

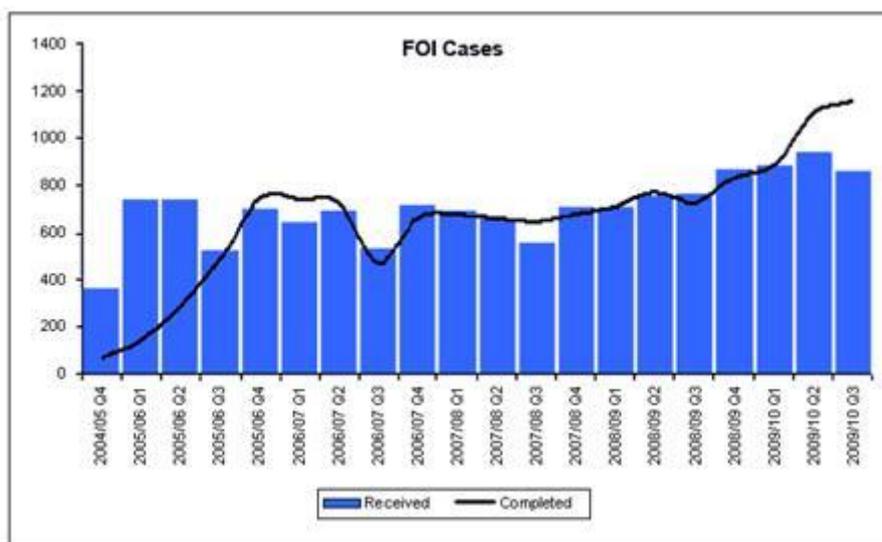
Archived Information Rights Monthly Updates from the calendar year 2010

January 2010

Freedom of Information in the UK

ICO improves its casework

The Information Commissioner's Office says it has already [closed more cases in the 2009-2010 year than all of 2008-09](#). They have reduced the number of cases more than one year old by half, and reduced those over two years old by 70 per cent. During the third quarter of the 2009-2010 year, the ICO closed 1,154 cases and issued 263 decision notices (and 39 appeals were lodged with the Information Commissioner).



This diagram outlines FOI cases received and resolved up until the end of September 2009

Government data goes live

The government, [with the help of internet pioneer Sir Tim Berners-Lee](#), has launched www.data.gov.uk, offering access to thousands of public sector datasets, ranging from traffic statistics to crime figures, for private or commercial use. "Government data is something we have already spent the money on... and when it is sitting there on a disk in somebody's office it is wasted," said Sir Tim. He was hired by Gordon Brown in June 2009 to oversee the project, and a test version of the site has been running since September, with more than 2,400 developers registering to test the site and provide feedback.

"A lot of this is about changing assumptions," said Professor Nigel Shadbolt of Southampton University, who helped develop the website. "If [the data] can be published under an FOI request why not publish it online?"

The new site is part of the [Smarter Government Action Plan](#) (as discussed in last month's update), which asserts, 'a more informed citizen is a more empowered citizen', a similar sentiment to that of Lord Falconer, speaking on FOI in 2004:

"without openness we cannot hope to encourage greater participation in our democratic life."

Similarly, the Mayor of London Boris Johnson has launched London [DataStore](#), where almost 200 datasets from the Greater London Assembly will be available for public use.

New Scottish FOI ruling and research on NGOs

Two significant findings in regards to the Scottish FOI Act have prompted reassessment of how the Act is working five years since its enactment.

Scottish Information Commissioner Kevin Dunion gave an [interview in The Times](#) at the start of the month where he praised the Act for its ability to open up Scottish government and discussed some of his most contentious rulings.

He noted his surprise that few voluntary organisations have used the Act and fears this may be down to fear of upsetting government bodies on which they depend for funds.

This assumption was given further weight two days later with the [publication of a new study](#), by Kate Spence of the University of Strathclyde, into the use of FOI by Scottish NGOs. The study found 50 per cent of 705 Scottish voluntary sector organisations said they would be discouraged from making requests for information under the Act for fear that it might harm working or funding relationships. Some NGOs admitted making requests through third parties to avoid a backlash. 83 per cent of organisations taking part in the study were funded fully or in part by public authorities .

The ruling last month by the Scottish Court of Session – requesters have the right to information, not necessarily to *documents* – [has angered Commissioner Kevin Dunion](#), saying it "*threatens to undermine the right-to-know regime*". He alleges the ruling is already having serious implications: "*Scottish Government officials are writing to requesters refusing to respond to requests where there is a reference to documents.*"

He notes how difficult *conveying* a request has become:

"If you wanted to find out the terms of a legally binding agreement entered into by a public authority and a commercial contractor, would you not simply ask for a copy of the contract?... I know of no other country in the world where the FOI law does not allow you to make reference to documents when requesting information. People will simply not play a parlour game where you have to identify what you want without using certain words – such as record, minute, report, e-mail, letter or indeed any means by which the information is recorded or could be located... By the way, it is almost impossible to conceive of certain requests for information being made without asking for copies – how else, in plain language, would you ask for a photograph, a map, a plan, or a CCTV recording?"

