



THE WORLD BANK

Implementing Right to Information A Case Study of the United Kingdom



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Table of Contents

Abbreviations and Acronyms	iv
Preface	v
1. Introduction	1
1.1. Methodology	1
2. Passage of ATI Legislation	2
3. Strength of the Legal Environment	4
3.1. Coverage.....	4
3.2. Exemptions.....	5
3.3. Procedures for Access	6
3.4. Implementing Regulations	7
3.5. Broader Legal Environment on Transparency	7
4. Promotion, Capacity, and Oversight	8
4.1. Organizational Arrangements	8
4.2. Budget	9
4.3. Staffing and Training	10
4.4. Promotion	11
4.5. Records Management	11
4.6. Information Technology.....	12
4.7. Monitoring.....	12
5. Enforcement	14
5.1. The Appeals Process.....	14
5.2. Sanctions	16
6. Compliance	18
6.1. Proactive Publication.....	18
6.2. Requests and Responsiveness.....	19
7. ATI and Accountability	23
8. Analysis	24
8.1. Politicians	24
8.2. Bureaucrats	24
8.3. Civil Society Organizations	25
8.4. Media	25
8.5. Business Interests.....	26
8.6. Formal Institutions	27
8.7. Informal Norms	29
9. Conclusion	31
Notes	33

Abbreviations and Acronyms

ATI	access to information
BBC	British Broadcasting Corporation
CFOI	Campaign for Freedom of Information
CSO	civil society organization
DPA	Data Protection Act 1998
EIR	Environmental Information Regulations 2004
FOIA	Freedom of Information Act 2000
FOISA	Freedom of Information (Scotland) Act 2000
HMSO	Her Majesty's Stationery Office
ICO	Information Commissioner's Office
MOD	Ministry of Defense
MOJ	Ministry of Justice
MP	Member of Parliament
NDPB	nondepartmental public body (official term for Quango, q.v.)
NGO	nongovernmental organization
Quango	quasi-autonomous nongovernment organization

Preface

The number of countries that have passed Right to Information (RTI) legislation— laws guaranteeing citizens the right to access information about government—has risen dramatically in the last two decades, from approximately 13 to over 90, including many countries in Eastern Europe, Asia, Latin America, and most recently, Africa and the Middle East. Several of these countries face persistent governance problems.

Right-to-information (RTI) laws establish the right of citizens to access information about the functioning of their governments; they can also serve to operationalize rights that have been constitutionally guaranteed. Effective RTI legislation is an essential tool, empowering citizens to access information on public policy choices and decision-making processes, to understand entitlements regarding basic services, and to monitor government expenditures and performance, providing opportunities for more direct social accountability. Because a well-crafted RTI law provides citizens with the right to access government records without demonstrating any legal interest or standing, it can require a significant shift in the way state-society relationships are organized from need-to-know to right-to-know.

Most countries have only recently adopted RTI legislation, often after a difficult and contested process. As a result, a great deal of the research and analytical work that has been conducted in this area has focused on an analysis of the conditions and processes that lead to successful passage of legislation.

Studies about how laws are being implemented— if the necessary capacity and institutional measures for enabling people to exercise the right are in place and if access translates into higher-order goals like participation, accountability, and corruption control—are quite limited.

Case studies were prepared examining the experience of a number of countries that have passed RTI legislation within the last decade or so: Albania, India, Mexico, Moldova, Peru, Romania, Uganda, and the United Kingdom. Each country case study assesses four dimensions critical to the effective implementation of RTI legislation as follows:

- (1) The scope of the information that the law covers, which determines whether an RTI law can serve as the instrument of more transparent and accountable governance as envisaged by its advocates. Clearly, a law that leaves too many categories of information out of its purview, that does not adequately apply to all agencies impacting public welfare or using public resources, or that potentially contradicts with other regulations—like secrecy laws—will not be very effective.
- (2) Issues related to public sector capacity and incentives, additional key functions and demands within the public sector created by RTI, entities responsible for these functions, and various organizational models for fulfilling these functions.
- (3) Mechanisms for appeals and effective enforcement against the denial of information (whether it be an independent commission or the judiciary); the relative independence, capacity, and scope of powers of the appeals agency, and the ease of the appeals process; and the application of sanctions in the face of unwarranted or mute refusals, providing a credible environment.

(4) The capacity of civil society and media groups to apply the law to promote transparency and to monitor the application of the law, and a regulatory and political environment that enables these groups to operate effectively.

The in-depth research presented in these case studies was conducted to examine factors that promote the relative effectiveness of these four

key dimensions when implementing RTI reforms, including institutional norms, political realities, and economic concerns. An analysis was conducted to determine which models have the potential to work in different contexts and what lessons can be drawn from these experiences to help countries currently in the process of setting up RTI regimes.

1. Introduction

This case study analyzes the development and implementation of access to information (ATI) in the United Kingdom, enshrined in the Freedom of Information Act 2000 (FOIA). The United Kingdom was sometimes described as a laggard in this field; many of its democratic peers enacted comprehensive access laws decades earlier. This case study argues that, despite an apparent late start, ATI in the United Kingdom is relatively effective and firmly entrenched.

There are several reasons for this. The structure of electoral competition and policymaking in the United Kingdom means that ATI has long been—and is likely to remain—a prominent matter of political debate. Fundamental changes to state and society alike since the 1980s have altered the structure of political accountability and administrative authority in ways that incentivize those in positions of power—at all levels—to support openness. Finally, the United Kingdom has a vibrant civil society and independent press that defend existing gains and lobby for greater transparency.

In addition to these fundamental structural contributors, the FOIA has also proved relatively successful because it is a strong law whose implementation was reasonably well-planned and well-executed. Five years elapsed between the passage of the law and the entry into force of the right of access to official documents. This time was used to provide training, to improve records management, and to proactively publish mechanisms within the public sector. The law's success is also due in no small part to the existence of an information commissioner with extensive powers and an appeals process that functions reasonably well despite some early problems with delays. Implementation is also facilitated by the fact that public authorities in the United Kingdom are sufficiently well-funded so that they can usually bear the cost of compliance,

and there is a strong official culture of taking one's duty to the law seriously—even when it might be inconvenient to do so, as is sometimes the case with FOIA requests.

The conclusions of this case study are positive but do not justify complacency. The United Kingdom has become more open over recent decades because several features of British politics and the administration encourage the framing of disputes over power in terms of disputes over ATI. Despite this debate, and despite the profound social and administrative transformations that have occurred since the 1970s, several features that historically underpinned the United Kingdom's regime of widespread official secrecy remain in place, notably the centrality of the cabinet in the overall political system. ATI is likely to remain contested in the foreseeable future, and future gains are likely to continue to depend on the active, ongoing support of politicians, public servants, and civil society.

1.1. Methodology

This case study is based on primary and secondary documentary research as well as interviews with senior officials and representatives of the major stakeholders in the ATI policy domain (a full list of interviewees can be found in the appendixes). It focuses on the development and implementation of ATI provided by the FOIA as it applies in England, Ireland, and Wales (but not Scotland, where a separate law applies). The distinction is important, since ATI in the United Kingdom has also been secured under a range of other laws, especially at the local level, where a good deal of basic service provision in the United Kingdom is undertaken. These other laws and initiatives, some of which still exist and continue to apply, are surveyed briefly toward the end of this paper, but are only discussed in detail to the extent that they affect the implementation of the FOIA itself.

2. Passage of ATI Legislation

Narrowly construed, the FOIA was just less than 10 years in the making. Work on drafting the bill began early in the Blair government's first term in 1997. The law was passed in 2000, and entered into force progressively between November 30, 2000, and January 1, 2005 (when the right of access to official documents came into effect).

The historical roots of freedom of information in the United Kingdom are much older than this, however. The Labour Party first promised to introduce ATI legislation more than 25 years earlier, but had not yet followed through on its commitment when it lost office to the Conservatives in 1979. The party's adoption of this commitment came at a time when people at all levels of society in the United Kingdom were recognizing that state control over information was a problem whose solution lay in securing public rights of access. This recognition, in turn, formed part of a much longer history of disputes over state secrecy and political control that can be traced back to the foundation of the modern British state in the late nineteenth century.

This historical context meant that debate over the principles and legal structure of the FOIA was already mature well before its drafting. Since the mid-1970s, politicians, officials, and campaigners produced a string of proposals, white papers, electoral commitments, and even a few bills that made some progress through the parliamentary process. Several limited forms of access had been secured well before 2000, and these significantly affected both the structure of the FOIA and its implementation. These are discussed below (see 3.5. Broader Legal Environment on Transparency).

Civil society organizations (CSOs) and politically connected professional groups were the most consistent advocates of freedom of information during this period. The first demands for access laws arose in the 1960s among professionals on the margins of formal political organizations:

lawyers, journalists, academics, and occasionally backbench members of the two main parties or members of smaller parties. The central concerns of these groups were the threats to individual liberty posed by the growth of the administrative state and the inability of existing political mechanisms to adequately address them. From the early 1970s onward, they were joined by public interest, environmental, and health and safety campaigners interested in harnessing the power of the state to overcome the challenges of collective action in dealing with the spillover effects of large-scale industrial production. The Campaign for Freedom of Information (CFOI), founded in 1984, was an alliance between these two camps; organizationally, it drew heavily on support from environmental and public interest campaigners, but it drew a good deal of intellectual inspiration from politically-connected individuals. The campaign was directed by a small group of highly engaged policy professionals,¹ but benefitted from the support of more than 100 organizations, including churches, trade unions, advocacy groups, and librarian associations, among others.²

Despite a long history of mobilization and support from a wide range of social and political interests, the success of the ATI movement in the United Kingdom depended, above all, on the cabinet's receptiveness to their demands. Mrs. Thatcher was well known for her opposition to the FOIA, and little progress was made during her premiership. One of the earliest signs that the New Labour Party would follow through on its long-standing commitment to introduce ATI legislation came when then-opposition leader Tony Blair personally associated himself with the idea at the CFOI's annual awards ceremony in 1996.³ The introduction of the FOIA also appeared as an explicit commitment in the New Labour Party's 1997 election manifesto.⁴ Work on a bill began soon after the election with the publication

of a white paper.⁵ Advocates welcomed the progressive nature of the proposals and the fact that David Clark, the paper's principal architect, appeared to enjoy the close personal support of Lord Irvine, the lord chancellor, and an extremely influential senior member of the early cabinet of the New Labour Party.⁶

Initial optimism, however, quickly gave way to concern, as the balance of power within the cabinet shifted toward the opponents of ATI legislation. The reasons for this shift remain something of a mystery⁷ and have led some to question whether or not Tony Blair was ever as committed to ATI legislation as he had appeared prior to the election. He certainly seemed to have either lost interest in the issue or been subject to countervailing influence by opponents within the cabinet at a relatively early stage of his administration.⁸ This was reflected in the transfer of responsibility for ATI legislation from David Clark to Jack Straw, who was understood to be personally less sympathetic to the cause than Clark, and from the Cabinet Office that had been responsible for open government initiatives since 1992 at the latest, to the home office, which was responsible for the police, security services, immigration, and other areas of government not usually noted for their enthusiastic about freedom of information.⁹ With these changes, the task of securing ATI became the responsibility of ministers and officials who were more inclined to believe that it "brings nothing but pain for governments."¹⁰

The government's consultation bill¹¹ was significantly weaker than the white paper proposals and contained much broader exemptions, less effective enforcement and appeal mechanisms, and a more restrictive public-interest test.¹² It is possible that senior government figures would have preferred to abandon the legislation altogether at this point, but their election commitments and the white paper had stirred so much public interest that this would have been too risky.

The bill was altered considerably during its passage through Parliament. It was severely criticized by select committees in both the House of Lords and House of Commons,¹³ resulting in several features that FOIA advocates found most objectionable being removed or amended by the second reading in early December 1999.¹⁴ Further concessions were made during the committee stage and in the later stages of the third reading on the floor of the House,¹⁵ although some commentators argue that these were superficial concessions that did not affect the basic structure of the legislation.¹⁶ The changes included a halving of the time frame (to 20 working days) within which authorities were required to respond to requests, the adding of a requirement that authorities give reasons for refusals, and the removal of the power of authorities to restrict the way in which information disclosed under the FOIA could be used by requesters.¹⁷ Several of the more significant changes made between the consultation draft and the final legislation are discussed below.

3. Strength of the Legal Environment

The FOIA draft drew inspiration from several sources, including earlier domestic proposals for ATI, existing rights under other laws, such as the Data Protection Act 1998 (DPA) and FOIAs in Australia, Canada, and New Zealand which were introduced in the early 1980s—not long after the New Labour Party first committed itself to ATI legislation. The United Kingdom’s FOIA is longer and in some sections more detailed than these other laws but, except for the issues discussed below, similar in its structure and intent.

Those interviewed for this case study identified some features of the law as problematic,¹⁸ particularly the absence of a purpose clause; this was also identified as a potential problem during parliamentary debates when it was argued that a clear statement of the purposes to be served by enshrining in law the principle of access (subject only to specified exemptions) would aid the Information Commissioner in evaluating the discretionary decisions of authorities. But the inclusion of such a clause was rejected by the government on the grounds that it would add unnecessary “confusion” to the law.¹⁹ As a result, the various appellate bodies have occasionally had to rely on parliamentary debates in order to infer the purposes of the FOIA in cases for which the meaning of specific clauses have proved ambiguous and their interpretation difficult.²⁰

3.1. Coverage

The coverage of the law was specifically mentioned in interviews as a strong point.²¹ According to legal expert Professor Patrick Birkinshaw, the United Kingdom’s FOIA is “the most comprehensive FOI legislation” with which he is familiar.²² It covers more than 100,000 separate public authorities—from the summit of the state in Westminster and Whitehall to local services, including schools, parish councils, and medical practices as well as a wide range of autonomous bodies at all levels. The authorities covered are explicitly identified in Schedule 1, which also specifies that certain bodies are covered only with respect to particular functions.

In addition to the authorities listed there, s84 excludes “the Security Service, the Secret Intelligence Service or the Government Communications Headquarters” from the definition of a government department, while s80(2) excludes Scottish political and administrative authorities covered by the Freedom of Information (Scotland) Act 2002 (FOISA). Finally, an absolute exemption²³ in s23 applies to information held by or related to 13 security and intelligence authorities and their related tribunals and commissions that are, consequently, excluded from the FOIA.

