

**Impact of FOI on central government**  
Constitution Unit end of award report to ESRC, RES 062 23 0164  
By Professor Robert Hazell and Dr Ben Worthy  
September 2009

## **1 Background**

1.1 Although FOI has now spread to some 75 countries around the world, it has been surprisingly under-researched. There has been little theoretical analysis of its objectives, or empirical evaluation of the extent to which they have been achieved. Nor has there been any detailed examination of its impact on government, or of official concerns that FOI might be detrimental to effective government decision-making or the quality of official records.

1.2 This project set out to fill these gaps. It is the first in-depth, systematic study of the objectives, benefits and consequences of FOI, anywhere in the world.

## **2 Objectives of the study**

2.1 The study aimed to do three things:

- to identify and analyse the objectives of FOI in the UK
- to evaluate whether they are being achieved
- to assess the impact of FOI on the working of Whitehall.

2.2 *To clarify the theoretical reasoning behind the objectives of FOI*

FOI is so widely assumed to be a good thing that there has been little critical analysis of its objectives. Our study began by analysing the academic and official literature on FOI. Our initial literature search found twelve possible objectives of FOI. These ranged from strengthening accountability to increasing participation to preventing corruption. In the British context we narrowed the objectives down to the six which have been most frequently mentioned in ministerial speeches, white papers and parliamentary debates:

- increased openness and transparency
- increased accountability
- improved decision-making in government
- better public understanding of government decision-making
- increased participation
- increased public trust in government.

Drawing on the transparency literature (Hood 2006), we divided the objectives into two tiers. Greater transparency and accountability were considered the core objectives of FOI, and the other four were secondary objectives which would flow from greater transparency and accountability.

2.3 *To evaluate to what extent FOI has achieved those objectives.*

We then sought to measure to what extent FOI had achieved each of these objectives. We did so using a battery of five research methods, to obtain the fullest available evidence and draw upon the views of all the main participants, including officials, requesters and the media. In order to separate out clearly the effects of FOI, we had

to distinguish other possible causal factors, such as the spread of the internet, of emails, and changes in politicians and civil servants' ways of working.

#### 2.4 *To assess the impact of FOI on Whitehall*

As part of our evaluation, we also examined the possible downsides of FOI, and the threat it might pose to the proper working of government. In the UK and elsewhere fears had been expressed that FOI would have a negative impact, undermining Cabinet confidentiality or civil service neutrality. From analysis of the literature (Drewry and Butcher 1991, Campbell and Wilson 1995) we identified five key features of the Whitehall model which might be threatened by FOI:

- civil service neutrality
- official secrecy
- ministerial accountability
- the cabinet system
- effective government.

The main threat to effective government is that FOI might have a 'chilling effect', with the fear of disclosure leading to less information being communicated and recorded. This in turn would have damaging effects on the quality of government decision making, as well as the quality of the official record.

### **3 Research Methods**

3.1 Our research used five main methods:

- analysis of official literature (government and parliamentary reports about FOI, Ministry of Justice statistics, annual reports of the Information Commissioner, etc)
- interviews with 56 officials in eight Whitehall departments, and 40 stakeholders
- an online survey of FOI requesters
- analysis of press articles using FOI
- analysis of FOI case law.

Analysis of media reporting of FOI has only been attempted on a very small scale and little work has been done on the requester. The media analysis proved particularly important, since we calculated from the official statistics that 99.9% of the population have never made an FOI request, and so can only get their information about FOI through the media. The way the press report FOI stories proved particularly important in tracing the causal links of why FOI not increase, and can indeed decrease, public trust in government (see 4.1.2 below).

#### **3.2 Official Literature**

We relied upon official documents (ministerial speeches, white papers, parliamentary reports and debates) to identify and analyse the objectives of FOI. Official documents were also used to evaluate the performance of FOI against those objectives. These included Ministry of Justice statistics on the number of requests, proportion granted etc, as well as the MoJ's public attitude surveys about FOI. From the Information

Commissioner’s Office we analysed their annual reports, statistics, decision notices and guidance.

We also drew upon data from elsewhere to compare our results with similar FOI regimes in Australia, Canada, New Zealand and Ireland.