Dunion has issued [new guidance](#) to Scottish government departments in the wake of ruling. He hopes their attitude "*can be remedied by simply coming into line with the rest of the public authorities in Scotland and with my guidance, which spells out what should be done .*"

Climate scientists breach FOI

Climate scientists at the University of East Anglia have [been found guilty of breaching the FOI Act](#) by the Information Commissioner.

Emails and other data from the University were released onto a Russian website, following what the University described as a hack into its servers. Accusations were made against the scientists and the Director of the Climatic Research Unit, Professor Phil Jones, after the emails purportedly showed climate data was being distorted and documents were being destroyed.

The emails leaked show Prof. Jones told a colleague that he had persuaded the university authorities to ignore information requests from people linked to a website run by climate sceptics.

Graham Smith, Deputy Commissioner at the ICO said, "*The e-mails which are now public reveal that... requests under the Freedom of Information Act were not dealt with as they should have been under the legislation. Section 77 of the Act makes it an offence for public authorities to act so as to prevent intentionally the disclosure of requested information.*"

However, [the ICO cannot not prosecute because the complaints against the University were made more than six months after the fact](#). The ICO is now seeking to change the law to allow prosecutions if a complaint is made more than six months after a breach.

The [Guardian](#) has now reported that of 105 FOI requests made to the to the climatic research unit, only ten had been released in full. For an example of the 'difficult' FOI requests NASA climate scientists have received (and refused), see this post from [NY Times science blogger Andrew Revkin](#).

American scientist Michael Mann, also implicated in the scandal, [has been cleared of wrongdoing](#) by Penn State University. They found no evidence that he destroyed or falsified data, as the leaked emails from East Anglia seemed to suggest. A inquiry into whether he upheld 'academic' standards continues, however.

For a good summary of the impact of FOI on science, and at East Anglia especially, see [this article](#) from science journalist Fred Pearce at the *Guardian*.

Power 2010 deliberative poll

On the weekend of 9-10 January, a sample of 130 citizens from across the UK gathered in London for a two-day [deliberative event](#). The purpose was to facilitate discussion on constitutional issues in the UK and generate a list of the most important issues as decided by the people. Initially, extending the scope of FOI was ranked by participants as the second-most important constitutional issue facing the UK. After participants read information on the issues provided by the organisers, and took part in round table discussions, [extending FOI was ranked tenth](#), ahead of issues like proportional representation in the House of Commons, an elected House of Lords and restricting the use of CCTV. See page 52 of [this document](#) for the information about FOI provided to participants for their deliberation.

Freedom of Information and Parliament

ICO orders release of Lord Ashcroft's tax-status

After a three year battle starting with FOI requests made by Labour MP Gordon Prentice, the Cabinet Office has been [ordered by the ICO](#) to release information regarding the tax status

of Conservative peer Lord Ashcroft. Ashcroft is the party's deputy chairman and its biggest donor.

It is alleged that Ashcroft made a promise to become a permanent resident of the UK as a condition of his ennoblement in 2000. However, Conservative leaders have not confirmed whether Ashcroft changed his status, and the Cabinet Office declined to reveal any undertakings he may have made, citing Ashcroft's privacy and clauses in the FOI Act that exempt the honours system from scrutiny.

In his ruling against the Cabinet Office, Commissioner Chris Graham says the public interest in Ashcroft, the House of Lords and the system of awarding peerages outweighs his individual right to privacy, and the need to keep the honours system confidential in this case:

"Since Lord Ashcroft's ennoblement, the question of where he lives has continued to be raised, leading to speculation that Lord Ashcroft has not satisfied the undertaking he gave... In the commissioner's view there is a legitimate interest for the public to know more about Lord Ashcroft's undertaking. This flows from the legitimate public interest in understanding the process by which Lord Ashcroft's peerage was awarded, knowing the details of any conditions placed upon that award and knowing whether Lord Ashcroft has met what appears to have been a condition to his award."

The [Constitutional Reform and Governance Bill](#) going through Parliament at the moment will remove the right of non-UK tax paying residents taking seats in the Commons or the Lords.

Debate over Royal papers continues

Tony Wright, Chair of the Public Administration Select Committee, has spoken about Prince Charles' correspondence to government departments in a [Westminster Hall debate on lobbying](#) after Gordon Prentice asked whether he believed the Prince's interaction with government departments should be put in the public domain. Wright says he is ambivalent, explaining *"if I was the heir to the throne and I thought that I had a role of advising, encouraging and warning, then I would probably want to exercise that role... I would write vigorously to Ministers about all the things that I was concerned with and I would probably write less vigorously if I thought that those letters were going to be published."*

Meanwhile, after the *Independent* won a case last month over the release of information about the cost of upkeep of royal palaces, the Department for Culture, Media and Sport has announced it will [take the case to the Information Tribunal](#).

