddon

Please regard this email as my personal response to the Call for Evidence by the Independent Commission on Freedom of Information. I have no objection to this submission being published, with my name and address if that is the norm. Although now retired, I have relevant experience as a former political leader of a local authority, and was fortunate enough to receive recognition in the form of an OBE from Her Majesty the Queen. Please acknowledge receipt of this submission.

Question 1
On Deliberative space you ask:
What protection should there be for information relating to the internal deliberations of public bodies?
For how long after a decision does such information remain sensitive?
Should different protections apply to different kinds of information that are currently protected by sections 35 and 36?

I am clear that there is a long tradition in the UK of providing deliberative space, both for politicians discussing decisions and for the advisers who participate in meetings and give advice. However, I would observe that there seems to be a difference in UK practice between central government (and the national governments outside England) on the one hand, and the practice of Local Government as set out in statute on the other, where advice is given by officials in writing in advance of a meeting, and discussed by the politicians in public with the press present and with officials likely to be asked to update or otherwise elaborate on their written advice.

When I first became a Councillor, individual issues were dealt with by a report from the relevant chief officer to the Council setting out the problem, what the possible options were and making a recommendation. When we took over the running of the Council, we extended this openness on the basis of the public's right to know to budget meetings, where what was being discussed was the individual budget lines, which referred to items that the Council was known to spend money on. The result was a better informed media, who appreciated overall that we were being open.

When an item was taken in private, it had to be justified under the legislation affecting Local Authorities, and the normal reason was commercial sensitivity when a bidder had disclosed information that could help a competitor, or when the information was personal to an identifiable individual. (I can see that matters of defence or diplomacy or which have market impact will at national level also need to be taken in private.) The tradition of providing deliberative space rests on fear of advisers being less than frank. In my experience, openness did not result in officers clamming up, except where a reason existed for confidentiality. In the rare instances where this was not recognised in advance, councillors would normally agree to take the matter in private, which could be seen as a form of safeguard for the officials.

I would ask the Independent Commission to look at the decades of Local Government experience of discussing most items in public, without the assumed effects of constraining advice having occurred. If the evidence does not convince the Commission that deliberative space does not of itself need to be protected, then I would ask that the weakest form of exemption be granted, described as a prejudice-based qualified exemption, and that the factual data which were discussed should be freely available in any case, as one of your statements seems to imply. Such an exemption should last for no more than the five years, a figure I choose because it is the lifetime of one Parliament.

On Collective responsibility you ask:
Question 2
What protection should there be for information which relates to the process of collective Cabinet discussion and agreement?
Is this information entitled to the same or greater protection than that afforded to other internal deliberative information?
For how long should such material be protected?

The Local Government equivalent to open discussion around a table resulting in a decision which all will have to defend subsequently is the meeting of party groups in those councils which have political groups. These meetings have been regarded as outside the formal processes of the Council and so were not held in public, though I have known of an authority (not mine) which invited the Chef Executive to a group meeting so that the group could have official advice. Although Cabinet meetings are clearly a formal part of the machinery of government, the political constraints on participants of the need to defend their decision are very similar. To that extent it is reasonable for Cabinet confidentiality to be protected absolutely, but not of itself for longer than the life of the Government in question. However, those matters which have already been defined as confidential because of their diplomatic or military or financial implications, together with commercially sensitive and personal data, should all remain exempt for the 20 year period now in force. This would mean that the BBC journalist who asked for material about Westland 19 years after the event would have had to be patient, but would have had the material in 20 years, not 24.

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

This question is, as discussed, an extension of the deliberative space issue. If it is acceptable to allow data to be in the public domain, even though it may be evidence which was deliberated on, surely the same applies to a professionally conducted risk assessment based on objective criteria. Any deliberation will occur after the data and risk assessment stage, when political judgements have to be made. There may be a borderline case where an assessment is of political risk, but that should be for the politicians to assess rather than civil servants. The fear expressed is that public risk assessments will not be candid, but any civil servant who produced an anodyne risk assessment would not be doing their job. Again, the chilling effect is to me a convenient myth of officials to keep information to themselves that should be known to the public who pay the salaries of the officials involved, especially if the risks are of harm that could affect members of the public. The biggest risk to large projects involving something new is that something unforeseen will emerge during implementation, or that the IT or management structures will be inadequate, which are arguments for finding a simpler solution in the first place, but are hardly unknown risks deserving of confidentiality. On the face of it, the sort of open local government subject to safeguards for truly confidential information is a much better model than the failure of central governments of all parties to manage risk as part of their decision-making. Therefore, there should be no protection for objective risk assessment reports (and the subjective sort have no place in government processes anyway), so the question of how long risk assessments should remain confidential does not arise.

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?

The fact that the veto was introduced as part of a series of amendments suggests it may not have been fully thought through. It forced politicians to take a position on whether or not material is sensitive, when it may merely be politically embarrassing, as the history of decision making in the Iraq war strongly suggests. Of the seven vetoes you list, two concern risk assessments, which as stated above should be public anyway, and one is part of a political campaign by the Guardian newspaper to discredit the Prince of Wales, the outcome of which showed that he had merely been writing to express his opinion as any other subject of the Queen can do, with none of the undue influence or immoderate language the Guardian had hoped to find. The American model would seem to be the one to follow, with an absolute exemption but right of appeal to the courts. No serving politician would be involved, and it would ultimately be for the Information Commissioner and the judiciary to interpret statute law, demonstrating the advantages in the separation of powers. That way, everyone would know over time what the criteria were for retaining confidentiality or publishing the material. Your final question presupposes that there is sensitive material to be safeguarded, but that should have been set out in the Act, which is where the exemption arises, and not preserved by the tendentious and potentially unaccountable use of executive powers of veto.

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

It is clear that the present appeals system is overly complex, and should be simplified, for the sake of all parties concerned. Since it will be the body holding the information to whom the initial request is addressed, it is reasonable for a system to exist whereby another official or group of officials reviews an initial refusal if the requester asks for a review. But after that the Information Commissioner should have the power to rule, subject only to an appeal by the dissatisfied party to the courts, which should, if the Commissioner's decision is against disclosure, be against both government and Commissioner, but if the decision is for disclosure would be the government going to the courts against the Commissioner and the initial requester.

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 request which impose a disproportionate burden on public authorities?
Which kinds of request do impose a disproportionate burden?

What the statistics you cite demonstrate is that the general public likes and approves of freedom of information and wants more of it. The biggest cost is certainly going to be staff time. However, the figures given do not tell us what sort of information the public wants to know. One solution would be to make more information available about the work of government, and let that be readily searchable on line. There is already a public policy of making government data available in the hope of giving rise to new businesses based on exploiting that data. The idea of having public access through Freedom of Information should be facilitated rather than curtailed, and in particular it should not be constrained by charging any more than nominal fees, which is what most of your examples are. The statistics you give also show the costs of the appeals system, but that should be addressed as already stated by simplifying the appeals system.

So the answers to your questions are, firstly, that the burden on public authorities is justified by the public's right to know, and that the authorities should be looking for ways, from the questions already asked, to make the information they hold more accessible at a reduced cost to the authority. The German model you quote seems to reduce the incentives on an authority to find cost-efficient ways of making information they hold publicly accessible, but both the American and Irish models are reasonable. Secondly, no controls are needed other than charging nominal fees and requiring public authorities to make their information more readily accessible in the first place. The third and fourth questions are the wrong way round. It is not a matter for consultation to ask the public what questions are the most burdensome for officials. The data on what is asked about should answer the fourth question, and could show that questions about infrequently requested material are the most time-consuming. Although I don't accept the premiss of the third question, identifying what takes the most time is not the same as identifying a burden, much less a disproportionate one. If the statistics on what officials call burdensome requests were collected, what would the response be if it turned out that the biggest burden in time and expense was caused by not answering questions when they were first asked and forcing the requester to pursue the matter, potentially all the way through to the Supreme Court? It would then be possible to argue that it is the officials not answering the questions in the first place which imposes the burden on the public purse, and it is the officials who should be held to account for this, not the members of the public.

Yours sincerely,

Dr Clive R Sneddon

Colette Ashton

Hello,

We must have transparency in the media otherwise we would not be made aware of the failings. I am sorry if you disgaree but I am fed up of 'officials' making decsions which impact on ordinary citizens lives....like me.

I want to be made aware of things like the expenses scandal, tax dodging amongst others. Any changes to FOI would merely send a message that there is something to hide.

It is only right and fair that we know this despite what the government may think.

In fact the FOI system should be made easier for anybody to be able to access information.

Make it simple, make it fair and make it for everyone.

Colette Ashton

Colin Peacock

Please register my concerns on amending the foi requests. I see the system working well today and see no need to change. Thank you, Colin

Conor McBride

Dear FOI Commission

The Freedom Of Information Act, through the hard work of Heather Brooke, resulted in the exposure of widespread expenses abuse by MPs. I'm very glad that happened. I'm very glad we have a means to achieve basic accountability. If you make yourselves unaccountable by dropping Freedom Of Information, you make clear that your entitlement to power is based on force, not justice.

You must exercise power with accountability.

Yours sincerely

Conor McBride

D A Hipsey

Dear Sits

Please vote to EXTEND the Freedom of Information Act.

Yours Sincerely

D.A Hipsey

Dan Clarke

The Freedom of Information Act is vital for revealing to our elected representatives the extent to which they have been misled by other parts of the British State. They are not able to do this work on their own and need an informed and engaged public to help.

I am going to provide an important and current example of this.

The biopsychosocial model of disability, and the assumptions that underpin it, have played an important role in the reforms made to disability benefits over the last twenty years. It has served to distort policy maker's judgements about people's capacity to work when they have health problems, and led to the adoption of unrealistic criteria for ESA. The exaggerated view of the extent to which disability is maintained by psychosocial factors amenable to management and personal control has led to massive additional pressure and burdens being placed upon people with disabilities. Lord Freud has described the importance of the biopsychosocial model in the house of Lords, and circulated reports extolling it's benefits. However the evidence base in support of this model is weak, and has been misrepresented.

As an illustration of these problems I encourage you to look closely at the results from the PACE trial[1]. This is a trail which examined the efficacy of biopsychosocial rehabilitative approaches for Chronic Fatigue Syndrome, an area where the biopsychosocial model had been claimed to be of particular value. This is the only medical trial to have recieved funding from the DWP and Mansel Aylward and Moira Henderson of the DWP were both observers for the trial's steering committee[2], while one of the trial's Primary Investigator's, Peter White, is an advisor to the DWP[1]. The results from this trial were presented in a way which gave a misleading view as to the efficacy of the interventions tested, and the potential for those with health problems to recover by altering their own cognitions and behaviours.

The trial was necessarily non-blinded, and compared patients receiving four different interventions. Those in the group receiving just Specialist Medical Care received little therapist time, while those receiving Adaptive Pacing Therapy were actually encouraged to only do 70% of what they felt comfortable doing. Alternatively, those receiving the biopsychosocial interventions of Cognitive Behavioural Therapy and Graded Exercise Therapy were told positive claims about evidence showing that these interventions would lead to improvements in health. This means that there will be problems with response bias for self-report outcome measures, and it is these that were used as the primary measure of the trial's results: as the DWP has found, running courses which leave people with disabilities more likely to self-rate themselves as 'positive' about finding work is much easier than running course which leave them more likely to actually find any sort of sustained employment.

Beyond the problem of bias, there were also problems with the factual claims about what patient's questionnaire scores should be interpreted as meaning. The PACE trial's published protocol defined 'recovery' as requiring an SF-36 Physical Functioning (SF36-PF) questionnaire score of at least 85 out of 100, while the trial's entry criteria required a score of 65 or under, which was taken to indicate that patients' fatigue was disabling[2]. Yet the post-hoc criteria for recovery which was eventually used to allowed patients with an SF36-PF score of 60 to be classed as recovered. This change was justified by the claim that a threshold of 85 would mean “approximately half the general working age population would fall outside the normal range.”[3] In fact, the data cited showed that the median score for the working age population was 100, less than 18% of the general working age population had a score under 85, and 15% had declared a long-term health problem[4,5].

An SF36-PF score of 60 was claimed in the Lancet PACE paper to be the mean -1sd of the working age population, and thus a suitable threshold for 'normal' disability[1]. They had in fact used data which included all those aged over 65, reducing the mean physical function score and increasing the SD[4]. For the working age population the mean -1sd was over 70, requiring patients to score at least 75 to fall within this 'normal range'[5]. Also, the trial's protocol makes it clear that the thresholds for recovery (including ≥85 for SF-36 PF) were intended to be more demanding than those for the mean -1sd, reporting that: "A score of 70 is about one standard deviation below the mean... for the UK adult population"[2].

Even using the loose post-hoc criteria for recovery, only 22% of patients were classed as recovered following treatment with specialist medical care and additional CBT or GET[3]. Regardless, the BMJ had reported that PACE showed CBT and GET "cured" 30% and 28% of patients respectively[6], a Lancet commentary claimed that about 30% recovered using a "strict criterion" for recovery[7], and a paper aimed at NHS commissioners stated PACE indicated a recovery rate of 30-40% for CBT and GET[8,9]. Such misstatements of fact to be should not be allowed to go on affecting how doctors treat patients, how funding decisions and policy are made, or the information that patients are provided with before deciding whether to consent to particular interventions.

Beyond questionnaire scores of dubious reliability, the PACE trial also provided data on rates for employment, disability benefits and insurance claims that should be less prone to bias. This data showed biopsychosocial rehabilitation did not lead to improvements in employment levels, and that all groups reported "receipt of benefits due to illness or disability increased slightly from baseline to follow-up" [10].

A separate meta-analysis of actometer data from CBT trials for CFS also found that CBT was able to lead to improvements in questionnaire scores in non-blinded trials, but not to improvements in the amount of activity that patients were actually able to perform[11]. Sadly, the PACE trial dropped actometers as an outcome measure, although they were purchased and used at baseline[12].

Recent evidence from a large study of NHS CFS/ME specialist services indicated that reported results for CBT and GET are even poorer than those reported in PACE (where considerable effort could be put into patient selection), and that centres offering CBT and GET achieved marginally worse results than centres that merely offer 'activity management'[13]. We do not currently have compelling evidence that CBT or GET are more effective medical interventions for ME/CFS than homeopathy, despite some of the claims made by proponents.

The changes to the outcome measures used in the PACE trial were justified by inaccurate claims and have been misleading to others. Government policy makes should be basing their judgement upon a rigorous examination of the evidence, when too often they seem to simply trust those academics who are telling them what they want to hear. The DWP part funded this trial, and policy makers should not be basing their decisions, or understanding of th value of the biopsychosocial model of disability, upon spun data. They should have access to the trail's protocol defined outcomes, or else from their own analysis of the raw data - done by those who have not built their careers upon claims about the value of the biopsychosocial model.

When it comes to the DWP and the biopsychosocial model, it can be difficult to tell if politicians have been misled or if they are happily misleading others. Regardless, unfounded claims and spin have a serious affect upon the lives of others, and politicians need to recognise their responsibility to look more seriously at the available evidence. However much they may like to believe that there are treatments able to lead to recovery for many of the people currently claiming disability benefits (for those with mental health problems "up to

90 per cent" could return to work with treatment according to a senior government source in the Telegraph![14]), and that steep cuts to welfare spending can be made without harming desperate and deserving people thanks to wonderful new psychosocial management techniques, a more critical and honest look needs to be taken at the data from those whose careers are built upon claims about their ability to successfully treat patients.

Recently, American academics and journalists have started to recognise the problems with the PACE trial and the way in which results from it have been misrepresented. David Tuller, academic coordinator of the concurrent masters degree program in public health and journalism at the University of California, Berkeley has written a series of critical pieces following a years long investigation [15], and this has led to an open letter from a collection of academic calling for an independent re-analysis of data from the PACE trial[16]. Throughout all of this, the Freedom of Information Act has played a vital role in allowing informed criticism to take place. So much so, that the researchers and their university successfully campaigned to have the Freedom of Information Act changed, to make it easier to avoid releasing important data. The University proudly reported an outcome of the trial being that "the IT Act of 2014 includes an exemption to the existing Freedom of Information Act 2000, to exempt current research from the FOI act requests, so long as release of data can be shown to be detrimental to the research."[17] Since then the Information Commissioner's Office has decided against QMUL's refusal to release annonymised data from this trial, as fortunately a request for information was made before the exemption came in to force. When commentating on this case James Coyne, one of the world most widely cited psychology professors, argued that greater openness with scientific data was necessary as evidence of widespread misrepresentations and spin within science could no longer be ignored. He quoted bioethecis Jon Merz arguing that "The litany of excuses – not reasons – offered by the researchers and Queen Mary University is a bald attempt to avoid transparency and accountability, hiding behind legal walls instead of meeting their critics on a level playing field. They should be willing to provide the data for independent analyses in pursuit of the truth."