It was not always obvious that the FOIA would be quite as extensive in its coverage as it turned out to be. One of the drivers of demand for an access law, especially in the 1980s and early 1990s, was discontent with the central government’s increasing use of quasi-autonomous organizations or “Quangos” (the official term is “nondepartmental public bodies” [NDPBs]), which were often criticized for their opacity, lack of democratic accountability, and for fostering an uncoordinated and incoherent policy and administration. Since the 1970s, both of the main parties had promised to reduce their number when they were the opposition parties, but when in power actually increased their number in order to achieve a range of outcomes, including developing policy, providing expert advice, regulating, and even directly providing some services. In the early years of the Blair government, there was concern that NDPBs would fall outside the scope of the FOIA²⁴ and early government proposals were in fact narrower in scope than the law as eventually passed.

The replacement of the government’s original proposal that the FOIA should apply to a relatively narrow range of authorities with a law of much broader scope was a moral victory for transparency advocates, but it occurred without the strenuous resistance of ministers. Coverage was discussed in Parliament²⁵ but was not a matter of major debate, and the government

explicitly identified breadth as one of its goals in the Lords' discussion of the bill.²⁶ Moreover, some members of the New Labour Party leadership viewed the FOIA as a means of legitimizing a new kind of British state (one characterized by decentralized governance) and of regulating relations between largely autonomous NDPBs and the public.²⁷ The introduction of the FOIA was, at least in part, a response to this specific structural transformation of the British state.

3.2. Exemptions

The FOIA contains 23 sections exempting various kinds of information. Since some of these sections contain more than one exemption, the total number of exemptions is slightly higher and relatively large when compared with similar legislation from other countries. For example, the Australian FOIA contains 17 exemption clauses, the Canadian law contains six broad exemption clauses, and the New Zealand law includes the equivalent of 19 exemptions spread across two clauses. The number of exemptions dismayed the activist community²⁸ who criticized both the consultation draft and the bill tabled in Parliament.²⁹ In retrospect, the number of exemptions appears to be less problematic than initially feared, perhaps because each specifies in detail the kinds of information that can be withheld (as opposed to earlier acts like the Swedish and American laws that rely on a smaller number of more general exemption statements). The law's specificity in this regard has limited the tendency of officials to exploit ambiguities in the law and circumvent the spirit of it.

Two aspects of the exemption regime were discussed at some length in Parliament. The first concerned the two kinds of exemptions that appear in the legislation. Nine are "absolute"—they allow information that falls into certain categories to be withheld without an assessment of whether or not there is a countervailing public interest for disclosure. This includes information held by or relating to the national security agencies (mentioned above),³⁰ court records, documents whose disclosure would infringe on parliamentary privilege, information provided in confidence, and information specifically

prohibited from being disclosed by other laws. The remainder are "qualified" exemptions, requiring authorities to assess whether or not there is an overriding public interest in disclosure.³¹ There are two types of qualified exemptions: class-based, covering particular types of information, such as that "relating to the formation of government policy" (s35), and harm-based, requiring the authority to demonstrate that disclosure would prejudice important public or third-party interests).

The introduction of the absolute exemptions is a significant point of difference between the government's consultation bill and the white paper.³² This continues to be relevant to the Information Commissioner's powers. In the case of absolute exemptions, she³³ can determine if particular information falls within a particular exemption, but she is not empowered to order an authority to release information after the application of an exemption has been determined to be correct. In the case of qualified exemptions, the commissioner can conduct a *de novo* review of whether or not the public interest lies in disclosure and she can order the release of that information. This power was introduced in committee;³⁴ the government's bill only allowed the commissioner to make an advisory recommendation that the authority was free to ignore if it saw fit to do so. This debate formed part of a broader discussion about the balance of power between the commissioner and the elected government, as discussed below.

The second main focus of debate in the House of Commons concerned the specific kinds of material exempted from disclosure. Each exemption was discussed in detail in committee, but those interviewed for this case study identified two exemptions as particularly noteworthy. The first concerns the results of health and safety investigations (for example, product safety reports, pollution investigations, and documents concerning workplace accidents). The consultation bill exempted this information, a decision that was considered symptomatic of the transfer of responsibility from the Cabinet Office to the home office.³⁵ However, this exemption

was removed by Parliament under pressure from civil society groups like the CFI. As previously noted, “These groups emerged as a political force in the early 1970s to address issues such as land use, product safety, human health, and environmental pollution.”³⁶ Their support of ATI legislation was motivated by a desire to break the close relations that had developed between regulatory authorities and industry. Regulators had historically sought to preserve these close relations by, among other things, invoking the Official Secrets Act (OSA) and by refusing to divulge the results of inspections to interested third parties (such as members of the public whose quality of life was affected by industrial pollution). The elimination of the proposed exemption covering these reports represents a clear instance of CSOs prevailing over the interests of the administrative state. Other evidence of this includes a narrowing of exemptions covering commercial interests and information provided to governments in confidence (that is, by regulated industries to regulators).³⁷

Another subject of debate with enduring relevance concerned policy advice that continues to be protected under the FOIA (s35). It is clear from the parliamentary debates that many Members of Parliament (MPs) believed that one of the main purposes of the FOIA was to provide access to information used by ministers and senior civil servants to decide policy. These debates focused on the possibility and desirability of distinguishing between the factual material upon which policy recommendations are based and the specific advice that ministers receive from the civil service. It was not actively disputed that the latter could be legitimately kept confidential; rather, critics emphasized the fact that ministers and civil servants alike routinely refused to divulge the former despite decades of regulatory attempts in favor of its disclosure. Jack Straw’s claim that most of the statistics on which policy decisions were made in his area of responsibility were already publicly available did little to convince these critics.³⁸

One of the major outcomes of this debate was the transformation of the government’s proposed absolute exemption for policy advice into a qualified exemption. This has probably resulted in the disclosure of far more information than the government anticipated because of the way that the Information Commissioner and courts have interpreted the public interest.³⁹ It has been suggested that the government may not have opposed this change because it assumed that the new enforcement bodies would take the same line as the parliamentary commissioner for administration had taken in enforcing the existing *Code of Practice on Access to Government Information*: that the disclosure of policy advice was *prima facie* harmful to the public interest. One result of the FOIA has been the considerable narrowing of the protected space for policy development that British governments once enjoyed. Although information can still be withheld while policy is being developed, once decisions have been made, there are now far fewer grounds for withholding information.⁴⁰ Tony Blair’s admission in 2010 that he considers the FOIA to be one of his greatest mistakes (because it impinges on the ability of ministers and civil servants to discuss policy proposals frankly and privately) suggests that this effect was not anticipated.⁴¹

3.3. Procedures for Access

Several procedural provisions were identified by interviewees as having proved particularly conducive to overcoming bureaucratic resistance and fostering public ATI, including the duty to provide advice and assistance to requesters (s16) and to consider any written request for information as an FOIA request, regardless of whether or not the requester explicitly mentions the law. During the parliamentary debates, MPs identified these provisions as particularly important because of the length and complexity of the law,⁴² and they have significantly contributed to the change in the attitudes about openness among bureaucrats by shifting several practical burdens from requesters to the state.⁴³

3.4. Implementing Regulations

The FOIA provides fairly extensive regulation-making powers, allowing the government to determine the commencement of many of its provisions (87(3)), to alter the authorities to which it applies (ss4–5), to set fees (s9), and to allow prescribed authorities longer time frames within which to respond to requests (s10(4))—there is a maximum upper limit of 60 working days. These have been used regularly since 2000, but except for commencement decisions (discussed below), have not materially affected the operations of the law. The FOIA also requires the government to promulgate two codes of practice that cover procedures for handling requests (s45) and records management (s46).

3.5. Broader Legal Environment on Transparency

As noted earlier, the FOIA is one of many legislative instruments regulating public access to official information in the United Kingdom, and it is by no means the oldest. One of the most important laws is the Official Secrets Act (OSA), originally passed in 1889 and amended several times over the course of the 20th century. Prior to its 1989 amendment, the infamous Section 2 of this law technically forbade any unauthorized disclosure of any state-held information by any public servant. This was controversial from its very inception and was subject to persistent criticism from official inquiries, the press, and civil society since the late 1960s.⁴⁴ The OSA remains on the books, but in 1989, its scope was restricted to the disclosure of information harming national security.

Apart from the FOIA, which, as noted earlier, applies to England, Wales, and Northern Ireland, the most important existing instruments favoring access to official information are the FOISA, which regulates ATI held by Scottish authorities; the DPA, which regulates access to and the processing and storage of personal information by organizations in both the public and private sectors; and the Environmental Information Regulations (EIR) 2004, which provides ATI on the environment even when it is held by private authorities, as is sometimes the case. For many decades prior to the passage of the FOIA, local government assemblies and authorities were subject to a range of more focused access laws, including the *Public Bodies (Admission to Meetings) Act 1960*, famous mainly because it was proposed by Margaret Thatcher at her maiden speech to Parliament in 1959. In some cases, local authorities are still subject to disclosure requirements beyond those that apply to the central government.

The FOIA and the DPA also replaced a number of partial access regimes at the national level. Perhaps the most general of these was the regulatory *Code of Practice on Access to Government Information* introduced by John Major in 1993. They also replaced a number of laws providing access to specific kinds of information (mostly personal information held by service-providing agencies or local authorities. Examples include the *Access to Personal Files Act 1987*, the *Access to Medical Reports Act 1988*, and the *Access to Health Records Act 1990*. Many of these laws had been introduced with active support from the CFI as a way of making progress on ATI despite Mrs. Thatcher's hostility toward a comprehensive freedom of information law.

4. Promotion, Capacity, and Oversight

A good deal of the early success *and* early failure of the FOIA can be attributed to the way the government prepared for the law between 2000–05.⁴⁵ The interval between the passage of the law through Parliament and its full entry into force was intended to give public authorities the time to put in place the necessary training, human resources, records management, and other measures that would allow its effective implementation.⁴⁶ In most cases, central authorities used this time productively and were, by and large, well-prepared. At the local level and in NDPBs, arrangements were more mixed; interviewees attributed this inconsistency to resourcing and the anticipated level of requests.

Unfortunately, preparations at all levels were disrupted—and the effectiveness of the law in its early years hampered—by a significant change in the overall implementation strategy, determined at the central political level. The government’s original stated intention was to conduct a phased introduction across the public sector, starting with central departments (on the grounds that they should lead by example), followed by local government (which had been subject to disclosure laws of limited scope for several years), and finally semi-autonomous administrations, such as the National Health Service and the police services. This phased-in introduction of the law was abandoned in late 2001, when a decision was made to introduce the law across the whole of the public sector in a single, so-called “big bang” on January 1, 2005. It is widely assumed that the electoral concerns of senior ministers significantly influenced this decision.⁴⁷

The “big bang” had several serious consequences, some of which were not overcome until 2010. Most notably, significant delays in handling complaints by the Information Commissioner’s Office (ICO) rapidly built up. The overall preparations for and the disruptions that the change in timing caused are discussed below.

4.1. Organizational Arrangements

The preparation for the entry into force of the FOIA was led by the Cabinet Subcommittee on Freedom of Information and Data Protection, chaired by the Lord Chancellor.⁴⁸ The subcommittee was supported by two interdepartmental committees: the Senior Group and the Practitioner’s Group on Freedom of Information. These were composed, of senior civil servants and lower-level officials with knowledge and practical experience, respectively. The arrangements were complemented by the Advisory Group on Implementation, composed of public sector representatives and independent experts. The nodal authority leading implementation of the FOIA within the central government has changed several times since the law was originally passed; it is currently the Ministry of Justice (MOJ).⁴⁹

Prior to the FOIA’s entry into force, initial efforts focused on developing publication schemes for the central government, on developing and issuing the Codes of Practice under sections 45 and 46 of the law, and on repealing and amending legislation prohibiting the disclosure of information (a power provided to the secretary under Section 75). This work was led by the nodal agency, the ICO, and the National Archives. The nodal agency promoted the law within the government and assisted public authorities in their organizational and operational preparations; it also promoted cultural change by publicizing good practices and conducting case studies.⁵⁰

The nodal agency continues to provide advice to the rest of the central government about its responsibilities under the law. The Access to Information Central Clearing House⁵¹ was established as a unit within the nodal agency in September 2005 to ensure the consistent application of the three main access regimes in the United Kingdom: the DPA, FOIA, and Environmental Information Regulations (EIR). The clearing house has been criticized for delays in responses and a rise in appeals, especially when

requesters realize that authorities may have been willing to disclose information except that they were blocked from doing so by the central government, similar to problems in countries with equivalent legislation, such as Canada.⁵² On the other hand, the clearing house gave several advantages to those charged with implementing the law. In the early years of implementation, it was a central source of advice for many authorities, especially those that received few requests or lacked the in-house resources to develop comprehensive expertise on the FOIA. It also ensured consistency in the application of the law if similar sensitive requests were filed with multiple authorities.⁵³

The clearing house still exists but its staff has been progressively reduced to a handful of officers; its prominence wanes as authorities become more experienced with the law and processes for handling FOIA requests and complaints become embedded in normal operating procedures. It does continue to be a source of expertise for the coordination of responses to sensitive requests and for handling cases referred to the commissioner, tribunals, and courts (it ensures that the government's position is adequately represented in proceedings whose outcomes constitute legally-binding precedents).⁵⁴

4.2. Budget

Public authorities are expected to meet the costs of compliance with the FOIA from within existing budgets, supplemented through fees. Below a certain threshold, authorities may only charge for costs directly incurred in providing the information (for example, photocopying and postage). This threshold is £600 for central government and Parliament; £450 for other public authorities. Once the total cost of meeting a request passes this limit, authorities may refuse to grant the request or may ask the requester to pay the full cost of provision. As discussed below, it was anticipated that authorities would reduce the cost of compliance below these limits by improving records management.