Early Day Motion to extend FOI

25 MPs from across the House have signed an Early Day Motion submitted by Conservative MP Peter Bottomley about extending FOI to private companies. [John Cross](#) from MySociety wrote to Bottomley (his local MP) about the anomaly *"that a company wholly owned by one local authority is subject to the Act, while a company owned by two local authorities is not."* Examples of this kind of company include the Manchester Airport Group (owned by ten Manchester local authorities) and the Russell Group, which represents the interests of 20 UK universities. [The Motion](#) calls for the 'the closure of this loophole and for companies owned 90 per cent or more by any number of public authorities to be subject to the Freedom of Information Act 2000.' Meanwhile, the consultation on extending [the remit of the Scottish FOI Act](#) to private companies continues.

Scottish budget passes with proactive publication promise

The Scottish National Party has gained six crucial votes of Conservative MSPs needed to pass its budget at Holyrood, through acquiescing to Conservative demands to [proactively publish spending over £25,000](#). Derek Brownlee, the Conservative finance spokesman, claimed that the deal they had secured would lead to a “*transparency revolution*”. Joint leader of the Scottish Greens, [MSP Patrick Harvie](#), claims publication of spending like this would “*turn the Scottish Government into nothing less than the research arm of the Taxpayers’ Alliance*”.

The state of Missouri has begun its own ‘accountability portal’ for citizens to trace where their tax dollars go – see <http://mapyourtaxes.mo.gov/MAP/Portal/>

MPs’ round-robin requests

Conservative MPs have accused six Police forces in the UK of [storing innocent people’s DNA on their databases](#), after FOI making requests to forces around the UK. A spokesman for the Home Office said DNA was a crucial crime-fighting tool, and the decision to remove or retain samples was at the discretion of individual Chief Constables.

Liberal Democrats too have used FOI requests to reveal police forces across the UK have spent [£132 million on rental cars in the last five years](#). South Yorkshire Police Constable Med Hughes has criticised the MPs, saying “*Liberal Democrats would do better to come and ask South Yorkshire Police how we are spending the money rather than wasting everyone’s time trying to get publicity for their party... I will be writing to all political parties inviting them to contact me if they have any issues, rather than working through the media.*”

Freedom of Information abroad

Europe

The European Parliament made a [resolution](#) on 17 December 2009 calling for a strengthening of the EU Access to Documents Rules. [Access Info](#), a European NGO promoting human rights and transparency, has welcomed the resolution, which seeks to bring into line access rules under the Lisbon Treaty.

The resolution calls for a widening the scope of access rules to encompass all the EU institutions, bodies, offices and agencies currently not covered, such as the European Council and the European Central Bank. It also calls for more access to internal documents, legal opinions, transcripts of meetings and information relating to the work of member state representatives when acting as members.

International organisations’ new transparency policies

The IMF

The International Monetary Fund has [revised its disclosure policy](#), for both the governments it works with, and its own information. The IMF says it has changed the focus of its transparency policies, from ‘why release’, to ‘why not’, in part because of the focus on the decisions of the Fund in relation to the global economic crisis. Freedominfo.org, a international network of NGOs working in transparency, [remains disappointed](#).

In regards to its own documents, the new policy includes expanding the list of open documents to include materials on the Fund’s income, financing and budget. The wait for documents from the IMF archives will also be cut.

The policy encourages governments to allow disclosure of certain additional documents. Not publishing represents a “*reputational risk*”, says the Fund, that “*can allow impressions of ‘secret dealings’ to take hold.*” However, the IMF says mandatory publication of documents would be a “*major departure*” that would require amending the original Articles of Agreement that created the Fund. The Fund also has no system for requestors to appeal denials.

World Bank

The [World Bank’s new disclosure policies](#) have been more [warmly received](#). In what the Bank calls ‘fundamental shift’ in transparency policy, the new policy presumes that documents will be disclosed unless confidentiality is justified by established exceptions. Exemption lists are common among all national FOI regimes, but this is the first list produced for the Bank, which like other international finance institutions, has previously relied on a ‘negative list’ of protected documents.

Other aspects of the new the policy include more specific procedural protections for those making requests, including a right to appeal, first to an internal body and then to an independent review panel. The new policy will go into effect in July and implementation will cost US\$4.5 million during 2010-2012.

China , Google and the United States

On 12 January, [Google announced it was reconsidering its operations in China](#). Google claimed it had experienced a series of Internet break-ins it believed were of Chinese origin. The company’s executives stated that e-mail accounts of several Chinese human rights activists had been compromised.

[Jonathan Fenby](#), author of the Penguin History of Modern China, says it is unlikely Beijing will allow citizens to access banned Internet sites through Google – a condition the company has demanded for staying in China. (Though the ease at which Chinese citizens can access ‘banned sites’ is often [underestimated](#). And the OpenNet Initiative has found [40 countries](#) filter the internet to varying degrees - meaning at the end of 2009, 32 per cent of all internet users were accessing a filtered version of the internet.)

