Independent Commission on Freedom of Information: Supplementary evidence following oral evidence sessions

Evidence Provided in Advance of Oral Evidence Sessions

Health and Safety Executive

Covering Letter

Dear Lord Burns

The Health and Safety Executive (HSE) has been invited to provide oral evidence to the Independent Commission on Freedom of Information. I will be giving evidence on behalf of HSE.

I welcome this opportunity to provide feedback on the impact of the Freedom of Information Act 2000 on our organisation. To help inform the Commission, I thought it would be helpful to provide some background in advance. Please see the attached written submission for the information of the Commission.

I look forward to giving evidence and answering any questions at the oral evidence session on 25th January 2016.

Yours sincerely

Peter McNaught

Written Submission

Background

HSE is an executive non-departmental public body with Crown status, established under the Health and Safety at Work etc Act 1974 (HSWA). It is sponsored by the Department for Work and Pensions (DWP). DWP Ministers have primary responsibility for health and safety policy in government. HSE also reports to other Ministers on different aspects of health and safety.

HSE's primary function is to secure the health, safety and welfare of people at work and to protect others from risks to health and safety arising from work activity. HSE is responsible for regulating work-related health and safety in Great Britain and work in partnership with local authorities (LAs) as co-regulators. HSE regulates health and safety across a range of sectors and industries including major hazard sites such as onshore chemical plants and offshore gas and oil installations through to more conventional sites, including quarries; farms; factories; waste management and construction. We do this by applying an appropriate and proportionate mix of intervention techniques including inspection, advice and support, awareness-raising activities and, where necessary, enforcement action.

The HSE's work covers a varied range of activities; from shaping and reviewing regulations, producing research and statistics and enforcing the law.

HSE as an enforcing authority may offer duty holders information and advice, both face to face and in writing. Where appropriate, we may serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue formal cautions (England and Wales only), and we may prosecute (or report to the Procurator Fiscal with a view to prosecution in Scotland).

As part of our enforcement functions we carry out inspections, respond to concerns about health and safety and investigate reports made under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). RIDDOR puts duties on employers, the self-employed and people in control of work premises (the Responsible Person) to report certain serious workplace accidents, occupational diseases and specified dangerous occurrences (near misses)

HSE has 971 front line inspectors1 whose primary role is to undertake inspections and investigations either in response to a concern raised; a RIDDOR report or as part of a proactive inspection programme. In 2014/15 HSE:-

(Figure from December 2015)

i. received 14,134 concerns

ii. received 84,967 RIDDOR reports

iii. carried out 20,208 inspections

iv. carried out 8,763 investigations (of which 5,320 were concerns investigated by an inspector)

v. took forward 616 prosecutions

Where we carry out an investigation, we gather and establish the facts; identify immediate and underlying causes and lessons learned; prevent recurrence; and gather evidence to allow us to take any appropriate enforcement action.

During the course of an investigation it may be necessary for HSE to both produce and obtain from third parties large amounts of information. The information will normally be contained in documents. This typically includes duty holder investigation reports; witness statements; specialist inspector reports; expert evidence; risk assessments; photographs; company guidelines and procedures and medical information. This information will inform our decision making process and can be used as evidence in a prosecution. Documentation will often contain sensitive information including personal data and potentially commercially confidential information.

HSE and the Freedom of Information Act 2000 (FOIA)

HSE deals with almost 5000 requests for information each year. Details of the performance data is set out in Annex 1. We receive more requests than any of the other monitored bodies and account for about 11% of the requests received by all 41 monitored bodies. As part of the Ministry of Justice Post Legislative Review Costing Exercise carried out in 2012 it was estimated that the average cost of dealing with each request in non-central public authorities

was £164. For the relevant year, for HSE this amounted to a cost of £945,642. However, this was an average of all non-central public authorities and did not take into account overheads such as accommodation and IT which add significantly to the costs.

Despite the large number of requests, HSE receives comparably very low levels of complaints. In 2015 HSE received 4789 FOI requests and received 31 requests for an internal review and 8 Information Commissioner (ICO) appeals under the FOIA. On average we disclose information in 50% of requests either fully or partially and respond to approx. 90% of FOI requests within the statutory 20 working day deadline

In order for HSE to manage the volume of requests, resource is required from all levels and disciplines from across the organisation. We have a network of approximately 180 staff who, along with other responsibilities, are tasked with administering the requests and making disclosure decisions. This network includes administrative staff, front-line Inspectors, specialist inspectors; policy advisors and scientists. We also have a central team of 4 FOI specialists who provide advice and support to staff and administer the FOI appeal procedures on a full time basis.

The vast majority (80%) of requests are for information held by HSE in relation to an investigation which it has carried out following an incident which has resulted in injury or death. These requests are usually from solicitors acting for either the claimant or defendant in relation to a claim for damages for personal injury. They are usually broad and unspecific in their scope requesting "all information and documents relating to HSE's investigation". The request may be made before any civil proceedings have been commenced or after the claim has been brought. The purpose of the request can only be to help establish or counter such a claim.

Against this background, HSE's submission is directed only to the sixth question asked by the Commission in its call for evidence:

"*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?"*

Submission

Since the FOIA came into force, HSE has processed approximately 62,000 information requests of which 80% (49,600) are requests relating to accidents in the workplace. Most of these requests are from solicitors for the purposes mentioned above. This amounts to a cost over this period to HSE, and therefore to the taxpayer, of at least £8 million. The real cost is likely to be even higher if overhead were taken into account.

Save for the requirement under FOIA, HSE has no statutory duty to provide this information. Whilst HSE supports the principles of the FOIA and the Government's Transparency and Accountability agenda, we question whether the FOIA was ever intended as the means for claimants or defendants to civil proceedings to obtain information which may be relevant to the claim. Such requests are clearly to further a private interest rather than meeting any wider public interest. Whilst the parties to such proceedings can seek to obtain such information by making the an application to the court for disclosure of material held by a 3rd party, HSE is still required to deal with a request for such information in same was as any other request for information and the provisions of the FOIA apply. Irrespective of the final

disclosure decision, the request needs to be processed in accordance with the terms of the FOIA. The Act is also applicant and purpose blind with a presumption on disclosure unless an exemption applies. Therefore although the purpose of these information requests is clear to HSE, we cannot take this into consideration under the terms of the FOIA.

HSE does consider the application of the exemption to disclosure in Section 30 FOIA (Investigations and proceedings investigated by public authorities). However, in general, the view of the Information Commissioner is that the public interest favours disclosure when an investigation is complete. The ICO's view was expressed in a Decision Notice in 2008 as follows:-

For this exemption, it will involve weighing the harm that may be caused to an investigation against the wider public interest in disclosure. The public interest in disclosure of information is likely to be weaker while an investigation is being carried out. However, once an investigation is completed, the public interest in understanding why an investigation reached a particular conclusion, or in seeing that the investigation had been properly carried out, could well outweigh the public interest in maintaining the exemption. (ICO Decision Notice FS50121354)

In order to deal with such a request HSE needs to carry out some or all of the following actions:

- Identify whether we hold any information;
- Retrieve the file
- Consider what restrictions may apply to disclosure (these may include any prejudice to any ongoing investigation or prosecution, any information which includes personal data, any information which may have been provided to HSE in confidence)
- Consult with any 3rd parties (this will include writing to witnesses to determine whether they consent to disclosure of their witness statement and details and writing to others where they may have provided information in confidence)
- Consider whether any exemptions may apply and where appropriate consider the application of the public interest test.
- Depending on the above, redact and remove information which is not to be disclosed.
- Copy information which is to be disclosed
- Send information to requestor together with details of reasons for the application of any exemption to disclosure.

In some cases there will be 1000s of pages of information to consider.

Where HSE provides partial disclosure (for instance not disclosing witness statement because the witness does not consent), the requestor will often still seek an order from the court for HSE to disclose the remaining information in any event.

Despite the time and resource that may be required to deal with these requests, it is rare (less than 1%) that the estimate for the time taken to deal with the request will exceed the appropriate limit under Section 13 FOIA (£600) as calculated in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004(the Fees Regulations). The hourly rate used to calculate this limit is set at £25 and therefore the time required to deal with the request would have to exceed 24 hours. However, the most time consuming task is that of consulting 3rd parties, considering the application of exemptions and redaction and none of the time taken on these tasks can be taken into consideration in calculating the time which will be taken to deal with the request.

Similarly, although the Fees Regulations allow for a fee to be charged where the estimate for the cost of compliance does not exceed the appropriate limit, the fees which can be charged are limited to the cost of reproducing documents and postage costs but not the time taken by staff to perform those tasks.

Therefore, HSE cannot generally decline to deal with any of these requests nor recover any significant proportion of the costs which it incurs in doing so. Therefore, HSE considers that the FOIA does impose a burden on it which is not justified by the public interest.

Options for reform

HSE would invite the Commission to consider the following options for reform.

Amendments to FOIA

FOIA could be amended either to provide a specific exemption where the request is for the purposes of obtaining information required for legal proceedings. Alternatively it could be amended to provide that in considering the public interest, the identity of the requestor and the purpose for which the information is required can be taken into account.

Amendments to the Fees Regulations

The Fees Regulations could be amended to allow for fees to include all staff costs incurred by the public authority in processing the request. If it were not considered appropriate for such fees to apply to all request, it could be limited to requests which are for the purposes obtaining information relevant to civil claims.

Summary

HSE recognises that the parties to a civil claim relating to an incident which HSE has investigated have a legitimate interest in relevant information. HSE does not wish to prevent the parties having access to such information. However, the provision of such information does not form part of its statutory functions and the costs of providing such information is using up valuable resources which could be better used to meet HSE statutory purposes of securing the health, safety and welfare of people at work and to protect others from risks to health and safety arising from work activity. HSE considers that those whose private interests are served by the provision of this information should pay the full cost of HSE providing it.