There is no reliable data on the actual cost of compliance with the FOIA. The nodal agency publishes extensive quarterly data on processing activity, but data on expenditures incurred as a result of the activity are not available. The most recent, comprehensive, cost estimate of the FOIA was commissioned by the Department of Constitutional Affairs in 2006. It estimated the average cost per request at £293 and the total cost to government at £35.5 million (about 0.007 percent of total public sector expenditures in that year).⁵⁵ This estimate was immediately criticized for inflating projected request numbers and systematically overestimating individual cost components.⁵⁶

Opinions on the budget implications of the FOIA differed between interviewees. The Association of Chief Police Officers, which coordinates the handling of FOIA requests among the 43 regional police forces in England and Wales, reports that it has experienced significant but not unmanageable resource implications.⁵⁷ Costs are mainly incurred due to the need to train staff in the legal and strategic requirements of responding to requests and the practicalities of redaction and information management. But other interviews suggest that resource implications are highly variable and that many authorities receiving fewer requests have been able to incorporate response processes into their existing legal or public relations functions with minimal disruption.⁵⁸

In addition, practices vary so considerably from authority to authority, even within a single sector, that none of the interviewees would give an estimate of the average budget impact of the FOIA. Historically, most authorities have tended to place FOIA handling either in the legal team or in central corporate services;⁵⁹ the choice was usually based on the resourcing and prevailing views as to whether or not FOIA was a matter of legal compliance or (political) management of relations with external stakeholders and client groups. Where the authority in question was headed by an elected official (that is, a minister), it was not uncommon to hear that all FOIA requests were routed through the minister's

private office, especially in the early period of implementation, resulting in some inflation of costs.⁶⁰ A number of interviewees indicated that constraints caused by public sector austerity might encourage authorities to look for cost savings by co-locating FOIA handling into other functions, such as complaint handling, but they also indicated that it was too early to identify any definite trends.⁶¹

Even if they cannot be quantified, the crucial determinants of budget impact appear to be the volume and sensitivity of requests. The police sector receives a high volume of requests, many of which pose considerable problems of coordination and consistency because they take the form of similar requests submitted simultaneously to multiple regional forces. Furthermore, the police often hold information provided by other agencies—including those responsible for national security. Thus, requests to the police often involve the consideration of numerous political and operational issues. The FOIA states that the decision about whether or not to release information lies with the authority holding it, rather than with the authority that originally provided it; in practice, however, it is routine for all affected authorities to consult with one another. This approach is desirable from an overall information management perspective, especially in circumstances when the information in question is of a sensitive nature, but it imposes organizational overhead as well as financial costs.

4.3. Staffing and Training

There are no figures available on the total number of FOIA officers employed in the United Kingdom, and arrangements for meeting obligations under the law vary considerably from authority to authority. Prior to the FOIA's entry into force, the nodal agency coordinated an effort among public authorities to put in place appropriate organizational structures, administrative procedures, and record management processes to ensure effective compliance with the law.⁶² Authorities were given considerable leeway in determining their own arrangements. This flexibility was considered desirable given the range of authorities subject to the law, the

differing resources available to each, and the diversity of the relationships they have with the formal political system and with external stakeholders.⁶³ Smaller authorities have tended to delegate the administrative handling of FOIA matters to their legal teams or to their corporate services divisions;⁶⁴ larger authorities and those receiving a high volume of requests have set up dedicated teams. The choice of staffing and organizational arrangements have also been influenced by available resources and prevailing views on whether or not the FOIA is a matter of legal compliance or (political) management of relations with external stakeholders and client groups.⁶⁵ Many interviewees were extremely reluctant to make generalizations about implementation at all, even within authorities in their own sectors, given the broad coverage of the law and the range of mechanisms in place. Any precise estimate of staff numbers or other data would be both speculative and misleading. As of late 2011, the ICO employs 328 full-time equivalent staff within lead agencies, and the Cabinet Office and nodal agency each have a small number of officials responsible for developing information policy.⁶⁶

The interviewees rarely referred to human resources issues as an influence on the FOIA, and the subject is largely absent from the secondary literature as well. The only significant exception to this is overall staffing levels: it is generally thought that authorities across the government dedicate insufficient resources to FOIA compliance, but it is also widely recognized that this is the result of budgetary issues rather than incompatibilities between the FOIA and human resource policies.⁶⁷ Other potential human resource issues appear to have been preempted by the significant centralized training efforts that occurred during the preparation phase (2000–05) that formed part of the promotion effort; this is discussed below. Since the entry into force of the right of access, responsibility for training has been largely transferred to the authorities themselves, although the ICO retains an important role in promotion. Several private sector organizations, including the CFI, run courses on data

protection, freedom of information, and other information rights.

4.4. Promotion

The main mechanism for publicizing the FOIA to the public was the 1996 election and the subsequent legislative process itself; these factors made the FOIA a matter of high-profile public debate; it was widely covered by the press. The main efforts at promotion occurred between 2000–05, principally focused on raising awareness within the government. These efforts have continued, mostly under the aegis of the commissioner (who is responsible under s47 of the FOIA for promoting the observance of the law within the government) rather than the nodal agency.

Prior to the law's entry into force, the nodal agency provided training to public authorities in cooperation with the ICO and CFI. This included several "road shows." At the most senior level, they involved ministers visiting authorities to emphasize the need for a positive attitude toward meeting FOIA obligations. CSOs reported that ministers responsible for promoting the FOIA, especially the Lord Chancellor, were extremely positive but lacked strong across-the-board support within the cabinet; they suggested that the FOIA had a few strong supporters and opponents, but that most ministers "remained quiet," refusing to commit themselves one way or another.⁶⁸ At the official level, these road shows involved the provision of some training, familiarization, and—above all—encouragement to authorities that they engage in more training of their staff in FOIA-relevant responsibilities. Such training, specific to the organizational context of each authority, included efforts at raising awareness and effecting cultural change within the public service.

However, a lack of widespread support within the cabinet proved particularly significant after the decision to shift to the "big bang." It introduced an unanticipated delay between the provision of training and the enforcement of the FOIA's access provisions, demoralizing the supportive constituency of trained officers among public

authorities that had been built in anticipation of an early entry into force. It also exacerbated the natural tendency of organizations to lose expertise in areas that are inactive or that are not part of ongoing business priorities. An example is the loss of staff with experience and training because of transfers into positions with different responsibilities. Some interviewees implied that the eventual entry into force of the access provisions arrested this loss of expertise, particularly among authorities that received sufficient requests to build up and maintain in-house expertise.

There are no central records on the number of staff trained during this period; the costs of training were met from existing budgets.

4.5. Records Management

Prior to the FOIA, the systematic management of records was governed largely by the Public Records Act 1958, which covers the management and storage of records that will eventually be transferred to The National Archives. This law only applies to some of the records public authorities produce in the course of their activities and, outside its requirements, the effectiveness of records management systems varied considerably from authority to authority. The implementation of the FOIA developed in parallel with efforts to improve record management systems, and the two initiatives fed off each other in a number of ways.

Effective records management was widely recognized as a precondition for an effective FOIA regime. The government's white paper had included a commitment to impose obligations on authorities to improve records management in line with "best practice guidance."⁶⁹ This was eventually operationalized in the form of a goal to implement governmentwide electronic records management by 2004 and with the inclusion of section 46 in the FOIA, which requires the government to develop a code of practice for records management. This code was developed and is maintained by The National Archives (the lead agency for records management in the United Kingdom), in cooperation with the

Information Commissioner. It covers both the management of records held by authorities subject to the FOIA during their useful life and the transfer of records to the public archives covered by the Public Records Act 1958.

Public authorities meet the costs of records management and FOIA compliance from within existing budgets. Concerns about the FOIA's implementation costs were, in part, addressed with the claim that they would be offset by savings gained through more effective records management. The experience of the police suggests that, in practice, these cost savings may not be realized, a conclusion also supported by interviewees from The National Archives.⁷⁰ There are several reasons for this. Authorities that handle sensitive requests require records management systems and coordination mechanisms that cover the creation, storage, indexing, and—when appropriate—the destruction of records and that will withstand public scrutiny.⁷¹ Establishing such systems or strengthening existing arrangements so that these goals are achieved usually costs money and, historically, authorities have usually considered good records management as an overhead cost rather than as a benefit in its own right. The interviewees from the National Archives suggested that effective records management tends to exist at agencies dependent on accurate records to conduct core business and at which missing or inaccurate records are likely to be identified as a problem in the normal course of business.⁷² They also suggested that this view of records management as an overhead cost explains why, historically, only the larger authorities have put in place dedicated records managers.⁷³

4.6. Information Technology

Technological change has been a driver of information policy in the United Kingdom since the 1970s; several interviewees expressed the belief that the FOIA was motivated in part by a realization that the Internet was changing social expectations about the availability of government information.⁷⁴ This was reflected in the parallel

efforts discussed above to improve electronic records management.

Despite this, the law only makes passing reference to information technology or the “digital revolution” (for example, s8, which stipulates that electronic requests cannot be rejected simply because they are electronic; and s11, which states that authorities should make reasonable efforts to provide information in the form the requester prefers). Detailed engagement with the potential for greater use of information technology appears to have occurred principally as a part of the reform to records management discussed above.

Under the banner of its “Transparency Agenda,” the Conservative-Liberal Democrat coalition elected in 2010 has sought to use information technology as a tool for public sector accountability and as a driver of public sector reform. Its Protection of Freedoms Bill, which was passed by the House of Lords in late 2011, amends the FOIA to insert an explicit right to many types of public data sets (aggregate numeric data held in electronic form). The coalition has also mandated the online publication of a great deal of information about public sector spending, salaries, and contracts, and is supporting efforts to publish data in comparable, interoperable formats and on terms that favor reuse. This is likely to provide additional encouragement to authorities to better manage their records, especially those stored as electronic databases. It is too early to make any considered judgments on its effects, but the Transparency Agenda is supported by a small but active group of CSOs composed of journalists, technologists, and FOI campaigners.

4.7. Monitoring

The monitoring of compliance with the FOIA is carried out by the Information Commissioner and the nodal agency. The ICO discharges its duties in a number of ways. Apart from hearing appeals and working with authorities to improve their internal handling processes, it maintains a Web site providing comprehensive documentation, guidance, and model publication schemes for various kinds of public authorities. The commissioner also supports research into transparency, conducts public information

campaigns, and is empowered to report to Parliament on issues of concern on an ad hoc basis. To date, these reports have mainly focused on issues of surveillance and privacy. But the commissioner also reported to Parliament after both instances of the exercise of ministerial veto (discussed below), explaining the decision not to appeal for judicial review.

The nodal agency publishes online quarterly and annual reports that cover activities in 44 governmental bodies, including all major departments of state and a number of bodies with “significant policymaking, regulatory or information-handling functions.”⁷⁵ The reports cover request volumes, outcomes (requests granted in full, partially, or refused, with refusals broken down by exemption), and appeals; they are available for every year since 2005. Figures in this document are based on these data.

5. Enforcement

The FOIA is enforced by the Information Commissioner. The commissioner has the power to order authorities to disclose information if a decision was made to withhold it on the basis of an exemption subject to a public interest test. This order can be overridden by a ministerial veto, but in the absence of this failure to comply with the commissioner's decision renders the authority liable to being found in contempt of court under s54.

Enforcement was a significant point of debate during the drafting of the FOIA. The main question was whether the final decision to release information should be made by an independent Information Commissioner or a cabinet minister. Ministerial concerns over this issue were arguably among the main reasons why the United Kingdom was so late in passing legislation: opposition to the idea of an access law among senior politicians was often justified on the grounds that it would empower judges to overrule ministers on fundamentally political matters for which ministers were normatively responsible to Parliament and accountable to the electorate. This concern was reflected in parliamentary debates, during which it was argued that ministers should retain the ultimate authority on what should be released in order to uphold parliamentary supremacy. Behind this argument was the idea that the public had elected its government to govern, with the implication that elected officials should not be beholden to the whims of unelected appointees whether they be judges or quasi-judicial figures (like information commissioners). Critics countered that the absence of independent review would make ministers into judges for their own cause and allow governments to identify their own electoral interests as “the public interest.”⁷⁶

In an attempt to reconcile these competing concerns, the draft bill sought to protect ministerial control over information in several ways. For qualified exemptions, it proposed that authorities should be the final arbiters of whether or not disclosure is in the public interest. As noted above, this proposal was

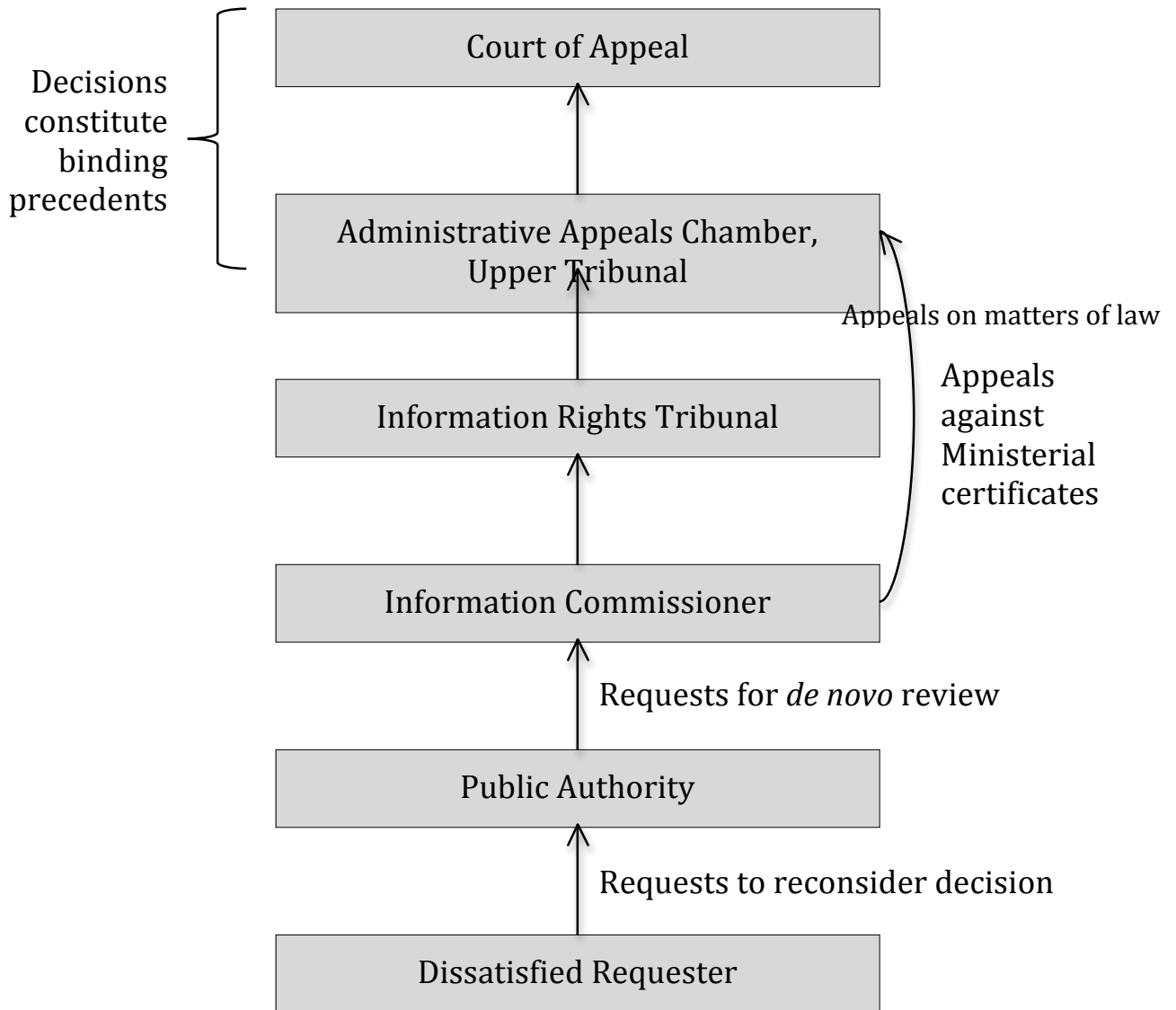
abandoned in the face of criticism, and the application of the public interest test was made subject to the adjudication of the Information Commissioner. As an alternative mechanism for protecting political considerations, the government proposed a power of veto over ICO decisions to override authorities' public interest assessments. This proposed veto was originally available to all elected bodies at both the local and central levels, but the final bill provided only for a ministerial veto (under s53), the use of which is subject to judicial review.⁷⁷ At least one interviewee suggested that this may have been the government's desired outcome all along, and that the original expansive veto proposal was merely a gambit made in anticipation of a heated debate.⁷⁸

Even in its restricted form, the veto proposal was controversial. The CFI feared that it might undermine the law entirely by becoming the main means of resisting politically unwelcome disclosures.⁷⁹ The government responded to these concerns during parliamentary debates by agreeing that the veto should be exercised by cabinet—not individual—ministers.⁸⁰ In the end, the veto has rarely been used, despite the many decisions by the commissioner and the tribunal that the government “cannot have liked,”⁸¹ including two decisions to protect cabinet papers and one to protect the names of the private staff of MPs. Judicial review was not sought in any of these cases. While on paper the veto appears to weaken the law substantially, the very rarity of its use suggests that its effects may not be quite as serious as feared. The veto is politically costly since its use amounts to an open admission by the cabinet as a whole that the law is being temporarily suspended, leaving the cabinet open to accusations of resisting democratic accountability for political gain.