Two weeks later, US Secretary of State Hilary Clinton placed her support behind Google in [a speech](#) describing internet restriction as an ‘information curtain’. She said ‘*both the American people and nations that censor the internet should understand that our government is committed to helping promote internet freedom .*’ She further remarked:

“The internet has already been a source of tremendous progress in China, and it is fabulous. There are so many people in China now online. But countries that restrict free access to information or violate the basic rights of internet users risk walling themselves off from the progress of the next century... Countries or individuals that engage in cyber-attacks should face consequences and international condemnation. In an internet-connected world, an attack on one nation’s networks can be an attack on all.”

A Chinese Foreign Ministry spokesman said the criticism by Clinton was “*harmful to Sino-American relations,*” while [China’s Global Times](#) said ‘*The US campaign for uncensored and free flow of information on an unrestricted Internet is a disguised attempt to impose its values on other cultures in the name of democracy.*’

United States

Back in the US, the number of [FOI lawsuits in 2009](#) is a slight increase on 2008 and 2007 numbers. Meredith Fuchs, a lawyer for the National Security Archives, said some federal agencies have become much more open under the new administration. It remains a "*mixed bag*," however, and suggested the administration has trouble overruling past decisions.

The [LA Times](#) has reported on journalists' unease with the Obama administration, providing a good overview of the Administration's wider transparency activities and its sometimes-frosty media relations.

Data protection

Guernsey

Guernsey has amended its Data Protection Ordinance in lines with proposals from the UK's Ministry of Justice, introducing custodial sentences for unlawful disclosure of personal data.

Body scanning

Body-scanning has now been made compulsory at Heathrow and Manchester airports in the wake of the failed terrorist plot on a Detroit-bound airliner in December. A privacy group in the US claims [documents obtained through FOI show](#) - contrary to manufacturers' claims - the scanning machines can store and transmit images.

The scanners have been criticised by human rights and privacy campaigners. But Transport Secretary [Lord Adonis](#) has sought to allay fears, saying the images from the scans are deleted "*immediately*" and staff carrying out the procedure are fully trained and supervised.

Phone hacking scandal

The Guardian continues [its investigation](#) into the News of the World phone hacking scandal, now claiming three mobile phone companies have told them hundreds of customers' voicemails were accessed by the private investigator and the journalist at the centre of the scandal, contradicting the official version of events presented at the trials of Clive Goodman and Glenn Mulcaire.

Electoral role data sold

[East Anglian Daily Times](#) has used FOI requests to discover councils in Suffolk have been selling people's names and addresses to local businesses. Ray Amesbury, senior democratic services manager at Babergh District Council, said: "*As with all other councils responsible for maintaining a register of electors, Babergh is required by law to make either its full or edited register available on request. The amount that councils are able to charge for this is set centrally and cannot be varied by councils.*" Babergh District Council has sold the edited register to businesses, organisations and individuals 33 times since 2004.

Information Commissioner's Office decisions this month

For January 2010 decisions, click [here](#)

Information Tribunal decisions this month

For January 2010 decisions, click [here](#)

February 2010

Freedom of information in the UK

Government response to Dacre Review

- Change from 30- to 20-year-rule
- No change to status of cabinet papers overall
- Exemptions for monarch and heir

Secret government papers are to be released after a delay of 20 years in a change from the current 30-year rule, the Ministry of Justice has [announced](#). The recommendation fell short of the [15 years suggested by a review](#) set up by Gordon Brown. MOJ said the new period struck the right balance between accountability and the need to protect information which, if released prematurely, would harm good government.

It argued that a 20-year rule would protect the neutrality of the civil service where official careers stretching more than 15 years are common, and would minimise distraction for ministers. The shift will be brought in gradually over ten years to allow about two million paper files to be transferred to the National Archives – double the volume of old government records released each year. The government estimates the cost of implementing the new rule will be about £28 million for the first five years.

The Campaign for Freedom of Information group [welcomed the change](#) and the decision to ditch proposals to exempt cabinet papers from the Freedom of Information Act. The group however expressed its disappointment at a new absolute exemption that will protect information about the monarch, the heir and second in line to the throne for twenty years and then, if the individual concerned is still alive, until five years after their death.

Increase in the number of rejected FOI requests

The government is rejecting increasing numbers of freedom of information requests according to a [report](#) published by Sweet & Maxwell. Some 22 per cent of FOI requests were refused in the most recent three-month period on record, up from 18 per cent in 2005, the first full year that the Freedom of Information Act came into force. There was however disparity across public bodies in disclosing information, with the Cabinet Office refusing 51 per cent of requests in the third quarter of 2009, and the Ministry of Defence refusing only 8 per cent. Marcus Turle, the author of Freedom of Information Manual published by Sweet & Maxwell, said government departments were not always attuned to the motion of the public's 'right to know' as enshrined in the FOI Act. Mr Turle said "*Public-sector bodies are increasingly refusing to disclose information or dragging their feet over dealing with requests as a way of managing their reputations*".