Do you feel confident that our elected representatives are able to unpick the spin and misrepresentation that takes place within science and the civil service on their own? If not, you should be committed to strengthening the Freedom of Information Act so as to empower citizens to aid in the pursuit of truth which necessarily underpins worthwhile policy development. Even with the Freedom of Information Act in place, it has been hard work to gather evidence of the problems which has afflicted government policies towards disabled people over the last two decades, and it now seems that it is American academics and journalists who have taken time to express concern about this British scandal. There is a culture of deference within British society which allows those in authority to live in a fantasy world of their own creation. A small collection of people with shared prejudices and assumptions can set about funding poor quality research which supports their own beliefs, justifies the policies which they wish to pursue, and venerates their efforts - without even realising that they are doing anything wrong. Greater openness with data and information would help those who do not share their prejudices and assumptions to more effectively challenge the distortions of thought and perception which can otherwise do so much to harm others - particularly to those at the bottom of society who are least likely to have their own concerns represented within the corridors of power.

In the last few weeks, a new PACE paper has been released which showed that, even using only self-report outcomes, the addition of CBT and GET to patient's medical care led to no improvement over the control intervention[19]. Nonetheless, this was presented by the trial's researchers as being a big success for CBT and GET. Even with this relatively transparent spin, I am still not confident that civil servants and politicians keen to believe in the value of rehabilitative approaches would have been able to recognise the true significance of the data released.

Giving people greater ability to be well informed and speak honestly about the important political matters which affect their lives is a good thing and worth the cost of the Freedom of Information Act. I do not think that the problems related to the PACE trial (of £5,000,000 immediate cost, affecting NHS funding decisions of many millions more, and shaping government disability policies) could have been uncovered without the Freedom of Information Act. Do you?

Footnotes

[1] White PD, Goldsmith KA, Johnson AL, Potts L, Walwyn R, DeCesare JC, Baber HL, Burgess M, Clark LV, Cox DL, Bavinton J, Angus BJ, Murphy G, Murphy M, O'Dowd H, Wilks D, McCrone P, Chalder T, Sharpe M. Comparison of adaptive pacing therapy, cognitive behaviour therapy, graded exercise therapy, and specialist medical care for chronic fatigue syndrome (PACE): a randomised trial. Lancet 2011;377:823-36.

[2] White PD, Sharpe MC, Chalder T, DeCesare JC, Walyin R: Protocol for the PACE trial: a randomised controlled trial of adaptative pacing, cognitive behaviour therapy and graded exercise as supplements to standardised specialist medical care versus standardised specialist medical care alone for patients with the chronic fatigue syndrome/myalgic encephalomyelitis or encephalopathy. BMC Neurol 2007, 7:6

[3] White PD, Johnson AL, Goldsmith K, Chalder T, Sharpe MC. Recovery from chronic fatigue syndrome after treatments given in the PACE trial. Psychol Med 2013;1-9, published online 31 Jan. doi:10.1017/S0033291713000020.

[4] Bowling A, Bond M, Jenkinson C, Lamping DL. Short form 36 (SF-36) health survey questionnaire: which normative data should be used? Comparisons between the norms provided by the Omnibus Survey in Britain, The Health Survey for England and the Oxford Healthy Life Survey. J Publ Health Med 1999, 21: 255–70.

[5] Office of Population Censuses and Surveys. Social Survey Division, OPCS Omnibus Survey, November 1992. Colchester, Essex: UK Data Archive, September 1997. SN: 3660, http://dx.doi.org/10.5255/UKDA-SN-3660-1

[6] BMJ Short Cuts: 'All you need to read in the other general journals' BMJ 2011;342:d1168

[7] Knoop H, Bleijenberg G. Chronic fatigue syndrome: where to PACE from here?. Lancet 2011; 377: 786-788.

[8] Collin SM, Crawley E, May MT, Sterne JAC, Hollingworth W: The impact of CFS/ME on employment and productivity in the UK: a cross-sectional study based on the CFS/ME national outcomes database. BMC Health Serv Res 2011, 11:217.

[9] Interview with Amy Chesterton and Esther Crawley. Available at http://www.thenakedscientists.com/HTML/content/news-archive/news/2384/

[10] McCrone P, Sharpe M, Chalder T, Knapp M, Johnson AL, Goldsmith KA, White PD. (2012) Adaptive pacing, cognitive behaviour therapy, graded exercise, and specialist medical care for chronic fatigue syndrome: a cost-effectiveness analysis. PLoS ONE 7: e40808.

[11] Bleijenberg G, Prins JB, Wiborg JF, Knoop H, Stulemeijer M,. 'How does cognitive behaviour therapy reduce fatigue in patients with chronic fatigue syndrome? The role of physical activity.' Psychol Med. 2010 Aug;40(8):1281-7.

[12] PD White, MC Sharpe, T Chalder, JC DeCesare, R Walwyn, for the PACE trial management group: Response to comments on "Protocol for the PACE trial" http://www.biomedcentral.com/1471-2377/7/6/comments#306608

[13] Crawley E, Collin SM, White PD, Rimes K, Sterne JA, May MT; CFS/ME National Outcomes Database. (2013) Treatment outcome in adults with chronic fatigue syndrome: a prospective study in England based on the CFS/ME National Outcomes Database. QJM. 106:555-65.

[14] Ross T; Tories discuss stripping benefits claimants who refuse treatment for depression. (2014) The Telegraph; 12 July 2014. http://www.telegraph.co.uk/news/politics/conservative/10964125/Tories-discuss-stripping-benefits-claimants-who-refuse-treatment-for-depression.html

[15] Tuller D. Collection of essays available at Virology: http://www.virology.ws/tag/dave-tuller/
[16] Rehymeyer J. Hope for Chronic Fatigue Syndrome. http://www.slate.com/articles/health_and_science/medical_examiner/2015/11/chronic_fatigue_pace_trial_is_flawed_should_be_reanalyzed.html
[17] Queen Mary, University of London. The PACE trial. http://gtr.rcuk.ac.uk/projects?ref=G0200434#tabOutcomes
[18] Coyne J. Why the scientific community needs the PACE trial data to be released. http://blogs.plos.org/mindthebrain/2015/11/11/why-the-scientific-community-needs-the-pace-trial-data-to-be-released/
[19] Coyne J. Uninterpretable flaws in PACE CFS follow up. http://blogs.plos.org/mindthebrain/2015/10/29/uninterpretable-fatal-flaws-in-pace-chronic-fatigue-syndrome-follow-up-study/

Daniel Capron

The Freedom of Information Act has proved very valuable in causing information to be made public which it was the public interest to disclose. It has thus enhanced the human rights of the British people to be informed about actions taken allegedly on their behalf.

As a citizen of the United Kingdom, I urge the Commission not to water down the Act but to strengthen it by removing the power of branches of government to delay disclosure, as happened eg with MPs' "expenses" and with Prince Charles' letters to Ministers.

I can elaborate on these points if the Commission wish me to.

Not enough publicity has been given to this review of the Act and not enough time allowed for public consultation. The Commission should publicise its review more and extend the consultation period.

Daniel Capron

Dan Cook

Dear Sir/Madam,

I am responding to the consultation advertised on your website. I think it is welcome that this review is taking place.

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

My view is that the protections are adequate, and that in a democracy we can properly expect protections to be limited in scope. The FoI law has worked well as far as the public are concerned, and the case has not been made for increasing protections fro disclosure.

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

There is no case for additional protection.

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

We would all be better off if risks were discussed openly.

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?

No! This would undermine the purpose of the Act. If the executive act with propriety, they have nothing to fear. Just like the rest of us have nothing to fear from GCHQ and the NSA.

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

The current system appears to operate adequately.

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?

Yes, the burden on public authorities is justified by the public interest. If I am paying tax for something, or underwriting something, then I expect to be able to find out what is going on, just as I would within my own private company.

In addition, you do not ask any questions about the scope of the Act, and if it should be widened. There is a good case for saying that where a private company is very large, that it, too, should be expected to comply with FoI laws. Large companies and banks that are implicitly underwritten by the taxpayer, or whose market position is dominant enough to make their internal conduct a matter of public interest, ought to be required to comply with some aspects of FoI law in my view, unless they can show the matter to be a matter of competitive advantage. This situation works perfectly well in large organisations like Universities, where FoI laws help to ensure a culture of openness, fairness and good decision-making. The possibility for these public goods would be diminished if FoI were no longer to apply to Universities, and it therefore follows tat it would be beneficial for FoI provisions to be extended to other large private-sector organisations.

Kind regards,

Dan Cook

Daniel Olive

Q5

Enforcement, at the first step, should remain in the hands of the ICO, who can deal efficiently with the matter on the papers, and appeal should continue to lie to a relatively simple tribunal like the first tier tribunal (probably to the first tier tribunal) which can dispense with the matter with as little expense, bother, effort and formality as possible. It will however be necessary to allow more formal appeals for important points of law, which should if possible be to a higher tribunal. Further appeal of necessity must lie to the courts, whether on appeal or JR.

There should be clarity about how to appeal a long delay, where an authority misses a deadline but is still considering, however inactively, a request. At present the ICO advocates that an internal review of the delay be sought before appealing, which as the authority is still having a first look seems absurd.

Q6

I'm inclined to think that at present authorities make rather heavy weather of their work, particularly where they only have to authorise release, rather than process any information. I can't see how any of my requests could have cost more than a few pounds.

Most requests should remain free, as they cost next to nothing to process. For example, a travel and expense policy simply needs to be taken from the intranet of the department, briefly examined for material which could harm negotiating positions of the department, and have the names, and possibly some phone numbers, removed. If more than that is done, it is likely to be an instance of a somewhat rotund bureaucracy. There is clearly a great deal of public interest in these sorts of things coming out, and it would cost more to collect the money than to just send the information. Allowing charging would only encourage departments to pad their processes, while requiring them to respond, for the most part, at the cost of the department will encourage them to just get on with it.

If there must be charging, it should not apply to the vast majority of requests which either cost very little, or would cost very little if dealt with simply, efficiently and sensibly. Where there is charging, there should be competition for the services charged for, with accredited private sector firms able to perform the services at market rates. If exceptionally this is not possible, rates should be set by an economic regulator of this monopoly service, and/or criminal penalties should attach to the abuse of a monopoly or dominant market position, as they do in the private sector.

The costs which are not covered in the costs limit seem to be areas where a great deal of waste and inefficiency is to be found. Confirming that a 1940s Bank of England security file has now taken over 6 weeks, and the simplest things seem to take almost all of the 20 working day limit. I cannot imagine what useful activity can be being carried on in this time, and I'm inclined to think they could (and should) do an awful lot less without any great hazard to the security of the state. Having said that (which is my main objection to charging for the time civil servants spend deciding what to release) it is of course necessary that important decisions about what can safely be released without endangering national security or helping criminals be taken by civil servants who are free to take the time they need to fully consider the implications. If there were charging, the charges would inevitably have to be defensible, and it would be necessary to defend them in some cases. This would pressure civil servants to make their decision quickly, in a period of time they can defend easily, which might lead to their missing things. If they are to charge for their time, the cost should be itemised, and they should be required to defend it and prove the work was done, and took, and needed to take, as long as was billed for, just as they would in the private sector.

Civil servants do seem to have a habit in some cases of putting quite a lot of effort in to preparing their defence for the ICO and tribunal when dealing with a request. It would of course be necessary to separate this work out, so that an applicant was not paying for work to be done to oppose them. It is obvious that if the government is to go to law to keep some part of state activity from the citizen, it should not bill the individual citizen for the cost of

opposing them. Ideally of course civil servants would not do this work until and, crucially, unless, some appeal actually arose.

If the cost of dealing with requests is high, they should ease off on some of the formality. While I'm sure the eloquent tomes I receive on how to appeal, even when my request has been granted, are cut and pasted, I often get quite long tracts on why it is lawful to withhold phone numbers, or names of individuals, usually with reference to a balancing exercise (why do I imagine a civil servant on one leg in some sort of yoga pose?) that has been performed. While clearly I should know why they feel able to withhold some information, they could do so in a quicker and simpler way. As a law graduate I have no trouble understanding them, but they must take an age to write. Despite this, I still get flawed and incomprehensible grounds for some refusals. You often find that you get a magnificent thesis on the defensibility of some perfectly inoffensive omission like the direct dial and name for someone prosecuting organised criminals, and a very poor, brief, sloppy, and often flawed, explanation of why some harmless request has been turned down flat.

To recap, there are gross inefficiencies in how many requests are dealt with, and most requests cost or should cost next to nothing. If civil servants were directed to simply get the job done, there would be much less expense.

Daniel Vulliamy

Dear sir
If it is not too late, I would like to register my strong objections to any attempt to dilute the legislation.
I do not think the consultation has been widely notified.
I am concerned that the supposedly independent commission is stuffed with known opponents of FoI, particularly Lord Howard and Jack Straw.
The Act has done much to reveal the dirty underbelly of power and influence in the UK, particularly by assisting journalists discover truths those in power would prefer to keep from us. Recent examples include MPs' expenses, the Public Finance Initiative, offshore company ownership of UK property and land, the scale of tax evasion in the UK and its encouragement by governments, government IT scandals and monies wasted by government departments on management consultants. I could go on.
The claimed cost of responding to FoI requests at £9 million seems pretty small to me; compare it, for example, to the £290 million spent on advertising last year by central government.
I hope these views can be taken into consideration.
Yours sincerely
Daniel Vulliamy

Darren Humphries

To whom it may concern, my name is Darren Humphries and I have worked for Thames Valley Police in responding to Freedom of Information requests for over two years now, having dealt personally with over 700 such requests.

Please note that I give this information to present my bona fides. This a personal response and does not represent the official position of Thames Valley Police, though some of the information in this response is sourced from Thames Valley Police systems with the permission of management.

I can speak only with regards to the 'Enforcement and Appeals' and 'Burdens on public authorities' sections of the consultation (questions 5 and 6 respectively).

Firstly, some figures for context:

	2014	2015
FOI requests logged	1302	1178
Media requests	355	405
Internal reviews	24	42
ICO complaints	15	14

Question 5 – Enforcment and appeals

Of the 24 internal review requests in 2014, 7 were from media sources. Of the 42 in 2015, 15 were from media sources. This suggests that the media are not disproportionately using the appeals process. The internal review process is a simple and cost-effective overview process in the model practised by my organisation, though the vast majority of responses are fully supported by review decisions and the grounds on which the applicant appeals are usually flimsy in the extreme. They are mostly just that they applicant does not like the response that they have been given and appeal without even considering the advice that accompanies the response. Sometimes, and all too often, the appeal comes within a very short time of the response itself, suggesting that no consideration has been given to the explanation for the response. Since there is absolutely no disincentive to appealing, the applicant will appeal automatically. This is seen most in figures for 2015 to date where a single applicant has required internal reviews of 6 requests.

I do not have much to do with the process once it has reached the ICO complaint level, but each complaint of this kind takes a considerable amount of senior managers' time, researching and responding to the complaint. Anecdotally, these complaints are usually specious and again are carried out simply because the applicant has not liked the response and making the complaint takes very little effort on their part when compared to the significant work it generates for the Thames Valley Police public access management.

Of the 15 ICO complaints logged in 2014, only one applicant made more than one complaint, making 2 in total. By this point, that same individual has made four more ICO complaints and 2other applicants have made 2 complaints each. The complete lack of any disincentive to make complaints to the ICO means that individuals are able to generate considerable work for this organisation with little or no effort or consequence on their part through specious and repeated complaints to the ICO.

I would ask that the commission certainly looks at the complaints process beyond the Internal Review stage to make it less attractive to take specious complaints higher without any consequences whatsoever for the complainant.

Question 6 – Burdens on public authorities

I personally feel that the Freedom of Information Act 2000 has been a positive piece of legislation, but has been somewhat hijacked from its initial purpose, most especially from two groups of people – journalists and commercial enterprises.

As the figures that I have provided show, approximately a third of all FOI requests dealt with by my organisation are from media sources. Media access is one of the keystones of the Freedom of Information Act's purposes, providing journalists with information that can inform and illustrate their stories. It has been turned, however, into a tool for making 'fishing trips' to provide fluff stories to fill pages. For every BBC or ITN request that is clearly looking for information to support a story they are chasing, there are a dozen requests about ghosts, the supernatural, UFOs, crimes committed by people in Santa suits, crimes involving snowballs... As soon as a national story breaks, you can be certain that the local news outlets will be wanting statistics for their local areas in order to fill in some column space with the particular bandwagon.

The proof of the nature of these requests is in the fact that very few stories resulting from these requests ever show up in the publications that make them. I do not have figures for this, but when a story does appear it is an unusual enough event for the whole team to

comment upon it. I believe that the FOI Act was instituted, in part, to provide investigative journalists with supporting information, not a lake in which to cast empty nets in the hope of catching an interesting fish.

The second group of people who misuse the FOI Act for purposes that I do not believe it was intended are commercial interests. We receive a minority of requests from business people looking to find information that will allow them a way into the purchasing stream for our organisation and gain an advantage on potential opposition. These requests, though relatively small in number, are usually highly detailed with multiple questions that require a huge amount of time to gather. Since almost all contracts issued by Thames Valley Police now pass through a public tendering process at which time all the necessary and relevant information will be provided anyway as part of the tender.