5.1. The Appeals Process

There is a five-step process for appealing refusals to disclose information under the FOIA, (figure 1).

Figure 1. Appeals Process under the FOIA



The first step is to request that the authority concerned reconsider its decision. The procedures for this vary from authority to authority and are regulated by the FOIA only to the extent that the code of practice issued under s45 specifies general principles to be followed. Under s50(2)(a), the commissioner is allowed to refuse to accept a complaint if it appears that this remedy has not been exhausted. The ICO reports that this relative lack of legal specificity as compared with provisions covering responses to initial requests

and subsequent appeals has sometimes been a source of difficulty for requesters because it allows authorities who want to withhold information in specific cases to significantly delay the resolution of disputes.⁸²

The second step is to lodge a complaint with the Information Commissioner whose powers vary depending on the specific exemptions invoked by the authority; this is discussed earlier.

The third step involves appealing decisions by the Information Commissioner to the Information Rights Tribunal, a quasi-judicial body specializing in RTI in the first tier of the United Kingdom's system of administrative tribunals. Cases are heard by panels appointed by the Lord Chancellor composed of a tribunal judge and two members from outside the legal community.

The fourth step is to appeal the tribunal's decisions on questions of law and, in certain circumstances, to request a judicial review of ministerial decisions; these appeals are heard by the Administrative Appeals Chamber of the Upper Tribunal.⁸³ Appeals against ministerial certificates issued on grounds of national security under ss23–4 and those issued in response to the commissioner's decisions are automatically heard by the Administrative Appeals Chamber rather than by the Information Rights Tribunal. The government has not yet relied on certificates under s23 or s24.⁸⁴

The fifth and final step is to appeal the decision of the Administrative Appeals Chamber with the Court of Appeal. The final two steps differ from the first three in that their processes are far more formal and legalistic; steps 1–3 usually involve less formal and more requester-friendly procedures. The two final steps also differ from the first three in that their decisions constitute binding legal precedents. Decisions at all levels of this appeals hierarchy are, however, increasingly treated as *de facto* precedents by many stakeholders, including the Information Commissioner.

5.2. Sanctions

The Information Commissioner's coercive powers are extensive from an international perspective, but they are not unique. By virtue of s52, she can make binding recommendations that documents be released. As in Ireland and Slovenia, these decisions are binding in the sense that failure to comply with one is considered a criminal offense or contempt of court, depending on the circumstances. This differs from laws overseen by ombudsmen who usually only have oversight

authority allowing them only to make recommendations.⁸⁵ The commissioner is also more powerful than a parliamentary commissioner for administration in the sense that she is empowered to undertake own-motion reviews rather than being restricted to investigating issues that are brought to her attention through complaints.

There was a general consensus among interviewees and in the secondary literature that the ICO was better prepared for some aspects of the FOIA than it was for others and that its performance has improved with time. The most serious problem in the immediate aftermath of the entry into force of the right to request documents in 2005 was the lengthy delays in examining complaints and issuing decision notices.⁸⁶ One study by the CFI suggested that some cases took more than four years to resolve.

The delays within the ICO undermined the law in several significant ways. They diminished the commissioner's authority when dealing with underperforming public authorities. Authorities who wanted to avoid their responsibilities could effectively secure a temporary exemption by delaying their own responses as long as possible. They could then rely on further delays within the ICO, so that, in some instances, information could be withheld for years. In many cases, this was not much different than an outright exemption, especially if a request was made by a member of the press or was for politically sensitive information. In 2010, the commissioner increased the number of staff dedicated to resolving appeals and reported that the number of open cases dropped significantly, especially among those that had been open for more than six months.⁸⁷ Because it is now routine for cases to be resolved within six months, public authorities are under greater pressure to handle requests in a more timely and positive fashion and cannot excuse their complacency by blaming the ICO.

Several factors contributed to these delays. One was the "big bang"—the decision to introduce access rights across the public sector on a single date rather than in a phased manner as originally

planned, resulting in a build-up of demand and ensuring that the ICO received a large number of complaints in a single burst. Another factor was that the ICO was arguably under-resourced and unable to allocate sufficient staff to handle the load.⁸⁸

Another contributing factor was that early complaints were complex in unanticipated ways.⁸⁹ In the lead-up to January 1, 2005, the ICO had made considerable efforts at developing guidance and policy on the interpretation of exemptions. It had assumed, partially because of its prior experience administering the DPA, that applications would consist of a neat bundle of papers containing the disputed information and a summary of the authority's reasons justifying the refusal to disclose.

Many early disputes focused on whether or not the authority actually held the information in question. This has been an ongoing problem because, quite understandably, many requesters do not know exactly how authorities internally operate or manage records. In some cases, requesters ask for documents that exist and are readily communicable; in others, information might exist in some form but is not readily available. Since the FOIA provides access only to documents already in existence, the process of matching requesters' expectations with the operating structures and records management processes of authorities has proved challenging.

Aside from the initial problems with delays, CSOs and public authorities also identified problems with the way the ICO prioritized and handled different cases. The CFI suggested that the ICO erred in the first few months by focusing almost exclusively on failures to meet time limits and disputes over whether or not information was held; decision notices on substantive policy matters were not issued for almost a year,

resulting in neither requesters nor authorities receiving guidance on how to handle borderline cases for a long time. Many early decision notices were not helpful because they recited legal provisions without providing full and informative expositions of the reasons behind the commissioner's decision.⁹⁰ The tribunal, in its criticism of this, claimed that it hampered the commissioner's appellate function and reduced the usefulness of his decisions as precedent. Strictly speaking, the commissioner's decisions are not precedents in that they are not binding on future decisions, but they are effectively treated as such by many in the requester community and among concerned authorities until overruled by the tribunal.

A second complaint involved the perception that the commissioner tends to provide full decision notices only when overturning a decision by an agency, resolving instances of upholding agency decisions informally with the requesters to ensure that the requests or appeals are simply withdrawn. This issue was identified by the Association of Chief Police Officers as problematic because it contributed to a relative lack of jurisprudence in support of an authority's decision to employ particular exemptions.⁹¹ The ICO has acknowledged that this is a problem but questioned its seriousness given the considerable amount of other guidance it has produced for authorities.⁹² Dispute resolution procedures, if employed at all, are informal because complainants and authorities alike often want expedited rather than formal resolutions, and these are more cost-effective for the commissioner. The ICO has attempted to address agency concerns by employing a better triage system: informal resolution is employed early to eliminate straightforward cases and to identify those that require more detailed consideration (and that will be subject to formal notices).⁹³

6. Compliance

6.1. Proactive Publication

Public authorities published a considerable amount of information prior to the FOIA, but responsibility for selecting what would be published, cataloged, and archived usually rested with the authority concerned. One study found that approximately 20 percent of administrative publications were produced by Her Majesty's Stationery Office (HMSO); and the remainder was mainly produced by ministries, departments, NDPBs, and other organizations (such as the British Broadcasting Corporation [BBC], British Library, and Central Office of Information).⁹⁴ The total number of non-HMSO publications produced was 20,000 annually for the central government and approximately 2,500 for the local government.

The FOIA seeks to encourage authorities to proactively publish more information and to do so in a more systematic manner, principally through ss19–20, which mandates every public authority to adopt a scheme for the proactive publication of information that is approved by the Information Commissioner. Apparently, the drafters of the FOIA intended for publication schemes and the right to request documents to form a virtuous cycle: publication schemes would inform the public of the information they had a right to expect as a matter of course, which would thereby help to identify the kinds of information that would require explicit requests. Meanwhile, requests would help authorities identify the types of unpublished information that their stakeholders considered valuable and that might be proactively published.

There has been a distinct convergence in the publication schemes that authorities have adopted, partly because of the actions of the ICO. This occurred in three phases. In the years after the passage of the FOIA, tailored publication schemes were developed for many different types of authorities. After some time, it became clear that most of these schemes were dealing with seven basic kinds of information; more recent efforts have focused on developing a smaller suite of schemes for adoption across a wider range of authorities

covering: (1) organizational structure and constitutional and legal governance; (2) projected and actual income and expenditure, tendering, procurement, and contracts; (3) strategy and performance, plans, assessments, inspections, and reviews; (4) policy proposals and decisions, decision-making processes, internal criteria and procedures, and consultations; (5) current written protocols for delivering functions and responsibilities; (6) information held in registers as required by law and others relating to the functions of the authority; and (6) advice and guidance, booklets and leaflets, transactions, and media releases on the services and activities of the authority. The third phase, which is now beginning under the current Conservative-Liberal Democrat government's transparency agenda, focuses on the proactive publication of public sector data sets (that is, standardized, factual nonpersonal data that are stored in electronic form). This is being centrally coordinated through the Cabinet Office, but amendments to the FOIA that are currently before Parliament would provide a right of access to data sets held by any public authority.

Evidence of compliance with proactive publication schemes is patchy, and it is difficult to draw any firm conclusions from it. There is a high level of compliance with the requirement to adopt a scheme, but evidence of impact or effectiveness is lacking. This is partly because these schemes are intended to preclude the need for members of the public to formally request information, and there are no systematic statistics on how many people access published documents. The ICO reports that it receives very few complaints about publication schemes, although it is not clear whether this is indicative of general public satisfaction with the schemes or of a lack of awareness of their existence.⁹⁵

Anecdotal and circumstantial evidence suggest that implementation was not always as thorough as it might have been. It appears that many authorities were slow to realize the potential of the Internet as a means of meeting their

obligations under these schemes. The ICO suggests that this may have been the result of a widespread institutional separation between business units responsible for IT and FOIA requests.⁹⁶ This has gradually changed; it is possible that the availability of information would have improved even without the FOIA simply because of technological change.⁹⁷ At present, the ICO reports that the major ongoing problem with publication schemes is a failure to publish up-to-date material.

On the other hand, it seems the drafters' goal of establishing a virtuous circle between publication schemes and the right of access has been realized to some extent. Pressure from CSOs has encouraged the proactive, routine publication of some information that was initially handled on a case-by-case basis.⁹⁸ A prominent example of this is salary information for officials employed by local authorities who earn more than £100,000; the central government is in the process of extending this requirement to salaries of more than £68,000.

6.2. Requests and Responsiveness

The nodal agency publishes quarterly and annual statistics covering approximately 40 departments of state and other monitored bodies with “significant policymaking, regulatory or information-handling functions.”⁹⁹ The statistics

cover requests to which authorities would not have responded except for the existence of the FOIA (so-called “nonroutine requests”); they provide details on response times, outcomes, fees, exemptions, internal reviews, and appeals to the commissioner. The distinction between routine and nonroutine requests is a matter of interpretation left to the authorities concerned.

According to these data, requests were at their highest immediately after the FOIA entered into force: in Q1 2005, almost 8,000 requests were made to departments of state and almost 6,000 to other monitored bodies, reflecting pent-up demand, due in part to the “big bang.” The number of requests to departments of state dropped to about 4,000 during the following quarter, and has grown steadily—if unevenly—since; as of Q4 2010, it stands at just less than 7,000 per quarter. Requests to other monitored bodies stabilized at approximately 4,000 per quarter in early 2007.¹⁰⁰

Data through 2010 (the most recent available from the MOJ) suggest that between three-quarters and nine-tenths of all requests receive a response within the required time frame and that performance has improved in recent years (figure 3). Just more than half of all requests are granted in full, a quarter are refused in full, and the remainder are partially granted or were still under consideration at the time the data were collected.