Met Office withhold climate scientist's correspondence

The Meteorological Office is resisting scrutiny of the role played by its top climate scientist in a report by the United Nations Intergovernmental Panel on Climate Change. The [Met Office is refusing to disclose Professor John Mitchell's working papers and correspondence with his IPCC colleagues in response to requests filed under the Freedom of Information Act](#) by David Holland, an electrical engineer who has written several papers questioning orthodox thinking on global warming. The block has been endorsed in writing by Defence Secretary

Bob Ainsworth – whose department has responsibility for the Met Office. The Met Office said that Professor Mitchell's records could not be disclosed because they were 'personal', because disclosure would 'inhibit the free and frank provision of advice or the free and frank provision of views', and because it would 'prejudice Britain's relationship with an international organisation'.

[Last month](#), the Information Commissioner ruled that scientists from the Climatic Research Unit at the University of East Anglia – who are also contributors to the work of the IPCC – acted unlawfully in refusing to process FOI requests in accordance with Section 77 of the Act.

Council refuses salary requests over personal safety

Councils are [alleged to have resisted a Government order to reveal the salaries of thousands of senior staff](#) over fears it would lead to a public backlash. In December it was announced that councils would have to disclose the full details of staff earning more than £150,000 a year - believed to be about 114 staff across the country. Following an FOI request, the Taxpayers Alliance claimed that council bosses fought against the initial ruling as it feared disclosures would put workers' children and personal safety at risk.

Bank nationalisation under spotlight

Campaigners fighting to win compensation for former Bradford & Bingley shareholders are [demanding the release of information about the bank's nationalisation](#) in September. They want to use the Freedom of Information Act to force ministers to reveal the detailed sequence of events that led to the state takeover of B&B's mortgage business and the sale of its branch and savings arm to Spanish bank Santander. David Blundell, chairman of the [Bradford & Bingley Shareholders' Action Group](#), which now has 15,000 members, said the nationalisation and break-up of B&B had been a "terrible and costly mistake", and has written to the Information Commissioner to ask him to disclose the information.

Heseltine cabinet papers decision taken to the Tribunal

Continued from last month's update: The government has decided to fight the [information commissioner's instruction to release the minutes](#) of the controversial cabinet meeting in 1986 preceded Michael Heseltine resigning from Margaret Thatcher's government. The commissioner backed [Martin Rosenbaum's freedom of information request](#) for the minutes on the basis that releasing them would help remove uncertainties over historical events, but the Cabinet Office has now appealed against this judgement to the Information Rights Tribunal.

Time scales questions on 'future publication'

[The Arts Council England has rejected a freedom of information request from the BBC](#) because it intends to publish the material by sixteen months from now. Julia Ross asked the Council for some data relating to A Night Less Ordinary, their scheme for providing free theatre tickets to people under 26 at selected venues in England. The Arts Council turned down her FOI application about the scheme's cost and the characteristics of those participating in it on the grounds that it "*intends to publish this information by June 2011*". While the Scottish FOI law lays down that the 'future publication' exemption can only apply if

the material requested is to be published within 12 weeks, no such maximum period is specified in the UK legislation.

More UFO data released

The Ministry of Defence has released more than 6,000 pages describing [people's experiences with unidentified flying objects between 1994 and 2000](#). The UFO encounters are revealed in the fifth instalment of documents released as part of a three-year project between the MoD and The National Archives, and include reports of a UFO hovering over former Conservative Home Secretary Michael Howard's home in 1997. A memo has also revealed that in addition to the deletion of comments on international relations and defence technology appearing in the files, defence officials' insulting remarks about the public had to be blanked out before they were made public. The Ministry of Defence (MoD) recorded UFO sightings from the end of the Second World War until it shut its special investigation unit on 1 December last year.

Freedom of information and Parliament

FOI reveals Ashcroft's non-dom status

Conservative donor and deputy chairman Lord Ashcroft [has admitted he does not pay UK tax on earnings outside Britain](#), ending years of questions from opponents about whether he was 'non-domiciled' in the UK for tax. Lord Ashcroft made a [statement on his website](#) in anticipation of the release by the [Cabinet Office](#) of documents showing the promise he made to the government when he was made a peer in 2000 to "*take up permanent residence in the UK again*". Christopher Graham, the Information Commissioner, had accused the Tory party of being "*evasive and obfuscatory*" on the issue [when he ruled](#) that the Cabinet Office should reveal the details of the promise Ashcroft was known to have made at the time of his ennoblement. Labour MP Gordon Prentice made the FOI request about Ashcroft's status in June 2008. He has now called for Ashcroft's resignation from the House. Our current [FOI and Parliament study](#) is looking at cases like this to understanding how FOI fits into the 'toolkit' of MPs.