### 3.3 Interviews

We conducted 102 interviews overall. These were then supplemented by 25 interviews with politicians and senior officials for the project carried out for the Information Commissioner (see para 7.2). The 102 interviews were broken down as follows

#### Interviews carried out in this study

<i>Progenitors of FOI</i>	<i>Serving civil servants</i>	<i>Former civil servants</i>	<i>Former ministers</i>	<i>Requesters (inc. journalists)</i>	<i>Stake-holders</i>	<i>ICO</i>	<i>Other</i>	<i>Total</i>
6	56	4	1	22	6	2	5	102

We interviewed officials from eight different government departments between April and November 2008, a total of 56 civil servants. They represented a wide cross-section, of FOI officers, policy and press officers, and officials working in records management and procurement. They also covered a variety of grades, from senior board-level officials to front line FOI officers.

Interviews were semi-structured, focusing on the extent to which the objectives had been achieved. We also introduced two scoring mechanisms. We asked interviewees to rank the achievement of the objectives of FOI in their department on a scale of one to five, where one was ‘not realised at all’ and five was ‘realised in full’. And we asked officials to place their departments on two ladders of openness and participation adapted from Arnstein (1969).

Access to Whitehall departments was granted a year later than planned (see 6: Major Difficulties). Interviews were then undertaken to a very intensive timescale. The delay prevented us holding focus groups of stakeholders, but we interviewed them instead.

### 3.4 Survey of Requesters

The delay also caused delay to our survey of requesters, because our main means of contacting requesters lay through departments. The survey was carried out using online survey software accessible through links on departments’ websites, and on their FOI responses and correspondence; and from non-government websites.

The survey began in early 2008. By January 2009 we had 350 responses, a very small proportion of the 30,000 requests per year to central government. The response rate was low because of the delay; and because it required the requester to make an effort to visit the survey website and complete the questionnaire.

To gain a more in-depth insight into requesters' views, the questionnaire was supported by selected interviews with 17 requesters who chose to leave contact details with us.

### **3.5 Media analysis**

The media plays a centrally important role in FOI. As so few people make an FOI request, the media is the primary means by which the wider public understand FOI. We examined articles on FOI in the national press between 2005 and 2008. Each article was coded according to a set range of questions, including basic data and more evaluative questions about the perspective on government offered by the article. We took a 20 per cent sample of 1,114 articles from an overall total of 5,570 articles.

In trialling we progressively tightened the guidelines for the coders, until we achieved inter-coder reliability (the level of agreement in answers between the two coders) of 90 per cent.

We also interviewed 5 journalists who used FOI. This helped provide a richer picture of how FOI is used and the wider news values that govern its use, an area that proved very important in understanding the impact of FOI on trust (see 4.1.2 below).

### **3.6 Case law**

Although not anticipated in the proposal, FOI case law proved very fruitful. First, it helped to articulate the underlying purpose of the Act. Second, it provided a framework for disclosures under FOI, especially on the exemptions which touched closely on the working of Whitehall. We analysed all the cases from the Commissioner and Tribunal pertaining to central government between 2005 and 2008, and drew upon those with particular relevance to the objectives of FOI or the impact upon Whitehall.

### **3.7 Publication schemes and disclosure logs**

The project had originally intended to examine two related mechanisms for opening up government created by FOI: publication schemes and disclosure logs. Both research methods proved impracticable. Officials could not record what information under the publication scheme had been disseminated before FOI, so we could not measure a before and after effect. Second, publication schemes were very similar across government departments, were not kept up to date, and not used by requesters. This was an important negative finding, but meant that the schemes could not be used as a research method.

With disclosure logs, a few departments had a full record of all requests disclosed, but others only highlighted those of 'wider public interest', and others did not maintain one at all. So disclosure logs did not provide a complete record of all FOI disclosures.

## **4 Results**

### **4.1 Has FOI achieved its objectives?**

Of the six objectives of FOI (see para 2.2), the core objectives of greater transparency and accountability were achieved. But the secondary objectives (improved decision making, better public understanding, greater public participation, increased trust) were not. The wider political context supported the two ‘core’ objectives but hindered the four secondary objectives.