Figure 2. Combined FOIA and EIR Requests per Quarter¹⁰¹

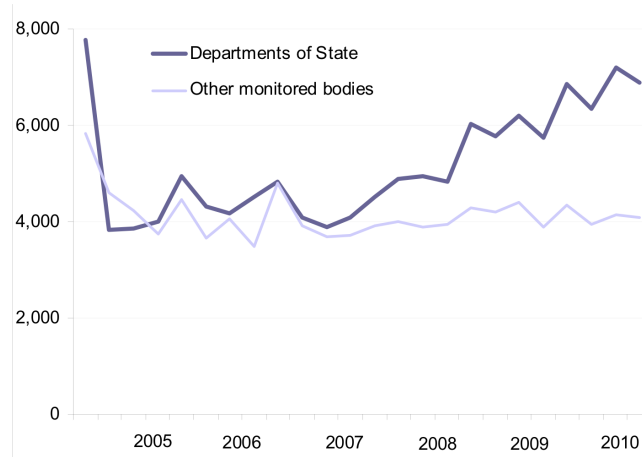


Figure 3. Outcome of Resolvable Requests, 2010¹⁰²

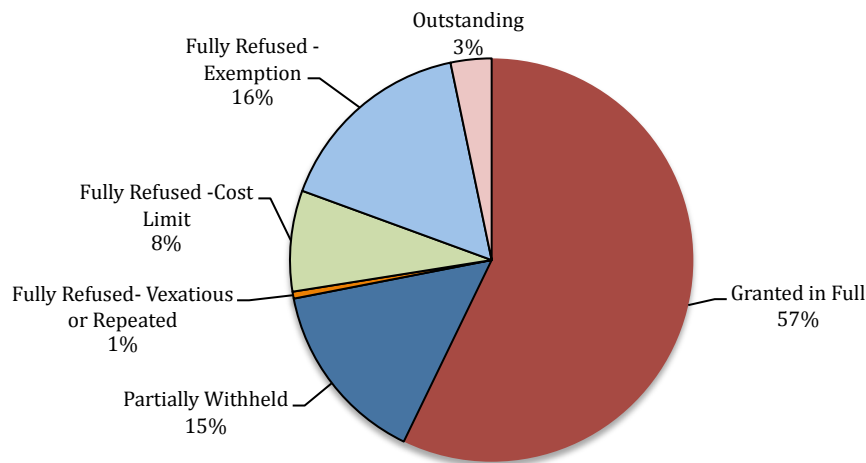
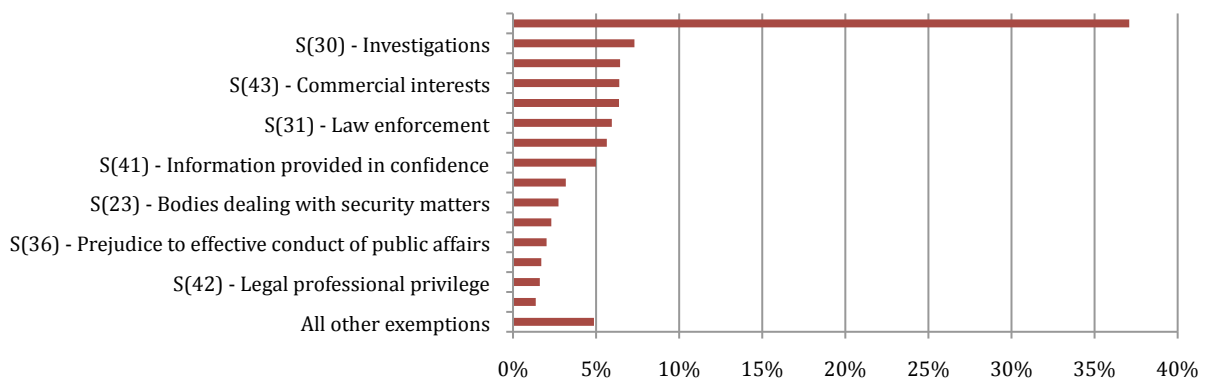


Figure 4. Exemptions Invoked in Withholding Information in Full, 2010¹⁰³



The most common exemption (by a substantial margin) invoked when partly or fully refusing information was that the request pertained to third-party personal data.¹⁰⁴ Appeals to the ICO have increased steadily since 2005, but appeals to higher authorities have remained constant at roughly 20 percent of refusals (figure 4).

It is difficult to make any firm claims about the identity of users. Part of the reason for this is that the commissioner and the tribunal have ruled that a request for information should be considered without reference to the identity of the requester or the reasons behind the request.¹⁰⁵ Even if this were not the rule,

questions of identity are difficult to resolve because distinctions between individual citizens, members of campaign organizations, and members of the press are not always easy to draw. Further, such distinctions are not always informative: request volumes are so small that even minor shifts in behavior can alter results from year to year and across different parts of government. A comparison with the early years of implementation in other similar countries (such as Canada, Ireland, and Australia) suggests that the United Kingdom's law is average in terms of use.¹⁰⁶ In all cases, the percentage of the overall population making nonroutine requests for nonpersonal information is tiny: 0.06 percent on

average for the United Kingdom between 2005–07; 0.21 percent in Australia in the equivalent three years (1982–84); and 0.01 percent in Canada. The consensus among those interviewed was that three types of requesters (individuals, members of organizations, and the press) are responsible for roughly a third of requests each. Attempts to back up these assumptions with hard evidence (through surveys of requesters) have not proved successful, partly due to low response rates.¹⁰⁷

There are no centralized data on the types of information being requested; data are only provided on the proportion of requests received by each authority (figure 5).

Among all monitored bodies, 86 percent of requests are handled within the 20-day deadline, and 91 percent within the permitted deadline or with a permitted extension. Overall, the performance of the departments of state is slightly worse than other monitored bodies: 83 percent of the state departments met the 20-day deadline as opposed to 91 percent of the other bodies; 88 percent of the state departments met the permitted deadline compared to 95 percent for the other monitored bodies. The 10 best- and worst-performing monitored bodies, as measured

by the total number of requests met within the deadline and permitted extensions, are shown in figure 6. For clarity, mid-range performers have been omitted.

With certain exceptions, FOIA compliance across different authorities varies primarily with regard to the volume of requests received by authorities, the resources allocated to handling them, and the attitudes of senior officials toward the value of proactive stakeholder relations management. These three factors are frequently interrelated: authorities that receive a large number of requests experience greater pressure to establish dedicated units for handling them. When the high volume of requests is due to the sensitivity and political interest of the information held by the authority—as in the case of police services—the business imperative to establish robust handling procedures is greater.¹⁰⁸ Major exceptions to this are central government departments primarily responsible for handing sensitive political issues and coordinating whole-of-government policy, especially the Cabinet Office and the treasury. For example, the Cabinet Office has signed an undertaking with the ICO, an act that has been widely recognized as a reprimand for its poor performance in meeting its obligations under the FOIA.¹⁰⁹

Figure 5. Proportion of Requests Received per Monitored Body, 2010¹¹⁰

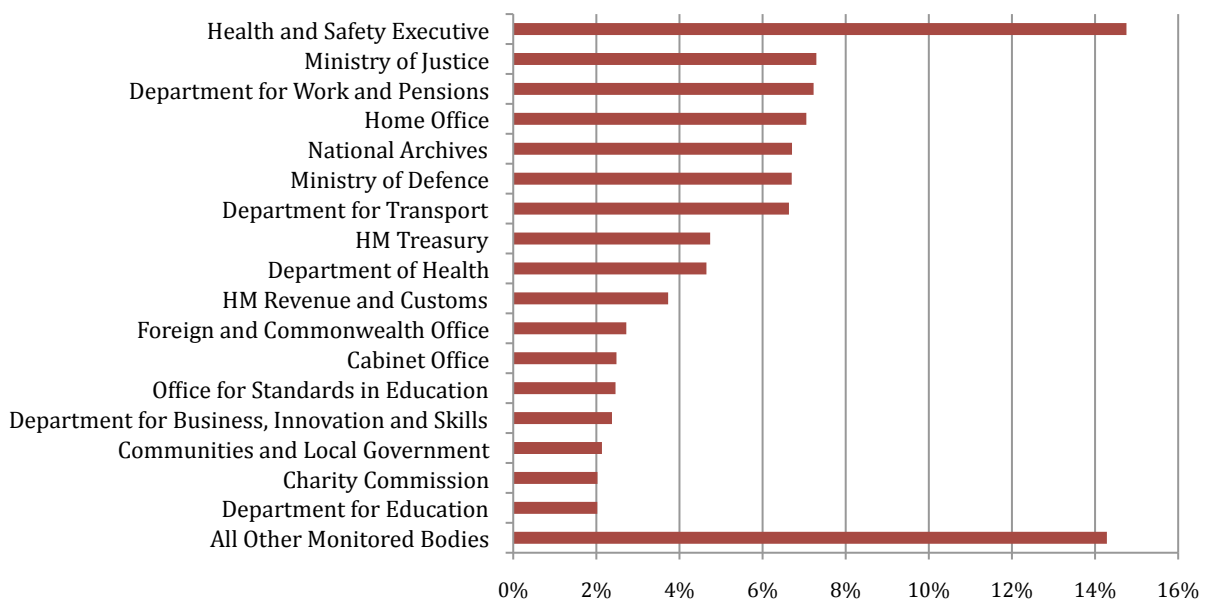
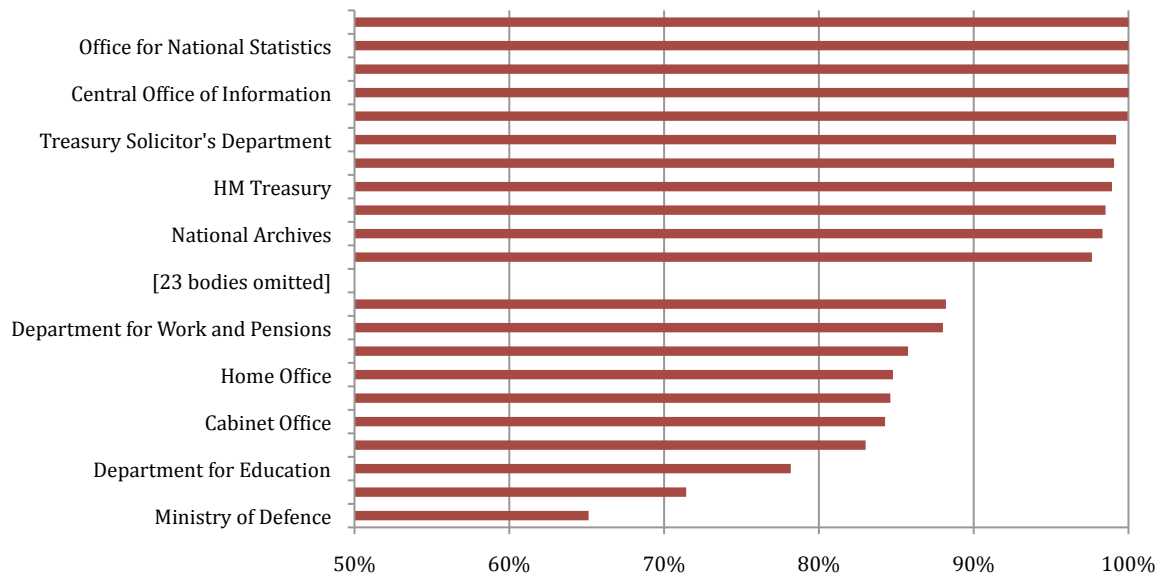


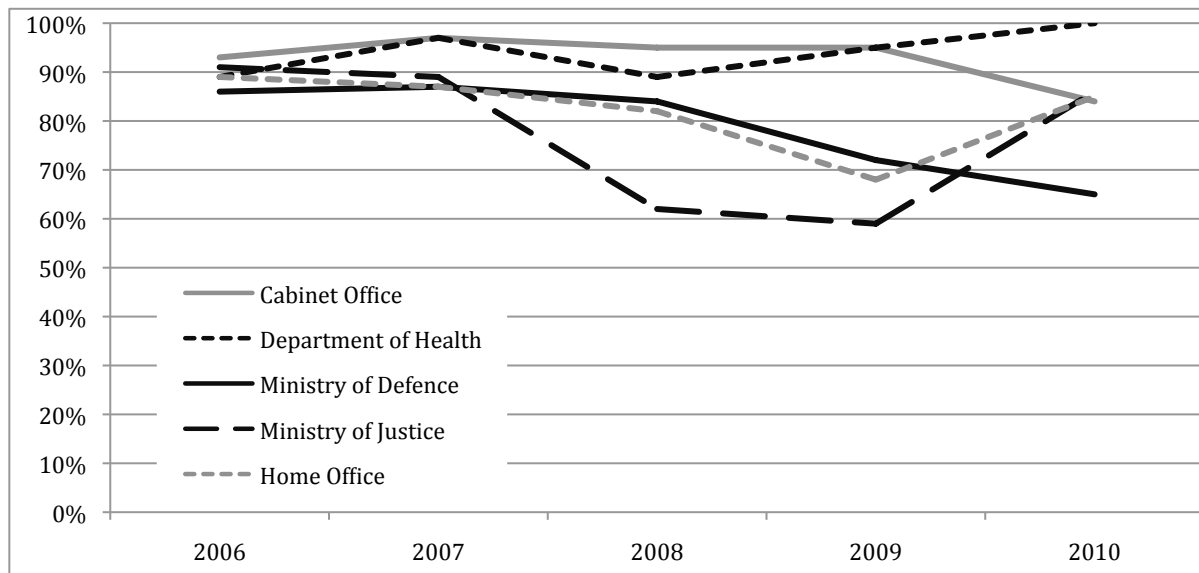
Figure 6. Percentage of Requests Met within Permitted Timeframe¹¹¹



The Ministry of Defense (MOD) was one of the best performers in the early years of the FOIA as measured by the number of requests fulfilled within required time frames; the good performance may have been to compensate for the many areas of its work in which information cannot be disclosed for reasons of national security and defense. Recently, however, the MOD's performance has declined; it has signed an

undertaking of its own with the ICO.¹¹² By contrast, the Department of Health was a poor performer initially, but its performance has shown recent improvement, due in great part to the considerable efforts by the ICO to help the department improve its internal processes. Response rates for these two authorities are shown in Figure 7.

Figure 7. Requests Met within Extended Time Frame by Several Central Departments¹¹³



7.ATI and Accountability

The general consensus in the academic literature and among interviewees is that the United Kingdom's FOIA, despite some early problems relating to delays and weak enforcement, has been reasonably successful in achieving its immediate aim of improving transparency and thereby of strengthening accountability. Unfortunately, it is difficult to provide concrete evidence of this positive effect without resorting to anecdote, as the only major study of the impact of the FOIA notes.¹¹⁴

Several of the interviewees pointed to the 2009–10 parliamentary expenses scandal as evidence of the FOIA's potential to improve overall accountability.¹¹⁵ Several MPs have been charged, reprimanded, or suspended over claims they made illegal or unethical claims under the parliamentary expenses system. Data on expenses were originally sought through a series of FOI requests lodged by nongovernmental organizations (NGOs) and investigative journalists. They were resisted by Parliament for a considerable period; they were even the focus of an unsuccessful attempt in 2007 to amending the FOIA to exempt the material. Eventually, the information was leaked to the *Telegraph* newspaper, not released under the FOIA, but the leak only occurred after the information tribunal had ruled that the information would have to be released to the requesters. Thus, it seems reasonable to attribute the release of parliamentary expenses data and the subsequent scandal to the FOIA.