Annex 1 - HSE FOI Performance Data

	2013	**2014**	***2015**
Total received	5766	5052	4789
Number handled under EIR	325	351	174
Responded within 20 working day	91%	93%	94%
Outcome			
Percentage granted in full (incl information not held)	49%	50%	51%
Percentage partially withheld	14%	16%	17%
Withheld	25%	24%	15%
Other (e.g. advice & assistance provided)	12%	10%	17%

*Annual performance data not yet published

In 2015: **Complaints**

Internal reviews	31
ICO complaints	8
ICO decisions in favor of complainant	1
ICO decision in favor of HSE	7

Exemptions applied	
Section 24 (National security)	0
Section 30 (Investigation and proceedings)	626
Section 35 (Formulation of government policy)	1
Section 36 (Prejudice to the effective conduct of public affairs)	6
Section 40 (Personal information)	772
Section 41 (Information provided in confidence)	45
Section 42 (Legal professional privilege)	2
Section 43 (Commercial interests)	10

*Please note more than one exemption can be applied to a request

Evidence Provided in Further to Oral Evidence Sessions

The Information Commissioner

2 February 2016

Introduction

1. At the Commission's oral evidence session on 20 January 2016, Mr Straw asked the Information Commissioner to provide further information on two points:

    - The resources available to the ICO for its Freedom of Information work and any information the ICO had on the resources available to equivalent authorities in comparable jurisdictions;

    - The issue of not being able to apply income from data protection notification fees to FOI work and how virement between sources of income could help the ICO.

2. In response to this, the Information Commissioner is able to provide the following information.

The resources of the ICO and those in comparable jurisdictions

3. The ICO's grant in aid for FOI is currently £3.75m. At its peak six years ago the figure was £5.5m. Following the Comprehensive Spending Review, the grant in aid has been set at £3.75m for the next three years – in other words a modest further cut in real terms (depending on the rate of inflation over the period).

4. It is hard to make a meaningful comparison of the resources available to the ICO for our FOI work with those of regulators in other jurisdictions. It is necessary to take account of factors such as how many complaints a commissioner's office receives, how many public authorities are within their jurisdiction and so on to get a true picture. Many years ago, when we made a case for an increase in our FOI budget we did look at Scotland as the comparator and this is what the Commissioner had in mind at the oral evidence session. The comparison then was fairly crude; we looked at the number of cases we each received and divided the funding by that figure to look at how we were funded per case. The figure for Scotland then was much higher, but the data is not now readily available, as the calculation was made in 2008/9.

5. For comparison, in 2014/5 the ICO received 4981 FOI cases, and closed 5072. The ICO regulates over 100,000 public authorities and received £3.75m in grant in aid funding. In the same period, the Scottish Information Commissioner (SIC) received 474 cases, closed 486, and regulated approximately 10,000 public authorities. The SIC received £1.58m in funding for the year, a significant proportion of which is to meet statutory duties other than issuing decisions (more information is available from the SIC[1]).

6. This is a very rough comparison and more variables should be used and considered as this is not the most accurate way to compare funding. The differences, which on the face of it are fairly significant, recognise that the ICO is a much larger organisation than the

[1] http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx

SIC, its staffing and structures are different, and that the ICO regulates a wider of range of activities, therefore our support costs and fixed costs are spread across a number of funding streams and can benefit from greater opportunities for economies of scale.

7. The Scottish Information Commissioner is funded directly by the Scottish Parliament, rather than by grant in aid from the Scottish Government.

Data protection funds and FOI

8. The current position on ICO funding overall is best explained by looking at the information in the latest ICO annual report[2]. This illustrates the level of funding we receive for data protection (DP) compared to FOI. Our base DP registration fee of £35 has remained the same since 2000 and the £500 fee for large organisations has been unchanged since its introduction in 2009. Nevertheless, total DP fee income has risen as more organisations and individuals have registered.

9. The framework agreement we have with the Ministry of Justice[3] (currently in the process of being updated in discussion with our new sponsor department, the Department for Culture Media and Sport) sets out how the ICO is allowed to vire money between FOI and DP (up to a maximum of £100K). There is no provision to vire from DP to FOI. The framework is subject to review by the National Audit Office and HM Treasury. We must only use grant in aid to fund specific FOI costs eg salaries of FOI dedicated staff, FOI legal costs, any FOI monitoring work. However, we are not required to apportion expenditure for our back office costs between DP and FOI. This focusing of FOI funds on FOI work is essential to ICO budgeting.

10. Under the new General Data Protection Regulation, recently agreed and due to come into force in 2018, the obligation on data controllers to notify with data protection authorities, such as the ICO, will disappear. We will therefore lose the basis for the fee paid by data controllers. We are in discussions with the Government about whether a new levy or fee could be introduced so that the ICO retains its independent funding stream and the DP function is not moved to grant in aid funding. We have had some discussions about whether public bodies could pay an 'information rights fee' rather than just a DP fee. Such a fee would jointly cover DP and FOIA and better recognise the reality that DP and FOI are two sides of the same ‘information rights’ coin. There is, however, still a measure of caution about any model that implies cross subsidy.

11. We trust that this level of detail is sufficient, in the interests of providing a quick response, but we will endeavour to provide further information if required.

[2] https://ico.org.uk/about-the-ico/our-information/annual-reports/
[3] https://ico.org.uk/media/about-the-ico/documents/2770/framework_agreement_moj_ico.pdf

Kent County Council

2nd February 2016

Firstly thank you for inviting representatives of Kent County Council to give oral evidence to the Commission on 25th January.

We didn't get an opportunity to mention the following at the evidence session as it wasn't relevant to any of the questions that we were asked, but we did want to suggest to the Commission that another avenue to consider may be simply to have a major publicity campaign promoting what public authorities (in particular local authorities like us) routinely publish as a matter of course to fulfil statutory obligations like the Local Government Transparency Code. Basically dispelling the myths that surround FOI and transparency.

The rationale for our suggestion is based on some recent articles in the Daily Mail about the review of the Freedom of Information Act which, because they are factually incorrect, are fuelling the concerns that the public have about a lack of transparency.

In November, the Daily Mail ran the following article http://www.dailymail.co.uk/news/article-3309596/The-shocking-scale-fat-cat-pay-public-sector-exposed-today-major-Daily-Mail-investigation.html . The Daily Mail was exposing "the shocking scale of fat cat pay". They said that the details "only came to light" through 6000 FOI requests and months of painstaking research.

We did receive an FOI request from the Taxpayers Alliance in 2014 asking for details of employees who received total remuneration in excess of £100,000k (to include salary, bonuses, employer pension contributions etc) in 2013-2014 and there are two issues here:

(i) why are the Daily Mail & Taxpayers Alliance submitting FOI requests to local authorities to access information that is already routinely published? I suspect because it is easier to send a few emails to pre-prepared distribution lists than look up the information on 6000+ websites. This justifies the comment in 6.9 of my submission *"Journalists and the Media also use the Act as a "fishing expedition" for potential stories, in effect utilising valuable council resources to do their research for them".*

(ii) why are they stating total remuneration as salary in their article, which paints a false picture? This justifies the comment in 6.9 of my submission *"Disappointingly, the information provided to the Media is then often misrepresented or taken out of context to "sensationalise" and sell news"*

A short time after we responded to your call for evidence, we received an FOI request from a local journalist for a copy of our submission which we provided to him within a few days.

A few days after that, the following article appeared in the Daily Mail http://www.dailymail.co.uk/news/article-3352008/Now-town-hall-fat-cats-launch-assault-right-know-Councils-demand-fees-introduced-handling-data-salaries-perks.html. The headline itself is inaccurate as although many councils, ourselves included, may have suggested the introduction of fees to alleviate the burden in our submissions, no authorities suggested charging for requests for information that is already in the public domain!

The Daily Mail quoted part of what we had said in 6.9 *"Journalists and the Media also use the Act as a "fishing expedition" for potential stories, in effect utilising valuable council resources to do their research for them"* but not the latter half *"Disappointingly, the information provided to the Media is then often misrepresented or taken out of context to "sensationalise" and sell news"* as we suspect that this article was an example of that!

Looking at the comments made by the public in response to this article, many of them said that information about salaries, expenses and councillors' allowances should be published, clearly not realising it already is!

We have also noticed that in none of the many Press articles regarding the work of the Commission and "the sinister attempt to crush the public's right to know"[4] have the public been told that they could actually read the submissions to the Commission for themselves. Or indeed what other information is routinely available to them.

As we stated in our submission in points 6.2 to 6.5 despite publishing more information, the numbers of requests are going up. Analysis of webpage hits would suggest that there is little interest in what we publish on our website.

On average, we refuse access to some/all of the information requested for only about 20% of the total requests we receive. This figure excludes requests where Kent County Council doesn't actually hold the information requested. A breakdown of these refusals is as follows:-

- s40 – personal data = 32.5%
- s12 – exceed appropriate limit = 30%
- s21/s22 – already accessible/future publication = 13%
- s14 – repeat/vexatious = 0.5%
- all other FOI exemptions/EIR exceptions combined = 22%

Therefore, another suggestion to add to the ones already suggested in our original response to the consultation is that the Commission consider the option of a major publicity campaign surrounding Open Data & Transparency and the Freedom of Information Act. This could outline the obligations on public authorities to publish a wide range of information, highlighting what information is already accessible, and invites the Press/Media to work with us not against us.

[4] http://www.dailymail.co.uk/news/article-3353660/Public-sector-chiefs-unite-attempt-crush-FOIs.html

Local Government Association

05 February 2016

Dear Lord Burns,

Thank you for the opportunity to give oral evidence to the Independent Commission on Freedom of Information on 25 January 2016. During my evidence the Commission requested clarity on two further points which were:

- The effects of Section 11 of the Act in relation to providing information in the form requested by the applicant
- Whether local authorities have tested the vexatious exemptions where requests are made by the same individual or similar requests from the same individual.

Section 11

Section 11 of the Freedom of Information Act allows an applicant to express a preference for the means by which communication is to be made, which the public authority shall so far as reasonably practicable give effect to. An authority may determine what is reasonably practicable, however councils have expressed concern that the cost to the local authority in assessing the reasonableness of the request and the potential appeal of refusing to meet it adds a further burden to the process. Northamptonshire County Council provided an example whereby the requester challenged the authority with an appeal process due to their understanding that "under recent ICO guidance on datasets you have duty [*sic*] to release the request [*sic*] information in the format I specified." While the council will have a view of what is reasonably practicable, such a demand will nevertheless place a burden on the local authority, whether or not the request is complied with.