There is a third group of people that are harder to identify and pin down and those are the ones who make multiple FOI Act requests under false names. Quite often, we notice similarities in the style or content across multiple requests that suggest they come from a single source. Since we cannot challenge everyone who requests information, this is much harder to quantify.

If I could make suggestions that would, I believe, reduce the burden on public authorities without necessarily reducing legitimate access to publicly held information they would be as follows:

Require all applicants to provide copies of photo ID with the request. This would cost nothing, but would reduce the number of people making multiple requests under different names.

Do not introduce fees for initial requests, but provide for some sort of banding such as free for the first three requests in a year and then charge thereafter.

Introduce an exemption for information held about contracts that are subject to open tendering processes.

Introduce measures to make taking complaints higher up the appeals chain, such as certain costs to be paid to authorities if the complaints is found to be frivolous.

The Freedom of Information Act 2000 is an important piece of legislation and should be protected, but I believe that some adjustments should be put into place to steer it back towards the usage that was intended.

Dave Anderson MP

I wish to make the following comment.

Privacy is important and any review should look at how it is protected better than has been the case previousLy. Not easy, but essential

The use of FoI needs to allow challenges to government on their catch all "National security" line. A classic abuse is the denial of access to information withheld by governments in relation to the so called Shrewsbury 24. Some form of genuinely independent scrutiny of such information should be introduced

Dave Anderson MP for Blaydon

Dave Croydon

FOIs are an essential part of a functioning democracy.

Herewith a simple example:
I am a council leaseholder in Brighton & Hove City. In conjunction with Mears the council is carrying out overpriced and unnecessary works across the city. The Housing department showed me redacted documents when I asked to see the project documentation.
My aim is to stop unnecessary work and waste of money. If not, to avoid being charged for it.
So far the council has not completed the works but they are pressing on regardless.
I asked for the redacted information and was told that their legal department advised them not to give it to me even if I filed a FOI. I filed a FOI anyway.
I got the information I was asking for. The council's surveyor (via Mears) had suggested a cost that was 50% of the price that I am being asked to pay.
Dave Croydon

David Bell

Absurd to think that the Independent Commission are considering introducing charges for FOI requests.
If anything, we need this Government to be as transparent as possible, and by even considering introducing these charges, this only increases public speculation that the current Government has something to hide.

David Edward Clarke

Freedom of information, or transparency, lies at the heart of democracy. A government with the apparent support of 35% of the electorate is moving into a very dark world indeed if it attempts to shroud its deliberations in further secrecy. Remember some 65% of the electorate did not support the Tories at the general election, and even fewer would do so today now that the reality of Tory government has been revealed: destitution for the poor and uber-riches for the so-called wealth creators at the top.

Tories ar not what they claim to be - tough on the undeserving. Rather this government is showing itself to be soft on the undeserving - the super-rich whose only interest is share-holder dividends and directorial remuneration. Nor are Tories the party of opportunity: they are the party of division that close down opportunity of self-expression in the community at large in favour of profit for the few. Market forces rule Torytown

The government has already given us the key to its divisive ideology: “Strivers v Skivers’!

David Edwards

FOI comments by David Edwards

I was employed as Legal Services Manager and latterly Solicitor to the Council at Rother District Council until December 2011. I oversaw the preparation for the coming into force of the 2000 Act in 2005 and thereafter (amongst many other functions) the processing of requests. I hope these comments are of interest.

Questions 1, 2 and 5. No comment, other than the present system seems satisfactory, although my experience relates to Local Government so I'm responding as a citizen

Question 3: Information which involves candid assessment of risks?

I suggest that this issue is assimilated into an extension of section 42 which is at present relating to Legal Advice. Advice about Litigation risks is really the same as advice about other issues (which might end up as Litigation!). There is a "public interest" test.

Question 4 – Veto

I appreciate that the Supreme Court has ruled on section 36, but for what it's worth as a "practitioner" I never regarded this as a "veto" power. I always understood it envisaged a reasoned decision based on a reasoned factual assessment. The word "veto" implies the ability to say "I so command it. Let my will take the place of a reason". If a genuine veto is to be subject to Judicial Review, it's difficult to see how the Court would assess its exercise. I respectfully suggest that referring to s. 36 as a "veto" was a sloppy practice by people who weren't legally aware of the actual wording. This in turn created, an unjustified expectation regarding the extent of the s.36 exemption.

The consultation refers, in passing, to the Environmental Information Regulations. In the years after 2005 it has become apparent that a lot of information that was thought to be covered by FOI, is actually covered by EIR (the two regimes are mutually exclusive). In practice, awareness of EIR is low and if you're going to disclose environmental information anyway you are going to supply it in response to a request purportedly under FOI. If you are not, different refusal reasons apply. It is relevant, however, that these are governed by European Law, and as is common with European Law it is expansionary.

Looking at Article 4(2) of Directive 2003/04/EC (to which the UK's EIR 2004 are supposed to give effect) there are exemptions for "public security or national defence" but nothing remotely like a "veto". This issue is covered at length in the Supreme Court's Decision. The Committee needs to consider that it doesn't need much ingenuity to find an environmental aspect to many issues and frame a request so as to fall under EIR rather than FOI. Thus introducing an express power of irrational "veto" under FOI would achieve very little secrecy in return for public disquiet.

Question 6 - Burdens
Business requests, especially to more than one Council and charging
I didn't get irritated by genuine local residents or investigative journalism, but in my view commercial usage is an abuse of public resources. This frequently involves identical requests being made to many authorities. I respectfully challenge the figure of 60% for requests by private individuals. Employees will e-mail requests using their own names, and thus get counted as private individuals, but if you look at the request it's obvious the nature of the information being requested is not what an individual would be interested in. In my

experience the majority of requests are really from business (non-media), and this is increasing.

Some journalists' requests may be less serious, but even if they are more interested in the cost of refreshments at a meeting than the Agenda, that's still a legitimate public concern. Under the law as it is, requests can be refused as "vexatious", which journalists probably all know. The ability to just refuse is sufficient protection against wasting money answering silly media questions; when the media were criticized it may be that this was overlooked.
There is a £10 fee for subject access under Data Protection, but processing this is uneconomic. The only purpose for such a fee for FOI would be as a deterrent. Therefore the choice must be either to charge real costs, including administration of the fee system itself, or maintain the present system, where fees are only charged for requests exceeding certain costs. The principle of public access is valuable, whether by the public directly or the press on their behalf, and it would be undermined by charges. Business use should be discouraged, none of the discussion before 2005 envisaged it, and business should pay the full economic cost without a public subsidy.
I can accept that genuine investigative journalists may need to send identical requests to all Councils (e.g. to see how is a new law working) but businesses and organisations and charities (who 'advocate' rather than give anybody real help) should be made to pay the total cost of such activities. Frequently, unlike journalists' researches, this is private research which will never be available to the public and therefore cannot be in the public interest.
Each Authority has spent substantial resources processing an FOI request to supply information that somebody just puts into a spreadsheet that nobody may ever see outside that business. If you multiply the cost of each request by the number of public authorities it goes to, the result is enormous. The result might just be sales leads that the requester wants to keep from competitors, but more sinisterly it might be of public interest but gets suppressed because it was the "wrong answer" from the point of view of the requester.

I don't think it was ever meant to enable anonymous requests, but rulings by the Information Commissioner that an e-mail account is sufficient identification effectively enable this.. Reversing that would enable charging for commercial use and private research, but there should be exemptions for citizens and investigative journalists etc. intending to put the results into the public domain.

The Committee should consider:

Requesters must disclose their real identities and addresses.
The application should include a declaration that it isn't being made on behalf of or in concert with any other person who isn't disclosed. Giving a false declaration is an offence.
Business requests must pay a fee with no free allowance.
Requiring multiple requests to be made indirectly through an agency (maybe the Information Commissioner);
That agency itself collates the results into a spreadsheet (or similar) which it publishes on the Internet;
And collects and shares an overall fee.
Requests by private individuals on their own behalf and bona fide investigative journalism etc. remain free (up to present limits).

The duty to confirm the existence of information

Central Government assumed that in future information would be all electronic, and there were unrealistic expectations concerning "records management" - which were unfunded. The Act could have included an exemption from the obligation to confirm existence in respect of unrecorded information already in existence, with its main impact being prospective only.

Making the Act fully retrospective, but giving public authorities over 4 years to prepare resulted in the destruction of vast amounts of information. This might have been of historic interest even though it was unimportant. I still consider that the obligation in s.1(1)a imposes an unreasonable burden in a real world where large amounts of information is not accessible at the click of a mouse. Paper files may contain extraneous information that wouldn't be expected or revealed in a file-index.

I would suggest a change to this duty to "use best endeavours to ascertain whether the information is held and to confirm if it is".

Records Management

If section 46 (and codes etc. issued under it) applied to the private sector, it would be seen as pointless "red tape". It should be repealed.

PS. There is no such time as 12.00 AM!

Regards,
D Edwards

David Gadenne

I used to run a blog (definitely not for profit) about the political machinations in St Neots, Huntingdonshire. This covered what our Parish, Town, District, County and our MP got up to.

Whilst much information I used came from published agandas and minutes, some of the information I could only gain via the use of the Freedom of Information Act. I have made a few requests and found the following:

1. One request for a document from Huntingdonshire DC, after the acknowledgement of the receipt of my FOI request, took 89 working days to process and, although I made several prompts, the intervention of the ICO was the only way to get a reply.

2. Three other requests took longer than 20 days for simple requests – 21 to 35 working days.

3. One FOI request from the above 3 came back with the wrong information. Looked like someone elses request.

4. On one request for a document I was sent a whole load of documents including the one I wanted. To me this seemed a waste of time and money.

5. I also made several requests about the decision Huntingdonshire DC was making about the closed open air swimming pool. This request was for an agenda and minutes and associated documents in Part 2 (confidential) of a meeting. In reply there was a straight no. An internal review came up with publication with a fair proportion redacted. I then went to the ICO and many of these redactions lifted though not all. There I left the matter.

6. I also requested the agenda and minutes of a working party to looking at car park charges. Initially denied the chairman of the working party read the blog and informed the officers there was nothing in the agenda or minutes that were confidential or secret. Indeed I was sent a copy by email. Whilst the Council did eventually impose car parking charges, which I agreed with, it was a couple of councillors who opposed the charge in public were in agreement in this working party.

7. I also came up against the Internal Review procedure. This is supposed to take at most 20 working days. Again many times, although a majority sucessful, these took longer than 20 working days

8. With St Neots Town Council I had tussles with them over the agendas, minutes, reports and Annual Returns that the law says must be published and had to resort to the use of Freedom of Information Act to get this Council to be lawful.

In the Parish where I currently live the same goes again. Information the law states must be published is not. Therefore the only reasonable recourse is to use the Freedom of Information Act to get the Parish Council to publish what it legally is required to.

I have made one request to the Enviroment Agency and was sent the wrong information.

In reseaching attendances of Councillors at various Councils I have found that my local District Council publishes a running update. The County Council does not and therefore requires a FOI request to find out this basic information (though they have to keep this information because of the 6 months rule). On the otherhand the County Council publishes

all FOI requests and answers. Whereas the District Council does not. This can lead to a multiplication of work where a number of requests for the same information are made on the same subject matter and the answer has been already been given. Yet instead of pointing to the information the whole process is gone through again.

If the commission is so minded to recommend the introduction of charges below the level set at the moment then I feel this would be unjust where public authorities do not publish information they are required to or in guidance should do. Why should I pay for information that the local authority must or should publish. I feel I shouldn't. The Freedom of Information Act allows residents to extract information that should be published and the authority doesn't do.

There is no other reasonable way to extract information and for a Council to be able to charge for something they must or should be publishing is wrong.

Therefore I feel if charges are brought in where a Council or other public authority does not publish documents that it should publish this should be made a criminal offence with a minimum fine of £5000 for officers or council or councillors who allow this to happen.

Also if charges are imposed then if the 20 working day limit is exceeded and or the 20 working day limit for an internal review is exceeded then the whole request must be for free.

I also feel:

Part 2 documentation should be published as a matter of course and minutes redacted before publication.

All Local Authorities including Parish and Town Councils must by law publish all requests and replies and associated documents so as not to replicate work and cost to the requestor.

I feel that the Freedom of Information Act is a good, but not an excellent, tool for the public to hold those who spend the money raised from us in taxation to account.

Regards

David Gadenne

David Gaunt

Dear Sir or Madam

It has been widely reported that the Government is looking to change how the current arrangements operates.This reporting appears to suggest that the operation of the FOI Act may be lead to a curtailing of the present freedoms, charging people for using the service, imposing strict limitations and even axing it altogether.

I respectfully suggest that **NO CHANGE** be made to the Act so that individuals and organisation's are able to continue to scrutinize the work of the central and local government and the work of other Public Bodies in the fulfilling of their legal obligations.

Without the FOI the General Public would never have known about the MP's Expenses scandal, the waste of taxpayer public monies by the NHS, Quango's and other bodies as recently reported upon in the Daily Mail.

The public have a right to know how they are governed and how there money is spent to make considered judgments.

I fear any change to the present arrangements smacks of another "cover up" and which if implemented is a backward step in a modern democracy. I want to live in a modern democracy and be able to scrutinize those who are placed in positions of authority.

Yours faithfully

David Gaunt

David Gear

Dear Sirs,

I attach below a copy of my email to my MP Sajid Javid

Dear Sajid Javid,

Freedom of Information (FOI)

In view of the potentially damaging democratic implications of the proposed changes to the FOI I have carried out some research most of which I am sure you are aware and a brief summary is attached below. Please can you stand up for transparent politics by sharing your 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.

The last Labour Government committed itself to shining a light on the shadows cast by decisions made behind closed doors. Tony Blair said at the time "this [Act] is fundamental to changing the way we do politics in this country…there is still far too much an addiction to secrecy and wish to conduct Government business behind closed doors. In 1999, then-Home Secretary Jack Straw told the House of Commons, 'Unnecessary secrecy in Government and our public services has long been held to undermine good governance and public administration'. It was hoped the resulting Freedom of Information Act (2000) would 'transform the culture of government from one of secrecy to one of openness'; in doing so, 'it should raise public confidence in the processes of government, and enhance the quality of decision making by the Government'. The white paper that preceded the Act – Your Right to Know – began by saying that 'Unnecessary secrecy in government leads to arrogance in governance and defective decision-making'

Any fundamental review of freedom of information (FOI) legislation is hardly necessary. Just three years ago the cross party House of Commons Justice Committee, chaired by Alan Beith, carried out an extensive investigation into the operations of the Act. It reported that: "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."

The new Commission would appear to be constructed to achieve an already preconceived decision. Chaired by Lord Burns, it includes Jack Straw who is already on record saying the Act should be rewritten, is currently subject to criminal investigation for his alleged involvement in the kidnap and rendition of a Gaddafi dissident and had to suspend himself from the Labour party following a deeply embarrassing Dispatches and Daily Telegraph "cash for access" sting. Jack Straw has vetoed release of the cabinet minutes covering the Iraq war and called for wider restrictions covering policy development and ministerial communication. Alongside him is a former Tory home secretary of authoritarian bent former Conservative leader Lord Howard (who was at the sharp end of FOI requests during the expenses scandal) and Lord Carlile (whose views on the paramount importance of secrecy are well-known). Patricia Hodgson, who is now chair of Ofcom, a regulator which has previously complained about the cost of FOI compliance and its "chilling effect" on sound record-keeping. In the chair, the former Whitehall mandarin Terry Burns. To say that this panel is more likely to take an insider's view – to think first of the perspective of the bureaucracy being asked awkward questions, and only second of the citizen trying to root out inconvenient truths – is putting it mildly. The panel's constructors may be on record as being thrilled by the panel's "soundness". "What is true is that most people who are on the

committee have been the subject of FOI requests rather than made FOI requests." It may be stated that 'Everyone likes accountability unless they are the one accountable. Some may view the FOI proposals as 'No privacy for you and security for us.'

The FOIA's impact over the past decade has been invaluable. Without it, we would not have known about the MPs' expenses scandal, police use of tasers on children, the incineration of miscarried and aborted foetuses as clinical waste, Sir Cyril Smith's attempts to threaten police investigating claims he had molested young boys and hundreds of care home residents dying of thirst. The list goes on and on, and includes countless regional news stories which – though they may not make it into national headlines – are of vital importance. Proposals that limit the scope and function of the FOI Act, as these appear designed to do, are fundamentally incompatible with the Government's wish to become and claim to already be "the most transparent government in the world".

"It is deeply worrying that the Commission is proposing charging the public for information that they have a right to. Freedom of Information is a crucial tool for keeping our politicians honest and our Government on the right track. It should be available to everyone without cost

Proposals to charge for Freedom of Information Act requests have been condemned by campaigners after Press Gazette research found central Government departments spend less than £6m a year answering FOI questions. This figure is "very good value for money considering the level of scrutiny and accountability it generates", according to Maurice Frankel, director of the Campaign for Freedom of Information. It represents around 0.001 per cent of the £577.4bn the central Government is due to spend in the 2015 fiscal year (figure from UKpublicspending.co.uk). It is less than 2 per cent of the estimated £289m the Government Communication Service said it would spend on external communications activities in 2014/15. This figure was set out in the Government Communications Plan 2014/15, published by the GCS and signed off by 16 directors of communications across central Government departments.

