



GOVERNMENT RESPONSE TO THE
CONSTITUTIONAL AFFAIRS
SELECT COMMITTEE REPORT

Freedom of Information-one year on

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

**By Command of Her Majesty
October 2006**



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1. Introduction

1. The Government is grateful to the Constitutional Affairs Select Committee (CASC) and to all those who gave evidence on a wide range of issues on the Freedom of Information Act 2000 (FOI Act) in its first year of operation.
2. The Select Committee's Report – *Freedom of Information – one year on* – reached a number of conclusions and recommendations regarding the operation of the FOI Act.
3. The Government response to the Report is below.

2. Summary

4. The Government welcomes and shares the overall assessment of the Committee that the implementation of the FOI Act has been a 'significant success'. The Act has been historic in that for the first time the public has obtained a statutory right to information held by over 100,000 public authorities across the whole of the public sector. These statutory rights require a fundamental change in culture for public authorities. It is apparent in this second year of implementation that a culture of greater openness and improved access to information is emerging and being sustained.
5. The Government agrees with the Committee that there is a significant amount of new information being released and that this is often being used in a constructive and positive way by a range of different individuals and organisations. The Government is also aware of the impressive efforts made by public authorities to meet the demands of the Act at a time when there are ever increasing demands upon public resources.
6. While the Government is pleased by the significant success that FOI represents it will continue to build on that success. The Government notes the Committee's recommendations and conclusions. It will:
 - publish data in the monitoring statistics to show how often and by how much the 20-day response deadline is extended by Government Departments to consider the public interest. Indeed, the first set of statistics on this issue were published by DCA on 29 September 2006;
 - examine the viability of publishing in the monitoring statistics central Government Departments' target times and success rates for determining internal reviews;
 - initiate a review and revision of the code of practice on records' management under s.46 of the FOI Act in order to update it for the rapidly changing world of digital records.

3. First year of FOI implementation

Recommendation 1. It is clear to us that the implementation of the FOI Act has already brought about significant and new releases of information and that this information is being used in a constructive and positive way by a range of different individuals and organisations. We have seen many examples of the benefits resulting from this legislation and are impressed with the efforts made by public authorities to meet the demands of the Act. This is a significant success.

7. The Government welcomes the assessment that the implementation of the FOI Act has been a 'significant success' and is encouraged that this is also the consensus among the witnesses called by the Committee. This is extremely positive given that the consensus was achieved from witnesses representing a diverse range of organisations.
8. Since the Committee ceased gathering evidence in mid-April the flow of releases of information under the FOI Act has continued. These releases have both provided information of significant interest to the public and increased the transparency of public authorities. Examples of these releases include the disclosure of information relating to:
 - The heart surgery survival rates for different hospitals in England and Wales¹
 - The safety of Britain's nuclear plants²
 - The best and worst performing schools in each county³
 - Information on restaurant hygiene⁴
9. The Government notes that public authorities have continued to make substantial efforts to comply with the FOI Act. These efforts include public authorities proactively publishing information, an example of this is the Rural Payments Agency's release of figures relating to Common Agricultural Policy payments. This is the second year of publication.⁵

¹ <http://heartsurgery.healthcarecommission.org.uk/>

² <http://www.guardian.co.uk> , 5 July 2006

³ <http://www.borehamwoodtimes.co.uk/>, 20 July 2006

⁴ http://news.independent.co.uk/uk/this_britain/article1369620.ece, 7 September 2006

⁵ <http://www.rpa.gov.uk/>

4. Requesters' experiences

Recommendation 2. Indefinitely delayed internal reviews conflict with the concept of the statutory response time in the Act. We note that the Commissioner has the discretion to begin his investigations when he judges that the complaints process has effectively been exhausted. We welcome the commitment he has now made to put pressure on public authorities to complete internal reviews more quickly.

10. The Government shares the concern of the Committee that some requesters may be encountering delays due to some authorities taking a long time to complete internal reviews. The FOI Act does not prescribe the period within which public authorities should complete internal reviews. The code of practice under s.45 of the Act states that authorities should set their own target times for dealing with complaints and that these target times should be reasonable and subject to regular review.
11. The Committee states that 'one of the effects of lengthy internal reviews is that applicants may be prevented from starting the complaints process with the ICO'.⁶ Under s.50 of the Act, on receiving a complaint 'the Commissioner shall make a decision unless it appears to him that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under s.45 of the Act.' This section gives the Information Commissioner a power to accept a complaint where he judges that the public authority has failed to complete an internal review in accordance with the requirements of the code of practice. The Government welcomes the Commissioner's commitment to use this power if and when appropriate.