Vexatious exemptions

Councils have shared with us examples of vexatious requests made repeatedly by the same individual. In the case of West Lancashire Borough Council, a requester made 32 requests to the Council between 15 April and 12 May 2014. In order to comply with the appeal system as set by the ICO, the Council had to go through an internal process of refusing the requests, dealing with the internal review, and then a complaint investigation by the ICO before the matter was brought to a conclusion.[5] The requests were rejected, but only on the grounds that they were regarded as burdensome not because the requests were made by a vexatious requester. ICO guidance says: "An authority cannot…refuse a request on the grounds that the requester himself is vexatious."[6]

Recommendations

As the above examples demonstrate, councils are using the exemptions and the abilities that are within the Act. However, the cumulative time it takes to deal with unreasonable requests and the appeals process can be burdensome.

[5] https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1431679/fs_50563398.pdf
[6] https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf

Councils support the principles of the Freedom of Information Act and we are keen to work with the Information Commissioner in order to give greater clarity as to what should be considered reasonably practicable and to limit the exploitation of the Freedom of Information Act. Our written submission sets out recommendations to review both the Fees Regulations and the appeals process which will further redress concerns about the burden on councils.

Yours sincerely,

Councillor David Simmonds CBE

Chairman, LGA Improvement and Innovation Board

NHS Providers (Initial Submission)
February 2016

ABOUT NHS PROVIDERS

NHS Providers is the membership organisation and trade association for the NHS acute, ambulance, community and mental health services that treat patients and service users in the NHS. We have over 220 members – more than 90% of all NHS foundation trusts and aspirant trusts – who collectively account for £65 billion of annual expenditure and employ more than 928,000 staff.

INTRODUCTION

The Freedom of Information Act 2000 (the Act) gave the public unprecedented access to information held by public services and has made a significant contribution to delivering transparency and openness in the public sector. There is widespread support for the principles underpinning the Act within the NHS provider sector not least because broad access to information is critical to accountability, and accountability is an essential component of the good governance necessary to deliver good public services. We are grateful for the opportunity to contribute evidence to the Commission, particularly in offering our members' perspectives on how to address a number of unintended consequences in the practical implementation of the legislation which have come to light in recent years.

The NHS has taken major steps over the last few years to bring increased amounts of useful and relevant information into the public domain, as well as information that is perhaps less relevant at first sight, but is important for the purposes of transparency. Publication schemes for NHS providers are typically broad based and compliant with the model scheme. Agenda, papers and minutes of the board of directors (and council of governors in foundation trusts) are published on websites as a matter of routine. Large amounts of financial, quality and performance data is available at the trust, on request and increasingly on websites, locally and nationally. Information released as a result of freedom of information requests (FOI) is also published as a matter of routine. We are confident that further progress will be made by trusts in promoting increased transparency and openness.

Having said that, it is also timely to review the operation of the Act to address unintended and negative consequences, some of which our members believe represent a disproportionate burden on public services without making significant contribution to the desired outcomes behind the legislation. Our members have identified five categories of FOI request that they believe represent a disproportionate burden in terms of time and opportunity cost and were not intended under the Act as follows:

- Trawls for commercial contact details
- Requests for commercial information for procurement purposes
- Frivolous requests
- Research requests
- Complainants who have exhausted other statutory routes for their complaint.

We address each of these areas of concern and possible remedies below and give examples in the text and examples of commercial requests, research requests and

complainants who have exhausted other statutory routs for their complaint at Appendix 1. While in our oral evidence we made mention of media trawls as a less important area of concern, we do not intend to address it further in our written evidence because we believe the five areas above are of a different and more important order.

TRAWLS FOR COMMERCIAL CONTACT DETAILS

NHS organisations receive frequent requests for contact details, particularly telephone numbers and e-mail addresses of managers below board level. The form of request varies but a typical example would be for the name, telephone number and e-mail address of the 3 tiers of manager below board level. The purpose of these requests is to obtain a tailor made set of contact data that can be sold on to companies that then use the information to cold call managers and make unsolicited offers of goods and services. What the FOI requesters want, in effect, is something for nothing. The upshot of this is that the NHS expends time and effort to profit a commercial organisation yielding no advantage to the public and a disadvantage to the public sector which has to deal with high volumes of irrelevant commercial marketing calls and e-mails. The information provided in no way contributes to the individual patient's right to know about the service they receive, which is a matter dealt with in individual correspondence with the patient and, of course, face to face. There is an important distinction to be drawn here between a FOI request for an individual name and their contact details which would, of course, be met, and the commercial marketing generated trawl for something like the name, telephone number and e-mail address of the 3 tiers of manager below board level.

While much of this information is in the public domain, the information is rarely complete, is often held departmentally rather than centrally, and is often not absolutely up to date. So there is a cost to collation and then maintenance; it is very rarely simply a matter of just taking a feed from a central intranet. The cost of providing the information is far outweighed by the burden of the subsequent volume of commercially driven nuisance calls and emails that are then generated.

It is worth adding that very few large, service based, organisations provide contact details for their middle management, recognising the issues that arise from allowing complete freedom of access to the names and contact details of managers.. Instead, they will, quite understandably, provide a central set of contact details to enable customers to be routed through a single contact point or set of contact points that are designed to handle customer contact. This is efficient for the customer and the organisation. Public sector organisations additionally provide the names and contact details of their Board members, as part of being an accountable public service. Our members tell us they do not understand how it can be a legitimate use of FOIA to force them to provide sets of contact details to commercial third parties solely for their benefit that no commercial organisation would be required to provide. They particularly don't understand this when the information provided then causes considerable disruption to the efficient operation of their organisation and they have to incur significant cost to provide the information in the first place.

REQUESTS FOR COMMERCIAL INFORMATION FOR PROCUREMENT PURPOSES

These requests typically involve companies that wish to be suppliers of goods and services requesting often quite detailed information on systems, processes and supply needs outside the procurement process and indeed when no procurement is taking place or is imminent. This is the equivalent of cold calling. While the information obtained is often of little

commercial value to the requesting company, it takes time and resource for an NHS provider to collate and provide the information. This is particularly the case where the information requested is not held centrally and requires investigation to obtain or where it is not available in the form requested and needs to be tailored.

While it might be possible to use an exemption under the Act to refuse some of these requests, refusals are often appealed as a matter of routine. Our members feel that the resource and inconvenience involved in being assured that an exemption applies, and then dealing with an appeal, often outweighs the burden or cost of providing the information.

Our members tell us that commercial and marketing based requests of the first two types set out in this note (i.e. this category and the category set out above) constitute between 30% and 35% of the total number of FOI request. This is the largest of any category and outweighs the estimated 20% to 30% that come from ordinary members of the public.

FRIVOLOUS REQUESTS

These are requests that do not serve the public interest and where the information can be of no discernible benefit to the individual requesting it. One example identified by one of our members was for the number of female staff whose name began with the letter A. Once again it might be possible to use an exemption, but these requests are extremely likely to be appealed at least to first tribunal level. In the light of this it is often more cost effective, if frustrating, to supply the information requested.

RESEARCH REQUESTS

There is no objection to students, academics or researchers contacting NHS organisations to request help with research, but NHS providers (or other public service providers) should still be able to refuse such a request if resources and time do not allow. However often requests come through the FOI route. They are often very broad and excessively detailed requests, requiring considerable work to deliver. As with the categories set out above it is a matter of routine for these requests to be appealed if refused, once again often to 1st tier tribunal level.

COMPLAINANTS WHO HAVE EXHAUSTED OTHER STATUTORY ROUTES FOR THEIR COMPLAINT

Certain requests come from complainants who may be staff, patients or members of the public who wish to complain about the care they, or a family member have received, and in some instances seek redress for a failing in that care. Many of the individuals making FOI requests which fall in to this category may not feel their complaint has been answered through other statutory routes. In fact, they may have exhausted the complaints procedures locally and nationally (via the Parliamentary Health Service Ombudsman) and have even been through the courts, or in the case of former employees through employment tribunals. This is doubtless a sensitive area, and we are not questioning the importance of individuals having access to a fair and transparent complaints procedure with regard to NHS care, or indeed their right to information and answers when things do go wrong. However the use of the FOI procedures is not the best means to address the issues at the heart of these individual complainant's concerns, nor likely to offer them the comfort, or redress that they seek.

It should also be noted that the exemption on vexatious complaints is not necessarily helpful to NHS providers in this regard because the law as it is currently applied relies on the request, not the person requesting, being shown to be vexatious. In some instances, NHS providers do experience multiple requests made by individuals over a prolonged period of time however, as stated earlier, the individual requests themselves often appear reasonable. Our members say they feel compelled to provide the information requested to avoid the likelihood of appeal to 1st tier tribunal level, and indeed to respond fairly and transparently to the individual, or family, in question.

PROPOSED REMEDIES

Our members report to us that the cumulative effect of the above categories of request represents an unreasonable burden. We believe that the following three remedies could contribute significantly to reducing this burden while in no way impinging on the public's right to make requests for information.

- **Strengthening the guidance on Section 14 of the Act**
  Section 45 of the Act gives the Secretary of State broad powers to issue guidance. We believe such guidance in respect of Section 14 on vexatious complaints would be particularly helpful. The current guidance produced by the Information Commissioner's Office (ICO) is not based on statute and the ICO itself has highlighted the risk of the guidance being overturned by the courts.[7] Statutory guidance could reduce any uncertainty that public authorities may feel about dealing with vexatious complaints. We would hope that such guidance would be subject to consultation and discussion to enable broad agreement wherever possible on its content. We would hope to see the five categories of request described above addressed within the guidance.

- **Reducing the fees limit**
  A change to the cost regime of the Act would assist public authorities in meeting the cost of compliance and reduce an opportunity cost which is becoming increasingly important in the public sector. The ICO has indicated that if a change to the cost regime is considered necessary it would support the conclusions of the Justice Select Committee: that reducing the appropriate limit in the fees regulations would be the most proportionate step to reduce the cost impact of the Act on public authorities.[8] The current limit on expenditure before a fee can be charged to help recover costs of providing information in the form requested is £450.00. This equates to 18 hours work or approximately half a working week at £25.00 per hour. Considering whether and exemption applies cannot currently be counted against this limit nor can the cost of redaction even though both are often necessary and can be time consuming.

  We would propose that the fees limit be reduced from £450 to £175 which would equate to one working day. Such a limit would be sufficient to ensure that most routine requests from members of the public would continue to be dealt with free of

[7] ICO written evidence paragraph 61
[8] ICO written evidence

charge, but would allow public authorities to begin to recover some of the cost of complying with requests for large amounts of detailed information.