A further difficulty in assessing the effects of the FOIA is that its most beneficial effects may lie in its encouragement of officials to anticipate being

held accountable, altering their behavior so that retrospective accountability is not necessary. This effect is likely to manifest itself in ways that are difficult to measure with standard techniques like media content analysis and statistical analysis of request data; two examples cited by interviewees may illustrate the point.

- Prior to the 1990s, the Ministry of Agriculture, Fisheries, and Food was regularly criticized in the press and by NGOs for its pervasive secrecy and tendency to favor producer groups over public interests. As of 2001, this ministry no longer exists; its functions have been transferred to a range of other authorities responsible for food standards and environmental protection. The immediate catalyst for this was the inability of the ministry to satisfactorily handle an outbreak of foot and mouth disease. Along with its dissolution, debates over its secrecy and poor decision-making have vanished from political discourse.
- Similar changes have occurred in nuclear safety,¹¹⁶ not only an example of retrospective accountability as an identifiable actor, but as a tool for profound structural transformation designed to prevent mistakes from occurring in the first place. This is achieved by transforming the nature and identity of the responsible parties; in other words, retrospective accountability becomes unnecessary by ensuring that correct decisions are made at the outset.

8. Analysis

ATI is a broad policy with several stakeholders whose interests could influence its implementation. This section discusses the influence of several stakeholder groups that were influential in the drafting of the FOIA.

8.1. Politicians

The single most influential stakeholders in the establishment of the FOIA were politicians, especially senior members from the two main political parties. Their support remains a crucial factor in its ongoing development in that high-profile instances of ministerial refusal to disclose information are often politically motivated or widely understood to be so while proposals to extend access often have advocates or supporters at the political level because of their electoral appeal. Both attitudes flow from the structure of the Westminster system, which centralizes both political and administrative authority in the cabinet, thereby giving senior political figures a great deal of influence over both the law and the behavior of the bureaucracy. This system also centralizes electoral accountability in the same group, providing a complex set of incentives to control the distribution of official information; sometimes this aligns in favor of the right to full access, sometimes it encourage opposition to it.¹¹⁷

8.2. Bureaucrats

Prior to the 1990s, the civil service was widely seen as the most consistent source of opposition to the FOIA. Some commentators see all bureaucracies as inherently secretive (for organizational reasons first systematically laid out by Max Weber),¹¹⁸ but a close examination of the British case suggests that a more nuanced explanation is warranted.

One reason for traditional bureaucratic opposition is the combination of a highly politicized executive and a permanent civil

service. Ministers and civil servants alike have an interest in ensuring a neutral civil service capable of providing independent policy advice. Official secrecy supports this interest by ensuring that individual civil servants are not publicly associated with particular policy positions, thus able to present themselves as nonpartisan advisors to successive ministers.¹¹⁹ Ministerial desire to preserve this source of confidential advice was directly linked to the refusal to introduce access rights in the late 1960s and early 1970s.¹²⁰

Official secrecy is not a necessary outcome of bureaucracy; it is instead affected by political concerns, suggested by the fact that the attitudes of the most senior civil servants have changed over time. The First Division Association¹²¹ affiliated itself with the CFI in 1984—the first occasion it had chosen to align itself with any external group. This was apparently intended to publicly signal that it was not interested in maintaining secrecy for its own sake but only because it protected the bureaucracy’s capacity to provide independent and impartial advice to ministers.¹²² It is no coincidence that the decision to affiliate itself with CFI occurred at a time when the politicization of the civil service attributable to Mrs. Thatcher’s reforms was a matter of public debate.

Bureaucratic tendencies toward secrecy have been mitigated by the profound structural reforms put in place by the Major and Blair governments: the introduction of performance management and the “Third Way” reforms under the New Labour Party. These provide incentives to authorities with managerial independence to build constituencies among their stakeholders as a means of improving their own legitimacy and influence within government. These external incentives have proved to be a major incentive for openness, perhaps even more than the FOIA, and are partly responsible for the “sea-change” in state-society relations discussed in section 8.7. “Informal Norms.”

8.3. Civil Society Organizations

Despite their active lobbying for its establishment, all CSOs have not found the FOIA useful. It appears to be most helpful to NGOs for whom the preservation of a close, cooperative working relationship with government officials is not a high priority.¹²³ This includes NGOs seeking the disclosure of information that the government is expected to resist or whose goals place them in an inherently adversarial relationship with government. Campaign organizations with objectives that are controversial in society at large were mentioned by many interviewees as prominent users of the law, notably Friends of the Earth, Greenpeace, the Campaign Against the Arms Trade, animal welfare groups, and public interest groups interested in combating (real or perceived) agency capture by industry groups.¹²⁴ Official interviewees at national and local levels suggested that these groups rely on the FOIA because they are unable to develop the kinds of ongoing cooperative relationships that might provide opportunities for informal disclosure of official information. They also suggested that groups interested in establishing cooperative relations, such as those with an interest in ongoing influence over policy development or implementation, might find recourse with the FOIA counterproductive inasmuch as it would be perceived an unnecessarily adversarial act by officials or at the very least as evidence of the absence or breakdown of the type of cooperative exchanges that these groups probably want to establish.¹²⁵

8.4. Media

Historically, the press was one of the most significant organized opponents of official secrecy in the United Kingdom.¹²⁶ This was due in no small part to the OSA effectively criminalizing political reporting for most of the 20th century—a legal technicality that was limited in practice only because of a traditional unwillingness of attorneys general to prosecute.

Despite this, and even with their obvious structural interest in ATI, the media's use of the FOIA has been uneven. Within national media

organizations, it appears that the FOIA is used intensively by a small group of journalists rather than being embedded in the ongoing practices of organizations. This concentrated pattern has become semi-formalized within the large newspapers and among broadcasters in the form of FOIA specialists: individuals who develop considerable practical expertise, with the support of their managers, and who are expected to advise their colleagues in making use of FOIA.¹²⁷ The knowledge that these individuals develop seems to travel with them when they move instead of remaining with the former host institution.¹²⁸

Outside the major media institutions, there are a small but significant number of freelance journalists who make use of the FOIA as a research tool, especially—but not exclusively—at the local level.¹²⁹ The ICO also reported increasing use among the specialist press in the health, IT, and police sectors. Local government information officers informally distinguish between two types of media requesters.¹³⁰ The first are investigative journalists who use the FOIA as one tool among many to pursue important issues and who produce stories for broadsheets or television. Reportedly, information officers view these kinds of requests as an inconvenient but legitimate use of the law. Stories based on this approach have often had significant impact: journalists Heather Brooke and Jon Ungood-Thomas of *The Sunday Times* and Ben Leapman of the *Sunday Telegraph* requested information about the expense claims of 14 MPs in 2005; these requests eventually led to the disclosure of the parliamentary expenses data discussed above. The second type of requester is the freelance reporter who submits the same request to every council, hospital, or police force in the country. Results are then collated and used to identify “worst offenders.” Stories based on these data are sold to local or tabloid papers to print on “slow news days.” This strategy is viewed much less favorably by information officers since it imposes administrative costs on authorities and undermines trust in public authorities without an identifiable benefit in return. On the more general question of their relationships with

information officers, journalists think that their requests, regardless of content, are seen as less legitimate—and certainly more inconvenient—than those from “ordinary” members of the public.¹³¹

There has not yet been any comprehensive study of uneven journalistic engagement with the FOIA. The interviewees for this study suggested several possibilities. First and foremost, journalists are likely to find the law less useful than the average citizen because they are interested in politically sensitive information that is explicitly exempted from disclosure or that officials are inclined to resist disclosing through procedural means.¹³² The statutory 20-day response time frame is too lengthy for most journalists whose deadlines are measured in hours.¹³³ This claim is consistent with the fact that the heaviest journalistic users appear to be those working on longer time frames: investigative journalists, those who use it as their primary research tool, and those who sell “slow news day” stories. Lack of use may also simply be a matter of habit: some journalists who might have been willing to make more systematic use of the law in the early years were discouraged from doing so by the extensive delays; they have therefore come to rely on their existing contacts.¹³⁴

8.5. Business Interests

British businesses were not a major influence on the genesis of the FOIA but were expected to make use of it after its introduction like their counterparts in the United States.¹³⁵ As it turned out, however, business use was initially so low that it surprised some observers. It is now on the rise, but the rate of use of the law by business is still far lower than in the United States. Businesses that do make requests appear to be using the law for three purposes:¹³⁶

- ***To obtain background information on tenders, including previous submissions made by competitors and background information held by the public authority.*** Businesses appear to be much more reticent to use the law for this

purpose than their counterparts in the United States. This reticence seems to be motivated by a concern that public officials view such requests as an inappropriate use of the law; businesses fear their own submissions might be considered in a less favorable light if they are identified as requesters, despite the fact that any such retaliation would be contrary to the spirit of the law and to the commissioner’s guidance. As a result, businesses that use the law in this way often make their requests anonymous by directing them through solicitors. Moreover, businesses that have made submissions are reluctant to allow details of their contracts and pricing information released to competitors. The incidence of so-called reverse-FOIA suits is increasing, and local councils have started to adopt the practice of asking successful bidders to indicate the information they consider to be commercially sensitive.¹³⁷ Although these schedules are not conclusive evidence of sensitivity, they are considered *prima facie* evidence of a belief on the part of the company concerned.

- ***To obtain data for resale or reuse at a profit.*** Government files represent a significant potential source of information that firms can process, combine, and republish for profit, including maps, legal texts, and statistical data on the natural, economic, and social world. The FOIA constitutes one mechanism by which companies gain access to this information, particularly when it is not already held by public authorities in a centralized form. One example mentioned by several interviewees was requests for the procurement plans of public authorities, although officials view these requests are even less favorably than those from journalists.¹³⁸ It is important to recognize that the FOIA has partly driven and partly evolved in parallel with efforts to provide access to public sector data on terms favoring commercial reuse; the current Conservative-Liberal Democrat coalition is legislating to include a “right to data” in the FOIA and has established the principle of publishing government data sets, salaries, and contracts at central and local levels.

- **Public relations.** One particularly interesting recent development is the use of the FOIA by companies to provide the factual basis of publicity campaigns. A hypothetical example discussed by some interview subjects was using the law to collect data on accidents at pedestrian crossings to generate sales of safety equipment. This use does not appear to be common; it was mentioned because it was unexpected and rare.

8.6. Formal Institutions

Formal institutions have played an important role in the development and implementation of freedom of information in the United Kingdom. The FOIA was not associated with the introduction of a new set of democratic institutions or even with the radical transformation of an existing set: it is part cause and part outcome of an ongoing process of evolution within a relatively—but not perfectly—stable political system.

The United Kingdom’s competitive two-party system contributed decisively to the emergence of freedom of information as a topic of political debate. Two-party systems are structurally favorable to electoral competition on the basis of access rights because they feature clear lines of electoral responsibility and encourage opposition parties to demonstrate their trustworthiness to the electorate by promising to introduce mechanisms to strengthen retrospective sanction voting.¹³⁹ The politicization of access rights in this way has been a recurring pattern in British political life since the early 1970s. Controversy surrounding the use of secrecy to prevent reporting and criticism of British involvement in international events such as the Suez Crisis in 1956 and the Biafran War in the 1960s eventually led to a comprehensive review of the OSA under Lord Franks. This review stopped short of calling for ATI legislation, but it opened the door to it by explicitly identifying the Swedish and American laws as possible sources of inspiration for reform.¹⁴⁰ Controversy surrounding the secret actions of the British state abroad continued under both the Thatcher and Major governments

in the 1980s and 1990s; the 1989 amendments to the OSA were, in part, a response to the failure of high-profile prosecutions of public servants who leaked information to the press. The release of the Scott Report into the Matrix Churchill affair in 1996 brought the issue to public attention during the election that eventually brought the New Labour Party to power and provided Tony Blair with the opportunity to compete with the Conservative Party on the issue of trustworthiness by promising to combat secrecy and reinforce accountability. In his own words, Matrix Churchill made the case for the FOIA “unanswerable.”¹⁴¹ The current Conservative-Liberal Democrat Coalition’s “transparency agenda” has been presented in terms that suggest an attempt to consolidate electoral support, demonstrating a firmer commitment to retrospective democratic accountability than the outgoing New Labour Party government.¹⁴²

Precisely because of its clear lines of accountability, however, the two-party system also discourages ministers from actually implementing access rights. The difficulty faced by parties in balancing the competing imperatives inherent in the party system can be readily seen in the New Labour Party’s repeated attempts to back away from its electoral commitments to freedom of information—successfully in the 1970s and “unsuccessfully” in the late 1990s. In a sense, the very existence of the FOIA is testimony to the fact that the imperatives of electoral competition in the United Kingdom can sometimes trump the long-term institutional self-interest of those competing.

The centralization of political and administrative authority in a cabinet exercising decisive influence over a parliament that is itself the supreme political institution is also an important but complex contributor to access rights. It has reinforced the tendency to politicize access rights by encouraging the framing of dissatisfaction with the expansion of the welfare state (and the associated expansion of bureaucratic control over information) as a political problem best solved through collective political action rather than as

an administrative problem best solved through the courts (as was the case in Germany and France).¹⁴³ It simultaneously encouraged the executive to exert extremely tight control over the disclosure of all official information: ministerial responsibility for the whole of the state—however imperfect it may be in practice—implies that all the information about and held by public authorities is potentially relevant to electoral assessments of government performance.¹⁴⁴

As noted earlier, the civil service has historically been one of the main sources of opposition to the introduction of access rights. The structural basis for this opposition was substantially transformed by the public sector reforms undertaken by the Thatcher, Major, and Blair governments. At the risk of grossly oversimplifying an extremely complex and contested period of political history, this transformation occurred in three stages. Under Margaret Thatcher, extensive privatization and reinforcement of cabinet control over the parts of the state that remained in public hands laid the groundwork for reform, despite the PMs personal opposition to a freedom of information law. The introduction of outcomes frameworks and performance management and the creation of agencies with focused goals and managerial autonomy¹⁴⁵ separated responsibility for policy development and implementation and established structured communication between the two as a basic public sector management tool.