Recommendation 3. Some public authorities are not recognising the circumstances in which they should apply the Environmental Information Regulations rather than the FOI Act. We recommend that DEFRA and DCA work together to prepare a shared code of practice for the EIRs and FOI.

12. The Government recognised that some public authorities were experiencing difficulties in distinguishing requests that fall under the Environmental Information Regulations 2004 (EIRs),⁷ rather than the FOI Act. The Government sought to help public authorities by publishing guidance on the key differences between the EIRs and the FOI Act,⁸ and guidance on how to tell the difference between EIR and FOI requests.⁹ This guidance can be found on both the DCA and the Department for Environment, Food and Rural Affairs (Defra's) web sites and complements other Government guidance. DCA and Defra continue to provide advice and assistance to Departments on the interpretation and application of the FOI Act and the EIRs and both Departments have a helpline for enquiries.
13. DCA and Defra consulted a specially convened stakeholder group in January 2006 to discuss with them whether a shared code of practice would be helpful. The group included representatives from local authorities, health and fire services, public utilities and Government Departments. The result of this consultation was that joint guidance would be more helpful than a code of practice. What public authorities want is guidance to assist them in making judgements about different types of requests. The Government believes that it has provided comprehensive guidance; it will keep it under review and update it as necessary. In addition to this, the Government is also considering the possibility of producing joint procedural guidance for the EIRs and FOI in the form of a user-friendly booklet.

⁶ Paragraph 22.

⁷ The EIRs enable compliance with the UK's commitments under the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters, and with the EU Directive 2003/4/EC on public access to environmental information.

⁸ [http://www.dca.gov.uk/foi/EIR FOI Boundaries Guidance \(May 2006\).pdf](http://www.dca.gov.uk/foi/EIR%20FOI%20Boundaries%20Guidance%20(May%202006).pdf)

⁹ <http://www.defra.gov.uk/corporate/opegov/eir/pdf/boundaries.pdf>

5. Public authorities' experiences

Recommendation 4. Whilst central co-ordination of support and guidance to public authorities can cause problems if it is slow or too directive, we believe that when it is provided openly, it can be a valuable way of improving compliance. We recommend that the DCA takes a more active role in improving co-ordination and in disseminating advice from the Clearing House more widely throughout the public sector.

14. The Government welcomes and shares the Committee's view that central co-ordination and guidance can provide a valuable means of improving compliance. DCA has adopted a two-fold approach, which it will continue to develop. Firstly, DCA guidance, based on the Clearing House's experience of advising on numerous complex cases, is available to all on www.foi.gov.uk. Since the Act came into force, DCA has revised its procedural guidance and provided new best practice guidance on disclosure logs.
15. Secondly, the Government recognises that the effective implementation of the legislation requires a professionally motivated and qualified cadre of information rights specialists working across the public sector. The DCA has taken a number of steps to help build capability across the public sector. In particular:
 - The University of Northumbria in partnership with DCA has established online training in information rights leading to postgraduate qualifications.
 - DCA has also sponsored, with the ICO, an annual conference for FOI officials, bringing together over 200 FOI officials from across the public sector with leading experts in the field.
 - www.foi.gov.uk has recently been redesigned to make it easier to use and more accessible to both the public and FOI officials.
16. This bottom-up approach complements the role of the Information Rights User Group (chaired by Baroness Ashton, the Parliamentary Under Secretary for Constitutional Affairs) and the Information Rights Sector Panels (for local and fire authorities, and for the health, education and criminal justice sectors) in disseminating best practice throughout their respective sectors. The Information Rights User Group provides a useful tool for improving compliance with the Act by creating a mechanism for both suppliers of information and requesters to have a valuable dialogue on the operation of the Act.
17. Public authorities giving evidence to the Committee emphasised the importance of case law to enable them to interpret the statute with confidence. Case law is inevitably in the early stages of development. The Commissioner publishes all of his decision notices on his Office's website www.ico.gov.uk, and DCA publishes a digest of the most significant ones.
18. Under s.47 of the Act the Information Commissioner has a duty to promote good practice by public authorities and compliance with the Act and its two codes of practice. This duty also extends to compliance with the EIRs (Regulation 16(5)). The Commissioner has taken a number of steps to fulfil his duty under s.47 and the Government encourages public authorities to make proper use of his advice and guidance.