We also believe that the time calculated be amended to include all items in the completion of the FOI request for example including the time spend on considering whether exemptions and apply and on redaction. The likelihood of appeal means that when considering whether to apply an exemption public authorities need to do much more work than simply consulting the current non statutory guidance. They need to form a reasonable view on whether they believe the exemption is defensible which involves work at quite a senior level. Work on redactions is skilled, detailed and time consuming, yet absolutely necessary.

Making both of these changes together may mean a proposed reduction of the fees limit to seven hours is perhaps too great a reduction. If it is accepted that time spent on considering exemptions and in redacting should count against the limit, a limit of ten hours or one and a half working days might be considered more appropriate. We assume that any changes to the limit would be subject to consultation so the final figure could be set in response to that consultation.

- **Introduce a higher hurdle for appeal**

At present requesters have nothing to lose by appealing against a decision at internal review and ICO levels. It is impossible for the public authority to know whether the person making the appeal is simply 'chancing their arm', has vexatious intent or believes they have a well founded case. What our members tell us is that the application of an exemption to any of the five categories of request we describe in our evidence above is likely to be met with an appeal as a matter of routine.

Dealing with appeals cannot be done in a cursory manner, even when the request appears at face value to be vexatious. So once again there is time and an opportunity cost involved. We recommend that the bar to appeals is raised so that only those who are serious would be inclined to make an appeal. We believe that this could, quite easily be achieved without in any way deterring appeals by those who feel they have a strong case.

We recommend that appellants be required to do the following in making an appeal:

- Explain and justify why they believe the original decision wrong giving reasons: this would allow the public authority to consider the appeal on specific grounds rather than having to consider each and every aspect of the original decision and therefore reduce the cost of dealing with appeals;
- Explain why they believe the disclosure of the information they request would be in the public interest. This would deter frivolous and vexatious appeals and would focus debate on where the public interest lies;
- Pay an appropriate set fee which would be refundable if the appeal were successful, or at the discretion of the authority or ICO as appropriate: once again this would deter the frivolous and vexatious.

CONCLUSION

IN CONCLUDING, WE REITERATE OUR SUPPORT FOR THE INTENTIONS UNDERPINNING THE FREEDOM OF INFORMATION ACT 2000 AND OUR WISH TO MAKE IT WORK MORE EFFECTIVELY AND EFFICIENTLY IN THE PUBLIC INTEREST. WE BELIEVE THE CATEGORIES OF REQUEST WE HAVE OUTLINED IN OUR EVIDENCE TAKE A DISPROPORTIONATE AMOUNT OF TIME TO DEAL WITH, AT CONSIDERABLE COST TO THE PUBLIC PURSE, WITHOUT PRODUCING BENEFIT IN THE PUBLIC INTEREST. WE BELIEVE THE REMEDIES WE PROPOSE WOULD GO SOME WAY TOWARDS DEALING WITH THESE ISSUES IN A FAIR AND EQUITABLE MANNER AND WE WOULD ENCOURAGE THE COMMITTEE TO EXPLORE SOME OF THE OPTIONS WE HAVE SUGGESTED. WE REMAIN OPEN TO DEBATE AND WE WOULD BE HAPPY TO CONTRIBUTE CONSTRUCTIVELY TO ANY FUTURE CONSULTATION OR DEBATE ON REVISIONS TO CODES AND TO ADVICE SO THE PUBLIC INTEREST IS BETTER DEFINED AND ITS DELIVERY ENHANCED.

NHS PROVIDERS, FEBRUARY 2016

APPENDIX 1

COMMERCIAL ORGANISATIONS SEEKING INFORMATION TO AID PROCUREMENT

Example 1:

(Examples are illustrative of many similar requests which we received relating to IT and telephony installations and contracting arrangements – probably the largest single category of FOIA requests received)

I would like to request information under the Freedom of Information Act. The information that I require relates to a specific telecommunications contract.

The contract information sent by the organisation previously has now expired please can you provide me with a new update of the telephone maintenance contract:

Please can you send me the following contract information with regards to the organisation's telephone system maintenance contract (VOIP or PBX, other) for hardware and Software maintenance and support:

1. Contract Type: Maintenance, Managed, Shared (If so please state orgs)
2. Existing Supplier: If there is more than one supplier please split each contract up individually.
3. Annual Average Spend: The annual average spend for this contract and please provide the average spend over the past 3 years for each provider
4. Number of Users:
5. Hardware Brand: The primary hardware brand of the organisation's telephone system.
6. Application(s) running on PBX/VOIP systems: Applications that run on the actual PBX or VOIP system. E.g. Contact Centre, Communication Manager.
7. Telephone System Type: PBX, VOIP, Lync etc
8. Contract Duration: please include any extension periods.
9. Contract Expiry Date: Please provide me with the day/month/year.
10. Contract Review Date: Please provide me with the day/month/year.
11. Contract Description: Please provide me with a brief description of the overall service provided under this contract.
12. Contact Detail: Of the person from with the organisation responsible for each contract full Contact details including full name, job title, direct contact number and direct email address.

If the service support area has more than one provider for telephone maintenance then can you please split each contract up individually for each provider.

If the contract is a managed service or is a contract that provides more than just telephone maintenance please can you send me all of the information specified above including the person from with the organisation responsible for that particular contract.

If the maintenance for telephone systems is maintained in-house please can you provide me with:

- Number of Users:
- Hardware Brand: The primary hardware brand of the organisation's telephone system.
- Application(s) running on PBX/VOIP systems: Applications that run on the actual PBX or VOIP system. E.g. Contact Centre, Communication Manager.
- Contact Detail: Of the person from with the organisation responsible for telephone maintenance -full Contact details including full name, job title, direct contact number and direct email address.

Also if the contract is due to expire please provide me with the likely outcome of the expiring contract.

If this is a new contract or a new supplier please can you provide me with a short list of suppliers that bid on this service/support contract?

Example 2:

I would like to submit a freedom of information request for the following information relating to IT/Telecommunications Voice and Data Services.

1.Fixed Line (Voice Circuits) Provider- Supplier's name
Fixed Line Renewal Date- please provide day, month, year.
Fixed Line Duration- the number of years the contract is with the supplier.
Fixed Line Number of each type of Lines (eg Analogue, ISDN2,ISDN30,SIP)
Fixed Line Monthly charge for each line by type and any other associated charges

2. Minutes/Landline Provider- Supplier's name
Minutes/Landline Renewal Date- please provide day, month, year.
Minutes/Landlines Duration: the number of years the contract is with the supplier.
Minutes/Landline Monthly Spend- Monthly average spend
Minutes/Landline breakdown of duration/cost by call destination

3. Fixed Broadband/Data Line Provider- Supplier's name
Fixed Broadband/Data Line Renewal Date- please provide day, month, year
Fixed Broadband/Data Line Service Details – line type/capacity etc.
Fixed Broadband/Data Line Monthly Spend

4. Mobile Fleet Network Provider
Mobile Fleet Service Provider
Mobile Fleet Contract Renewal Date - please provide day, month, year (for each number if different)
Mobile Fleet – the number of years the contract is with the supplier.
Mobile Fleet number of connections/numbers on the account
Mobile Fleet Tariff description, monthly cost and any breakdown of charges for line rental and calls

5. PBX/Phone System(s) make and model
PBX/Phone System(s) system details incl number of handsets
PBX/Phone System(s) Renewal Date of Lease (if applicable) - please provide day, month, year
PBX/Phone System(s) Lease Provider's name
PBX/Phone System(s) Maintenance Service Provider

PBX/Phone System(s) Maintenance Renewal Date - please provide day, month, year
PBX/Phone System(s) Maintenance Equipment covered
PBX/Phone System(s) Maintenance Annual charge

6. Managed Service Contract/IT Support
Managed Service Contract/IT Support Contract Title & Supplier's Name
Managed Service Contract/IT Support- Services Included
Managed Service Contract/IT Support Total Contract Value
Managed Service Contract/IT Support Contract Duration
Review Date- please provide day, month, year

7. Internal Contact managing each of the above relationships: please could you provide full contact details including contact number, email and job title
Please could you confirm all prices are provided exclusive of VAT.

Example 3:

1. ICT end-user base

Approximately how many IT users do you have in your organisation?

Total no IT users

Please tell us where these users work:

Typical place of work	**% of users**
Permanent desk	
Hot-desk	
Not desk-bound (community or field-based)	
Working from home (for all or part of the week)	

2. End-user and office equipment

How many of the following devices are in use within your organisation, and how often are these devices replaced?

Device/equipment type	**Number of devices in use**	**Approx. date of purchase of your oldest assets**	**Approx. date of purchase of your most recent assets**	**Average refresh rate (e.g. every 3 years)**	**Most dominant brand in use**
Desktop PC					
Thin client PC					
Laptop PC					
Tablet PC					
Mobile phone owned by your organisation					
Mobile phone used within a BYOD context					
Printers, photocopiers, scanners					

Multi-function devices (MDFs)					

3. Servers

Who is responsible for managing your server assets? Please tick the option(s) which best describes your organisation:

Management responsibility for servers	
We manage all our own servers	
We manage some of our own servers (**please give approx %)**, with the remainder managed by a third party	
We lease our servers, but a third party manages them all on our behalf	
We do not own any servers – all of our systems are hosted	

Of the servers that you manage, please provide approximations for the following:

Server installed base	
How many server units do you have?	
Most dominant brand of server in use?	
Average utilisation rate of your servers (%)? Alternatively, what % do you consider to be under-utilised?	
% of server units that are virtualised?	
Do these virtualised servers reside within a server room or a data centre belonging to your organisation? **If YES, please also respond to Q5**	

4. Storage hardware/devices

Who is responsible for managing your storage hardware/devices? Please tick the option(s) which best describes your organisation:

Management responsibility for storage hardware/devices	
We manage our own storage hardware/devices	
We manage some of our own storage hardware/devices (**please give approx %)**, with the remainder managed by a third party	
We lease our storage hardware/devices, but a third party manages them all on our behalf	
We do not own any storage hardware/devices – all of our systems are hosted	

Of the storage hardware/devices that you manage, please provide approximations for the following:

Storage hardware/devices installed based	
How many storage units do you have?	
Most dominant brand of storage hardware/device in use?	
Average utilisation rate of your storage devices (%)? Alternatively, what % do you consider to be under-utilised?	
What is your average storage capacity (%)?	
Do these storage devices reside within a server room or data centre belonging to your organisation?	
% of storage devices that are virtualised?	
Do these virtualised storage devices reside within a server room or a data centre belonging to your organisation? **If YES, please also respond to Q5**	

5. Server room or data centre facility

We would like to get an approximation of how your in-house server room or data centre is configured:

Server room or data centre location	
If an in-house server room or data centre, please give approx. size and/or capacity of the facility (m_2 or ft_2)	
Total no racks in your in-house server room or data centre (units)	
Alternatively, is your server room or data centre co-located in another public sector organisation's facility	
Alternatively, is your server room or data centre co-located in a specialist private sector data centre facility	
Alternatively, do you manage a co-located facility on behalf of another public sector organisation?	