#### **4.1.1 Transparency and Accountability**

FOI has **increased transparency**. All the evidence, from requesters, officials and other sources, showed that the amount of information released has increased, and that government has a more ‘open attitude’ towards information provision. FOI was assisted by range of other drivers towards openness, particularly the information revolution, as well as the long march towards more open government since the 1970s.

Similarly, our interviews contained plenty of evidence and examples to show that FOI has **increased accountability**, though not to the same extent. It has been used by the media, MPs and campaigners to make government more accountable. But the extent to which FOI can be used to increase accountability is dependent on whether other actors (the media, NGOs etc) are willing and able to make use of it.

#### **4.1.2 Improved decision-making, understanding, participation and trust**

There was little evidence that **FOI improved government decision-making**. The vast majority of interviewees felt that FOI had no positive impact on any of the numerous facets of decision-making whether the quality of advice, quality of records, evidence used in making decisions or relations with third parties. The minority who felt it had made a difference focused upon very small alterations, such as ‘inappropriate’ comments being removed from notes or minutes. Nor did officials feel FOI had a negative impact (see 4.2 and 4.3).

The Act has had little impact upon **public understanding of government decision-making**. Few requesters use the Act to access papers about decision-making, and newspapers rarely report disclosures that do so. Both these factors may reflect a wider lack of interest in decision-making, and the perception that most policy papers are well protected by exemptions (a perception belied by the decisions of the Information Commissioner).

There is little evidence that **public participation** has increased as a result of FOI and the Act has not served to promote wider engagement. Less than 0.1 per cent of the population make FOI requests. Such evidence as we gleaned about requesters from the survey suggests that the majority were already engaged in the political process (campaigners, pursuing a grievance or political activists) or using FOI in a professional capacity (journalists, academics). Officials agreed with this picture of requesters.

Finally, **trust** has not been increased by FOI. Only 3 per cent of stories increased the reader’s trust in government; more than half of the articles, 58 per cent, reduced trust in government; while more than a third, 39 per cent, had no effect, being ‘business as usual’ or historical FOI requests. Only 3 per cent of requesters who answered our survey felt that FOI had increased their trust.

The reasons for this are less about FOI than the context in which FOI exists. First, public perceptions are influenced by the minority of FOI stories that achieve prominence. These frequently involve controversy, negative aspects of performance, and cases of resistance or apparently secretive behaviour. FOI is subsumed within the wider conflict between parts of the press and government, with government seeing information as being distorted and journalists seeing it as being withheld, manipulated or 'spun'. Secondly, it is not simply an issue of media and government relations, as FOI is shaped by pre-existing low levels of trust. The media report stories that conform to poor expectations of politicians.

## **4.2 Impact of FOI on Whitehall**

If FOI has not realised its proponents' more ambitious objectives, neither has it realised its opponents' worst fears. Whitehall had real concerns that FOI would prejudice the proper working of government, by undermining collective Cabinet responsibility and ministerial accountability to Parliament. They also feared that civil servants would be less willing to give free and frank advice, and civil service neutrality would be threatened if civil service advice was exposed

In practice none of these fears have been realised. Officials were all agreed that FOI has not significantly affected the way Whitehall works. The constitutional conventions that FOI was thought to threaten remain broadly intact. Civil servants are no more or less anonymous or impartial. Ministerial accountability to Parliament is barely affected. Civil servants are not required to advocate or defend policies publicly, because it is ministers who take the flak from FOI disclosures, not officials.

Ministers are concerned about the impact of FOI on Cabinet, as demonstrated by the government veto to prevent disclosure of cabinet minutes on the decision to invade Iraq. As a result no Cabinet discussions have so far been disclosed. Leaks and briefings do much more than FOI to reveal differences of opinion in Cabinet.

## **4.3 Negative effects of FOI**

Finally, FOI has not caused a 'chilling effect' on frank advice and deliberation, or on the quality of government records. The myth persists, but convincing evidence proved hard to find. There was no evidence of any decline in the quality of official advice. Ministers may resort to 'sofa government', and there is deterioration in the quality of government records; but there is no evidence to link this to FOI. Sofa government results from ministerial preferences and behaviour. The deterioration in government records results from starving the record keeping function of resources. Given so few specific FOI examples, we concluded the chilling effect to be a myth, albeit a pervasive one. The majority of officials were more fearful of the consequences of not having a record rather than of a record being released. Many pointed to general shifts in the way decisions are made and use of electronic technology as the source of changed records, rather than FOI.