Under Major, a slight but significant shift in emphasis occurred. His *Citizen's Charter*¹⁴⁶ represented an attempt to subject the parts of the state that could not be privatized for whatever reasons to marketlike pressures by disclosing timely, accurate information about their performance to the public, not just to the cabinet. This reform explicitly sought to harness the power of public opinion by casting citizens as consumers. To that end, it mandated the publication of information that would allow the public to exercise meaningful choices between different service providers: charters of service, reports of performance against the outcomes in

these charters, and independent inspection reports by specially established bureaus.¹⁴⁷ Major also introduced a nonstatutory Code of Practice on Access to Official Information designed to reinforce the devolution of operational responsibility, encourage responsiveness, and facilitate dispute resolution.¹⁴⁸

The code received a lukewarm reception from civil society, and, looking back, the consensus is that departmental resistance and lack of political support resulted in a low number of requests and the release of less information than might ideally have occurred.¹⁴⁹ Nevertheless, it represented a major advancement in two respects. It mandated the proactive publication of a range of information that had previously been kept secret, including the membership of cabinet committees, the reasons for administrative decisions, and background information on past policy decisions. It also included a request mechanism—the first enforceable right of access in the United Kingdom.¹⁵⁰ Thus, it smoothed the way for the eventual introduction of the FOIA by easing traditionally secretive departments into the idea of establishing a more open relationship with their constituents.¹⁵¹

The third phase occurred under the Blair government, which introduced the FOIA partly in fulfillment of long-standing electoral commitments to democratic renewal, and partly because it formed part of its “Third Way” reform agenda, which relied extensively on distributed public governance.¹⁵² The election of the Conservatives as part of a coalition in 2010 ushered in yet more proactive disclosure of information as a public sector governance tool, albeit one with more similarities to the Thatcher and Major approaches than to Blair’s. A public sector transparency board has been established within the Cabinet Office to drive this transparency agenda. It is too early to gauge its results but it is clear that the proactive publication of government data sets will be a major emphasis, and an amendment to include a right to data in the FOIA is currently before Parliament.¹⁵³

8.7. Informal Norms

Changes in informal norms have affected the implementation of the FOIA on several levels. The operation of the FOIA in the United Kingdom has also been facilitated by the widespread norm among public servants that their first responsibility is to faithfully carry out their duties under the law even when these may prove inconvenient. Several interviewees mentioned that majority of public servants seem to approach freedom of information in this manner most of the time, with the implication that they comply without being particularly motivated by the underlying democratic rationale.¹⁵⁴ A study by University College London found no hard evidence of the so-called chilling effect when officials deliberately alter the records they create or refuse to record some decisions in writing to avoid disclosure under the FOIA.¹⁵⁵

In contrast with this duty-based approach, several nongovernment interviewees mentioned that the manner in which public organizations respond to requests matter as much or more than specific decisions in influencing the perceived success of the law. Requesters, especially professionals who make frequent use of the law, expressed more positive views of those authorities that were seen to be handling requests promptly, consistently, and fairly, *even when those authorities rejected specific requests*. All parties mentioned delays in responding to requests as particularly likely to lead to dissatisfaction; one journalist indicated that, if forced to choose, an FOIA that worked quickly but that released less information would probably be more useful than one that released more information but did so more slowly.¹⁵⁶ This point about appearances resonates with a broader point made by the interviewee from the CFI. The CFI's training courses often brought together requesters with the officials responsible for handling their requests.¹⁵⁷ It is apparently quite common for requesters to adopt far more positive attitudes about the likelihood of obtaining information after they meet officials who are positive about the principle of access even if the officials do not work in the authorities receiving their submitted requests.

At the highest level of abstraction and over the long term, the FOIA is part cause and part outcome of a sea change in relations between the British state and its citizens: the development of an "open government."

Prior to the late 1970s, these relationships were highly paternalistic and characterized by pervasive, selective opacity on the part of the state. Officials sought to maintain control over policy development and implementation and were generally reluctant to seriously consult with interest groups other than industry and trade unions.¹⁵⁸ This closed style of government was associated with the tendency of officials to reserve the right to determine what information should be disclosed to the public at large; they often actively resisted attempts by journalists, NGOs, and citizens alike to obtain it.

A classic example of this traditional British approach was the regulation of industrial production processes.¹⁵⁹ Regulators in such areas as pollution control; health and safety inspections; and food, medicine, and product safety routinely refused to disclose information like the names of companies they had prosecuted or that were in breach of regulations. This was sometimes justified on the grounds that regulators needed to avoid jeopardizing the industry's willingness to share information by exposing regulated companies to the "double punishment" of negative publicity. This was clearly an informal norm because regulators were empowered through legislation to compel the disclosure of the information required but they chose to act as if they had to rely on cooperation.

By the 1990s, this kind of selective, secretive engagement had virtually disappeared, although vestiges remained in pockets of the state that were relatively insulated from direct contact with the public. The prevailing norm is now one of more active engagement and negotiation with a broad range of stakeholder groups and of acceptance at high levels that public ATI is both legitimate and desirable.

This newfound openness at the political level has allowed freedom of information to have a self-reinforcing effect at the lower levels of public service. The existence of a legal rule favoring disclosure allows officials to answer informal requests from and engage in discussion with external groups much more freely. This is because all parties know that requesters will probably be

able to access information if the matter is put to the test and because the law provides clear standards for justifying the withholding of genuinely sensitive information if the need arises. In other words, the law does not just empower requesters; it also makes it easier for officials engage openly with them when they are so inclined.

9. Conclusion

Overall, it seems reasonable to conclude that the FOIA has achieved modest success in its primary aim of improving transparency, that is, ensuring the release of information that would not have been publicly available without it.¹⁶⁰ One measure of its success is the degree of consensus among those interviewed, from both government and the various requester communities, that requesters have been able to obtain information that governments would have preferred not to disclose (for example, documents relating to policy decisions) or that it actively sought to withhold (for example, parliamentary expenses). A second measure of its success is that the FOIA provides a set of rules for conducting disputes over what type of information should be available, and these rules have generally proved beneficial to requesters. CSOs have also been able to use requests and appeals to their strategic advantage, and some types of information the government may not originally have anticipated would be released are now available by request (for example, some policy-relevant information); others are routinely published despite early refusals to do so (for example, salary data for local governments).

This study has identified several contributors to this success. The interviewees frequently identified institutional contributors. The two most significant of these are the law itself, which is not perfect but compares favorably against similar laws around the world,¹⁶¹ and the existence of an information commissioner with strong formal powers. The particular importance of effective practical oversight and enforcement mechanisms was underscored by the problems caused by the appeals backlog that built up in the first few years after the law's implementation, and by the way this undermined both the commissioner's moral authority and compliance within other public authorities. More generally, the prevalence of the rule of law and the relatively high infrastructural capacity of the British state mean that authorities have generally been able to implement the law within existing resources despite occasional

inconveniences. Second, the existence of a strong and varied domestic constituency was an essential contributor to the development, preparation, and the implementation of the FOIA. Repeated requests by journalists and CSOs, coupled with strategic appeals, have unquestionably led to the proactive publication of information that was routinely withheld in the first few years. The two examples discussed in this document are parliamentary expenses data and salaries.

Although the FOIA has been reasonably successful in achieving this immediate aim, its impact has not been uniform. Information about how much money the government spends, for example, is considerably easier to obtain than information about policy discussions,¹⁶² even though the former was a much less prominent matter of debate in the lead-up to legislation than the latter.¹⁶³ This variability of impact suggests that, rather than radically transforming the underlying structure of power in the United Kingdom, the FOIA has been influenced by it. The release of spending data is the result of a combination of pressure from CSOs (such as the Taxpayer's Alliance, which was founded in 2005, partly to take advantage of the opportunities offered by the FOIA¹⁶⁴) and a series of decisions by the commissioner and tribunal that have made it more difficult to withhold such information. These changes are exemplified by the disclosure of salary information that was initially considered a matter of some sensitivity by authorities like the local councils.¹⁶⁵ Over time, a consensus has emerged that information concerning senior staff salaries is a legitimate matter of public interest, although the scope of disclosure varies from authority to authority, with some publishing information on lower officials or salaries and others not.¹⁶⁶ Many councils proactively publish this information on their Web sites now, and the current Conservative government's transparency agenda has extended this still further by mandating the proactive disclosure of all local government spending above £500 along with a

wide range of data on central government spending. By contrast, policy-relevant and politically sensitive information remains a controversial and contested topic, and although there have been some gains in this area, not as much of this type of information has been released as advocates had initially hoped.

The introduction of the FOIA was the outcome of several long-term trends in the United Kingdom, notably the contradictory nature of party competition and centralization of authority, and a slow, ongoing separation of political authority from responsibility for routine administrative processes that was occurring in

the context of an increasingly mediated and digitized society. Together, these suggest a cautious optimism about the prospects for transparency over the long term, but its ongoing entrenchment cannot be taken for granted in the short term. The principle of ATI will likely remain contested for the foreseeable future, and strong transparency mechanisms and a vibrant civil society will continue to be essential guarantors of its development.

Notes

¹ Andrew Puddephatt, *Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom* (Washington, DC: World Bank Institute, 2009).

² Interview 3, *Senior Official, CFI* (9 June 2011). By the late 1980s, the number of supporting organizations was approximately 100.

³ Tony Blair, *Speech by the Rt.Hon. Tony Blair MP, Leader of the Labour Party at the Campaign for Freedom of Information's annual Awards ceremony, 25 March 1996*. (London: CFI, 1996), <http://www.cfoi.org.uk/blairawards.html> (accessed on 1 April 2011).

⁴ Labour Party, *New Labour. Because Britain Deserves Better* (London: Labour Party, 1997).

⁵ Chancellor of the Duchy of Lancaster, *Your right to know. The government's proposals for a Freedom of Information Act, Cm 3818* (London: Her Majesty's Stationery Office, 1997).

⁶ Interview 3.

⁷ HC Deb, April 4, 2000, vol. 1857, col. 838.

⁸ Interview 3.

⁹ *Ibid.* and HC Deb, April 4, 2000, vol. 1857, col. 848.

¹⁰ Ben Worthy, *Policy Making in British Central Government: The Freedom of Information Act 2000: A Case Study* (PhD thesis: Manchester University, 2007b), 147.

¹¹ Secretary of State for the Home Department, *Freedom of Information: Consultation on Draft Legislation, Cm 4355* (London: Her Majesty's Stationery Office, 1999).

¹² The meaning and significance of the public interest test is discussed below.

¹³ House of Commons, Select Committee on Public Administration, *Third report. Freedom of Information Draft Bill. Volume I. Report and proceedings of the committee, HC 570-i* (London: Her Majesty's Stationery Office, 1998).

¹⁴ HC Deb, December 7, 1999, vol. 340, cols. 714–98.

¹⁵ HC Deb, April 4, 2000, vol. 1857, cols. 930–35; HC Deb, April 5, 2000, vol. 1857, cols. 981–1123.

¹⁶ Tom Cornford, "The Freedom of Information Act 2000: Genuine or Sham?," *Web Journal of Current Legal Issues* (2001), <http://webjcli.ncl.ac.uk/2001/issue3/cornford3.html> (accessed on 1 July 2011).

¹⁷ HC Deb, December 7, 1999, vol. 340, cols. 743,772.

¹⁸ Especially Interview 5, *Senior Officials, ICO* (16 June 2011).

¹⁹ HC Deb, April 4, 2000, vol. 1857, col. 834.

²⁰ Robert Hazell, Ben Worthy and Mark Glover, *The impact of the Freedom of Information Act on central government in the UK : does FOI work?* (Basingstoke and New York: Palgrave Macmillan, 2010).

²¹ Interview 1, *Official, ICO* (24 May 2011); Interview 2, *Senior Journalist, BBC* (2 June 2011); Interview 3; Interview 4, *Official, Taxpayers' Alliance* (15 June 2011); Interview 10, *Official, MoJ* (7 July 2011).

²² Patrick Birkinshaw, "Freedom of information and its impact in the United Kingdom," *Government Information Quarterly* (27:4, 2010), 312–321.

²³ The meaning and significance of "absolute" exemptions is discussed below.

²⁴ Matthew Flinders and Hugh McConnel, "Quangos and Accountability," in Matthew Flinders, Ian Harden and David Marquand (eds.), *How to make Quangos Democratic* (London: Charter88, 1997), 42–51; Matthew Flinders, "The Politics of Accountability: A Case Study of Freedom of Information Legislation in the United Kingdom," *Political Quarterly* (71:4, 2000), 422–435; Chris Skelcher, Stuart Weir and Lynne Wilson, *Advance of the Quango State* (London: Local Government Information Unit, 2000).

²⁵ HC Deb, December 7, 1999, vol. 340, cols. 767, 777–78.

²⁶ HL Deb, October 17, 2000, vol. 617, col. 951.

²⁷ Worthy (2007b).

²⁸ Toby Mendel, *Freedom of Information: A Comparative Legal Survey* (New Delhi: UNESCO, 2003), 96–8.

²⁹ Maurice Frankel, "Abysmal handiwork; Maurice Frankel is bitter. He feels betrayed, after campaigning for decades to get open government.," *Guardian* (25 May 1999), 19. See also HC Deb, December 7, 1999, vol. 340, cols. 735–36,748.

³⁰ See s23. Other information relating to national security but which is neither held by nor relevant to these authorities is subject to a qualified exemption under s24.

³¹ This includes, at s24, national security information not covered by the absolute exemption at s23.

³² HC Deb, December 7, 1999, vol. 340, cols. 747–48.

³³ There appears to be a kind of unstated convention in the United Kingdom of referring to the office of Commissioner (as opposed to the incumbent) as "she" when gender-neutral language cannot be avoided. This may partly be a mark of respect to the first Information Commissioner, Elizabeth France.

³⁴ HC Deb, April 4, 2000, vol. 1857, col. 846.

³⁵ Interview 3.

³⁶ David Winder, "Little Known British tradition—Secrecy," *Christian Science Monitor* (17 December 1986), 1.

³⁷ HC Deb, December 7, 1999, vol. 340, col. 773.

³⁸ *Ibid.*, cols. 730, 751, 770, 782.

³⁹ Interview 3; Interview 5; Interview 10.

⁴⁰ Interview 5; Interview 10. It should be noted that the only major study of the effects of the UK FOIA found that changes to the policy process over the late 1990s and early 2000s were difficult to attribute *solely* to the FOIA (which is to say that the effect of other administrative and structural reforms that also occurred over the same period could not be excluded). See Hazell *and others* (2010).

⁴¹ Blair's own retrospective assessment of his contribution to the introduction of the FOIA was: "You idiot. You naive,

foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it," in Tony Blair, *A Journey* (London: Hutchinson, 2010), 516–7; Martin Kettle, "Tony Blair interview: the full transcript," *Guardian* (1 September 2010), 1.

⁴² HC Deb, April 4, 2000, vol. 1857, col. 864.

⁴³ Interview 5.