Torture documents released

Foreign Secretary David Miliband has [lost an appeal court bid to prevent senior judges disclosing secret information relating to torture allegations](#) in the case of Binyam Mohamed, the former Guantanamo detainee allegedly tortured by the CIA while he was being held in Pakistan. Andrew Tyrie MP, chairman of the All-Party Parliamentary Group on Extraordinary Rendition, said the UK appears to have allowed itself to become complicit in torture, and asked Mr Miliband to back a judge-led inquiry. The APPGER has been pursuing information about the UK's role in extraordinary rendition through both the UK and US FOI laws for years.

Lord Justice Thomas and Mr Justice Lloyd Jones had wanted to disclose a summary of US intelligence information given to British security services in May 2002 about Mr Mohamed's treatment during interrogations by the Americans. Mr Miliband had argued that to disclose the information would damage vital transatlantic security co-operation, but the Court of Appeal rejected the minister's claims and appeal, and a few minutes later the [seven paragraphs](#) in question were published by the FCO, albeit in a redacted form.

Commons resists publishing MPs' unpaid bills

Hundreds of MPs are believed to be liable for large tabs in the restaurants and bars in the Palace of Westminster, many running to thousands of pounds. Commons authorities [have resisted a FOI request](#) asking for a more detailed breakdown about the money owed. After months of delays, the ICO has written to the Commons demanding the release of the details or an explanation why it is refusing to do so.

Criminal investigation over Heathrow expansion emails

THE Department for Transport (DfT) is facing a [criminal investigation following a complaint that it deleted sensitive internal emails](#) about the expansion of Heathrow airport. It is accused of disposing of emails to and from the airport's operator, BAA, between September and November 2007 as the government prepared to push through its controversial plans for a third runway. The deletion or concealment of records to prevent disclosure under the FOI Act is a criminal offence, and the investigation unit of the Information Commissioner's Office has asked to interview civil servants at the DfT. The emails were requested under by [Justine Greening, a Conservative frontbencher, who has led the campaign against the expansion](#). Ms Greening asked for an investigation after spotting gaps in email conversations between transport officials and BAA. BAA is not covered by the Act and staff are therefore not required to retain material, but they are to be interviewed about the missing emails.

Conservatives allege civil servants' neutrality damaged

The Conservatives have accused Labour special advisers of abusing their position by commissioning civil servants to produce work for the purpose of attacking the Conservative Party, after uncovering [evidence](#) through the use of Freedom of Information requests.

Legg acquiesces to Harman's demands on expenses claims

The *Daily Express* claims Harriet Harman put pressure on auditor Thomas Legg not to reveal MPs' expenses claims which were rejected, citing [minutes released under the Freedom of Information Act](#). Sir Thomas Legg, who conducted the audit of expenses, wanted to include in his report all claims, including those that were rejected by officials, but the Deputy leader argued in a meeting with Sir Thomas that to do so would be "inappropriate". When Sir Thomas released [his report](#) this month, he only mentioned those claims which were paid out.

Scottish government seeks alternative to Electoral Commission

The Scottish government plans to set up a special body to run a future referendum on independence, [minutes of meetings](#) which were obtained by the BBC from an FOI request have shown. Ministers do not want to use the Electoral Commission which oversees Westminster elections. The Electoral Commission has a statutory role to run referenda called by Westminster, but has no formal role in those called by the Scottish Parliament. In the minutes obtained by BBC One's Politics Show, civil servants told the commission they planned to set up a new body - the Scottish Referendum Commission - to run the election. The paperwork also revealed the concerns of the Westminster commission over the wording of the questions and that the timescale towards the poll was too short.

Freedom of information abroad

Australia

A coalition of news media has questioned the Australian Government's commitment to transparency, [saying its freedom of information overhaul should go further](#). The Senate's public administration committee is inquiring into the Rudd government's FOI bills, which will give the public more access to documents held by the bureaucracy. Australia's Right to Know spokesman Michael McKinnon told the Senate the public should have access to cabinet advice, as New Zealand law allows. Mr McKinnon said while Cabinet deliberations should remain secret, the information put before Cabinet should be more freely accessible to the public. The [proposed laws](#) will also create an independent information commissioner to review FOI disputes and encourage public servants to be less secretive. The Rudd Government has said it will appoint current Commonwealth Ombudsman and Australian National University professor John McMillan to the role when the Bill is passed.

The Government of New South Wales has meanwhile [been accused of inaction in the long-promised overhaul of its freedom of information regime](#). The Parliament passed new legislation last June, but the inaugural Information Commissioner has yet to take up his duties and the Act has not come into force.

India

Indian FOI Advocates are calling for a thorough investigation into the [murder of Satish Shetty](#), believed to be the first person murdered in retaliation for FOI activism.

Mr Shetty, 38, was killed by three unidentified men on the morning of 13 January in Talegaon, Pune. He had been actively using Indian's Right to Information legislation to expose land scams, tax evasion and government corruption. He worked on spreading awareness about the Right to Information legislation and was a popular figure among Talegaon residents who regularly sought his help for solving their problems.