## **4.4 'Iron laws' of FOI: hypotheses to be tested in other countries**

Our findings enabled us to sketch out some potential laws of FOI, based upon our conclusions and knowledge of FOI regimes elsewhere (Hazell 1989, Gillis 1998, White 2006). The ‘iron laws’ of FOI may include the following:

- **The media has a key influence on the impact of FOI.** Not only is the media a key user of FOI (and defender when reforms threaten it) but, given so few people make a request, it is a key conduit for shaping wider perception of FOI. Though government and academics frequently highlight the role of the official and requester, our study demonstrated that the media is an extremely important player.
- **There is no going back.** The FOI Act cannot be repealed, however much the government may dislike it. Interviews and leaked ministerial correspondence showed how much some ministers resent FOI, but it is now part of the framework of government.
- **Government holds all the cards.** Despite its evident discomfort at the continuing pinpricks of FOI, the government remains in a very strong position. It holds the information. It can resist disclosure for years if it wants to play the system and fight appeals
- **Both sides will game the system.** As in any field of legal regulation, there is scope to game the system. Officials and ministers will play things long if they want to delay disclosure, and they face few penalties for doing so. This was a constant refrain of requesters, especially journalists.
- **Government will always be seen as secretive.** However open the regime, and wherever government draws the line between what can be disclosed and what must remain secret, there will always be friction between government and requesters, especially the media.
- **FOI never settles down.** In terms of bureaucratic routine and a body of case law FOI does begin to settle down after the early years. But at a wider political level it never does and conflict is ongoing.
- **A few FOI requests cause most of the trouble** The Pareto principle operates in FOI, as in other fields of policy. In the UK and elsewhere (e.g. White 2006 on New Zealand), a few high profile cases cause disproportionate effort, media attention, public controversy and political pain.
- **FOI does not increase public trust.** This is because of the media’s predominantly negative reporting, exacerbated by government resistance to media requests, and pre-existing low levels of trust.
- **Officials have nothing to fear from FOI,** save for the extra burden on resources, which is the more difficult to bear at a time of staffing and public expenditure restraint.

#### 4.5 Paradoxes and myths of FOI

The study also highlighted a selection of paradoxes about how FOI operates

- **FOI only works if almost nobody uses it.** We have noted the low rates of use: less than one person per thousand makes FOI requests in the UK. What is less noted is that if usage increased to two people per thousand, the system would collapse: FOI officials were all working under heavy pressure.
- **Requesters and officials both support the principle of FOI, but deplore the practice.** Both requesters and officials support the principles of FOI, but find it very cumbersome and legalistic.

And the study challenged some of the more powerful myths about FOI, given credence by politicians both in the UK and in other FOI regimes.

- **FOI is for the ordinary citizen** FOI is not much used by ordinary citizens. By definition FOI requesters are **extraordinary**: they represent at most one in a thousand of the population. Moreover, many are activists or professionals rather than the ‘man in the street’.
- **FOI requests would be easy for the government to process**, if only it wasn’t so secretive. This is a common misperception amongst requesters. They don’t understand the difficulties faced by government in finding the information in the first place, in trawling through it for exemptions, and consulting third parties.
- **There would be no need for FOI requests** if government published more information proactively. This belief is also shared on both sides but it is very difficult to anticipate what requesters will want, especially since many are pursuing private interests not shared by others.

## 5 Activities

We held three meetings of the project Advisory Committee, discussing our work plans, interview questions and emerging findings. The Advisory Committee was the main means for keeping the Ministry of Justice, Information Commissioner and Campaign for FOI informed of our progress.

Most of our dissemination activities are detailed below. These include presentations at conferences to academics, practitioners, government departments, and bodies such as the Committee on Standards in Public Life. There were also regular contacts with a range of UK and international academics and practitioners interested in our work, including the World Bank.