Transparent and accountable decision making is essential to a successful democracy and FOI requests have been the strongest weapon against corruption in government.

Yours sincerely,

David Gear

David Hurry

The 2000 Act gives us the opportunity to obtain information that would otherwise not be available. As such it allows us to find details that would otherwise not come to light. It is invaluable to the proper running of the democratic process and needs to be preserved and protected. Limitation of the Act would be a severe blow to democracy.

David Hurry

David J Baker

To whom it may concern

I should like to express my concern about the deliberations of the commission considering changes to the Freedom of Information Act. It is doubtful that any changes they suggest will improve the Act and will be aimed at preventing embarrassing facts coming to public knowledge. Here I think of the MPs expense scandal, the outrageous privatisation of the Commonwealth Development Corporation and the way that public money is spent by 'gravy train' officials in various government bodies. I could lengthen the list but will not in the interests of brevity.

It is my belief that the provisions of the Act should not be diluted and application of fees for access to available information would be negative factors that I would interpret as building barriers for the seekers of truth, primarily investigative journalists.

Yours faithfully

David J Baker C.Eng., M.I.Mech.E

David M Hughes

Government,

Please don't water down and make the changes you are planning to the Freedom of Information Act as it only costs around £9 million pounds a year to run which is much less than the £290 million the government spent last year on advertising.

If the changes planned go ahead it would become much more difficult of even impossible to find out about future corruption scandals such as MP expenses, rampant junketing by the UK public spending watchdog and disastrous public tendering exerceses such as the NHS computer fiasco.

A worried taxpayer,

David M Hughes

David Mannering

From: David Mannering
Email: as above

Dear Commissioners

There are a few aphorisms that neatly capture the issues posed by this consultation:

Everybody likes to get as much power as circumstances allow, and nobody will vote for a self-denying ordinance.
Information is power
All power tends to corrupt; absolute power corrupts absolutely
Democracy is the worst form of government, except for all those other forms that have been tried from time to time.

Drawing these strands together: an effective democracy is the best way to contain abuse of power. But effective democracy depends on information being available to the wider public so that they can challenge the preferences, prejudices and decisions of the Executive.

A government that is unwilling to share information is effectively asking the public to trust the Executive absolutely. Our system of government is better than many. But, there are enough examples in recent times to demonstrate that blind faith would be naïve in the extreme. All those in a position of authority have an incentive to control information so that it is easier for their own preferences to prevail and/or that it is harder to shine a light on excesses or incompetence. This is precisely why we need the Freedom of Information Act. It facilitates debate about alternative options; it promotes efficiency and honesty amongst the Executive and decision-makers. The consultation asks whether the costs of the FOI Act to some public bodies can be justified. I am confident that any robust cost-benefit would show that the aforementioned benefits outweigh the modest costs of operating the Act. Moreover, many public bodies have only the most tenuous democratic accountability. For example: independent regulators. Other publicly funded organizations also have wide discretion to set their own agendas. The FOI Act is arguably the only way for these bodies to be subject to effective public scrutiny.

An extreme version of the denial of information would put us in an analogous situation to a quasi-dictatorship. In such a world, the public are required to wholeheartedly embrace only the propaganda spun from the Ministry of Truth.

I have been on both sides of the FOI Act. I have worked for organizations that have been contacted by public bodies because they have been asked to release information that may impact on my organization. I have also raised a number of FOI requests, usually to help me discharge my responsibilities to local residents as a Parish Councillor and secretary of the local residents' association. The current Act is working satisfactorily. The FOI Act is particularly useful in securing access to information which helps one make a fully informed response to consultations and to test the robustness of decisions by the Executive.

The consultation suggests a general power of veto by the Executive perhaps subject to appeal. This would be a very retrograde step. It is well known that the judiciary is very reluctant to second guess the decisions of the Executive where the Executive has discretion. In any event, ordinary members of the public do not have the resources to mount an appeal. The net effect would be that the Executive would establish very elastic criteria for preventing information release. The FOI Act would be emasculated; its benefits would

evaporate to the point where its very existence would be called into question on grounds of usefulness (a Catch 22). Even under the status quo, requestors have to largely take on trust the information which is withheld or redacted under powers of exclusion. It is imperative that any grounds for exclusion are very precisely defined and as narrow as possible so that, in those rare cases where an applicant appeals a non-disclosure decision, the appellant has a reasonable chance that the judiciary will not automatically conclude that an exclusion lay within the margin of appreciation accorded to the Executive.

To conclude, it is widely recognized that the reputation and credibility of the political and public sector classes is at something of a nadir presently. There are numerous contributory factors. On political grounds alone, it would be unwise to validate the public's suspicion by emasculating the FOI Act.

Yours sincerely

David Mannering

David Marcer

It is my understanding that the Freedom of Information Commission is seeking the views of ordinary people. I am ordinary and despite all the signals given by the make-up of the commission I must believe that it is not there simply to protect the great and the good from embarrassment, so here are my views.

I am old enough to remember when public servants could get away with far more skulduggery than they do now. When it was introduced the FOA Act blew through their ranks like a dose of disinfectant. Unfortunately, my recent experience of trying to prise information out of my local hospital has demonstrated that public officials have learned that delay and obfuscation are their best weapons. The idea that they might observe their duty to provide advice and assistance is just a joke. Far better to wear the complainant down than to have to mess about with an appeal.

Rather than, as is widely predicted, doing the bidding of government and recommending that the rights of ordinary citizens to know what is being done to them and about them in secret, the commission should instead be recommending a clamp down on the tactics of delay and obfuscation and recommending that there should be sanctions for failure to advise and assist.

It would be a move, a small move admittedly but nevertheless a move, towards totalitarianism if the right of the ordinary citizen and their representatives (amongst whom I include journalists) to seek information from those who govern and control them were to be curtailed. I suggest that if you want to know the value of this right then you should ask Mr C. Grayling who, I have seen it reported, was an enthusiastic exerciser of this right under previous governments.

Especially when considered in the light of the abuses that have been uncovered it seems that citing the cost of FOI requests as a reason for restricting citizens' rights is about a relevant as arguing for ten-year parliaments to save on the cost of elections. Put cost in context. Yesterday, and ironically as the result of an FOI request, it was reported that: NHS chiefs spend £1.2m on publicity drive to expand use of personal health budgets (Pulse Daily). Strange how some expenditure is reasonable and some isn't.

The test that I will apply when reading your recommendations is: who will be rubbing their hands with glee when they read them? If it is people like you, members of the commission, then I suggest that you will have done just as Mr Grayling required you to do.

David Marcer

David Orr

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

I worked for 30 years in IT in both private and public sectors.

When large IT projects go wrong after implementation, there is a strong tendency to want to protect the people in charge from any disclosure that shows that they knew of a risk, but

either ignored it or did not put the right risk management in place beforehand.

A sort of “group think” and state of denial can exist, where all so called bad news is suppressed in favour of “good news” – often aspirational benefits glowingly described in press releases.

A classic example is the Universal Credit IT project in the DWP as they moved large legacy systems into “agile” systems for the repeatedly delayed and functionally limited roll-out for the new Universal Credit IT.

The DWP has repeatedly hidden behind the “chilling effect” and used every appeal going to avoid any information coming out, that may show that there were foreseeable and manageable risks.
Similarly, the NHS National Programme for IT was fine, until suddenly we awoke one day in 2013 to find that something like £12 billion had been spent and only a fraction of the benefits constantly claimed in glowing press releases had been delivered.
The big problem with the application of both exemptions as either “chilling effects” or “prejudicing the effective conduct of public affairs – safe space” is that the people in power or those with responsibility for bad decisions, can act as judge and jury to avoid or delay their “sins coming to light”.
A strong political Leader or senior civil servant will hold power over the people charged with determining whether section 35 or 26 can be applied, to avoid a public disclosure that may be embarrassing politically or a threat to their CV or future career path.

My view is that under the current Act, sections 35 and 36 are already being applied too often and in defence of the status quo or current leadership interests or reputation.

The ICO acts as an appeal body, but even then, the DWP can repeatedly appeal decisions using expensive legal challenges that are publicly funded.

Large organisations (the DWP or a large Council for example) have access to significant publicly funded legal costs and can thereby abuse their powers to be held to account, by simply throwing money at a series of legal cases to avoid or delay the truth coming out.

By comparison, members of the public and even local and regional media cannot afford to support similar legal action.

There is a real and in my view, growing danger that “safe space” and “chilling” arguments will be used to protect those who took decisions that later went badly awry or wasted huge sums of public money, in order to prevent the damaging truth coming out.

The key thing is to retain a written record of “safe space” discussions, but time limit the ability to refuse disclosure, so that at a future point, the public can openly assess whether those in charge took good or bad decisions. Or whether they carried on with a policy even though competent and sound advice of likely risks were discussed, but then ignored.

I would argue that the Act needs to:

Ensure that all “safe space” discussions are properly recorded and stored (including relevant emails);

Safe space discussions should then be classified as to when they can be released, so that a balance between having candid discussions against upholding the public interest can be assessed post any key decision. The public then retain the ability to, at some relevant future point, assess the impact of those discussions on the decisions and outcomes. For example, until the end of an elected administration’s term or immediately afterwards when a project or policy failure with significant public interest occurs.

The principle of a public interest test being applied and having the power of over-ride ride in favour of disclosure should be retained. As an independent body with a regulatory role, the ICO should continue to adjudicate on this balance of arguments.
The ICO Guidance for “prejudice to the effective conduct of public affairs” (section 36) already states “For purposes of effective administration a responsible public body ought to keep suitable minutes of important meetings, whether or not the minutes may be disclosed to the public at a future date”.

Without records of important meetings, the arguments over subsequent proper disclosure and the balance between secrecy and public interest are potentially rendered meaningless.

I believe that the Commission should ensure that the keeping of “suitable minutes of important meetings” is an explicit and statutory part of the FOI Act ie unlawful not to do so.

I have been involved in two successful ICO appeals where two planning authorities for my town were either not keeping records of private meetings with gaining developers (prior to

planning recommendations and decisions being taken) or were keeping illegible hand written notes that were in day books (so were not being properly recorded and stored for later retrieval for public disclosure).

Great care must be taken that a “safe space” within the FOI Act doesn’t create a space so private that fraud or corruption can occur.

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

Without records of important meetings, the arguments over subsequent proper disclosure are potentially rendered meaningless.

I believe that Cabinet discussions should be fully recorded and that failure to keep proper records should be a statutory offence (see the Question 1 response above).

As a general principle, I think that if Cabinet discussions and agreements are with-held, then once the elected period of power has completed for that administration, then the records should be available for disclosure with redactions applied only to strict criteria regarding National security, “prejudice to the effective conduct of public affairs” etc.

This release at the end of an elected administration’s term should apply even if the same ruling party or coalition is re-elected to Government.

Should a serious crisis occur within the period of an elected administration’s rule, then public interest arguments should still be capable of being weighed and if they outweigh the need for continued secrecy, then disclosure should occur.

As an independent body with a regulatory role, the ICO should continue to adjudicate on this balance of arguments.

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

Large projects (often involving IT systems) should, if they are following a recognised project/programme methodology (such as PRINCE or Managing Successful Programmes) be creating and maintaining formal Risk Logs, showing how risks are being mitigated and if the risks happen and become issues, then how those issues will be managed.

Sighting Risk Logs is an effective way of determining whether large projects are being properly managed and whether downside risks are being properly identified and effectively managed.

In projects focused only on “good news”, you can get a culture or “group think” where negative risks are not identified or logged. If downside risks are not logged then they cannot be managed.

I believe that Risk Logs and each of their updating iterations for large, publicly funded projects should be available from the date they formally become live within the project.

If they are held back for a period of time (say 1 year) then by the time they become available, it is too late for any external scrutiny and for positive pressures and public critiques from external scrutiny to be brought to bear.

How any more large and expensive project failures wasting limited public funds do we need, if Risk Logs and other key project or programme documentation is kept secret?

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?

The principle of a public interest test being applied and having the power of over-ride in favour of disclosure should be retained.

I do not believe that the veto should be exercised solely by the politicians and/or senior public officers in charge (the Executive).

I think it would be better if the ICO were part of the public interest test (made in confidence) rather than the Ministers and/or senior public officers in charge being sole judge and jury.

Where the executive continue to uphold the veto against the ICO public interest test, then whilst the veto maintains primacy and the information continues to be with-held, the ICO public interest test should still be made publicly available.

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

I think that the current appeal system, free at the point of need, is broadly satisfactory.
The Internal Review procedure allows the public body to make a final assessment before an appeal to the ICO and gives the requester opportunity to reflect on the responses.
The ICO carry out a check that appeals are appropriate and I think that the ICO generally do a very good job.
However, the Government must ensure that the ICO has sufficient resources to deal with appeals in a timely way and not use austerity budget cuts to render the ICO ineffective, by simply limiting resources to oversee the FOI Act.
There is currently no sanction if a public body deliberately delays the FOI and Internal Review response times. Or if a public body "games" the system right through to an ICO appeal to delay bad publicity until the news cycle has passed on.

In Somerset, the County Council had made National newspaper headlines after Children's Services were rated at the lowest "Inadequate".

It was then disclosed that Somerset had one of the highest paid Interim Directors in the land for Children's Services costing almost £1m for 18 months for a 3.5 day week and being paid "off payroll" through his own Limited Company (to potentially avoid tax and National Insurance). Worse still, at the end of his expensive hire, the Children's Service remained at the lowest "Inadequate" rating.

FOI requests to determine his working hours and expenses and whether the Council had allowed the use of his own personal service off-payroll Company were repeatedly delayed and broke the 20 working day limits for response and Internal Review.

Eventually, after public statements to Council meetings and media support, the Council modified it's HR Policy for these expensive interim hires and ensured that future hires did not allow potential tax and National Insurance avoidance through the use of personal limited service companies.

Should the Commission consider sanctions to be applied by the ICO, where a public body repeatedly does not meet the 20 working day limits for an initial FOI request response and Internal Review?

I have seen politically sensitive FOI requests delayed right through to an unnecessary appeal to the ICO (by the public body's refusal), even when prior and referred to ICO case adjudications showed that the failure to disclose would NOT be upheld by the ICO.

In two cases of local and strategic planning authorities failing to keep legible meeting notes (for private meeting with gaining developers ahead of a major planning application) the ICO upheld appeals for legible disclosure, but a 7 months delay occurred between making the FOI request and the inevitable ICO adjudication in favour of the requester.

That is evidence of "gaming" the system as it stands, without further weakening of the appeals process or introducing further self-regulation by public bodies.

I cannot recall any FOI appeal that I have made to a Council that was refused and then appealed to the ICO, failing that appeal. Whilst the statistics show that 62% of public body refusals are upheld, I believe that the 38% that are NOT upheld and partial or full disclosure then takes place, may encompass many politically sensitive refusals and these are often of high community impact.

A 38% "failure rate" does not indicate that people are regularly making frivolous appeals to the ICO.

Given that Councils, especially larger ones, have considerable legal resources and can easily afford to support any refusal that the ICO fail to uphold to the First Tier Tribunal and even the Upper Tribunal, then I believe that for public and media FOI requesters, the appeal system should remain free at the point of need.

However, appeals by commercial requesters should be charged.

I have a clear example of a large Council using the appeal system to frustrate an inconvenient and politically sensitive FOI request. A citizen friend of mine was investigating a £400m controversial 10-year contract with IBM that Somerset County Council (SCC) signed "in the early hours of a Saturday morning" late September 2007.

The Senior Responsible Office (SRO) leading the project for this controversial contract (that was failing and in dispute by 2013) was also the Section 151 Treasurer, meaning that he "marked his own homework", when assessing financial risks to the Council from his own project.

My friend appealed to the FTT when SCC labelled him "vexatious" for seeking further information towards an appeal to his regulatory body CIPFA. This "vexatious" status then limited his democratic access to his own County Council and limited his rights as a local citizen and taxpayer. A very serious and arbitrary loss of democratic rights indeed.

The ICO were wrongly told by SCC that the regulatory body CIPFA appeal was closed, when in fact it was open at the time for a final appeal (and that information was available to SCC as well).

At the FTT my citizen friend very quickly had his appeal upheld and then his rights from the "vexatious" ruling by SCC restored. The case is here: http://www.informationtribunal.gov.uk/DBFiles/Decision/i690/20120301%20Decision%20EA20110224.pdf

Conclusion

For the foregoing reasons, the Tribunal finds that the Appellant's request was not vexatious. In particular, the Tribunal finds: that the request has a serious purpose and value; it would not impose a significant burden on the Council; it was not designed to cause disruption or annoyance; it does not have the effect of harassing the Council; and it cannot be characterised as obsessive.

The appeal is allowed. The Tribunal requires the Council to identify the Information sought by the Appellant and deal with it according to its responsibilities under and within the FOIA.