6. Telecoms and Unified Comms

We would like to get an approximation of your telecoms and unified communications infrastructure (to include messaging, conferencing and video, as well as voice):

Telecoms and Unified Comms Infrastructure	**No end users/seats**
On-premise IP PBX (Internet Protocol Private Box Exchange)	
Hosted IP PBX/Unified Comms service	
Other (please define)	

Example 4:

1) Please confirm the location of your computer room / data centre
   a) On your premises?
   b) 3rd party location?
   c) Other NHS provider location?

2) What is your annual budget for the following areas in the years:-

	IT as a whole	IT staff	IT Hardware	IT Software	IT Licences	IT Utilities (heating, aircon)
2015-2016						
2014-2015						
2013-2014						
2012-2013		n/a	n/a	n/a	n/a	n/a

If you are unable to provide the information as shown above, please provide the information in the format you have available for the years shown

3) Do you have any plans to move or re build your data centre facilities?
   a. What are your plans?(please provide any information you hold on the plans)
   b. What is reason for the change?
   c. What is the budget?
   d. When do you plan to make these changes (month /year)
   e. Who is the project lead (name, full email address and direct telephone number)

4) Do you have any other IT projects planned with a budget of over £50,000 for the:
   a. Next 12 months - Please provide details (product, budget &expected project length)
   b. Next 2 years - Please provide details (product, budget &expected project length)
   c. Next 3 years - Please provide details (product, budget &expected project length)
   d. If so please provide contact details (name, full email address and direct telephone number) of the current /potential leads?

5) If your data centre /computer room is located with a third party of other NHS service supplier, please provide the following information: -
    a. Contract start date?
    b. Contract end date?
    c. Total contract cost?
    d. Annual contract costs?
    e. Service/project lead (name, full email address and direct telephone number)
    f. Name of supplier/contractor?

Example 5:

For the year 2014, please could you tell me the Trust's catering purchases of:

1. Boxes/Bags of fresh fruit and veg and a breakdown of what these items were (e.g bananas, apples, broccoli) and the total cost.
2. How many pieces of fruit this would generally represent, per box eg. 100 bananas per box
3. Tins of fruit and bags of frozen vegetables and the total cost.
4. Cakes, packs of biscuits, cake bars, sweet puddings and dessert pies and the total cost.
5. Soft drinks containing sugar (not including diet soft drinks) and the total cost.
6. The cost agreed in the tender for fruit and veg and the amount actually paid.
7. Please could you tell me who the food is bought for? e.g hospital canteens, patient meals, staff cafe, vending machines etc.

RESEARCH REQUESTS

Example 6:

Enquiry Details: Freedom of Information Request (Public Health Funerals)
1. Has the Trust conducted any 'Public Health Act Funerals since 01/03/15 to the Present (can you include up to the date you respond to my request)?
2. If the answer to this question is yes, can you disclose:
a) The full names of the deceased
b) The date of birth of the deceased
c) The date of death of the deceased
d) The last known address of the deceased
e) Whether the details of the deceased, have been/will be or are likely to be referred to the Government Legal Department (if you are not sure then can you just answer that field 'unsure, or unknown' or words to that effect).

3. Have there been any similar FOI requests to this (within the time scale outlined in question 1)

4. Has the Trust given this information away to any other individual or organisation outside the parameters of FOI (other than the Government legal department or internally) within the time scale outlined in question 1

5. Has the Trust always disclosed details on Public Health Funerals? Or has the Trust refused in the past but then changed its stance after an appeal/internal review? (In terms of time scale can you search as far back as you can without breaching the costs allocated for an FOI request, which does not require the requestor to pay fees).

6. If the Trust has refused in similar requests to this in the past an then changed its approach to disclosure
a) What exemption Clauses were used to block the request
b) On what basis did the Council change its approach to disclosure
c) If it changed its approach on the basis of an appeal, could you send me a copy of that appeal?

Example 7:

Under the Freedom of Information Act, I would like to request information about the following information:

1. What happens when a patient dies in the care of the trust and there are no details of the next of kin provided?

2. Who tries to locate/trace the next of kin if the information is unknown? (name, department and contact details)

3. What are the steps taken to locate the next of kin of the deceased patient?

4. What happens when the trust is unable to locate the next of kin?

5. If the patient dies within the care of the trust and the next of kin cannot be traced, whose responsibility is it to provide a funeral? (name and contact details)

6. On how many instances has the trust provided a funeral for a patient (time frame January 2014 to present)?

7. Of these public health funerals please provide:

a) Name of deceased
b) Date of birth and date of death
c) Last residential address
d) Have the next of kin/family members been traced?
e) What date have the details been referred to the QLTR, Bona Vacantia, Treasury Solicitor, Government Legal Department, National Ultimus Haeres, Duchy or Farrer & Co?

8. Have there been cases where the trust has referred/or plan on referring details of the deceased patient to the Treasury Solicitor/Government Legal Department, Bona Vacantia, National Ultimus Haeres, Crown Solicitor, Duchy Farrer & Co or QLTR?

9. Which other organisations have details (of the deceased with no known kin) been passed to and why?

10. Does the trust conduct an asset search and/or will search?

11. Which department deals with the deceased's assets? (name and contact details)

12. Is the trust responsible for selling the assets in order to compensate for the funeral costs?

13. Does the trust have an Empty Homes department? (name, contact details)

14. What is the role of the empty homes department?

Example 8:

I am researching temporary staffing processes within the NHS. Please provide the following information:

1) Do you have a master vendor (MV) arrangement in place for the supply of medical locums? If so please state the name of the provider used (Medacs, Holt, A&E Agency etc.)

2) Please state the utilisation rate that has been achieved through the master vendor in the last 12 months. This is the total value of locum spend supplied by the master vendor itself in the last 12 months as a percentage of total locum spend in the same period.

3) Does the trust use a direct engagement model to engage locum staff? If so please state the name of the company used (Liaison PwC, 247 Time, Brookson, HB Retinue, Medacs etc.)?

4) Do you run a weekly payroll for medical bank?

5) Does the trust use rostering software (Allocate, Smart etc.)? If so please state the name of the company used, and the total amount that the trust has spent on rostering in 2014/15.

Please provide all subsequent information split by the following staffing categories. Please include all spend outside of the specified categories as “other”.

- Nursing & HCA’s
- Medical & Dental
- AHP’s
- Other

6) Pease state the trusts expenditure on agency staff in 2014/15 split by the above staff categories.

7) Please state the total spent on internal bank staff in 2014/15, split by the above staff categories. This is the total paid to workers completing shifts via the trust bank, excluding any costs to 3rd parties. Please do not include any spend on outsourced bank staff.

8) Please state the total number of staff signed up to the trust’s internal bank, split by the above categories.

9) Of the above figure, please state the total number of staff signed up to the bank who also work as substantive staff at the trust. I.e. Staff that hold substantive contracts but have also completed shifts via the internal bank.

10) Does the trust outsource the supply of any bank staff to third parties such as NHS Professionals, Bank Partners, etc.? If so please specify the name of the company used and the staffing categories supplied by the 3rd party.

11) Does the trust use any third party tech solutions to manage internal bank staff (de Poel, HB Retinue, Liaison, Holt, 247 Time etc.)? If so please specify the name of the company used and the staffing categories managed through the tech solution.

12) Do you use any suppliers or systems to manage the release of vacancies to agencies and bank workers? If so please state the name of the company used and the staffing categories managed. If you use different suppliers/systems for different staffing categories, please specify.

REQUESTS BY COMPLAINANTS WHO HAVE EXHAUSTED OTHER STATUTORY ROUTES FOR THEIR COMPLAINT

Example 9:

This is a very brief summary of an extensive sequence of FOI requests made by an individual applicant seeking to establish negligence in relation to a family member`s death in the 1980`s. Whilst the Trust now operates the facility in question, the Trust was not established until 2001, many years after the events in question.

The Trust has been very clear on its position, one which is subject to on going challenge by the applicant, often in a hostile, aggressive and offensive tone.

In total 7 multi-faceted FOI requests have been received by the Trust from this individual covering matters including:

Disclosure of the deceased`s records
All documentation relating to the legal status of the facility in question, legal liability and providing clear legal proof
Security arrangements then and now including lock fittings
Arrangements for medical records transfers in pre 2000
Operational policy changes from 1980s to date
GMC numbers of staff from 1980s

A number of these requests have resulted in review requests and subsequent escalation on two matters to the ICO.

The Trust has recently found it necessary to deem specific requests vexatious given the repetitive nature, the disproportionate and or unjustified level of disruption caused, a highly personalised matter etc.

NHS Providers (further submission)

9 February 2016

Dear Commissioner

Further submission from NHS Providers: FOIA Requests for managers' contact details

Following our presentation of oral evidence to the Commission on 25 January we were pleased to submit written evidence on 3 February. In presenting that evidence we wished to give a balanced overview of what we believe are the main issues confronting our members in dealing with freedom of information requests and to propose possible solutions. We refrained therefore from going into extensive detail on each aspect of our evidence. However at our oral evidence session, we also offered, at the request of Rt. Hon Jack Straw, to provide more detailed information on one aspect of our submission and I though it might be useful to address that aspect of our evidence in more depth here

NHS provider organisations receive relatively frequent requests for contact details for tiers of management and professionals below board level. If collated in the right form these details are saleable assets and it is precisely for this reason that freedom of information requests are often made.