Our findings were disseminated on project pages on the Constitution Unit website (<http://www.ucl.ac.uk/constitution-unit/research/foi/projects/whitehall.htm>). We started a monthly FOI update (<http://www.ucl.ac.uk/constitution-unit/research/foi/monthly-updates/August2009.htm>), reporting some of our data. And we started an annual one day workshop for young FOI researchers, held in July 2008 and July 2009

## 6 Outputs

## 6.1 Book and report

The major output has been a book, provisionally titled *Does FOI work? The impact of the Freedom of Information Act 2000 on British central government*, accepted for publication in 2010 by Palgrave Macmillan. The manuscript is our nominated output.

### 6.1.2 Report

The main policy output is a 60,000 word report for the Information Commissioner on *Freedom of Information and Policy Formulation*, at [http://www.ucl.ac.uk/constitution-unit/files/research/foi/ICO\\_%20FOIandPolicy.pdf](http://www.ucl.ac.uk/constitution-unit/files/research/foi/ICO_%20FOIandPolicy.pdf)

## 6.2 Articles

Three academic journal articles have been drafted and will be submitted during 2009:

- 'Has FOI met its objectives in the UK?' by Ben Worthy, under submission to *Governance*.
- 'Performance measures for freedom of information' by Robert Hazell and Ben Worthy, under submission to *Government Information Quarterly*.
- 'Freedom of information and policy deliberation' by Robert Hazell, to be submitted to the *Modern Law Review*.

### 6.2.1 Future articles

Future articles will cover

- What are the objectives of FOI?
- the impact of FOI upon public trust in government
- A comparison of the impact of FOI on central government and local government.

The last two will await comparative findings from our next research project on FOI and local government (see section 8).

## 6.3 Conference papers

- '[Has FOI worked in Whitehall?](#)' Presentation by Robert Hazell, Ben Worthy and Mark Glover to FOI Live 2008 Conference, 3 June 2008. Presented to more than 300 FOI practitioners at our annual FOI conference run with the Ministry of Justice and Information Commissioner's Office.
- '[Measures of Success for FOI](#)', Paper by Robert Hazell for the International Conference of Information Commissioners, Wellington, New Zealand on 29 November 2007.
- '[What is Freedom of Information For? An exploration of the objectives behind the FOI Act 2000](#)'. Sarah Holsen Paper presented to Political Studies Association Conference on April 2007.

## 6.4 Public seminar presentations

- 'The Impact of FOI: the evidence'. Presentation to the Constitution Unit [Government Information Policy Seminar Series](#) on 19 November 2008
- 'Evaluating the FOIA 2000: Challenges and Progress', Government Information Policy seminar on 31 October 2007.

Both presentations were to a mixed audience of practitioners, policy-makers, campaigners and academics, and the text placed on the Constitution Unit website.

## **6.5 Private seminar presentations**

- Presentation at the National Association of Data Protection Officers Annual conference: 'The impact of FOI' on 11 November 2009.
- Presentation at the Understanding Modern Government lecture series on accountability: 'The role and impact of FOI' on 11 November 2009.
- Presentation at the Ministry of Defence FOI/DP team open day: 'The impact of FOI' on 21 October 2009.
- Presentation at the Information Tribunal open day: 'The Impact of the Freedom of Information Act' on 7 May 2009.
- Presentation to DEFRA: 'The impact of the Freedom of Information Act: the requester and the media' on 3 April 2009.
- Presentation at the Institute for Government on 2 April 2009
- 18 March 2009 the Constitution Unit organised a half day seminar for the Committee on Standards in Public Life, including MPs, peers and the UK and Scottish Information Commissioners, to help the committee scope a planned inquiry into the operation of FOI
- March 2009 presentation to Information Commissioner's Office on the formulation of government policy and FOI (see 6.1.2)
- Presentation at the Foreign and Commonwealth Office FOI team open day: 'FOI: the requester' on 10 December 2008.
- Presentation at the London Information Rights Forum: 'Who is the requester?' on 27 November 2008.
- Presentation at the Ministry of Defence FOI/DP team open day: 'FOI: the media and the requester' on 21 October 2008

Future presentations are being organised with other government departments, the Information Commissioner's Office and the Scottish Information Commissioner. The World Bank met with us in June 2009 to discuss our findings. We have been asked to present to World Bank staff in late 2009 or early 2010.