This case shows why the individuals need to have tribunal access free at the point of need, when large public bodies abuse their powers, to wrongly make a local citizen exercising his statutory rights "vexatious".

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?

I am a member of the public and a taxpaying citizen of the County of Somerset. I am a principled campaigner for openness and transparency in Local Government.
The overhead of FOI requests should be seen as a part of local democracy and not simply as a financial burden. Many FOI requests are a positive sign of public engagement with public bodies, especially with local councils where voter turnout is very low.

In Councils, the costs of allowances and expenses for elected Councillors far exceeds the FOI overhead, yet no-one claims that these democratic overhead costs are “a burden”.

Most Councils spend far more on public relations and external communication than they do on responding to FOI requests. The Director in charge of Somerset County Council’s public relations and communications receives an £85,000 salary!

My local Councils have suffered cuts of around 40% from 2010 (as a result of the 2008 banking crisis). The rise in FOI requests to local Councils since 2010 is, I believe, in part due these unprecedented 40% cuts and a desire to protect valued local services.

Vulnerable service users may not be have the resources or skills to be able to defend the services they receive, so FOI requests by advocates are an essential part of obtaining information to assess and if necessary contest controversial decisions.

My local council Somerset County Council (SCC) signed a controversial £400m 10-year outsourcing deal with IBM in 2007 for a joint venture run as a private limited company South West One (85% owned by IBM). IBM were also in partnership with Avon & Somerset Police (ASP) and my local District Council Taunton Deane (TDBC).

When the 3,000 page contract for the 10 year deal (with IBM for South West One) was signed in 2007, SCC repeatedly and publicly claimed savings of £192m would be made.

SCC and other public partners then shrouded the whole deal in secrecy and it was very difficult to obtain the true net savings as the contract progressed, once all contract letting, initial investment and contract charges had been included.

One FOI is never going to get to the bottom of complex outsourcing or “commissioning” of public services into the private sector, often over extended periods, where annual tracking of true performance via repeated FOI requests may be necessary to establish the true position each year over the contract term.

It took rounds of complex FOIs to SCC, ASP & TDBC (some repeated on an annual basis) to determine all of the costs involved in the South West One contract with IBM.

In particular, how much had been paid by each partner for a "poorly configured version" (description by an official audit report) of the SAP IT system and additional substantial charges by IBM for something opaquely labelled as "transformation".

There were constant and inappropriate uses by the public partners to FOI Act exemptions when FOIs on South West One (85% IBM owned) were made.

If an Internal Review did not result in disclosure, I appealed to the ICO and every appeal was upheld, apart from one (a deliberate test case to establish whether South West One Limited should be treated as a public body given bulk of income coming from public funding. Please see “Issue with scope of FOI review” below.

In comparison to the Councils, I found the culture at Avon & Somerset Police to be far less co-operative over information disclosure and that forced an inspection of accounts during the open period in 2011, where another £2m of hidden subsidy between SCC & ASP was uncovered.

By the time relations between SCC and IBM had broken down in 2013, resulting in a court case expensively settled out of court at a cost of £5m, I was able to determine that the contract had, rather than saving taxpayers £192m, paid IBM at least £53m more than had been saved.

Far from this controversial deal saving money for Somerset taxpayers, it had actually taken money out of hard-pressed frontline local services. This would not have emerged without the power to uncover the truth, which I obtained through the FOI Act.

Had each (absolutely necessary) FOI been charged over the six years of following this controversial contract, then I would not have been able to get to the bottom of a complex and long-term outsourcing deal.

Public bodies like large Councils have massive budgets, professional Legal and PR teams and are powerful organisations, whereas individuals have limited resources and power. The FOI Act helps redress that imbalance.

I would repeat that large Councils like SCC spend much more on PR and external communications staff and resources, than they do on answering FOIs.

Any shifting of power away from the individual to the public body as a result of a weakening of the FOI Act cannot be justified simply on cost grounds. It is a price worth paying for better scrutiny, transparency and openness.

To support openness and transparency, FOI from individuals or the news/media should NOT be charged.

The report states that FOI costs across "the wider public sector" are £11m. In 2012/13 the expenditure for Councils across England and Wales was £154 BILLION!

This makes the cost burden of FOI requests as a key part of democratic oversight in Councils a tiny proportion of cost of the public services they deliver and does NOT support charging for FOIs.

In a typical county or unitary council, the cost of servicing FOIs is tiny, when compared to the costs of providing social care services.

Again, any argument that resources of a handful of FOI staff could be diverted to frontline services is essentially spurious. No such argument is ever made against the costs of public relations, external communications and Council newsletters or Councillor allowances and expenses.

Another issue is that if a public body is operating to best practice in information management and record keeping, then most FOI requests should be covered by existing information held and retrieval should be relatively straightforward.

"The Commissioner's view is in accordance with the code of practice which resulted from section 46 of the Freedom of Information Act 2000. This covers the management of records by public authorities under the Act and EIR

http://webarchive.nationalarchives.gov.uk/20150730125042/http://www.justice.gov.uk/downloads/information-access-rights/foi/foisection-46-code-of-practice.pdf

Under the heading 'Importance of records management' it states the following:

Freedom of information legislation is only as good as the quality of the records and other information to which it provides access. Access rights are of limited value if information cannot be found when requested or, when found, cannot be relied upon as authoritative. Good records and information management benefits those requesting information because it provides some assurance that the information provided will be complete and reliable."

If the commission starts to consider "disproportionate burdens" then great care would need to be taken to ensure that public bodies with poor information management and record keeping practices are NOT rewarded for not recording and storing information for quick and effective retrieval.

All assessments for FOI costs and burdens should start from a baseline of best information management practice; time for any public body with sub-standard information management and record keeping practices to get to that baseline before responding to an FOI request should NOT count.

I do not support a change in determining the costs of disclosure by adding in time for redaction or consideration etc. Councils will simply create enough time for these activities, especially "consideration" to make many FOIs chargeable. This is against the open spirit of the original FOI Act legislation.

One area where charging could be valid, is where sales people from commercial companies or businesses are asking pre-sales questions to determine spend and when deals run out. The commission reports that 20% of FOI request are commercial, so could be chargeable.

Should each FOI requester declare that the information is NOT for commercial purposes and if it is, then a charge is levied?

Issue with the limited scope of this FOI Review

Many public services in local Councils and across the NHS are being outsourced or “commissioned” out. When that happens there is a considerable loss of democratic rights compared to public services run in-house by the public body.

In my local Council I can:

Vote every 4 years;

Stand as a Councillor at elections

Inspect papers, agendas and minutes before committee meetings;

Attend committee meetings and ask questions publicly (which have to be answered);

Contact my local Councillor to act for me on an issue;

Submit Freedom of Information (FOI) questions;

Inspect the accounts every year and ask questions (which have to be answered);

Exercise my statutory rights to appeal wrong doing to the District Auditor.
South West One Limited is a controversial joint venture in Somerset between IBM (85% shareholder) and Somerset County and Taunton Deane Borough Councils with the local Police (15% shareholders).

South West One receives virtually all of its income from the public purse and delivers public services, yet it is impossible for local taxpayers to:

Hold the Company to account for failing to deliver the “assured savings” or the audited “poorly configured” SAP IT system;

Attend any public part of a Board meetings (accepting commercially confidential information is excluded);

Ask public questions;

Ask elected Councillors to tell us what they have done or said when attending Board meetings as our elected representatives;

Publicly inspect and ask questions about the published Limited Company accounts;

Exercise the right to involve the District Auditor if wrong doing or fraud is suspected.
I believe that the FOI Act should be extended to private/limited companies that deliver public services that are publicly funded.

The omission of the scope of the FOI Act to cover private providers of public services that are publicly funded is something this Commission should address, to avoid a democratic deficit building up over time.

Yours sincerely,

David Orr

David Palfreyman

Reference the Call for Evidence dated 9/10/15...

I am the Bursar of and a Fellow of New College Oxford, and as the Bursar I am also the FOI Officer for College - and have been since the FOI Act was implemented.

Over that time I have seen some 10-2O FOI enquiries a year and am unable to recall a single one that might be said to touch upon any matter of significant public interest.

About half have been 'fishing' expeditions by commercial entities seeking to discover information about our IT suppliers, our catering contracts, our building contractors - in effect, misusing the Act as a form of commercial data-gathering and quasi-marketing. They are almost always generic enquiries to all UK universities and colleges.

Most of the rest are from journalists, and usually ones too lazy to check what data is already accessible within our Annual Report & Accounts or otherwise is at our website (say, concerning room rents and meal charges).

Occasionally they might be said, by some (and, of course, the student journalist concerned), to involve an issue of vital public interest - How many bottles are there in the Wine Cellars? What is the exact mix of alcohol types and quantities and value consumed by the students, by the Fellows, and by conference visitors? What were the annual expenses claimed by the key College Officers in each of the past five years? How many students have been disciplined and for what offences?

A few requests are from students and school-children undertaking academic projects and using the FOIA to gather data - thereby serving their personal educational interest. Similarly, very occasionally they come from academics engaged in research projects. One would anyway have wanted to assist those making these sorts of requests to an academic institution, but ends up resenting the use of the FOIA to, as it were, force a reply.

So, with reference specifically to your series of questions under Q6: No. Yes. Yes. Silly and vexatious and hardly-public-interest ones as above.

Suggested action? - adopt the New Zealand system for bona fide requests from individuals limited to their approaching a few specific relevant public bodies, and not where the email is addressed to (say) all UK universities; but, if possible, certainly block requests as 'fishing' by a commercial entities to public bodies en masse, and similarly preferably also those from journalists seeking an easy way to create a storey.

David Palfreyman, MA MBA LLB FRSA

David Pearce

Dear commission,

I would like to voice my support for FOI and strongly urge you to leave the Act as is.

It is a vital tool to journalists, think tanks and the third sector delivering immeasurable benefits and enhancing our democracy - sunlight is the best disinfectant.

I hope you recognise this and recommend the Act remains as is, it being fit for purpose. Please do not feel compelled to tinker with it.

Yours faithfully,

David Pearce

David Preston

A group of people fighting for the future of our local airport which was sold to a private group have tried on a number of occasions to access via the FOI act, information relating to the sale of the airport by the five local Councils that now make up the Tees Valley economic area. All applications have been refused on the grounds of third party security. Then with a further request it was said that it was also refused on the grounds that it could show the people who made that decision in an unfavorable light!

The airport owners , Peel, are slowly running the airport down while receiving public funding to open up land through building new roads which will benefit them; the local councils are being held to ransom as they fight to keep the 2 remaining scheduled flights following Peel's decision to refuse all holiday flights.

At the time of its sale to Peel it was said in the newspaper's that Peel would invest heavily in the airport; but instead they sold the airport to a Canadian group linked to them as they also did with Liverpool Airport changing the name from Teesside airport to Durham Tees Valley airport the name change never stuck as many road signs remain as Teesside to this day. That began the running down of the airport including the loss of the Heathrow connection and turning a near 1 million passengers to barely 250,000. Strangely Peel then bought the airport back using yet another of its 300+ companies (as it did Liverpool).

Peel even threatened to close the airport if the local councils would not take back responsibility for the pensions of staff that they gladly took on when they first bought the airport.

We are now in a situation where the politicians are spending millions to desperately keep one route to Amsterdam and one to Aberdeen going while the people of the Tees Valley get no real service from an airport sold off for very little money because of incompetent political governance led by the old regional (for region say Newcastle) One North East.

We should be able to access details of a sale that took place over 10 years ago yet which is still eating public funds with another £5 million already in the pipeline.

The FOI act needs to be strengthened and made more accessible for the public to, if not prevent, then at least make politicians and their officers more accountable for their actions and bring the truth to the public.s attention.

thank you

David Preston

David Rolls

Dear sir/madam,

The FOI act has been a positive influence on UK life and I speak as someone who has had to reply to inconvenient FOI requests and as someone who has since made life easier for a lot of people by making them.

If there is nothing to hide such requests are only a nuisance at worse. If there is something to hide then lack of ability to make such requests can have enormous adverse consequences. It really is as simple as that. Keep the ability to make such requests and the teeth to get them answered in the face of delay and procrastination.

Yours faithfully,

David Rolls

David Roper-Newman

Introduction

I am employed as an Information Governance Officer for a small district council. I have been in this role since April 2015. Prior to that I was employed as a civil servant in a senior position within one of the largest government departments. I had been a civil servant for over 40 years. In my last post in that department, I was responsible for the past nine years, inter alia, for providing responses to a range of external questions (on matters relating to security, including security of information), including drafting responses to requests dealt with under the FoI Act. Prior to that last post, I was familiar with the need to provide responses to requests and even in earlier positions provided responses to a small number of requests.

In my current role, I am expected to ensure that the Council meets its obligations (amongst others) under the FoI Act and the Environmental Information Regulations. This is a wider remit than in my previous job, but nevertheless, I have recognised that handling such requests has generic requirements and characteristics that apply across the entire public sector. Although I am not expected to provide responses for most routine cases (although I do for certain work areas), I have advised council officers on how they might reply to certain requests, I have offered advice when internal reviews have been requested, and I have also conducted a small number of such reviews myself. I have developed a new control process for the management of requests to ensure that they are dealt with promptly and within the statutory timescales, and I have also developed a series of draft letter templates for officers to use when replying to requests (these are also being used by another district council), and I have also written guidance for officers and also the Council's external website. I have also advised a small parish council within the authority's area that has been faced with some difficult requests for information.

I have also looked at requests for information that have been made to this authority over several years.

I have asked colleagues in the Council for contributions to respond to the Call for Evidence. I have only received one response, which I guess is because colleagues are very focused on delivering the day job. Therefore the following answers are largely from my own personal perspective, but coloured from experiences in my previous and present roles. I have not been able to pass these comments by anyone senior in the authority, so they cannot be regarded as speaking on behalf of my Council, but nevertheless I hope that my answers reflect what I believe colleagues in my authority would say.

I have also seen the Information Commissioner's response to the Call for Evidence, and some of my comments take account of his answers to the specific questions.

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

I believe that there should be protection for internal discussions by public authorities. In local government and other non-central government organisations, this is conferred by S.36. However, for a lot of smaller organisations, making decisions over whether a specific internal communication should be disclosed can be a time consuming and onerous process. The current section of the Act requires that a legally qualified person makes the decision in a particular case. In some very small authorities, for example parish and town councils, they

may not have a person sufficiently qualified or experience in dealing with cases which engage with S.36, and it would require disproportionate resources to determine such cases. Overall, I believe that internal deliberations by an organisation outside of central government should be absolutely exempt from disclosure otherwise free and frank discussions by the organisation will be inhibited. Giving an absolute exemption to such internal discussions will enable free and frank discussion (and a safe space) of the issues of a particular case by officials of the organisation, and this has surely to be in the public interest.

As an alternative, I suggest that the section be put on a similar basis to the Environmental Information Regulations (EIR) Regulation 12 (4) (e), which does not require decisions to be made by a qualified person.

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

For similar reasons to those given in the answer to Question 1, I do not believe that Cabinet discussions should be disclosed (at least for 30 years), otherwise there is no safe space to allow elected representatives a safe space for the candid and open exchange of views, which must itself, be in the greater public interest.

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

In a number of cases that I have been involved in, where a request for information has been received asking for details of the organisations assessment of risks, or its means of protecting, say information, it has been necessary to consider these requests in terms of S.31 (usually against the prevention or detection of crime). This seems to be an inappropriate approach because we are in effect shoe-horning the request against the particular Section of the Act, when in fact there should be specific provision in the law dealing with assessment of risks. It seems fairly obvious that any assessment of risks of a particular process, threats, or vulnerabilities, should not normally be disclosed, because to do so would lead to the likelihood that someone willing to commit some mischief will try to test out the organisation's measures to protect against those risk(s). In any set of circumstances this cannot be in the public interest. As things currently stand, because there is no single provision in the legislation, different organisations are likely to deal with risk assessment in many different ways.

I would prefer to see (preferably) an absolute exemption covering risk assessment, particularly where vulnerabilities or threats have been identified, and the assessment covers the organisation's approaches to dealing with or responding to) these.

Again the EIR approaches this in a more specific manner than the Act, in Regulation 12 (5) with the reference to 'adversely affect'. This could be adapted for inclusion in the Act in relation to assessments of risk.

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?

I believe that the executive should be able to exercise a veto in limited cases, but the purpose of veto is to prevent. Therefore, the exercise of a veto should not be subject to any review by the Information Commissioner, although exposure to JR should continue.

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

There clearly needs to be some form of independent process to regulate the Act. I do wonder whether the current arrangement which allows the ICO to supervise the Data Protection Act, Freedom of Information Act, PECR, EIR, and the RPSI sits well together, given that this will create conflicting priorities. I know that the ICO has struggled with the weight of its caseload, particularly in the handling of complaints relating to the DPA (and continues to do so), and it may be that the responsibilities for FoI and EIR could be transferred to a separate regulator.

However, the presence of an independent regulator to give advice, in the way that the ICO has done over many years, is essential.

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?