Recommendation 5. The National Archives has told us about the impressive range of guidance documents which it has issued but the evidence suggests that records management practices in some public authorities need substantial improvement. More proactive leadership and progress management of Departments' records management systems and compliance with the section 46 code is required. We note that the National Archives will, during 2006, make plans to assess authorities' compliance with the section 46 code of practice and we look forward to the publication of their findings at an early date.

19. The Government agrees that good records' management is essential to the implementation of the FOI Act. Accordingly The National Archives has launched a programme to assess central Government Departments against the benchmark of the s.46 code of practice and to provide advice and guidance to assist them to achieve compliance. Departmental action plans will be monitored and, if there were to be any cases of persistent non-compliance, they would be referred to the Information Commissioner so that he could consider follow-up action using his powers under the Act. An annual summary highlighting key issues will be published, and will inform future records' management guidance from The National Archives. The programme will also gather information about records management performance from across Government. It will build on key findings from the earlier programme organised by The National Archives assessed compliance with the Government's target that by 2004 Departments' information created electronically should be stored and retrieved electronically. The National Archives has also developed and published an evaluation workbook and methodology to support public authorities in the wider public sector to assess their own compliance with the s.46 code of practice. The National Archives will provide advice on using the workbook and will, at the request of the Information Commissioner, work with these bodies on assessment.

20. The Government plans to initiate a review and revision of the s.46 code in order to address more clearly the particular needs of digital records.

Recommendation 6. The National Archives has been monitoring implementation of Electronic Document and Records Management System in Government Departments in terms of progress against the Cabinet Office targets for 2004. We recommend that it publishes a report setting out the extent to which those targets were met and the actions which should now be taken to achieve the benefits from EDRMS.

21. The National Archives monitored performance against the Electronic Document and Records Management System (EDRMS) target until Spring 2005. This monitoring has ceased as The National Archives is now focussing on the wider issues of records and information management using assessments of compliance with the under s.46 code as the main tool for this task. The National Archives will publish the lessons learned from the EDRMS monitoring in its first annual summary of compliance with the s.46 code. The National Archives continues to provide advice on all aspects of records management to Government bodies, including advice on EDRM systems and their benefits. Where a Department could undertake further work to implement electronic records management additional recommendations will be made as part of the s.46 assessment programme.

Recommendation 7. Baroness Ashton's attitude that adequate processes for the long-term preservation of digital records are in place contrasts with the views of the National Archives. Her response to our questions does not accord with the widely recognised view among industry specialists that digital preservation of records is a complex and urgent problem to which no satisfactory long-term strategy has been found. Difficulties in accessing older electronic records could soon become a serious problem for Government Departments. There is a serious possibility that material over 10 years old will essentially be irretrievable in the near future and complacency about this is not acceptable. Plans are needed to handle the rapid and significant changes in technology and the inevitable degradation of storage media. National Archives and the DCA must take the lead in developing such plans. We will monitor progress on this issue.

22. The Government does not agree that there is a substantive difference between the view of Baroness Ashton and the evidence provided by The National Archives on processes for the long-term preservation of digital records. In her evidence to the Committee, Baroness Ashton concentrated on the initial capture and storage of digital records. The National Archives' evidence focussed on a later stage in the information management process, the medium and long-term preservation of digital records. Both stages are critical to the survival of electronic records and to ensuring that Government Departments have continued access to the information they need for daily business. Arrangements for capture and storage have been addressed by Government Departments implementing electronic records management systems. To address the needs of long-term preservation The National Archives has created a repository for datasets in the National Digital Archive of Datasets, managed by the University of London; it has established a facility to preserve copies of Government Departments' websites; it has created an in-house archival storage system for digital records; it has developed a technology watch service to address the issue of technical obsolescence and preservation planning and it is providing a growing range of advisory services for Departments on long-term preservation. The Government is now developing a shared service model to address the requirement for long-term access to, and preservation of, digital information. The National Archives, working closely with DCA, will lead this cross-Government initiative. Taken together, the Government believes these initiatives demonstrate that the concerns raised by the Committee have been recognised and are being addressed.