## **6.6 Graduate student workshops**

- Workshop for researchers studying transparency on 10 July 2009
- ESRC workshop run by Prof. Duncan Tanner for postgraduates using FOI on 20 February 2009.
- Workshop jointly created by the Unit and LSE for academics and postgraduates studying transparency on 20 June 2008

We intend to present at the Political Studies Association conference in April 2010.

## **6.7 Website and blogs**

'Journalists' use of the UK Freedom of Information Act', *Open Government Journal*, Vol. 3, No. 1 (2007). [Press release](#).

Mentions have also been made of research on Martin Rosenbaum's 'Open Secrets' blog and CFOI FOI blog, which were used to disseminate the survey of requesters. We also intend to approach other blogs such as *FOI News* and *Information Law*.

## **6.8 Media**

'Law in Action' BBC Radio 4 (October 2009)

'Is this the high water mark of freedom of information?' Constitution Unit press release on 27 February 2008

Our regular Constitution Unit newsletter the *Monitor* has included regular updates on the project and findings in January 2009, May 2007 and with a summary of findings in September 2009. This is distributed to some 3000 policy makers, practitioners and academics, in the UK and overseas. More media work is currently being planned to coincide with the launch of our book, with short articles for the media on FOI's impact upon Whitehall, FOI and trust and the chilling effect.

We will also write articles for *Public*, *Whitehall and Westminster World* and *Public Service*. These will offer FOI officers and others insights into what FOI can and cannot do (see below).

## **7 Impacts**

### **7.1 Academic impact**

We hope that our book will be regarded as a definitive study of the impact of FOI, in terms of its methodology and its substantive findings. We look forward to other academics testing whether FOI can achieve its more ambitious objectives (public participation, increased trust etc) in their own countries; and testing the validity of the iron laws and myths of FOI outlined in paras 4.4 and 4.5.

Academics and possible future collaborators who have shown close interest in our study include Prof Dan Metcalfe (College of Law, American University); Prof Alasdair Roberts (Law School, Suffolk University); Rick Snell (Law School, University of Tasmania); Sarah Holsen (Grenoble). They have all visited the UK to discuss our research with us.

### **7.2 Policy impact**

The most important influence has been to encourage a more realistic sense of what FOI can and cannot achieve. FOI was oversold, by its advocates and by ministers, and labours under the burden of unrealistic objectives. To policy audiences we stress the need to lower expectations of what FOI can deliver; and explain that FOI is unlikely ever to increase trust, because the government's battle with the press over bad FOI stories is one that can never be won. FOI will continue to generate bad news stories, and they just have to be managed.

A final indication of the project's impact is the strong interest of the Information Commissioner. In October 2008 he commissioned us to carry out a separate study of FOI and policy formulation, which led us to conduct a further 25 interviews in Whitehall, and publish a separate report (at [http://www.ucl.ac.uk/constitution-unit/files/research/foi/ICO\\_%20FOIandPolicy.pdf](http://www.ucl.ac.uk/constitution-unit/files/research/foi/ICO_%20FOIandPolicy.pdf)). Other Commissioners and their staff who have met with us are the Scottish, Irish, Canadian and Australian appeal bodies.

## **8 Future research priorities**

We plan next to conduct a similar two year study of the impact of FOI on local government in the UK, using essentially the same battery of research methods, thanks to a further ESRC grant (RES 062-23-1748). We may find that at the local level FOI has been more successful in achieving the secondary objectives of increasing public understanding of government, public participation, and possibly even trust. That project should provide plenty of material to compare and contrast with our findings on central government.

At the same time we are going to conduct a two year study of FOI and Parliament, funded by the Leverhulme Trust (F/ 07 134/CQ - Freedom of Information and Parliament). We shall be looking not just at the impact of FOI on Parliament as an institution, but at how FOI is used by parliamentarians to obtain information from the executive and call it to account.

The other possibility, which we are keen to explore, are cross-national comparisons, and the development of better performance measures for FOI. This has a strong academic and policy interest. Academics cannot presently say whether one country's FOI law works better than another, or why. The policy interest comes from the World Bank, EU and OECD, who are all promoting good governance initiatives, including transparency laws. They also want to know which FOI laws are effective, and why. Working with the World Bank and others we hope to develop measures of success for an FOI law, and to explore whether there are simpler measures to use than measuring performance against objectives. That is the next phase of our international and collaborative research.