Since the Freedom of Information Act was introduced, the overall climate in the public sector has changed significantly. The Act was introduced to allow members of the public to obtain information from public bodies on the discharge of their functions. Many of the requests I have seen over several years, are not from ordinary members of the public, but are from commercial organisations seeking to sell products, researchers of political organisations, and on occasion, persons who are seeking simply to cause mischief or disruption to the particular authority. When the Act was introduced, I believe that it was assumed that providing responses would be incidental to the public sector's delivery of business. Some 15 years later, the provision of responses has become an industry in itself, there are websites dedicated to publicising responses to requests (whatdotheyknow.com), and the handling of responses has become a skill in itself, with some training bodies developing practitioner's qualifications. I am sure that the original legislators never intended these consequences.

Although the Information Commissioner has pointed to the ability to deflect vexatious requests this hardly deals with the problem of commercial organisations seeking information, which appear to be motivated from their (commercial) rather than public interests.

For large organisations such as my former employer, dealing with requests for information can be managed more readily than for say a small authority, such as a parish or town council, which may be run largely by volunteers and does not have extensive legal and administrative resources at its disposal.

The question of internal reviews also deserves a mention. For very small organisations such as parish councils, finding an appropriate person to conduct an internal review may be problematic, and yet the (outdated) Code of Practice covering reviews makes no allowance for this problem. I would be inclined to remove the right of internal review where the organisation is a parish or town council, or a very small public authority (and allow direct appeal to the ICO).

I do not believe that excluding small organisations from inclusion in the FoI regime is in the public interest. However I recognise that handling a Freedom of Information request for small organisations can impose an unfair and significant burden on such small organisations.

I have to say that from recollection a large proportion of the requests I dealt with in my previous organisation originated either from political researchers, or media organisations – very rarely from a member of the public. In my present role, a large proportion of requests are clearly from commercial organisations, and a smaller proportion from members of the public (relating to very specific issues), and occasionally the media. I do not necessarily agree with the ICO's conclusions that the public are the largest category of users making requests based on the research published as the preamble to the report cited in his response says:

The response rate was low, with 60 completed surveys. While this has provided a unique insight, the survey is not statistically significant nor, indeed, representative and should not be regarded as such.

So only a relatively small minority of local authorities replied to that research, and while the report was published in late 2011, some of the data related to 2009.

I believe that some reasonable charging for requests should be introduced. I do not think that differential rates of charging for different types of response is appropriate however, as this will in itself create administrative burdens for authorities. I am concerned that introducing any charge will have a deterrent effect on members of the public making entirely reasonable requests for information, the present burden on public authorities is such that introducing a charge for replying to requests is also reasonable. However I don't believe that it would be reasonable to introduce differing charges for members of the public or commercial organisations, as it would be easy for a company to masquerade as a member of the public by using a personal email address for example.

For small organisations, such as parish and town councils (where there are few employees or the service is provided by volunteers), where the impact of a request can be onerous, I suggest that the authority is able to charge £50-£60 for each request, which will go some way to defraying the costs of responding to the request and will act a deterrent to those intent on seeking to disrupt the authorities' business.

For all other public authorities, I suggest that the charge should be limited to £30.

Charges should be paid before the authority replies.

Note that I recognise that requests for information under the DPA – Subject Access Requests an authority can charge up to £10, but that modest payment is clearly for an individual's personal data. .

I acknowledge that this will pose a burden for organisations in collecting payment, but it will also have the effect of discouraging large numbers of 'round robin' requests that are sent by many organisations on a 'scatter-gun' basis, with no regard to the impact on the organisation's size or ability to respond.

As the Information Commissioner has commented, while the Act can allow challenges to public authorities, checks and balances are now needed to ensure that challenges are proportionate, when viewed against all the other services that the authority has to deliver, especially when resources are scarce. But I do not agree with the Commissioner that there are currently sufficient checks and balances that achieve this aim.

I hope that these comments are helpful, and I am happy to be contacted if you require any further information.

David Roper-Newman

Dave Whyte.

EVIDENCE ON BEHALF OF THE FREEDOM OF INFORMATION ACT

Sir,

I have been using the Freedom of Information Act since its introduction and I am against any legislation to reduce the effectiveness of this Act. Indeed, legislation is required to make the act more effective.

I have dealt with the Ministry of Defence in relation to my participation in the British Nuclear Trials, only to discover, the intense dislike the Ministry have to produce any valuable evidence. Perhaps legislation should be introduced to ensure that questions are answered fully and truthfully.

At present there is an element of Staff within the Ministry of defence that can only be described as 'Inveterate Liars' e.g. I requested information on the levels of radiation at ground zero 2 hours and 4 hours after the detonation of Atomic Bombs Pennant and Burgee. In 2008 I received a Graph showing the decay rate of radiation at ground zero after both Pennant and Burgee bombs but there was no radiation scale to determine the levels of radiation present. I was eventually instructed to purchase the publication ES1/602 (Operation Grapple Z – Interim Report) to answer all of my questions. When I made the request to purchase this publication I was informed 'It was not for sale!'

Records show that this document was supposedly released for sale in 2006, but it was late 2011 that I was finally able to purchase a copy. ES1/602 contains 190 pages in its original state; I received '79 pages'. When questioned at the First Tier Tribunal (EA2011/0178) the Ministry of Defence expert Witness stated that the missing 111 pages must have been restricted. There was no information in the 79 pages received that were relevant to my questions. It was only, due to the expertise of Judge Chris Ryan, that the documents required were finally delivered from the Ministry of Defence with an apology. Without the Freedom of Information Act, this information would never have been released.

In 1998 at the European Court of Human Rights at Strasbourg, during the case between McGinley and Egan V the United Kingdom, paragraph 100 of the Judgement read: "The Court recalls that the Government have asserted that there was no pressing National Security reason for retaining information relating to radiation levels on Christmas Island following the tests." This statement, made by the British Government, gave their assurances that information relating to radiation levels would be released. They lied!

What chance would a Member of the British Public have in obtaining proof of any misdemeanour committed by the Government or other Public Department with the rescindment of the Freedom of Information Act?

Dave Whyte.

Deborah King

Dear FOI commission,

I have written some unpaid articles for our local newspaper, the Uxbridge Gazette, to get a portfolio of work for a journalism course I was doing. I have needed to use the FOIA to get information to write articles about. One of the stories made front page news so must have been newsworthy.

I could not have afforded to pay for the requests.

I do not think the act should be amended to restrict the right to access information.

Yours faithfully

Deborah King

Deborah Mahoudieh

The McKenzie Angels acting on behalf of the British Citizens of Europe, here present our case reflecting our lawful and reasonable concerns on the issue of the British Family Court's ability to guarantee the safety of children they place in both state-run and private child care and also, the accountability of those same Courts when risks are realised via actual child suffering.

Below is a list of the documents we present in evidence to support our lawful suspicions and concerns as outlined above. We submit these documents as; relevant to-date, lawfully valid, and, officially and professionally recognised and endorsed:

A: Law of Probability
http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080611/child-1.htm

B1 & B2: Missing in Care
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419144/Missing_children.pdf
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117793/missing-persons-strategy.pdf

C: Unwitting Incest: Forced Adoptions
http://news.bbc.co.uk/1/hi/7182817.stm

D: Deaths in State Care
http://www.thejournal.ie/deaths-children-state-care-preventable-hse-official-report-494026-Jun2012/

E: High Court Precedent: Adoptive Returnee
http://www.familylawweek.co.uk/site.aspx?i=ed146290
http://www.theguardian.com/society/2015/aug/11/adopted-girl-wins-right-to-return-to-biological-family-after-abuse

F: Child Abuse in Care
http://www.familylawweek.co.uk/site.aspx?i=ed146290

G: Ray Jones: Dangers of Unregulated, Private Child Care Providers
http://www.communitycare.co.uk/2015/01/07/stealth-privatisation-childrens-services/

H: High Court Precedent: Onus of Proof, Expert Dismissal & Retractions
http://www.bailii.org/ew/cases/EWFC/HCJ/2015/26.html

I: EU CP Directives.
http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443149158125&uri=CELEX%3A32011L0093

J: UN CP Committee Report 2014
http://www.un.org/ga/search/view_doc.asp?symbol=CRC/C/OPSC/GBR/CO/1

K: Behavioural Problems of Children in Care
http://www.u.tv/News/2015/10/01/Behavioural-problems-in-40-of-children-in-care-46051

L: Leaving State Care
http://www.york.ac.uk/inst/spru/research/pdf/leaving.pdf

M: Child Identity
http://study.com/academy/lesson/self-identity-in-children-theory-definition-issues.html

N: False Allegations of Abuse
http://www.leadershipcouncil.org/1/res/csa-acc.html

O: Child Safety UK: CRISIS REPORT
https://mckenzies4fairness.files.wordpress.com/2015/10/15-10-25-crisis-report.pdf

P: The Child Protection System in England Written evidence submitted by Ian Joseph
http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeduc/writev/1514/cp09.htm

Q: UK MP Report: Endemic Abuse
http://www.bbc.co.uk/news/uk-england-south-yorkshire-30083835
Determining the Risks

1) First we refer to the law of probability as defined in Document A:

'Balance of Probability as Required Level of Proof
24. Re B [2008] UKHL 35: "The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A step-father is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."'

2) According to evidence presented via professional Reports, Studies Court Precedents and concerns as listed above, we as representatives of the British public as EU Citizens, in all probability and in interest of Child Safety and Protection, are criminally negligent should we, in light of all aforementioned evidence, choose to minimise or ignore the fundamental risks now publicly exposed.

3) The risks are real, which means our resulting suspicions and concerns are entirely lawful and therefore, in interests of assuring Child Safety to the highest possible degree as is the fundamental duty of the UK Family Courts, we request that immediate steps are taken to address and resolve all of the concerns as highlighted herein.

4) Identifying Risks

A: Incest Risk

4) Risk of unwitting incestual relations between forcibly adopted and/or separated siblings and related family: Note we have provided just one example of many, as evidence related to this via Document C; we ask the Respondents to take into account that many such similar cases are undiscovered and/or unreported due to desires for privacy due to possible negative public responses toward individual parties involved and/or against any children conceived via such relationships: We thereby, lawfully conclude that the scale of the problem is very probably, much bigger than is presently, officially recognised.

5) The Law is founded on what we know and on what we may lawfully suspect according to what we know; we know that forcibly adopted siblings living under different names can and do meet each other and/or related 1st cousins, aunts and uncles, as 'strangers' in adulthood and commit to sexual relations with one another. The risk continues with future children of those siblings and we are aware of the genetic defects related to children born as a result of incest, the most common of which, relates to 'learning difficulties'.

6) Such risks are greatly amplified the larger the family being separated i.e. 3, 4, 5 or more children. Since many sibling groups are presently being systematically separated into foster care and with 31% of these being placed into forced adoption; what measures are Britain's Family Courts taking to ensure that all such separated siblings do not suffer the risk of unwitting sexual relations with their external families, siblings and/or their siblings children?

B) Emotional Risk

7) Emotional risk of damage caused by forced separation of siblings: The risk here is related to loss of identity as it is known that children identify themselves in role of 'brother' or 'sister' as soon as a new family member is born.

8) A child's developing psychology is very fragile and such self-indentification as established in relation to their role as older or younger, brother or sister represents a psychological building block on which a child's accepted identity is founded, any external denial of or disruptions to that identity will result in a sense of loss and grief and thereby, weaken the child's identity and his/her subsequent sense-of-self in growing up into adulthood and only because, in the case of state-enforced separation, there is no valid reason (unless a sibling is a serious danger to their sibling) which a child can understand, as to why they can no longer be a sister or a brother.

9) Here we refer to Document M:

'Working through much of the 20th century, Erik Erikson is most famous for developing his psychosocial theory of identity development. Erikson argued that development occurs in stages and is greatly influenced by one's interactions with their environment. In his theory, there are eight stages, though for the purposes of discussing children, we'll only cover the first five.

Erikson framed each stage around a 'crisis' that occurs, and development is affected by how the crisis is resolved. During any single stage, a child is grappling with their identity and may bounce back and forth between extremes. For example, during the second stage, a toddler may feel very autonomous about some things, such as their ability to feed themselves, but when encountering something new and scary, they may feel great doubt about their abilities.

Chart of Erikson

In order to help children cope with these challenges parents and teachers can support them in a number of ways:

Provide children with opportunities to complete tasks independently.
Allow children to make their own decisions when appropriate.
Allow children to design their own activities or incorporate their feedback.'

10) All of the above applies also, to a child's sense of self as gained via relationship with parents and external family, especially grandparents and cousins. While in circumstances of actual abuse, the child's sense of self is damaged; in cases of 'future emotional risk', the child as yet, has suffered no actual damage to their sense of self via their parent and indeed, instinctlively clings to the security and trust they naturally invest in their parents: Explaining to such a child that they must say goodbye to parents and all related external family forever because Mum or Dad MIGHT harm them emotionally in the future, does not in any way, support a child's sense of 'justice' and this negation of actually, damaged emotions a child experiences on forced separation, dramatically negates (in the eyes of the child) the concerns of the Sate relating to a 'future' emotional risk'.

11) To a child who has as yet, suffered NO actual harm or abuse; being forcibly removed from the family home and handed over to strangers by strangers, is the absolute worst horror any child could imagine.

12) Such actions as committed daily on behest of the Family Courts are not only causing children unneccessary and severe emotional damage they are also, a criminal violation of British citizens Human Rights and rights to a fair trial in the sense that a high percentage of children are essentially, illegally abducted on grounds of ONLY a 'future emotional risk' (with no crime actually proven to have been committed or else, no legally identified risk via conviction i.e. named on the 'sex-offender's' register), a risk that is used to justify the ACTUAL emotional harming of children who have NOT suffered abuse and who do NOT need 'rescuing'.

13) How does the child 'rescued' from a 'future emotional risk' FEEL to be dragged away from their beloved parents, siblings, friends and family? Do they feel rescued or kidnapped?

14) The overall impact is on the separated child and siblings diminished ability and willingness to trust in authorities and/or to commit to adult relationships in adult life; trust and security are often, seriously negated.

15) All such underlying problems will manifest in a variety of seemingly unrelated behavioural problems such as anger, violence, vandalsim, abscontion, theft, self harm, perjury and suicide.

16) Document K highlights the fact that 40% of children in State and state-endorsed private care, are suffering from behavioural problems.

17) Since the majority of all children placed in State Care are most commonly separated from family and siblings to protect them from harm and/or risk of harm, the fact that such children are exhibiting a professionally identified, very high rate of behavioural problems, is direct evidence that all such children are in some way damaged by the very mechanisms employed by the present Family Court protocols in placing children into State and private Care and/or, that State & Private Care authorities are not adequately addressing or diminishing behavioural problems in the children they are protecting.

18) Certainly, children who consider themselves 'victims' of the Family Courts and their child care providers, will not be responding favourably to Foster Carers etc., who are naturally, percieved as an 'enemy' instead of a 'carer': Such circumstances do not predict peaceful compliancy on part of a forcibly removed child whose wishes are rarely if ever, taken into account.

C: Future Risk of Social Disadvantage

19) Here we refer to Document L in ackowledging the very serious disadvantages children face on leaving State Care as young adults, we note with dismay the very low rate of entrance into higher education and low employment rate among all such youngsters:

20) 'Research undertaken since 1990 has provided a broader range of evidence based on larger scale surveys of care leavers and in-depth studies of the leaving care process. It identified both the accelerated and compressed nature of young people's transitions from care when compared to the wider population of young people. Most young people were found to leave care before the age of 18 (Biehal et al., 1992; Garnett, 1992) and that learning to manage a home, establishing a place in the labour market and starting a family tended to overlap in the period soon after leaving care (Biehal et al., 1995; Corlyon and McGuire, 1997). In relation to education and employment, care leavers were found to be particularly disadvantaged. Only a minority gained qualifications and around one half were likely to be unemployed after leaving care (Biehal et al., 1995; Broad, 1998). In this respect, evidence also pointed to a legacy from care into adulthood (Cheung and Heath, 1994). In consequence many care leavers were surviving on low incomes and were often financially dependent (Broad, 1998).

21) Since as 'Carer' the State is required to provide for children as would a parent, why is there so little provision toward enabling children in State Care to enter Higher Education? No funding for college? No funding for University? No help with learning to drive, establish a home etc?

D) Risk of Psychological, Physical and Sexual Abuse & Death

22) Here we refer to Documents F & B: In relation to Document F, we note first, the authors comment in the summary of their Report:

> 'Our findings are likely to underestimate the true extent of the problem, as over half of unsubstantiated allegations could not be proven one way or the other.
> Allegations that are unsubstantiated due to a lack of evidence can pose serious dilemmas to practitioners trying to decide on a safe course of action for the child. It is important (whenever it is considered safe) that some time is taken (in conjunction with colleagues) to carefully weigh the evidence in individual cases in an effort to avoid precipitate action.
> Further work is needed to understand the variation that was found between countries and local authorities in rates of abuse or neglect in foster care.'