6. The Information Commissioner

Recommendation 8. We heard evidence from requesters and public authorities who had waited months for the Information Commissioner to start investigating their complaints. Witnesses also gave examples where the quality of investigation and the information provided in the decision notice were inadequate.

23. The Government has noted the Committee's concerns about delays at the Information Commissioner's Office and the quality of his investigations. However, the Government also notes that the Committee recognises that the Commissioner introduced a number of changes to the organisation and procedures in his Office at the end of 2005 and in the early months of 2006 and that productivity has consequently improved.
24. The FOI Act created an independent regulator in the Information Commissioner to oversee compliance with the Act. The Commissioner is therefore responsible for the quality of investigations he undertakes and the decision notices he produces. If applicants are dissatisfied with his decisions they can appeal those decisions to the Information Tribunal. Furthermore, if applicants are dissatisfied with the standards of service provided by the Commissioner they can ask their MPs to refer the matter to the Parliamentary and Health Service Ombudsman.

Recommendation 9. The impression given by our witnesses was that the complaints resolution process was unsatisfactory during 2005, but we were pleased to note the efforts being made by the ICO to learn from its first year's experience of a challenging workload in order to investigate complaints more efficiently. We are surprised that the need for additional resources was not identified earlier in 2005, before the backlog became such a problem, and we are not convinced that adequate resources have been allocated to resolve the problem, or that they were allocated early enough. The Commissioner has told us he will publish a progress report in September 2006. We expect this to provide measures of quality as well as quantity. We will use this report to monitor the success of the recovery plan and to assess whether further action by the Committee is needed.

25. The Government is committed to ensuring that the Information Commissioner is resourced adequately. The Government sees benefit in putting the arrangements for funding the Commissioner's FOI work, discussed in the Committee's report, into a wider context.
26. The grant in aid for the Commissioner's FOI work in 2005-06 was £5m. As the Committee noted in its report (at paragraph 51) the grant in aid was settled in the light of research commissioned by the ICO in 2004 to estimate the number of FOI complaints that the Commissioner might receive in 2005-06. The actual number received was within the estimated range.
27. The Secretary of State for Constitutional Affairs and DCA officials had regular meetings with the Commissioner throughout 2005 and raised with him the question of his resources. As the Secretary of State told the Committee on 18 October 2005 the Commissioner had not requested additional resources for the financial year 2005-06.¹⁰ Nor did the Commissioner subsequently request additional resources for 2005-06. However, in the Autumn of 2005 the Commissioner informed DCA that he would be seeking additional resources for the financial year 2006-07. In January 2006 he submitted a revised business case for the additional sum of £1.13m in 2006-07 to enable him to clear the backlog of cases that had built up during 2005.
28. In his discussions with the Department, the Commissioner said that he wanted to review his internal structures and processes and change them in the light of the experiences of the first year of live running. In order to assist the Commissioner in his review, DCA offered the Commissioner an additional sum of £100,000, which was made available to the Commissioner in January 2006. The Commissioner appointed an external management consultancy to review his FOI casework operation, to make recommendations about changes to the operation and to oversee the implementation of those changes.
29. It should be noted that the Commissioner did not have to wait until after the beginning of 2006-07 to be told whether or not he would receive additional grant in aid. On several occasions the Commissioner and his staff were told by DCA Ministers and officials that he would receive additional grant in aid in 2006-07, but that the sum involved was most unlikely to be the full amount that he had bid for of £1.13m. The Commissioner also agreed that £300,000 of internal savings could be achieved in his Office in 2006-07. On 23 March¹¹ DCA officials told the Commissioner that his FOI grant in aid for 2006-07 would be £5.55m. This represented an 11 per cent increase in funding and means that together with the £300,000 of internal savings that the Commissioner has identified, he has £850,000 additional funding in 2006-07 to eliminate his backlog.

¹⁰ HC 566-i Q45, 18 October 2005.