In our members' experience, these requests are rarely made by individuals who wish to know something about the team from whom they will be receiving treatment. This is because information on how NHS providers and their services are rated by the Care Quality Commission (CQC), performance information, public feedback on services and information on outcomes delivered by individual consultants in a number of specialties, is all rightly, and readily, available in the public domain. Instead, these are often requests from companies or individuals asking for collated lists of contact details, particularly e-mail addresses, so that they can sell those on to commercial interests that will in turn make unsolicited contact with a view to selling goods and services.

The argument has been made that this is information that NHS provider organisations hold in relatively accessible form, for example on an intranet, and that it is the sort of information that should be in the public domain in any case. It is clearly the case that organisations hold the information. However NHS foundation trusts and trusts will often have very many hundreds of employees in the two tiers below board level and do not necessarily hold a searchable central repository of contact details in the specific form sought by those making the request. It is clearly possible to collate the information although there will be a one off cost of assembling the information and a continuing cost in keeping it up to date as staff turnover which, in a large organisation with hundreds of managers and consultants, will be relatively frequently. The key issue from an NHS provider perspective is that there is no value to them as organisations in collating and maintaining the information in the form requested. The only possible reason to do so is to meet FOIA requests from commercial companies seeking to either sell services or sell the contact details to third parties.

If those requesting the information were prepared to conduct a slow trawl themselves through the organisation's website to find the information they request, there would be less of an objection, but for public money to be spent purely to profit a commercial interest with no benefit accruing to the NHS seems to us to be invidious.

We also think there is some contention about the level of position an employee should hold within an organisation to expect that their work contact details, including their role and location will be published. Clearly it is appropriate for board members, accountable for the quality of services to have their details in the public domain or for senior clinicians who make available key information about their qualifications and their own performance in a number of key specialties. Those further down the management chain are not directly accountable to the public, but rather through their management structure to the board. Most organisations recognise that chain of accountability by ensuring that it is those at the top of the organisation who give account on behalf of the organisation. Their more junior colleagues will interface with the people for whom they provide treatment or services, but not more generally on behalf of the organisation and their contact details are disclosed where their work requires it, not as a matter of course. We think this is right and proper because it protects individuals who are not spokespersons for the organisation and are not accountable for its overall performance.

There is also the argument we made in our recent written submission to you: that very few, if any, large, service based, organisations provide contact details for their middle management, recognising the issues that arise from allowing complete freedom of access to the names and contact details of managers. Namely, that they are in receipt of a stream of unwanted and distracting contact, in this case marketing commercial products. Instead, all large service organisations will, quite understandably, provide a central set of contact details to enable customers to be routed through a single contact point or set of contact points that are designed to handle customer contact. One of the main reasons for avoiding unnecessary contact in an NHS setting is that we are quite deliberately trying to maximise the time that, for example, senior clinicians spend on patient care, rather than dealing with unnecessary marketing emails or phone calls.

In summary, the provisions under the FOI Act are intended to help members of the public access information of relevance to them which may not readily be accessible, and we are fully supportive of instances where individuals seek pertinent information to assure themselves or members of their family about the quality of care available to them, or related matters. However we see no public interest in public services being compelled to disclose information for the sole purpose of providing a saleable resource to a third party. We also believe it is appropriate for organisations to decide for themselves which contact details below board level are in the public domain to protect staff below board level and to ensure that a proper chain of accountability operates.

I hope this further submission deals with the questions raised by the Commission, but please do not hesitate to contact me if there is more that we can do.

Regards

Chris Hopson

Chief Executive, NHS Providers

Professor Forsyth and Professor Ekins

3 February 2016

Supplementary evidence for the Freedom of Information Commission

We thank the Commission for the opportunity to speak briefly about some of the issues raised by our Policy Exchange report *Judging the Public Interest: The Rule of Law vs. The Rule of Courts.* In this supplementary note, we would like to reiterate two main points that follow from our report and to comment on alternatives to full restoration of the veto.

The significance of Evans v Attorney General

The first point to reiterate is that the Supreme Court's judgment in *Evans* undercut the ministerial veto (s 53), which was a robust, central part of the scheme of the FOIA until it was undone in *Evans*. Notwithstanding the disagreement amongst the majority judgments in *Evans*, between Lord Neuberger one hand and Lord Mance on the other, their judgments jointly put continued use of the veto in very grave danger of being quashed by the courts. Suggestions to the contrary in some of the evidence put before the Commission, viz. either that s 53 was intended only to apply to decisions of the Information Commissioner and not to the Tribunal or that *Evans* changes nothing, are untenable, as our report explains in detail.

In relation to that first erroneous suggestion, it is worth stressing that Parliament in 2000 conferred the right of appeal on a tribunal that was not a superior court of record. This appellate capacity was transferred much later to the First Tier Tribunal (FTT) and Upper Tribunal (UT), the latter of which is a superior court of record, in the course of a general reform of the tribunal system. Vesting the appellate jurisdiction in the FT and Upper Tribunal in this way does not change the scope of the ministerial veto. It seems to us impossible to avoid the conclusion that Parliament intended the ministerial veto to apply to decisions of the Tribunal as much as to decisions of the Information Commissioner.

There is a good case to be made, simply for the integrity of the rule of law, to restore the ministerial veto and to overrule the future effect of the *Evans* judgment (which at best makes future exercises of the veto highly vulnerable to challenge and at worst undercuts this central part of the FOIA altogether). Any relevant legislative changes that are made to the FOIA need to be framed with care to avoid the risk that subsequent courts might undercut them. We hope very much that the Supreme Court will not again act in the fashion one sees in *Evans* but there can of course be no guarantee of this. For this reason, we would suggest that the simplest and most effective reform that can be made in response to *Evans* is to respond clearly and authoritatively to the judgment by restoring the veto.

The draft bill we proposed in our report would, we suggest, accomplish this end. It would be very hard for the Supreme Court to see this as anything other than a clear response and rejection of their misreading of the Act. That is, a focused, simple restoration of the veto would be less likely than other alternatives to be misconstrued.

What constitutional principle requires

The second point is that respect for constitutional principle does not rule out restoration of the veto. Parliamentary sovereignty and the rule of law required the Supreme Court not to undercut the ministerial veto for which Parliament had made clear provision in the FOIA. However, one might think, in the context of a more general reform of the FOIA, that notwithstanding the wrong done by the Supreme Court, s 53 was itself unprincipled and

should be revised. This line of thinking takes for granted that in enacting s 53 Parliament improperly authorised ministers to overrule a court decision, contrary to the separation of powers. We say that there is no good reason for Parliament to limit the scope of the veto in order to comply with the confused and erroneous position taken by some judges of the Supreme Court on this point, a position perhaps adopted to some extent by the Information Commissioner and by the former Attorney General Dominic Grieve QC in their evidence to the Commission. It seems to us that there is no problem in constitutional principle if Parliament chooses to restore the veto exactly as intended in 2000.

To be clear, our point is not that the veto should be restored because the veto is good policy. This is of course a matter for you. Our point rather is that Parliament's choice to enact a veto was not unconstitutional. The Department receiving requests for disclosure, the Information Commissioner reviewing the Department's response, the Tribunal on appeal and the Minister exercising the veto all answer the same question: does the balance of the public interest weigh in favour of disclosure or in favour of maintaining the exemption? This is a question about the public interest which under our constitutional arrangements is squarely for the executive to decide. There is nothing at all problematic about Parliament reserving to ministers the final decision on such a matter.

As we say, our main concern in commenting on Evans has been to point out that the Supreme Court wrongly undercut s 53 of the Act in a way that our constitution forbids. The veto seems to us to have been an essential part of the scheme that Parliament chose to enact, such that one should think carefully about whether the scheme remains coherent or safe without it. Parliament imposed robust duties of disclosure on public bodies partly because of the safeguard, as it was perceived to be, of the veto. The idea that one can simply lop off this provision, without considering the need for corresponding change elsewhere in the scheme seems foolhardy. This is another reason to object to the Supreme Court judgment in Evans. It is not of course our main ground of objection but it is a reason for Parliament to consider carefully how to respond: its lawmaking scheme, whatever its merits, was undercut and distorted by Evans.

As we made clear in our Report and in our evidence, we think Parliament ought to reinstate the veto in the form originally intended. And we recommended a draft Bill to that effect. But there are of course other alternatives to our Bill that might restore the veto in part.

The early veto

One alternative (discussed by the Information Commissioner in his evidence) would be to permit the ministerial veto over the decisions of the Commissioner but not thereafter, i.e. the Attorney General or other Minister could veto decisions of the Information Commissioner but could not veto decisions of the First Tier Tribunal or the Upper Tribunal. Presumably, if the veto were exercised, there would still be the possibility of an appeal to the First Tier Tribunal or Upper Tribunal, (for instance, on the ground that the information was not exempt information at all) but that section 57 or 58 would be amended to ensure that the First Tier Tribunal or Upper Tribunal would be bound by the Minister's estimation of the balance of public interest expressed in the veto. While this addresses the Supreme Court's concern over the executive overruling the judiciary, it would mean that the A-G (or other Minister) would be incentivised to veto early and, in order to be on the safe side, often.

In addition there would be practical difficulties. What if the Commissioner finds in favour of the public authority (and non-disclosure), so there is nothing to veto until the Commissioner's decision is overturned by a tribunal? We understand that this might be addressed by giving the Minister a power to "confirm" a finding in favour of non-disclosure by the Commissioner; confirmation by the Minister would have the effect of precluding the First Tier Tribunal or

the Upper Tribunal from revisiting the question of where the balance of public interest lies. Again this would incentivise the Attorney-General to "confirm" to be on the safe side. This might lead to the position where the relevant Minister would feel he or she had to consider every decision of the Commissioner and confirm it or veto it.

One additional wrinkle with this suggestion is that fresh evidence led for the first time before the First Tier Tribunal or Upper Tribunal might reasonably lead the Attorney-General or other Minister to change their mind on where the balance of public interest lies. The decision of the Attorney-General made on the basis of partial evidence would have to stand.

Finally, it should be noted that Lord Neuberger was of the view that it would often be a misuse of the veto "to issue a certificate on certain grounds when it would be possible to appeal to the tribunal under section 57 on the same grounds." Care would have to be taken with the amending legislation to spell out that the "early veto" was not a misuse of the power to veto.