23) We note also, with immense concern that some of the children identified as suffering serious abuse in this report, were discovered only AFTER, earlier victims had reported historical abuse committed against them by those specific State authorised carers and/or adoptive parents.

24) We very strongly agree that the above Report vastly underestimates the true extent of children suffering physical and sexual abuse while in State Care or forced adoption and to degrees of psychological and emotional abuse, which would not be normally tolerated to be committed by a biological parent.

D2) Lack of Directives

26) To support our lawful suspicion and opinion, we refer to the fact that UN & EU Child Protection Directives are presently, largely ignored by British Family Courts: See Documents I & J.

27) According to the Directives, onus of proof is reversed which means a child's allegations of abuse are lawfully believed until the suspects concerned can prove their innocence.

28) According to the Directives, every child reporting abuse or crime needs an independent legal representative/guardian.

29) According to the Directives, retractions of a child's allegations are not sufficient evidence to support the closing of a case.

30) According to the Directives, medical evidence supporting a child witness testimony will fundamentally nullify any retractions and insist on further investigations.

31) We here ask the Respondents to equally accept the validity and professional and legally recognised status of the EU & UN CP Directives, as lawful evidence which highlights and supports all of the concerns we reflect in our submissions related to this case.

32) We here ask that in the event of the Respondents refusal to accept the legal validity of EU Child Protection Directives, the Respondents provide an equally valid set of Directives and/or a lawfully and professionally recognised weight of evidence to support their dismissal of those Directives.

33) Regardless of British Child Protection Providers collective ignorance of the EU Child Protection Directives, the lawful fact remains that British children are legally recognised EU Citizens and therefore, have a legal right to protection from and prevention of, crimes against themselves as identfied and addressed by the EU CP Directives.

34) The lawful fact is, that British children are placed at very serious risk precisely because EU CP Directives are not in place; children have no guarantee of safety within a legal climate which commonly dismisses the child's right to be believed, their right to an independent legal representative and which instead, invites retractions as 'justification' for closing a report of abuse; a report which is then labelled as "false".

35) We can instantly recognise the risk here in relation to an isolated child's vulnerable position and the 'fear factor' (as identified by EU CP Directives in Section 26). When we weigh up the power imbalance between an isolated child in care reporting genuine abuse and/or emotional harm or neglect and along with the absolute lack of child protections directives in place, is it any wonder that a high portion of allegations are revealed to be dismissed as 'false' or 'unsubstantiated'?

36) We witness how in such an ethos of inviting 'retractions' and the burden of proof placed on child witnesses, the amount of 'false-allegations' begins to mount and which itself, is then used as 'evidence' to support a resulting false supposition that British children are 'commonly' falsely reporting abuse when in reality, the very opposite is true; with only 10% of reports statistically proven false and, taking into account the commonly, very low rates of reports, we can instantly realise the issue of 'fase-allegations' is a minor concern in relation to the extent of the crimes and the very low rate of arrests and convictions: See Document N.

37) How many children do not have opportunity or courage to report abuse they are suffering in care? Lawfully, we need to take this into account.

38) With no independent legal guardians to look out for children's interests while in State Care or forced adoption, it is against the very foundation of child protection law to negate the aforementioned concerns as either 'minimal' or as an 'acceptable level of risk'.

D3) Court Precedents: Evidence of Negligence In Assessing Child Safety

39) ALL of the concerns, testimonies and risks shared here, are supported by legal evidence and Court Judgements/Precedents: We remind the Respondents of Justice Pauffley's comment in relation to her decision to return a forcibly adopted child to her Mother and who had suffered extradition abroad to strangers where she endured 10 years of extreme abuse: See Document E:

40) According to Justice Pauffley, this was something "no professional involved at the time could envisage".
http://www.theguardian.com/society/2015/aug/11/adopted-girl-wins-right-to-return-to-biological-family-after-abuse

41) A forcibly adopted child suffered extradition into the care of strangers, to Ghana where she suffered “extreme” abuse.
HOW could that happen?
WHY was no one following up on that adopted child’s progress and welfare?
WHY did the Judge not bother to address the very serious risk her case has exposed?

Is this case not equally as important a Precedent as that of 'Baby P'?

42) Unfortunately, directly because this terrible tragedy of justice has happened to this one and many other children as are legally documented; abuse of children while in care of other official parties, is now something that every parent losing a child to State Care and every professional involved in placing children into care, are now lawfully required to envisage.

43) We now refer to the recent High Court Precedents as outlined here, by Justice Pauffley's judgement on the case example below which was heard publicly and specifically, in order to determine any true risks to child safety whereby further police investigations would be initiated or else, denied: See Document H
http://www.bailii.org/ew/cases/EWFC/HCJ/2015/26.html

44) We here, highlight our concerns that while the medical expert in the aforementioned case, upheld her findings of long-term repeated sexual abuse of two children in giving professional evidence to the High Court, her expert conclusions were dismissed as the opinions of an "over dogmatic expert" and there was no medical evidence presented to conclusively prove her findings as false as is required by EU CP Directives: See extracts below from paragraphs 130 & 132 as quoted from Document H

45) 'Dr Hodes' very last report – of 5 February 2015 – was written in response to written questions. She states that "the overall situation is such that it is my view that the allegations / accounts need to be taken very seriously despite the confusing picture."p130.
'[Justice Pauffley concludes]: 'Overall, I feel impelled to observe that the level of Dr Hodes' involvement in this case was unusual.

[Why is a medical expert's involvement in a child sexual abuse case desrcibed by a High Court Judge as; "UNUSUAL"?]

'I remind myself of the several cautionary considerations when a court is considering the contributions made by experts as comprised within Re U; Re B [2004] EWCA Civ 567 – i) The cause of an injury or an episode that cannot be explained scientifically remains

equivocal. … iv) The court must always be on guard against the over-dogmatic expert, the expert whose reputation or amour propre is at stake, or the expert who has developed a scientific prejudice.' p132

46) In such a legal-climate whereby serious risks posed by multiple professionals working within all areas of child protection, who are directly alleged to be involved in serious crimes against multiple children, including murder; allegations supported by testimony of two child witnesses and with professional medical evidence supporting BOTH child testimonies, that are given the 'benefit of doubt' on grounds of *'retractions' given while in care of alleged abusers, who are subsequently, left free from police investigations; no child in State Authorised Care care has any reasonable guarantee of safety.

*Retractions are unacceptable according to EU Child Protection Directives and this is due entirely, to the fact that permitting retractions as 'evidence' to halt investigations into serious crimes against children, is to legally 'invite' further abuse of children in persuading them to lie and thereby, leave other children at risk too: Allowing retractions places undue pressure on child witnesses and therefore, places them at risk.

47) To all intents and purposes, the above UK High Court Judgement as referred to via Document H, is in lawful fact, an abomination of the very Justice that EU Child Protection Directives seek to provide for the children of Europe.

See Directive 26 of EU CP Directives/Document I:
48) 'Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing sexual abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, their initiation should not depend, in principle, on a report or accusation made by the victim or by his or her representative. The length of the sufficient period of time for prosecution should be determined in accordance with national law.'

D4) Risk of Absontion Or Going Missing From State Care
49) We refer here to Documents B1 & B2 as identifying and highlighting the risks associated with children who abscond or go missing while in State Care:

50) 'Inspectors saw evidence of some tenacious partnership working across relevant agencies to safeguard children at risk of going missing. Information was generally shared effectively when children were reported missing and there were some persistent efforts by professionals to engage children.

However, some inconsistency and gaps in practice meant that professionals were not always fully attuned to the needs of children who went missing. For example, it was not often clear whether checks, usually undertaken by police officers, to ensure that children were safe and well after returning home had been undertaken. When they had been, the outcomes of the checks were often not routinely shared with carers and professionals.

Similarly, more in-depth return interviews with children by an independent person to explore the reasons why they had run away and to identify any support needs were rarely evident. Updated risk management plans that identified specific actions to be taken to prevent children from running away and to keep them safe were rarely evident in the cases seen by inspectors.

The lack of routine attention to learning from the experiences of children also contributed to a generally weak understanding at a senior level of the reasons why children go missing. Strategic planning of services to reduce the number of children who go missing was

underdeveloped in most local authorities and was hindered further by some poor record management and unreliable data systems.'

51) Since we are thoroughly aware that a child's repeated abscontion from their prime carer is a sign that there is a problem related to that prime carer, it is a dismay to note that again, lack of independent guardianship is placing children at risk by leaving them the only option of putting themselves at greater risk of exploitation and abuse, by running away. Even, on being found, their clearly, unresolved issues are left unaddressed inasmuch as rarely, is anyone in authority much interested in WHY the child chose to abscond.

52) In event of a child attempting to flee abusive carers, on being found, it is the child who is deemed 'wrong' for running away while his/her abusers remain trusted by those same authorities as a care-provider or adoptive parent: We need to accept that when children flee their homes or carers it is MOST PROBABLY because something is wrong either at home or else, they are subject to criminal and/or 'grooming' influences from an external party.

53) All of the above concerns are magnified by the fact that many of the by-now, privatised child care providers are largely unregulated and accountable only by subject of contract to local Authorities: See Document G:

Considerable risk'

54) 'No other country anywhere allows decisions about the protection of children to be contracted outside of public services and the state's immediate responsibility...
'...In England what is intended by the government is even more extreme. Not only is it planned that these companies should be able to get the contracts. It is also intended that they will not be registered, regulated or inspected when providing these services.
...Nowhere else takes the considerable risk of these services only being accountable back to the government or local authorities through a contract. Why not? Well just look at how G4S, SERCO, A4e, and ATOS have let down the public so badly on their expensive profit-generating contracts...
Is it sensible to place child protection and other children's social services in the same jeopardy?'
Ray Jones, Professor of social work at Kingston University and St George's, University of London

Determining Factors For Child Protection

55) While there are many indications to suggest a child is suffering abuse and most especially if a child reports abuse to adults and local authorities, again, we find lack of EU CP Directives dramatically diminishes authority responses to those crimes except, where those concerns are related to instant removal of children deemed 'at risk' from a depressed parent who has asked for help from Social services or else, a parent and children who are identified by Social Services as suffering repeated harassment from a separated, divorced or estranged partner.

56) We note the reluctance to remove hostile parties from the family home and/or to charge such individuals according to the actual crimes they have committed and/or to identify any obvious mental health issues or drug & alcohol addictions.

57) Why are police referring incidents of breaking and entering, verbal and physical abuse against an ex-partner, to Social Services? Does being a partner or an ex-partner give an individual the 'right' to break the law? If Social Services are involved to help the victim and children, how can it be considered 'helping' to then remove the children from their non-

abusive parent and thereby expose those children to all the greater risks as are expressed in this Report?

58) Below are a few extracts from Document O with accompanying links of evidence, all of which highlight our concerns:

59) 'In dismissing two child witness testimonies [as shared previously via Document H], over 1,000+ incidents of serious child abuse against over a possible/probable 1,000+ children are also, dismissed; how can we fail to compare the lack of professional bodies assigned to investigating actual reports of child abuse by children, to the amount of police and professionals involved in removing baby and children into forced-adoptions when a Mum is judged a 'future-emotional-risk' because she's suffering POST NATAL DEPRESSION ?

'Mother whose children were taken for adoption joins class action

'When 'Alison' developed post natal depression she pleaded for help from those she thought were there to assist her.

But instead of gaining support she ended up losing custody of her three beloved daughters. Social workers said the children were at risk of suffering "emotional abuse", even though they conceded that she cared deeply for them and had worked hard to be a better parent.

Now the 22-year-old, whose real name cannot be used for legal reasons, is pregnant for a fourth time and is terrified that social workers will refuse to give her the chance of caring for the new baby once it is born.'

http://www.telegraph.co.uk/news/uknews/law-and-order/7840835/Mother-whose-children-were-taken-for-adoption-joins-class-action.html

'Social services took my children
Eileen Fairweather has investigated child care scandals for the past 20 years. But even she was shocked by the way an increasingly Stalinist state has torn apart one woman's family.
http://www.telegraph.co.uk/women/mother-tongue/8349748/Social-services-took-my-children.html

'The 'experts' who break up families: The terrifying story of the prospective MP branded an unfit mother by experts who'd never met her - a nightmare shared by many other families
http://www.dailymail.co.uk/news/article-2121886/The-experts-break-families-The-terrifying-story-prospective-MP-branded-unfit-mother-experts-whod-met--nightmare-shared-families.html#ixzz3odR1IOQM

'Is there NO treatment for Post Natal Depression? Do women NEVER recover from it? Is it HELPING to remove a mother's newborn baby and children permanently from her life? Can no one see the irony, that the long-known after effects of childbirth on a mother's psyche, are being used as 'justification' for removing her baby into a focred adoption?

'We are deeply disturbed that many lone parents are now too afraid to ask for help for depression, or to report sexual abuse of their children because they now KNOW, they are likely to lose their children.

'This fear that social services will come and take your children... (Mumsnet group-discussion; 643 Posts)

'I have recently worked with a young Mum who took ages tp seek help for her terrible PND because her Mum told her that if she was on antidepressants her shit of a boyfriend (who

physically, emotionally and psychologically abused her) would be able to get custody of their two children hmm. Or that social services would be round.
It took me an awful lot of visiting and listening and discussion before she felt able to seek the help she needed. An awful lot of reassurance that she was brilliant mum doing a fantastic job before she could believe me.
Now she is better - on antidepressants but weaning off.
Definitely needs discussion.' *Anon.

'Negative feelings can pass, but if you tell the authorities what you're feeling at your lowest of low (for example I admitted my baby didn't feel like mine when suffering exhaustion and going cold turkey from breastfeeding) that exact thing I said which I didn't even necessarily feel a day or week later, was used against me in court an entire year later and it contributed to the judge taking my son.
I thought if I told social services the worst of how I felt that they would HELP and give me some respite and support.
It was the biggest mistake of my life trusting them.' *Anon.
http://www.mumsnet.com/Talk/feeling_depressed/903685-This-fear-that-social-services-will-come-and-take-your/AllOnOnePage

*Please note that many parents discussing their experiences above, have no choice but to remain anonymous because discussing their case in public can lead to loss of any remaining children in their care and/or automatic imprisonment by order of the Family Courts.

'The myth that abused children grow up to reabuse needs also, to be dispelled;
'Fact: The majority of sexually abused children are female, and yet the majority of sexual abusers are male. Some studies have found that sexually abusive men are more likely to report a history of sexual abuse than other men. However, the majority of men who sexually abuse children do not report being sexually abused in childhood.'
http://www.asca.org.au/WHAT-WE-DO/Resources/General-Information/Myths-about-child-abuse

'The above is an important point because it is now a matter-of-fact that many British parents are losing their children to forced-adoption on the grounds of 'future-emotional-risk', a 'risk' which can be determined PURELY, on the grounds that the parent themselves, suffered abuse as a child.

'We note with alarm, how the insidious threat of losing one's children to forced-adoption will undoubtedly, lead to a dramatic reduction in adults reporting crimes of historical abuse they suffered as children and who subsequently, fail to receive necessary, therapeutic help and/or compensation and with the risk that abusers remain free in their jobs as teachers etc.

'We witness the same approach to women suffering domestic abuse and again, we note with concern the impact in terms of more women and children silently tolerating domestic violence because if they ask for help, they risk losing their children.

'Children of domestic abuse victims increasingly being taken into care
http://www.theguardian.com/society/2014/jan/15/children-domestic-violence-parents-care '

60) It is a major concern to witness the manner in which serious crimes of breaking and entering, verbal abuse, harassment and assault even against long estranged partners who live separately from the offender, are casually dismissed by British police and related authorities as 'domestic problems' and with the perpetrators commonly left unarrested or convicted.

61) Even worse is the fact that their continued criminal behaviour will often, ultimately result in removal of children from the victims of ex-partner's harassment and aggression.

62) We note with dismay, the by now, common arrests and harsh prison sentences given to parents who are found to be breaking Family Court Secrecy rules and/or who break the conditions set by the Family Courts: Extract from Document O:

63) 'Why is it considered by British police MORE reasonable to invade a packed Liverpool theatre to arrest a grandmother for "hugging" her forcibly adopted granddaughter, than it is for them to immediately arrest people who commit serious crimes against partners, ex-partners and/or children?

'The 72-year-old was reportedly watching comedian Ken Dodd in Liverpool when she was dragged from her seat and held in a police cell until her court appearance this morning.
Mrs Danby's 19-year-old granddaughter has learning difficulties and was removed from her father's care by Derbyshire council in 2007, on what she calls a 'spurious excuse'.
http://metro.co.uk/2014/12/30/grandmother-arrested-for-breaking-court-order-by-hugging-her-granddaughter-5003787/#ixzz3oSuQ04T5

64) We cannot fail to recognise the INCREASED and obvious risks to children posed by unregulated private Child Care providers as revealed earlier via Document G, and neither, can we continue to blindly ignore the terrible and ACTUAL, emotional damage caused by often unnecessary and brutal, state-enforced separations between genuinely loving parents and children, on grounds of 'furure risks' assessed according to; depression, a minor mental health problem or learning difficulty, personal experience of abuse as a child or harassment via an ex partner.