¹¹ Paragraph 105 says 'We were told by both the Commissioner and the DCA that the 2006/07 ICO funding was not agreed until after the beginning of the financial year, *in the middle of April 2006*.' A similar statement is made in paragraph 60. The report does not reference the statement. It did not form part of Baroness Ashton's evidence to the Committee on 18 April 2006.

30. The Commissioner is independent of Government and is responsible for how he deploys the resources granted to him. He is also responsible for the quality of his services and decision making. The Government is committed to ensuring that the Information Commissioner is funded adequately to provide a good service to the public. The Government also has a duty to ensure that public funds deliver value for money and that public bodies providing services to the public have the right structures and processes to deliver those services efficiently. During 2006-07, DCA Ministers and officials have continued to meet regularly with the Commissioner and his staff to review progress. The Commissioner will be providing a full report to Parliament on his FOI casework in October.

Recommendation 10. We support the Commissioner's decision to adopt a firmer approach to enforcement. We expect to see him use his full range of powers to improve compliance and reduce the delays being experienced by requesters.

31. The Commissioner explained in his evidence to the Committee that he had deliberately adopted a pragmatic approach to enforcement in the first year of FOI in order to allow public authorities time to adjust to their new responsibilities. The Government understands and supports the Commissioner's reasoning in adopting this approach.
32. The Government notes that the Commissioner has recently adopted a more streamlined approach to his investigations. The Government welcomes this since it allows the Commissioner to make more efficient use of his resources and ensures that cases are resolved faster to the mutual benefit of complainants and public authorities.

Recommendation 11. We recommend that the DCA takes a more proactive role in ensuring that Government Departments co-operate fully with the Commissioner and provide him with the information required for his investigations, within the periods agreed in the Memorandum of Understanding.

33. DCA officials have regular meetings with ICO officials about the investigation of cases and pass onto other Government Departments advice from the ICO about how to assist the Commissioner's investigations. The Government sees benefit in DCA continuing to fulfil this role. Where the Commissioner draws to the Department's notice particular cases of Departments failing to comply with the terms of the Memorandum of Understanding it will take those cases up with the Departments concerned.
34. Baroness Ashton informed the Committee that

'...the approach the Government would take is to provide the Information Commissioner with information as appropriate to the Act. There is no resistance on behalf of Government to doing that.'¹²

There are cases where the Commissioner does not need to see the information in question in order to determine whether or not a Department was right to have told a requester that it could neither confirm nor deny that it held the information. The existence of such cases is recognised in the Memorandum of Understanding.

¹² Q203.

Recommendation 12. We believe that it is too soon to assess the role of the Information Tribunal process in detail, but the Commissioner has made some important points which should be considered at a later date.

35. The Government agrees that it is too soon to assess the role of the Tribunal process in detail.

7. The Role of the DCA

Recommendation 13. The 20 day response deadline is a statutory requirement and not merely a target. The DCA, together with the Information Commissioner, must work to improve compliance with the deadline and raise standards so that authorities consistently provide a more timely response to requesters.

36. The Government will continue to work with the Information Commissioner to improve compliance with the 20 statutory day response deadline and raise standards so that authorities consistently provide a more timely response to requesters. The Secretary of State for Constitutional Affairs has emphasised the need for compliance with the 20-day response deadline.

Recommendation 14. Routine time extensions of up to several months undermine the spirit of the 20 day response deadline in the Act and reduce the benefits for requesters. We recommend that the DCA guidance be updated to reflect the Information Commissioner's guideline that two months should normally be sufficient to reach a decision about the public interest and the Minister's undertaking that wherever possible all information should be disclosed within 20 days. We recommend that the DCA publish data to show how often and by how much this guideline is exceeded by Government Departments.

37. The Act permits authorities to extend the time for responding 'until such time as is reasonable in the circumstances' (s.10(3)) when it is necessary to do so in order to assess the public interest considerations. The time taken should be reasonable in the circumstances of individual cases. These cases vary considerably.
38. On 29 September 2006, DCA published its most recent quarterly statistics on FOI implementation in central Government. These statistics showed that 83 per cent of requests received by monitored bodies between April and June 2006 were completed within the standard statutory deadline of 20 working days. A further seven per cent of requests were subject to deadline extensions to allow for the consideration of public interest. For the first time, this publication also included statistics on the duration of these public interest deadline extensions. These showed that 60 per cent of completed, deadline-extended requests were subject to extensions of not more than 20 working days, and 85 per cent were subject to extensions of not more than 40 working days.
39. These statistics on the duration of public interest deadline extensions will continue to be collected and published as part of ongoing monitoring arrangements. The Government believes that their collection and analysis will provide a solid basis for assessing the performance of central Government departments on this issue. It will also allow Government to determine how to best tackle the small proportion of requests which are subject to unacceptable delays.