[According to Anna Hazare](#), one of India's most renowned social activists, Shetty was killed *"simply because he used RTI to unearth corruption and in the process antagonised the vested interests of the powerful. The clear message that the killers want to send out is that nobody should dare to do what Satish did. This is frightening and can cause a serious setback to RTI movement."*

You can read a general assessment of how Indian's RTI Act is working by Alastair Roberts [here](#).

Meanwhile, a series of freedom of information applications filed with the Indian Environment Ministry and the Prime Minister's office has revealed that Indian Environment Minister Jairam Ramesh and Prime Minister Manmohan Singh are [not updated on international developments on climate change](#), because no mechanism exists to offer advisories or science briefs to the PMO on the latest developments. The Ministry of Environment on its part stated in its replies that all scientific literature is noted but when provided with a list of notable scientific papers, analyses and climate events and asked to cite the number of references to them in Ministry documents, they failed to produce a single record. Instead, the ministry repeatedly cited the 2007 Intergovernmental Panel on Climate Change report as the most credible scientific information on climate science.

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Africa

Media leaders, press freedom advocates, officials, and former U.S. President Jimmy Carter have met in Ghana at the [African Regional Conference on the Right of Access to Information](#). They have released the [a Plan of Action to advance the right of access to information in Africa](#). The conference, which took place in Accra, Ghana, from February 7-9, examined the specific the political and institutional constraints in Africa that have limited the opportunities to exercise the right to know.

However, in Uganda, a [ruling this week](#) in a case against two journalists seeking disclosure of multinationals' oil deals has highlighted the challenges to public transparency in the continent. Freedom to information is upheld by the African Charter on Human and People's Rights. The Declaration of Principles on Freedom of Expression in Africa explicitly states: "*Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.*" However, to date only five countries in sub-Saharan Africa (Uganda, Ethiopia, Zimbabwe – whose FOI law has been criticised as deeply flawed - South Africa, and Angola) have passed freedom of information legislation, according to Mukelani Dimba, the deputy chief executive officer of the South Africa-based Open Democracy Advice Centre.

The Government of Ghana has meanwhile tabled a draft Freedom of Information law for adoption in Parliament. Article 19 – an independent human rights organisation that works globally to protect and promote the right to freedom of expression – welcomes the draft law, but [recommends a number of changes](#). The Ghana National Coalition on the Right to Information has [expressed concern](#) over the manner in which the government is rushing to pass the Right to Information Bill, allegedly without regard to due constitutional process as enshrined in the 1992 Constitution.

Canada

Federal ministers in Canada have been warned by the Prime Minister against subverting Canada's FOI law after [a political aide at Public Works ordered a sensitive document withheld from a media requester](#). The Canadian Province of British Columbia (BC) has meanwhile been accused of operating [confusing and contradictory freedom of information rules](#) with regard to the 2010 Vancouver Winter Olympics. The BC government has for example refused to include the organising body for the Games under the Freedom of Information law.

United States

A government-run agency in Poland has for the first time provided [official records confirming the landing in Poland of planes associated with the CIA's secret detainee programme](#), two human rights groups have said. Flight logs provided by the Polish Air Navigation Services Agency under a Freedom of Information Act revealed details about at least six landings from February-September 2003 of jets linked to the CIA at a former military airport in northern Poland.

Meanwhile in the USA, several prominent [human rights groups have claimed](#) that [new documents](#) released under FOI illustrate that key congressional members from both houses were briefed numerous times about the CIA interrogation and detention programs, but abdicated the role of Congress in overseeing the activities.

The American Civil Liberties Union has filed a lawsuit against the United States Agency for International Development (USAID) to obtain [public documents detailing its overseas abstinence-only-until-marriage programs](#), which a recent Office of Inspector General's report says unconstitutionally promote religiously infused materials and messages. The ACLU is

demanding from USAID materials related to its abstinence-only-until-marriage programs funded through HIV/AIDS grants, including requests for proposals, contracts with USAID, curricula used by grantees, communications between USAID and the White House and communications between USAID and its grantees about religious instruction in abstinence-only-until-marriage curricula.

Dramatic [images](#) taken by police photographers in helicopters of the collapse of the World Trade Centre have been seen publicly for the first, having been released under a Freedom of Information request made by America's ABC News.

Five Silicon Valley companies - Google, Apple, Oracle, Yahoo and Applied Materials - have fought and won a [18-month Freedom of Information battle with the San Jose Mercury News](#), convincing federal regulators that releasing information about the race and gender of employees would cause them 'commercial harm'.

Russia

Regional governments in the Russian Federation are failing to live up to their promise to make Russian politics and officialdom more open, according to [a new study](#). The Moscow Institute for the Development of Freedom of Information surveyed the 185 websites that executive and legislative branches in Russia's regions have set up, to determine whether the sites were living up to the provisions of a new federal law that calls for such sites to serve as "*the most effective means for the dissemination of official information*" about the government. The institute evaluated the sites according to 300 indicators, including completeness, timeliness and accessibility and concluded that the sites of the regional executive organs averaged only a 32 per cent openness rating.