65) With 'condemned' parents being imprisoned for 'abuses' such as waving at their forcibly removed children while violent and dangerous 'partners' or ex-partners are at large to continue harassing and assaulting vulnerable parents and children, the discrimination in police response and resulting convictions, is obviously bias in favour of Family Courts: Document O:
'The mothers jailed after waving to their children in the street
It's a mystery why judges and social workers think they have the legal authority to act in such an inhuman way'
http://www.telegraph.co.uk/women/mother-tongue/familyadvice/10899893/The-mothers-jailed-after-waving-to-their-children-in-the-street.html

66) It seems while many claim there is not enough money to fund full implementation of Child Protection Directives in Britain, it appears there is plenty of funding available for protecting children from crimes which have not yet and may never, occur: The average Family Court Case costs the State; £500,000. This does not include the costs related to care in authority or privatised care and/or placement costs charged by privatised Social and Child Care Services: How much does it cost to imprison a parent whose only crime is to wish their child a 'Happy 21st' on Facebook or else, seek help for their child who is suspected of being abused while in State Care?

Christopher Booker: Telegraph Journalist;
'I recently reported on a mother, still in prison, after her desperately unhappy 13-year-old daughter had run away from a care home where she was being physically ill-treated. The mother had rung the police, but was careful to have no direct contact with her daughter, until the police begged her to go and calm the girl down in her brother's house, where she was screaming and sobbing. For this, the social workers persuaded a judge to jail her for six months.'

http://www.telegraph.co.uk/women/mother-tongue/familyadvice/10899893/The-mothers-jailed-after-waving-to-their-children-in-the-street.html

Summary

67) It is for the purpose of identifying and preventing crimes against children, as well as protecting children, that the EU Child Protection Directives were devised as a strategy and indeed, they are shown to be thoroughly vigilant in recognising the types of people involved in such crimes and the kind of fears and obstacles faced by child victims suffering and/or reporting crimes against themselves. At every level,the Directives seeks to address the power imbalance between child and adult and specifically, in order to encourage prompt and increased investigations into all allegations and suspects.

68) Prompt and thorough investigations serve to prove suspects guilt or innocence, protect children, attend to their needs, ensure that no crimes are being committed against children and that children do not remain at risk either presently or in the future.

69) We have shown here conclusively, that without British Family Courts acceptance and upholding of EU Child Protection Directives, British children as EU citizens are suffering heightened levels of abuse both at home and in State Care and that the present systems of Child Protection at work in Britain, most favour protecting child abusers from investigations and/or arrests and convictions and also, seriously undermine a child's already diminished powers in relation to those of their abusers

70) See Document J: The UN Report is legal evidence of the crimes committed by multiple professionals who are identified as having also, connections to charities abroad and as currently, operating with "impunity" throughout British authorities and businesses; a 'freedom from arrest' which is obviously, due to powers and influence associated with their professional social status.

71) The British media and Courts are currently full of Reports of child abuse experienced historically and presently, by children in State Care or forced adoption. So great is the problem that British Parliament has established a national 'Child Abuse Inquiry'.

72) In light of the many recent scandals, arrests and convictions involving Child Care Homes, councilors, police officers, government ministers and even, clergy and Judges, the British public have NO choice except to lawfully acknowledge all of that evidence in terms of assessing the risks to Child Welfare now posed by an obviously, corrupted establishment of combined authorities which are known, to harbour child abusers and which, perhaps unsurprisingly, collectively refuse to uphold the lawfully defined and professionally recommended UN & EU Child Protection Directives.

73) In light of all of the above lawful facts and evidence, what genuinely, loving parent can reasonably be expected to relinquish care and control of their children to those same authorities for sake of protecting their children from a "future emotional risk/harm" as so regularly identified by those same authorities as 'justification' for removing children from the safety of their family home?

74) Indeed, what Court established in interests of child safety could itself, ignore all of the herein identified risks which collectively, pose a greater and far deadlier a risk than that of 'future emotional risk' as so often suspected of the biological parent?

75) Can the Respondents here, provide any assurance that all the herein identified risks and threats are unfounded and/or false?

76) If the Respondents cannot, then they must lawfully accept that the greater risk to the children's welfare here, is via removal from their non-abusive parents care and their placement into the hands of strangers where their safety is lawfully known to be uncertain.

77) In losing children to suspect authorities, the parent is left in lawfully substantiated distress and anguish that their children are being placed at very serious risk of very serious harm.

78) Can ignorance of this lawful concern of "future physical risk of abuse and harm" be reasonably justified by the Family Courts when weighed up against the suggested ethical and professional concerns of a possible and as yet, entirely unproven "future emotional risk" ? See Document P:

79) '...the UK is the ONLY country in the world to GAG parents who wish to protest publicly when their children are taken...
Are there really parents who are punished by the State when they have committed no crimes?? YES !!The ONLY people in the UK who suffer this injustice are parents whose children are taken away after so called "experts" make predictions of the future such as "risk of emotional abuse".'

80) In light of the lawful suspicions and resulting concerns, can the professionals identifying 'future emotional risk' not equally be judged as "over-dogmatic experts" as Justice Pauffley has opted for as foundation for her judgement as presented in Document H ?

81) In regard to all the concerns expressed herein and as supported by accompanying facts and evidence, we request that the concern of 'future risk' to children be removed as a critieria for removing children from their family home except, in cases where that home is known to be willingly and knowingly harbouring a known sex offender or child abuser and/or a sufferer of severe mental health issues.

82) We request that in cases where a future emotional risk is identfied and where above defined 'exception' does not apply, that all such children and parents receive help via therapy and a family support worker: When it comes to child safety, it is often a case of 'better-the-devil-you-know' i.e. a parent with minor risks identified and receiving external support and therapy, is much less of a risk than authorised strangers whose threats are unkown and/or hidden.

83) In cases where children are suffering neglect as a result of poverty, we request that children be given voucher-grants for food, clothing, bedding, educational items, holidays and outings to be accompanied by parents and/or legal guardians.

84) We request that all children entering Child Care Services, forced adoption and/or reporting crimes of abuse to police, receive an independent legal guardian whose duty is to ensure the child's safety, welfare and legal and humanitarian rights.

85) We request that EU Child Protection Directives are fully implemented as STANDARD PRACTICE across the UK.

86) We submit that in ignoring or trivialising this Report and all the concerns here identified, British Family Courts are thus ignoring very serious risks to child protection and as a result, can provide little or no assurance or guarantee that a child placed into State Care is any safer and in fact, is not placed at even greater risk of every type of harm and abuse, than posed by the biological parent deemed a "future risk".

87) We feel it is both unlawful and unethical to place children at an unreasonable, much higher risk of suffering much greater damage, for sake of 'protecting' them from a relatively minor risk.

89) Since the risks faced by children entering State Care are real and lawfully identified and proven; what assurances can the Respondents provide to the entirely innocent parent facing loss of child or children on grounds of 'furture risk', in relation to the Family Courts own accountability, in the event of the here-identified risks being realised via criminal and/or negligent members now lawfully known and suspected to be working within British child care authorities and other private child care providers?

90) Until British Courts have implemented the here recommended measures to assure the safety of children in State or State-enforced private care, we submit that the Respondents cannot lawfully and in interests of child safety, ignore these legal Precedents and lawfully identified risks, which are directly related to Child Protection.

Conclusion

91) Finally, we express our deepest concern of all which is, that in a legal climate that thoroughly negates a child's credibility and which invites retractions via legal processes in which all but the child has any degree of legal independence and/or, independent professional representation; far too many reports of serious crimes and risks against children are being systematically uninvestigated and/or recorded as 'false', leading to further risks and crimes and, a climate of 'impunity' among abusers; a point most pertinently stated in the United Nations 2014 Child Protection Committee Report: See Document J.

92) The lawful risks are first, that a high percentage of children are exposed to the officially ignored threat posed specifically, by high-profile/professional and business-status abusers and/or 'rings' of such abusers whose members are known to cross all the usual social divides of class, religion and ethnicity. The crimes are reaching endemic proportions: See Document Q:

'MPs said all councils across England now needed to review child protection policies.
Their report said: "On the evidence we took, the alarming conclusion is that Rotherham was not an outlier and that there is a widespread problem of organised child sexual exploitation in England." '

93) Such 'rings' are collectively, very powerful: In comparison, the individual child-victim is very weak; in the interest of providing Justice for children, British Child Protection Law needs to thoroughly address this power imbalance; again, EU & UN CP Directives are already, many steps ahead.

94) We ask the Respondents to here take into account the terrible truth that present Child Protection Protocols operating in Britain are leaving thousands of children to suffer very serious abuse and which, being left officially unrecognised and therefore, untreated and/or compensated, the child is left to suffer and cope alone with all the resulting damage and often, to find themselves emotionally and psychologically crippled in adult life: Adult child abuse survivors, commonly experience Post Traumatic Stress Disorder, depression and many left primed to suffer alcoholism, drug addiction, self-harm, suicide, and/or further abuse due to low self esteem and negated perceptions of self-worth.

95) It is in the interest of supporting healthy child development into adulthood for the children of Britain, that we have here presented our dire concerns and proposals for immediate change in the way British Authorities address the issue of Child Welfare and Protection: Children are our future.

96) Further in our efforts toward more efficient measures of Child Protection for the children of Britain, we here, formerly request that the term 'minor' be eradicated in relation to the legal definition of a child.

97) The implication of the term 'minor' suggests a child is a lesser/unimportant/insignificant human being, which a child is not a 'lesser'. We feel this legal definition is unwittingly supporting the core-foundation of a degraded social attitude toward children and actual child suffering is subsequently, trivialised and/or negated as State concern.

98) Because children ARE our future, children are in reality, VIP's: We feel the UN and EU Child Protection Directives fully support the child as VIP and we humbly request that the British Family Courts and the Ministry of Justice do the same.

Derek Parry

Dear Sir

As an interested and generally well-informed UK citizen, I write to express my dismay at the apparent intention to weaken the provisions of the Freedom of Information Act. Government at all levels, public sector bodies and private sector organisations understandably like to work with the curtains drawn, in as secretive a manner as possible.

While this may be normal, it is also inimical to the public interest. It is to the everlasting credit of the Blair government that FoI was introduced. As a direct result, government bodies have been forced to be more open and honest and the public purse has benefited accordingly. It would be a scandal to weaken or terminate any of the provisions of the Act. Instead, its purpose should be enhanced and investigatory processes strengthened, not weakened.

It would be to the undying shame of Mr Cameron if he conceded, let alone instigated, any weakening of FoI.

Derek Parry

Derek Pirie

FAO The FOI Commission

The F.O.I. Act under it's present form is adequate, but should be enhanced as it allows members of the public to question what and where taxpayers money is being spent by Government or Government funded organizations

Only in extreme cases should a charge be considered.

Derek Pirie

Derek Savage

Dear Commission members,

I would be grateful if you will consider the following when reviewing the FOI Act 2000.
To help clarify the situation, I suggest that the Commission have a 'balance sheet' created to identify the sources of the demand for change; this would show the weight of relevant demands for change made by actual or potential applicants vis-a-vis those of the public organizations who might find themselves burdened, inconvenienced or embarrassed by having to comply with the Act.

Also, that the Commission establish whether anyone has claimed that the Act is unnecessarily stringent towards, or burdensome upon, or costly to the electorate, who pay all the costs of compliance by public organizations.

Would Commission members please recognise, in considering the balance between transparency and the [assumed) burden on public authorities that if there were more openness no burden would exist. Defensive procrastination is often the de facto reaction of some organizations from whom information is requested, and must significantly contribute to what they regard as burdensome.

Much of what authorities try to, and often succeed in withholding from public scrutiny, concerns money: their wages, expenses, staff payoffs, illegitimate payments and, not least, the financial consequences of their own mistakes or questionable practises. All such expenditure is funded, directly or indirectly, by the electorate, whose right to know about it should be inalienable.

In regard to the perceived need to secure a balance between the right [of the electorate) to information and the need for organizations to be able to formulate their policies in secret, would the Commission identify precisely where it has been clearly shown that such a balance has not existed since the Act became law.

Charging applicants to file a request under the FOi Act is no more than a tax upon the electorate.

In support of my point in the fourth paragraph about procrastination, I cite my request for information held by Wiltshire Council, relating to unauthorized payments made to Council employees. After an exchange of correspondence spanning about sixteen months had failed to elicit the information, I appealed to the Information Commissioner. His decision of 15 November 2011, Reference F550383945, found against the Council and severely criticized Wiltshire Council for undue delays and non-compliance with the Act. The following italicized paragraph is from the Commissioner's Report.

The complainant asked Wiltshire Council (the ''public authority '') to provide information relating to honorarium payments to former staff of Kennet District Council. The public authority withheld the requested information using the exemption in section 40(2) (personal information) of the Freedom of Information Act (the "Act"). The Commissioner considers that

section 40(2) was incorrectly applied in this case. The complaint is upheld and the public authority is required to disclose the withheld information. The public authority s handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

Private Eye, in Issue 1306 of 27 January 2012, saw fit to report the Council's misdeeds, quoting from the KPMG audit conclusion "what they were supposed to have done to justify their payments might be argued to have been part of their job". And an email from a beneficiary, head of human resources, Anne Ewing "All going to be rather subjective and I hope we could keep it confidential and discourage staff from talking about it... (name redacted) will inevitably know, hence my inclusion of them on the list. KPMG suggest that names were put forward inter alia to ensure their silence."

Your Commission, currently deciding on the future of the FOI Act which revealed the above misuse of public funds, will no doubt concur that the activities of ISIS put democracy as we know it at risk. That democracy does not just mean the freedom to go about our business in safety; integral to it is the freedom to know how those in power use it, or, in the above instance, abuse it.

If that freedom is in any way curtailed by the Commission, those making that decision will have diminished our democracy and in doing so, themselves.

Yours faithfully,

Derek G Savage

Derek Underwood

Good, democratic government needs to be open soo that people can make judgements about it. Freedom of information is an essential to enable that to happen.

Restriction of information is the sign of despotism, and corrupt government.

The only reason for restriction should be **essential** security items, not a blanket excuse for the security services to mis-behave!

I hope that the commission will continue to allow access to information, taking a wider view of the necessity of it, and improve the position of 'whistle-blowers' to ensure that those who act in the name of the people can be judged, and that they are not swayed by those who cannot be bothered, or do not wish to be held to account.

Good open government helps to ensure that people work hard and have a secure life, also that we can be trusted by other countries.

Otherwise we will be no better than some of the corrupt dictatorships that exist on the fringes, and are trying desperately to stop their countries from decaying.

Regards

D Underwood

Dirk Haiser

Dear Sir/Madam

I am writing to formally object to any proposed changes to the freedom of information act. I believe that it is vital that tools like these are used to ensure transparency and hold those in authority to account. There may be burdens placed upon public authorities but this is the price to be paid to ensure a transparent, accountable system is in place.

I would specifically object to the power of veto over such requests being given to the executive. I do no trust this veto to be implemented with the public interest in mind and would urge further protection of this and similar legislation.

Yours Sincerely

Dirk Haiser

Dominic Dudley

Dear Sirs / Madams,

I am writing to offer my thoughts on the Freedom of Information Act, as part of the public consultation process.

I am rather concerned about the way some politicians have taken to describing and criticising the Freedom of Information Act and the way it is used. To take a recent example, Chris Grayling's criticism of the media for using the Act to "generate" stories is a rather facile and illogical criticism. He may as well fire a broadside at the media as a whole for having the temerity to try and inform the public of what is happening in the world. But while his criticism may be poorly thought-out, it seems to me to be symptomatic of the way in which the Freedom of Information Act has become an easy target for too many people.

In the short time it has been in force, this Act has become a vital part of this country's system of democracy and democratic accountability. The costs involved are small in comparison to the benefits it brings. This Act should be defended rather than attacked; it should be expanded to bring more public and publically-funded bodies and contracts under its umbrella, not fewer.

British society has tended to be overly deferential and overly secretive in the past. That has on occasion allowed abuses of power to go unchecked and allowed hypocrisy to flourish. The Freedom of Information Act does not stop this happening, but it does shine a light into some corners of the state and thus provides a powerful check on nepotism, corruption and other ills.

I can understand that, as politicians, you may at times find the public release of information to be uncomfortable, but I hope you can also see the bigger picture beyond the experiences that you or some of your colleagues have had. Any scaling back of the Act, any reduction in its powers or remit, will only serve to make the state apparatus more secretive and potentially more corrupt. The British public have a right to know what is being done in their name, taxpayers have a right to know how their money is being spent. The Act provides a mechanism for that to happen. It may be imperfect, but its imperfections lie in the limitations that have been imposed on it. To impose any more limits would be a retrograde step.

Yours sincerely,

Dominic Dudley

Dr Duncan Burwood

Dear Sirs,

I am concerned at the above proposals.

To mention but one scandal, the MP's expenses scandal was exposed with the help of FOI. Watering it down would enable such scandals to continue unchecked.

Please resist all attempts to weaken the FOI Act.

Best wishes,

Dr. Duncan Burwood