Recommendation 15. We recommend that the target times and actual time taken for internal reviews by Government Departments are included in the DCA quarterly published statistics.

40. Under the s.45 code of practice, authorities are required to set their own target times for dealing with complaints, these should be reasonable, and subject to regular review. The Code also states that each public authority should publish its target times for determining complaints and information as to how successful it is in meeting those targets. Government Departments currently have varying target times for dealing with internal reviews depending on the complexity of the review.
41. The Government will examine the feasibility of including these statistics in the monitoring statistics.

Recommendation 16. The clearing house must comply fully with the letter and the spirit of the FOI Act, be openly accountable for its work and respond to any individual requests for information which it receives in full accordance with the Act.

42. The Government does not accept the Committee's view that the Clearing House is failing to comply fully with the letter and spirit of the FOI Act. The Government is satisfied that there is sufficient information in the public domain about the activities of the Clearing House.
43. The Government considers that the Clearing House has applied the Act appropriately whether responding to requests or advising other Departments on their responses. Information has not been disclosed when it is exempt, and (in the case of qualified exemptions) the public interest considerations in favour of withholding information outweigh those in favour of disclosing. Whether or not the Act has been applied appropriately in respect of each of these requests will be determined by the appeal mechanisms created in the Act.
44. The Government would emphasise that - notwithstanding the evidence given to the Committee by disappointed applicants for information about the Clearing House - 60 per cent of requests to Departments of State that could be answered in 2005 led to the full release of all the information requested.¹³ In 2005, 87 per cent of requests to central Government received a response within the statutory deadline.¹⁴ These figures provide strong evidence that FOI is being administered effectively and fairly in central Government and early results for 2006 shown that this positive performance is being sustained.
45. The Government also proactively publishes information about the Clearing House. There is a description of the Clearing House and its work on the DCA website.¹⁵ The website also contains a copy of the Clearing House toolkit issued to Government Departments. The Clearing House toolkit provides further information on the day-to-day operation of the Clearing House and its processes and procedures. The Clearing House operates on a referral basis. When Government Departments consider that a request meets one of the criteria on a list of referral points, or "triggers", they refer the request to the Clearing House for advice. Clearing House officials then decide whether or not their involvement is necessary in consultation with the Department which made the referral. DCA has also continued to answer a number of Parliamentary questions and FOI requests about its activities. These questions include information on the triggers and the numbers of requests referred to the Clearing House.

¹³ DCA, *Freedom of Information Annual Report 2005*, p 20, <http://www.foi.gov.uk/imp/annrep05.pdf>, as corrected.

¹⁴ DCA, *Freedom of Information Annual Report 2005*, p 18, <http://www.foi.gov.uk/imp/annrep05.pdf>, as corrected

¹⁵ <http://www.foi.gov.uk/practitioner/clearinghouse.htm>.

Recommendation 17. We recommend that the clearing house publish quarterly statistics about its case handling so as to provide clear information about its role.

46. DCA's 2005 annual report on FOI lists the number of referrals made by each Department of State and other bodies in each month of 2005. The Government considers that these statistics on case handling and the previously mentioned, at paragraph 45, information on the website is sufficient to provide clear information about the role of the Clearing House.

Recommendation 18. We would be concerned if there were cases where public authorities were spending weeks finding information. Since authorities may already include this time within their calculations of chargeable limits, we do not consider that it would justify a review of the fees regulations, but it would demonstrate a serious shortcoming in some public authorities' records management systems.

47. The revised code of practice on records' management under s.46 of the FOI Act code, together with the steps that The National Archives is taking to measure compliance with the Act, will help public authorities to improve their records' management practices. These steps are described at paragraphs 19 to 22.