Preclude appeal on the balance of public interest point

A further alternative (and one that we would prefer to "early veto") would be to recognise, per our point above about what constitutional principle requires, that the question of where the balance of the public interest lies is a matter for the executive not the judiciary. Consequently, the law could be amended to ensure that this question is not for the judicial authorities to decide. This would be achieved by ensuring that it was not possible to appeal to the First Tier Tribunal or the Upper Tribunal on the ground that the Commissioner had erred in finding in terms of section 2(2)(b) that "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

Appeals to the First Tier Tribunal or Upper Tribunal would thus be concerned with questions of law properly so called (section 58(1)(a): "the notice against which the appeal is brought is not in accordance with the law") and with the "review [of] any finding of fact on which the notice in question was based" (section 58(2)). Under this scheme an appeal would lie on questions of law to the First Tier Tribunal and Upper Tribunal but no judicial authority would ever address the question of where the balance of public interest lay and no question would ever arise of the executive authorities overruling a judicial body. The judgment of where that balance lay would be made by the Commissioner but it would be subject to veto by the Attorney-General or the Minister when they took a different view. In the exercise of the veto the Attorney-General or the Minister would be accountable to Parliament.

A word must be added about judicial review of the veto power. The veto power would in principle be subject to judicial review. But any disputes over questions of law properly so called or disputed findings of fact should be dealt with by the appeals process; that alternative remedy should exclude judicial review on matters adequately able to be dealt with of appeal save in exceptional cases. Disappointed FOI applicants may well attempt to use judicial review to revisit the question of where the balance of public interest lies. But in the absence of an irrational or *Wednesbury* unreasonable exercise of the power they should not enjoy success.

The FOIA would need to be amended with care to make it very clear that the balance of public interest question is to be a matter of discretion rather than a question of law, such that it would not be subject to appeal and judicial review (which, of course, lies for error of law). It would not, we consider, be sufficient simply to repeal section 58(1)(b) which provided for an

appeal against the Commissioner's exercise of discretion. Rather, it would need to be spelt out very clearly that the balance of public interest question is not a question of law.

Under this proposal there would remain a risk that the First Tier Tribunal or Upper Tribunal might mischaracterise matters that are properly for consideration by the Commissioner, or for the Attorney-General or Minister considering whether to veto a decision of the Commissioner. That is, the First Tier Tribunal or Upper Tribunal might, as in *Evans*, take questions about the existence and meaning of constitutional conventions or the risk of public misperception to be questions of fact for it to decide, which findings might require the executive to disclose information.

The limitation of the grounds of appeal to questions of law properly so-called is an alternative to restoring the veto and may be a preferable alternative to the early veto. However, we suggest that the Commission should not think that this alternative is superior to the restoration of the veto by reason of constitutional principle. Restoration of the ministerial veto would be constitutionally proper and might be the safest way – that is, the least likely to misfire – to address the hole in the scheme opened up by *Evans*.

Universities UK

February 2016

Supplementary evidence from Universities UK to the Independent Commission on Freedom of Information's call for evidence on aspects of the Freedom of Information Act 2000

About us

Universities UK is the representative organisation for the UK's universities. Founded in 1918, its mission is to be the voice for universities in the UK, providing high quality leadership and support to its members to promote a successful and diverse higher education sector. With 133 members and offices in London, Cardiff (Universities Wales) and Edinburgh (Universities Scotland), it promotes the strength and success of UK universities nationally and internationally.

Range and type of requests received, by subject and requester.

1. The latest Information legislation and management survey results, published in March 2015, show a similar pattern to previous years in the types of FOI requests received by universities, both by subject and requesters.

2. The top three subjects of FOI requests in 2014 were student issues and numbers (21%), HR and staff issues (13%) and financial information (11%). Requests regarding management and administration of the institution were in the top five of subjects.

3. Journalists, as in previous years, continued to be the most active category of requester, accounting for 25% of all requests. Members of the public made up 14% of requests, with commercial organisations making up a further 12%.

The proportion of providers who are not covered by the FOI Act, as well as the kind of institutions covered.

4. The exact figure of students enrolled at alternative providers of higher education in the UK is not known. The most comprehensive piece of research available was published in 2013, and refers to the 2011-12 academic year. Hence, the most accurate estimate available to us does not take into account growth in the sector over the past four academic years.

5. The research published by BIS in 2013 identified a minimum number of 674 alternative providers of higher education in the UK. The research notes that this is a minimum estimate for the total number of providers, because some providers may not have been identified through the research process. Of the 674, 27 were lead representatives of larger provider groups consisting of a total of 89 additional campuses or colleges.

6. The research estimates that there were approximately 160,000 higher education learners studying at the 674 providers in 2011-12. This estimate is not comprehensive, because the research did not identify specific student numbers at every one of the 674 alternative providers.

7. The estimate of the number of students enrolled at alternative providers compares with 2,496,645 undergraduate, other undergraduate and postgraduate students recorded by HESA at other institutions. In addition, there were 180,000 students registered directly with a further education institution to study a higher education qualification.[9]

8. We estimate, therefore, that the proportion of students enrolled at alternative providers of higher education across the UK was 5.6% of the total student population in 2011-12.[10] However, this estimate does not take into account significant changes in the English higher education sector. For example, the number of students in England claiming maintenance loans for courses at alternative providers more than tripled between 2011-12 and 2014-15 (see paragraph below).

9. The latest data from the Student Loans Company shows that the number of students in England claiming maintenance loans for courses at alternative providers rose from 11,420 in 2011 to 39,533 in 2014. This does not present a complete picture of the alternative provider sector because it does not include students who are either ineligible or who have chosen not to take student support.

10. The data from the Student Loans Company shows the number of students receiving student support at the provider level. Looking at maintenance loan awards in 2014, the three largest alternative providers by students receiving awards were Greenwich School of Management (6,098 students), St Patrick's International College (3,175 students) and the London School of Business & Finance (2,429 students). These providers are not covered by the Freedom of Information Act.

11. Providers with 50 or fewer students receiving student support are not included on an individual institution basis.

[9] Source: Patterns and Trends in Higher Education 2013 http://www.universitiesuk.ac.uk/highereducation/Documents/2013/PatternsAndTrendsinUKHigherEducation2013.pdf

[10] This includes both undergraduate and postgraduate students.

38 Degrees

February 2016

38 Degrees were asked to provide a distillation and analysis of the 86,000 responses they had received from their follow up survey.

Survey completed by 89,615 38 Degrees members (up to 22/01/2016)

Link to full survey: https://speakout.38degrees.org.uk/surveys/310

How important is it that Freedom of Information requests remain free, and open for anyone to make?

Answer	% of respondents
Very important	93.88
Fairly important	5.88
Not very important	0.18
Not important at all	0.06

Ministers have in rare cases vetoed the release of information by Freedom of Information requests. How important is it to you that these vetoes remain rare, and have clear restrictions?

Answer	% of respondents
Very important	93.31
Fairly important	5.92
Not very important	0.51
Not important at all	0.27

The Cabinet is the highest level of government made up of David Cameron and his most powerful ministers where important decisions are made. How important is it that Cabinet discussions are subject to Freedom of Information requests in the same way as other public bodies?

Answer	% of respondents
Very important	76.75
Fairly important	17.05

Not very important	4.22
Not important at all	1.98

Do you think Freedom of Information rules should be extended to cover private companies who are hired to run public services?

Answer	**% of respondents**
Yes	99.12
No	0.74
Undecided	0.14

If yes, how important is this to you?

Answer	**% of respondents**
Very important	84.17
Fairly important	15.41
Not very important	0.38
Not important at all	0.04

Should charities running public services be included too?

Answer	**% of respondents**
Yes	94.94
Undecided	4.48
No	0.57

When making big decisions like NHS reforms or building new rail projects the government does risk assessments to weigh up what could go wrong. How important is it that these assessments are available to the public via Freedom of Information requests?

Answer	**% of respondents**
Very important	89.77
Fairly important	9.66
Not very important	0.49

Not important at all	0.08

Do you think that Freedom of Information requests, if they take a lot of resource, should be subject to charges?

Answer	**% of respondents**
Yes, if its small or for only some requests	54.7
No	38.7
Yes	6.49

Survey completed 38 Degrees members in response to call for evidence

Key themes: why 38 Degrees members want to protect Freedom of Information

The themes presented here are based on analysis of a poll of over 72,000 members of 38 Degrees, and over 29,000 submissions which were made to your consultation in November. The research we have conducted gives a very serious indication of the high level of public opposition to any limits or restriction to FOI powers.

- **FOI makes government transparent** 38 Degrees members believe in democracy. That relies on transparency: that we know and trust what our representatives do on our behalf. But trust in politicians is low. If we want trust to increase, transparency should be the exception rather than the rule.

- **FOI is essential to public trust in politics** The public relies on Freedom of Information to know what decisions are being made at all levels of government, from their local public services to their own MPs. As a result, FOI makes government more trustworthy to voters. Weakening Freedom of Information so that fewer decisions and facts are in the public domain is seen by our members as a deliberate move to make the government less accountable to the public

- **Ministerial veto powers should not be extended** 38 Degrees members acknowledge the exceptional circumstances that might require ministers to use their veto (e.g, national security), but would be suspicious if new powers of veto were put in place

- **FOI should be strengthened** 38 Degrees members don't just want to protect our right to Freedom of Information - they want to strengthen it. An overwhelming majority of members encourage the government to consider extending FOI to cover

any private companies or bodies who spend public money, particularly those that are hired to run public services

Key statistics

- **A total of 87,090 38 Degrees members have shared their views on why Freedom of Information matters to them - for the evidence session and for the formal online consultation**
- **A total of 283,529 38 Degrees members have taken part in the campaign to protect Freedom of Information since July 2015**

Consultation Questions

These views, quotes and statistics are pulled from the 29,000 online submissions to the consultation made by 38 Degrees members, and a subsequent online poll conducted by 38 Degrees which was completed by over 72,000 members. Help text and text in Blue is where we 'translated' the questions in the consultation

Introductory Question: Why Freedom of Information matters

Question: First, can you say why you think transparency of government and public service providers is important? And why you think Freedom of Information (FOI) should be protected? (Help Text: Why do you think Freedom of Information should be protected?) [in Jan 2016 poll] How important is it that Freedom of Information requests remain free, and open for anyone to make?