⁴⁴ See, for example, Home Office, Committee on the Civil Service ["Fulton Committee"], *Report, Volume 1, Cmnd 3638* (London: Her Majesty's Stationery Office, 1968); Home Office, Committee on Section 2 of the Official Secrets Act ["Franks Committee"], *Report, Volume 1: Report of the Committee, Cmnd 5104* (London: Her Majesty's Stationery Office, 1972a); Home Office, Committee on Section 2 of the Official Secrets Act ["Franks Committee"], *Report, Volume 4: Oral Evidence Mainly from Non-Government Witnesses, Cmnd 5104* (London: Her Majesty's Stationery Office, 1972b).

⁴⁵ Interview 3; Interview 5; Interview 6, *Senior Information Management Officer, Wandsworth Local Council* (17 June 2011).

⁴⁶ Personal communication from a senior official, CFI.

⁴⁷ Interview 3; Worthy (2007b), 154.

⁴⁸ The Lord Chancellor is one of the "Great Officers of State." These Officers have existed for centuries, and were originally Ministers of the Crown (that is, ministers appointed by the monarch, as opposed to cabinet ministers who held office by virtue of winning an election under the modern parliamentary system). Several Great Officers still exist today, but most now have only ceremonial functions. The position of Lord Chancellor is distinctive, in that it has become a cabinet position with responsibility for the administration of the courts and the legal system. The position is distinct from the Secretary of State for Justice, although both positions were held by Jack Straw under New Labour and both are also held by his Conservative successor Kenneth Clarke.

⁴⁹ The original nodal agency was the Lord Chancellor's Department, which was responsible for administering the courts and judicial system. This was merged into the Department of Constitutional Affairs in June 2003, which was renamed the Ministry of Justice in 2007 following the transfer of responsibility for probation, prisons and prevention of reoffending from the Home Office. These changes were described by interviewees as routine alterations to government machinery, and appear to have had little effect on implementation (staff responsible for the FOIA moved between departments along with responsibility).

⁵⁰ Department for Constitutional Affairs, *Annual report on bringing fully into force those provisions of the Freedom of Information Act 2000 which are not yet fully in force, HC 367* (London: The Stationery Office, 2001); Department for Constitutional Affairs, *Annual report on bringing fully into force those provisions of the Freedom of Information Act 2000 which are not yet fully in force, HC6* (London: The Stationery Office, 2002a); Department for Constitutional Affairs, *Freedom of Information. Annual report on bringing*

fully into force those provisions of the Freedom of Information Act 2000 which are not yet fully in force, HC 7 (London: The Stationery Office, 2003); Department for Constitutional Affairs, *Freedom of Information. Annual Report on proposals for bringing fully into force those provisions of the Freedom of Information Act 2000 which are not yet fully in force, HC 5* (London: The Stationery Office, 2004).

⁵¹ Department for Constitutional Affairs (2004), 8.

⁵² Alasdair Roberts, "Dashed Expectations: Governmental Adaptation to Transparency Rules," in Christopher Hood and David Heald (eds.), *Transparency: The Key to Better Governance?* (Oxford: Oxford University Press, 2006).

⁵³ Interview 5; Interview 7, *Senior Information Management Officer, Association of Chief Police Officers* (20 June 2011).

⁵⁴ Interview 10.

⁵⁵ Frontier Economics, *Independent Review of the impact of the Freedom of Information Act: a Report Prepared for the Department for Constitutional Affairs* (London: Department of Constitutional Affairs, 2006).

⁵⁶ Anna Colquhoun, *The Cost of Freedom of Information* (London: The Constitution Unit, 2010), <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/cost-of-foi> (accessed on 1 July 2011).

⁵⁷ Interview 7.

⁵⁸ Interview 6.

⁵⁹ Interview 4; Interview 6.

⁶⁰ Interview 2. The Frontier Economics report estimated Ministerial time at £67 per hour.

⁶¹ Interview 6.

⁶² Department for Constitutional Affairs, *Work of the Advisory Group on Implementation of the [Freedom of Information] Act* (London: Department for Constitutional Affairs, 2002b).

⁶³ Interview 4; Interview 6.

⁶⁴ Interview 4; Interview 6.

⁶⁵ Interview 6.

⁶⁶

http://www.ico.gov.uk/about_us/our_organisation/key_facts.aspx.

⁶⁷ Interview 4.

⁶⁸ Interview 3.

⁶⁹ Chancellor of the Duchy of Lancaster (1997), 31.

⁷⁰ Interview 9, *Information Policy Officers, The National Archives* (24 June 2011).

⁷¹ Interview 7.

⁷² Interview 9.

⁷³ Ibid.

⁷⁴ Interview 5.

⁷⁵ MoJ, *Freedom of Information Act 2000 – Statistics on implementation in central government 2010 Annual and Q4: October–December 2010* (London: MoJ, 2011a), 52.

⁷⁶ HC Deb, December 7, 1999, vol. 340, col. 737, 752.

⁷⁷ Ibid, cols. 933–5.

⁷⁸ Interview 3.

⁷⁹ Interview 3.

⁸⁰ HC Deb, April 4, 2000, vol. 1857, cols. 916–7.

⁸¹ Interview 3.

⁸² Interview 5.

⁸³ This avenue of appeal replaced appeals to the High Court in a organization of administrative tribunals in 2007–08.

⁸⁴ Interview 10.

⁸⁵ Although it is worth noting that in many jurisdictions, especially Scandinavia, the recommendations of the ombudsman are followed as a matter of course.

⁸⁶ David Banisar, *Freedom of Information Around the World 2006; A Global Survey of Access Records Laws* (The Online Network of Freedom of Information Advocates, 2006), http://www.freedominfo.org/documents/global_survey2006.pdf (accessed on 20 September 2006); Robert Hazell and Ben Worthy, “Assessing the performance of freedom of information,” *Government Information Quarterly* (27:4, 2010), 352–359.

⁸⁷ ICO, *Annual Report 2009/10, HC220* (London: The Stationery Office, 2010), 27.

⁸⁸ Interview 3.

⁸⁹ Interview 5.

⁹⁰ Interview 3.

⁹¹ Interview 7.

⁹² Personal communication from a senior official, CFOI.

⁹³ Interview 11, *Official, ICO* (11 July 2011).

⁹⁴ Eric Gaskell, “Presentation des publications officielles dans les pays de la Communauté économique européenne,” in Commission de Coordination de la Documentation Administrative (ed.), *Documentation administrative et renouveau du service public* (Paris: La documentation française, 1992), 215–226.

⁹⁵ Interview 5.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Interview 4; Interview 6.

⁹⁹ MoJ, *Freedom of Information Act 2000. 2009 Annual Statistics on implementation in central government* (London: MoJ, 2010), 38.

¹⁰⁰ Ibid, p. 5.

¹⁰¹ MoJ (2011a), 4.

¹⁰² Data are for all monitored bodies, per MoJ, *Freedom of Information Act 2000 – Statistics on implementation in central government 2010 Annual and Q4: October–December 2010—Full Statistical Data* (London: MoJ, 2011b), [http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/2010%20Q4%20Annual%20FoI%20stats%20tables%20\(values%20only\).xls](http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/2010%20Q4%20Annual%20FoI%20stats%20tables%20(values%20only).xls) (accessed on 1 September 2011).

¹⁰³ Data are for all monitored bodies, per MoJ (2011b).

¹⁰⁴ MoJ (2010), 6–8; MoJ (2011a), 7.

¹⁰⁵ ICO, *Consideration of requests without reference to the identity of the applicant or the reasons for the request, Freedom of Information Good Practice Guidance No 6* (Wilmslow: ICO, 2007), 1. See also *S v Information Commissioner and the General Register Office* (EA2006/0030; 9 May 2007).

¹⁰⁶ Hazell and Worthy (2010), 354.

¹⁰⁷ Hazell and others (2010).

¹⁰⁸ Interview 7.

¹⁰⁹ ICO, *Undertaking with The Cabinet Office, ENF0240073* (Wilmslow: ICO, 2011a). The ICO’s assessment was echoed by several interviewees: Interview 2; Interview 8, *Volunteer, WhatDoTheyKnow* (23 June 2011).

¹¹⁰ MoJ (2011b).

¹¹¹ Ibid.

¹¹² ICO, *Undertaking with the Ministry of Defence, FPR0219435* (Wilmslow: ICO, 2011b).

¹¹³ MoJ, *Freedom of Information Act 2000. 2006 Annual Statistics on implementation in central government* (London: MoJ, 2007); MoJ, *Freedom of Information Act 2000. 2007 Annual Statistics on implementation in central government* (London: MoJ, 2008); MoJ, *Freedom of Information Act 2000. 2008 Annual Statistics on implementation in central government* (London: MoJ, 2009); MoJ (2010); MoJ (2011a).

¹¹⁴ Hazell and others (2010).

¹¹⁵ Interview 4.

¹¹⁶ Interview 3.

¹¹⁷ Kenneth Robertson, *Public Secrets: A Study in the Development of Government Secrecy* (London: MacMillan, 1982); Kenneth Robertson, *Secrecy and Open Government: Why Governments Want You to Know* (Basingstoke: MacMillan, 1999).

¹¹⁸ Max Weber, *Economy and Society: An Outline of Interpretive Sociology, Volume II* (Los Angeles: University of California Press, 1978 [1922]), 956 et seq., esp. 992–3.

¹¹⁹ Interview 3.

¹²⁰ Prime Minister, *Information and the Public Interest, Cmnd 4089* (London: Her Majesty’s Stationery Office, 1969), 9–10.

¹²¹ The First Division Association is the union representing the most senior civil servants in the United Kingdom.

¹²² Interview 3.

¹²³ Interview 5.

¹²⁴ Unfortunately, representatives of these groups declined to be interviewed for this case study.

¹²⁵ Interview 5.

¹²⁶ Times, “Abolish Secrets Act call,” *Times* (16 October 1973), 5; Times, “Secrets Act a menace to safety, Mr Nader says,” *Times* (19 May 1976), 4; ibid.

¹²⁷ The most well-known example is Martin Rosenbaum at the BBC, who was interviewed for this case study. As an institution, the *Guardian* has perhaps done most to associate itself with the use of the FOIA.

¹²⁸ Interview 5; Interview 10.

¹²⁹ Interview 2; Interview 3; Interview 6.

¹³⁰ Interview 6; Interview 7; Lynn Wyeth *Presentation to UCL/LSE Transparency Workshop, 29 July 2011*. (London: University College London, 2011).

¹³¹ Speech by Lord Falconer, quoted in Jeremy Hayes, *A Shock To The System: Journalism, Government and the Freedom of Information Act 2000* (Oxford: Reuters Institute for the Study of Journalism, 2009), 11.

¹³² cf. the examples Hayes (2009), 16–7.

¹³³ Sarah Holsen, Craig MacDonald and Mark Glover, “Journalists’ use of the UK Freedom of Information Act,” *Open Government* (3:1, 2007).

¹³⁴ Interview 2; Interview 7; Holsen *and others* (2007), 8.

¹³⁵ Tom McClean, “Who pays the Piper? The political economy of freedom of information,” *Government Information Quarterly* (27:4, 2010), 392–400.

¹³⁶ Interview 2.

¹³⁷ Interview 6.

¹³⁸ Interview 2; Interview 4; Interview 6.

¹³⁹ Tom McClean, *Shackling Leviathan* (PhD thesis: London School of Economics and Political Science, 2011), 118–163.

¹⁴⁰ Home Office (1972a), 31–6.

¹⁴¹ Blair (1996).

¹⁴² Prime Minister, *PM’s Speech at Civil Service Live. 8 July 2010* (London: Prime Minister’s Office, 2010), <http://www.number10.gov.uk/news/pms-speech-at-civil-service-live/> (accessed on 27 July 2011).

¹⁴³ McClean (2011), 164–205.

¹⁴⁴ Robertson (1982); Robertson (1999).

¹⁴⁵ Prime Minister and Minister for the Civil Service, *Efficiency and Effectiveness in the Civil Service, Cmnd 8616* (London: Her Majesty’s Stationery Office, 1982); The Cabinet Office, Efficiency Unit, *Improving management in government : the next steps : report to the Prime Minister* (London: Her Majesty’s Stationery Office, 1988); Comptroller and Auditor General, *The Next Steps Initiative, HC 410* (London: Her Majesty’s Stationery Office, 1989).

¹⁴⁶ Prime Minister, *Citizen’s Charter. Raising the Standard, Cm 1599* (London: Her Majesty’s Stationery Office, 1991).

¹⁴⁷ cf. John Major, *John Major. The Autobiography* (London: HarperCollinsPublishers, 1999), 25–6.

¹⁴⁸ Prime Minister (1991).

¹⁴⁹ Interview 3; Maurice Frankel, “State’s Open Secrets; How effective has the new code been in making government more transparent?,” *Guardian* (24 January 1995), 17; House of Commons, Select Committee on the Parliamentary Commissioner for Administration, *Open government. Minutes of evidence Wednesday 8 March 1995, 1994/95 HC 290-ii* (London: Her Majesty’s Stationery Office, 1995), 1–14; cf. Robertson (1999), 141; Parliamentary and Health Service Ombudsman, *Access to Official Information. Monitoring of the Non-statutory Codes of practice, 1994–2005, HC 59* (London: The Stationery Office, 2005); Ben Worthy, “John Major’s Information Revolution? The Code of Access Ten Years On,” *Open Government* (3:1, 2007a).

¹⁵⁰ The Code was not enforceable in the strict sense of the word, In that authorities could choose to ignore a recommendation in favor of disclosure by the Parliamentary Commissioner for Administration. It was enforceable in the sense that initial refusals to disclose could for the first time be appealed to an official body – namely the Parliamentary Commissioner.

¹⁵¹ Interview 3; Parliamentary and Health Service Ombudsman (2005), 34.

¹⁵² Worthy (2007b).

¹⁵³ Interview 3.

¹⁵⁴ *Ibid.*; Interview 5; Interview 10.

¹⁵⁵ Hazell *and others* (2010).

¹⁵⁶ Interview 2; Interview 4.

¹⁵⁷ Interview 3.

¹⁵⁸ This criticism was made most forcefully by the Fulton Committee in United Kingdom, Home Office, Committee on the Civil Service [“Fulton Committee”], *Report, 1, Cmnd 3638* (London: Her Majesty’s Stationery Office, 1968).

¹⁵⁹ Interview 3.

¹⁶⁰ *Ibid.*; Interview 2; Interview 3; Interview 4; Hazell *and others* (2010).

¹⁶¹ Interview 1.

¹⁶² Interview 2.

¹⁶³ Interview 2; Interview 3; Interview 10.

¹⁶⁴ Interview 4.

¹⁶⁵ Interview 6.

¹⁶⁶ Hazell *and others* (2010).