Recommendation 19. We recommend that problems with 'frivolous' requests should be dealt with through the existing provisions in the Act. We do not consider that this is an appropriate reason for reviewing the fees regulations.

48. The Government agrees that 'frivolous' requests should be dealt with where possible through the existing provisions in the Act. It welcomes the ICO's decisions on frivolous requests. The issue of frivolous requests is not the only reason for reviewing the fees regulations. The Government stated in January 2005 that the fees regulations would be reviewed within 12 to 18 months of the Act coming into force so that lessons could be learnt from its practical operation.¹⁶

Recommendation 20. We see no need to change the fees regulations. There appears to be a lack of clarity and some under-use of the existing provisions. We recommend that the DCA publish the results of its internal fees review when it is concluded and that it conducts a public consultation before deciding on any change.

49. The Secretary of State for Constitutional Affairs commissioned an Independent Review to look at the impact of the Freedom of Information Act. This report will be published today on the website www.foi.gov.uk.

50. Following the conclusions of the review the Government is minded to:

- i. include reading time, consideration time and consultation time in the calculation of the appropriate limit (£600) above which requests could be refused on cost grounds; and
- ii. aggregate requests made by any legal person, (or persons apparently acting in concert, to each public authority (e.g. Government Department) for the purposes of calculating the appropriate limit.

and the Government is not minded to agree the following:

- iii. a flat fee for all requests (although this could not be ruled out permanently as Parliament had voted powers in the FOI Act to allow such fees); and
- iv. a reduction in the cost threshold to £400.

¹⁶ Hansard, Ninth Standing Committee on delegated legislation, 11 February 2005.

51. The Government will take stock of the responses to this position before bringing forward secondary legislation.

8. Relationship with the ICO

Recommendation 21. We are not convinced that the relationship between the DCA and the ICO is working as effectively as it might. We are concerned that resource restrictions and staff salary constraints could limit the Commissioner's performance as an independent regulator and recommend that other reporting arrangements be considered if the recovery plan does not achieve its stated objectives.

52. The Information Commissioner is independent of Government and reports to Parliament on his responsibilities under the Data Protection Act 1998 and the Freedom of Information Act 2000. He is wholly independent in his decision making, subject to the right of appeal to the Information Tribunal and the Courts. The Commissioner's accounts are audited by the Comptroller and Auditor General.¹⁷
53. The ICO's grant in aid forms part of DCA's delegated expenditure limit and DCA's Principal Accounting Officer is responsible to Parliament for ensuring that there are adequate management controls to safeguard the public funds granted to the Commissioner. The grants in aid for the Commissioner's FOI work in 2005-06 and 2006-07 is discussed at paragraph 26.
54. The Information Commissioner's Office is part of the public sector and is subject to the staff salary constraints imposed by HM Treasury. The Commissioner has informed DCA that he does not suffer difficulties in recruiting and retaining staff. The Commissioner has also informed the Committee in his written evidence that for complex complaints involving exemptions and considerations of the public interest he has recruited staff at the same grade as the Parliamentary Ombudsman used for investigating such complaints under the Code of Practice on Access to Government Information.¹⁸ The Ombudsman is funded by Parliament and is subject to public sector pay restraints.
55. DCA has encouraged the Commissioner to recruit and second staff from the civil service in both the north west and in his London office at the appropriate level. Professional support is available to the Commissioner's human resources staff from DCA's human resources directorate. As noted in paragraph 29 DCA provided additional funding in 2005-06 to enable the Commissioner to review his organisational structure. The Commissioner is responsible for the number of posts that he allocates at different levels within his Office.
56. The Government welcomes the Committee's plan to examine the Commissioner's progress report and to use it to monitor the success of the ICO recovery plan, (Committee Report paragraph 62 refers).

Recommendation 22. We see considerable merit in the Information Commissioner becoming directly responsible to, and funded by, Parliament, and recommend that such a change be considered when an opportunity arises to amend the legislation.

57. The Government notes the Committee's recommendation that it should review the constitutional position of the Information Commissioner if a suitable opportunity arises. However, the Government is satisfied that the present arrangements provide for independent decision making by the Commissioner while permitting the proper scrutiny of public resources.

¹⁷ Data Protection Act 1998, sch 5, (10)(2).

¹⁸ Commissioner's written evidence to the Committee, paragraphs 42-43.

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