Answer: 93% of 38 Degrees members ranked keeping FOI requests free, and open for anyone to make as 'Very important'. The key points by 38 Degrees members can be summarised as follows:

- Government is and should be answerable to us - this is the definition of democracy.
- We only get to elect our government every 5 years - in between this time, FOI is a vital tool to making sure decisions are being made in our interests.
- A lot of the public don't trust politicians, FOI gives the government a chance to prove otherwise.
- Transparency is the core theme here: 38 Degrees members do not necessarily think the government has a lot to hide, but this is all the more reason to have a mechanism like FOI in place, it encourages open government.

Top quotes

- It is essential for public trust that the government is as transparent as possible. Without FOI the public will be more disengaged with politics than they are now. Juan, Lewisham East

- It's all about trust. Keeping too much information from the public domain undermines what little trust the public still have in politicians. Alec, Mid Norfolk

- FOI is vitally integral to such transparency and I am deeply suspicious when any move is made to dilute our rights in this manner. Alex, Angus

- We should all be entitled to know the truth. Not just the pieces they think we should be told. Alex, Bristol South

- With the exception of TRULY issues of national security the public has the right to question and be informed of any actions their elected Government takes. This impinges on both the need for the public to be informed, either directly or through media channels, and also the question of public trust in their Government. Derry, Sheffield

- It is really important the decision made at Cabinet level are available for scrutiny by the people who the government are representing. This should not be changed to allow decisions to be made secretly. Governments who have nothing to hide should not be afraid of public scrutiny. Alex, Birmingham

Introductory Question: How can it be improved?

Question: How do you think government transparency could be improved? For example, do you think FOI should cover private companies providing public services? If you have used FOI and experienced problems or successes you could mention these.
Help text: How do you think government transparency could be improved?
[Additional question in Jan 2016 poll: Should charities running public services be included too?]

Answer: 99% of 38 Degrees members agreed that FOI should be extended to cover private companies who are hired to run public services 94% also think that this should apply to charities running public services. The following summary of key points made by 38 Degrees members:

- Overwhelming theme: if a private company is receiving public money to provide services for the public then they should be subject to the same FOI laws as public bodies.

- Others: More and more public services being provided by private companies. The public should be able to see who's profiting from their money. What have the companies got to hide?

Top quotes

- Yes, where the private company performs a public function Robert, Livingston

- Indeed any organisation charged with providing public services OR whose services impact upon society and the ordinary citizen should be subject to FOI scrutiny. John, Rutland and Melton

- More and more services are being provided by private companies. They are using public money and should be accountable and subject to the legislation in the same way as public services. Sammy Knight, Dewsbury

- I agree that private companies who tender for and supply public services should be included in FOI legislation. Once again, if it is funded by the public purse then the public should be able to see who is profiting from it. Tamsyn Murray, Broxborne

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.)

Public bodies, like the government and local councils, make decisions that affect us all. Under FOI, we have the right to find out how these decisions are made. Now the government wants to limit FOI, so that many decision making processes can stay behind closed doors. What do you think?

Answer: Summary of key points made by 38 Degrees members include:

- Taxpayers have a right to know how their money is being spent;

- It is intrinsically undemocratic to prevent citizens finding out what the government is doing. And limiting FOI would stop the public being able to check if the government is representing their interests. Members accept that their should be a very small number of exceptions for national security as there are now.

Top quotes

- "There are no exceptions to having open government other than those which directly relate to national security. The public has the right to know what is going on and how decisions are reached. Secrecy simply encourages duplicity and shady dealings. Open government allows open debate and transparent decisions that can be challenged or supported by individual citizens. Chris Seal, Leicester West

- Decisions made by government or private bodies providing a service to the public on behalf of government must be made without any hidden agenda. When decisions are made for the right reasons there should be no reason why they ought to be hidden from the public. Duncan, Orkney and Shetland

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 Cabinet is the highest level of government - made up of David Cameron and his top ministers. Under the new plans, all Cabinet discussions could be exempted from FOI - basically shutting us, the public, out. What do you think?

Answer: 75% of 38 Degrees members felt that it was 'Very Important' that Cabinet discussions should be as subject to FOI as other public bodies (16% felt that it was 'Fairly Important', and the remaining not very or not at all important). A summary of the key points made by 38 Degrees members include:

- Overriding consensus is that FOI should apply - even more so - to the cabinet. As the most influential group in parliament and the highest body of representation, members feel it is paramount that the Cabinet is subject to proper scrutiny.

- There is also a strong sentiment that government - particularly the cabinet - is paid and employed to represent us, the public, and therefore should be accountable to us.

- Some members express concerns that where it threatens national security, the Cabinet should be able to refuse FOI requests or impose a time limited protection.

- In general, this comes down to an issue of fundamental democracy and allowing the public to feel a part of politics.

Top quotes

- Given the importance of Cabinet issues, it is even more important that these be available to the public. Ministerial exemption from FOI is a grave threat to democracy. Robin Buckland, Lewes

- If the Cabinet is the highest organ of representation for the people it should also be the most open organ of debate and clarification. Apart from national security issues which could be life-threatening to some, what decisions are there to be taken that they cannot let the public see where the arguments go? Alan, Sutton and Cheam
- If they have nothing to hide they have nothing to fear, as one of Mr Cameron's colleagues said recently. Sam Roberts, Oxford East

- Again, it is outrageous that the people we employ and whose salaries we pay should even consider hiding its discussions from us. Collin, Birmingham

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

When making big decisions - like NHS reforms or building new rail projects - the government does risk assessments to weigh up what could go wrong. Right now, these are covered by FOI, but not always disclosed. The government wants to prevent risk assessments from being made public altogether. What do you think? Does the public have a right to know whether major government projects could fail? Should this information be kept secret?

Answer: 88% of 38 Degrees members ranked it as 'Very Important' that these assessments are available to the public via Freedom of Information requests. A summary of key points made by 38 Degrees members include:

- Risk assessments should not be hidden if the decision/risk affects the public.
- If the public have to meet the costs of the risks, we should know what they are.
- Secrecy risks encouraging risk taking and decisions not being made in the public's best interests.
- Keeping such information secret does not serve democracy.

Top quotes

- There's no reason why risk assessment should be concealed if what is being considered affects the general public. It is the public who is at risk. Tim, Ruislip
- Risk assessment should be made public as the public's taxes have to meet the costs of the risks. If we have to pay, we should know the risks. David, Morecambe
- It does not serve democracy to make any part of government policy or decision making processes opaque. Dennis, Islington North
- If there is nothing to hide there is nothing to fear. Peter, Camborne and Redruth
- Secrecy feeds the suspicion that these decisions are not made in the people's interests but rather in the interests of a small elite who aim to extract profit from them. This is our money and our future, it is our right to know the risks and who stands to gain. Ann Korner, Chingford and Woodford Green
- Secrecy breeds and encourages risk taking which may be inappropriate and which is undemocratic. Janice, Rutland

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?

Right now, ministers can stop information being made public under FOI even if the bodies which oversee the Act order disclosure. This hasn't happened often - but they did it to block release of Cabinet Minutes about the Iraq War and an account of the NHS reforms going wrong. Now the government want to make it easier to use the veto. What do you think? Should the government be able to impose their view instead of having to argue it?
[Question in January 2016 poll: Ministers have - in rare cases - vetoed the release of information by Freedom of Information requests. How important is it to you that these vetoes remain rare, and have clear restrictions?]

Answer: 92% of 38 Degrees members felt it was “Very Important” that the veto “remain rare, and have clear restrictions”. A summary of key points made by 38 Degrees members include:

- If their decisions are sound they should have nothing to hide. You don’t get good decision from legislation made in secret.

- Politicians having the power to pick and choose which information is hidden from the public is not character of an open democracy, but a more dictatorial, totalitarian form of government.

- A veto should only be used in strict circumstances - decided by the judiciary not politicians - when there is a threat to national security, and only then that information should only be protected for a limited time.

Top quotes

- The executive should not have a veto. If they have nothing to hide and their decisions are sound, then there is nothing to be afraid of. That's the argument the government use when snooping on the public. It works both ways. Martin, Scarborough

- Imposing motions instead of attempting to justify actions smacks of totalitarianism. Ministers should not be able to pick and choose when they block information. Kate, Wallsey

- A veto should only exist in issues of national security (even then that info should only be protected for a limited time) and it should be up to a judge, not a politician, to decide whether or not the veto is justified. Hamish, East Lothian

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

Anyone who’s unhappy with how their FOI request has been handled can appeal. The Information Commissioner or a tribunal can order a public authority to disclose information. Do you think authorities should have to justify decisions about FOI, and why?

Answer: A summary of key points made by 38 Degrees members include:

- Authorities need to publicly justify their decisions and allow the public to appeal via an impartial, transparent and accessible judicial system.

- If the government want to deny the public their democratic right to information, then this needs to be explained and justified by an independent judge. If there's no right to appeal, then the government could abuse their power and ignore the legislation.

Top quotes

- If they are sound then they have nothing to hide. If there is no right to appeal then what is to stop them ignoring the legislation? Sammy Knight, Dewsbury

- Anyone in a position of authority, or any body public or private should have to justify decisions that affect other people in order to stop abuse of power. It's all too easy to argue special circumstances Duncan, Dumfries

- Public bodies should be made to explain publicly why they feel that information should not be shared. This should be able to be overruled by a tribunal. Sue, Linvingston

- An FOI is used to hold a government to account. It is a tool of the people. If this tool is taken away from the people then, since we live in a democracy, it should be no trouble to explain why the FOI should be denied. Sarah, Orkney

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?

Should you have to pay to make a Freedom of Information request? The government is considering introducing charges, and to make it easier for government and public authorities to refuse requests on cost grounds. This means lots more requests would be denied. Do you think this is justified? Should we have to pay to find out what our politicians are up to?

Answer: 68% of 38 Degrees members do not think you should pay to make a Freedom of Information request. A summary of key points made by 38 Degrees members include

- Our members held different points of view on this issue. The majority believe that there should be no charge for FOIs because the information belongs to the public but a small believe that a nominal (and affordable) fee could be introduced to prevent frivolous requests.

Top quotes

- There should be no charge to access what should be public information, Kate, Wallasey

- Charges in my view would be a mechanism to shut down access to information and totally unjustified.” Doug, Glasgow

- I do not agree with the charging of fees to request information on what the government is doing in our name with our tax money. Linda, Croydon