Russia's *Ensuring Access to Information about Activities of State Organs and Organs of Local Administration Law* was [passed in January 2009](#) and came into force in January 2010. The law would, it was hoped, bridge the gap between the right "to freely seek and obtain information about the activities of state organs and organs of local administration," as proclaimed in Article 29 of the Constitution of the Russian Federation, and actual administrative practice.

Data Protection

New guidance from the ICO

The Information Commissioner's Office has published a new report designed to encourage organisations to prioritise data protection best practice.

Launched at a Data Protection Officer conference in Manchester, the [Privacy Dividend](#) report explains how to put a value on personal information and assess the benefits of protecting privacy. It includes practical tools designed to help organisations prepare a business case for investing in privacy and data protection, including calculation sheets to assess the value of personal information, and guidance on the steps involved in a privacy protection scheme. "*No organisation can neglect to protect people's privacy. Not only is it the law, but there is a hard-headed business imperative,*" said Information Commissioner Christopher Graham.

Former ICO Commissioner Richard Thomas has spoken about achievements and challenges in regards to data protection in [an interview with SC magazine](#).

Increased penalties for data breaches

The House of Lords has approved the Data Protection (Monetary Penalties) Order, which will come into force on 6 April. The ICO will then have power to impose a fine of up to £500,000, instead of the current maximum fine of £5000 for serious data breaches.

Shell employees data leaked to environmental groups

[*The Times*](#) has reported that seven (NGOs) have been emailed a database of personal details about all Shell staff. An investigation is under way to ascertain how the personal details of 170,000 employees and contractors of the oil company were leaked. The details have also been posted on an anti-Shell website.

Shell has contacted all the NGOs - which include Greenpeace's American office, Earthrights, Justice in Nigeria Now, Shell Guilty, Friends of the Earth (Netherlands), Remember Sarowiwa and CCR Justice - with a demand that they delete the database or face legal action under the UK Data Protection Act.

Budget cuts impact on data protection

A survey by IT firm Sepaton has found forty per cent of the 400 businesses surveyed say they lack the budget to protect their data effectively, particularly in the face of ever-escalating demands for data back-up. More than half (57%) of respondents – all from companies with at least 1,000 employees – said their data stores were expanding by at least 20% a year. Despite this, three-quarters of respondents said their data protection budget would remain flat or fall in 2010.

Information Commissioner's Office decisions this month

For February 2010 decisions, click [here](#)

Information Tribunal decisions this month

For February 2010 decisions, click [here](#)

March 2010

Freedom of Information in the UK

MOJ announce extension of FOI

Justice Minister Michael Wills [has announced the FOI Act will be amended](#) to cover four new organisations: The Association of Chief Police Officers (ACPO), the Financial Ombudsman Service (FOS), the Universities and Colleges Admissions Service (UCAS) and Academy Trusts – the bodies responsible for Academy Schools.

“The organisations we will add to the Act make key decisions which affect the lives of millions of people across the country,” said Wills. *“It is only right that they are also subject to the FOI Act and the additional accountability it brings to decision-making.”*

Sean O'Neill, writing in [The Times Crime blog](#) says that in relation to Apco, the announcement *“will neutralise some of the criticism of its uncomfortable status as private company and quasi-public policymaking body.”*

The Act will be extended by secondary legislation - The relevant order will be laid “as soon as practicable” in the next parliamentary session. It is subject to the affirmative procedure and so will be subject to debate in both Houses of Parliament. The commencement date for the Order will be October 2011, allowing time for the new bodies to establish processes for responding to requests and to create a publication scheme.

Amendments to implement monarch exemptions

The Government has added amendments to the Constitutional Reform and Governance bill, [currently making its way through the House of Lords](#), implementing absolute exemptions for information regarding the Monarch and the heir. The Government announced its decision [last month](#), in its response to the Dacre Review.

The royal family is currently exempt from direct requests for information under the Freedom of Information Act. However, public bodies can be asked to release information that may include details about the royals. Such requests are subject to a public interest test and, so far, only limited information has been released.

Maurice Frankel, director of the Campaign for Freedom of Information, writing in the [Independent](#), is critical of the new exemption of Royal Family communications with the government, which he argues is not necessarily in the public interest.

Meanwhile, [The Independent](#) has received some of the material regarding the subsidies for the upkeep of royal palaces after the ICO ruled against the Department of Media, Culture and Sport back in December. Robert Verkaik alleges the “100 letters, emails and memos” they have been provided with *“is merely the tip of an iceberg concealing secret correspondence between ministers, officials and the Palace.”*

MOJ to provide more detail on delays

The Ministry of Justice has confirmed the [changes it plans to make to the freedom of information statistics](#) it produces for its annual report on FOI in central government. In the

future, more time bands for the duration of public interest tests (PIT) and internal reviews (IR) will be added, so that the uppermost time band in each case is “*more than 100 working days*”. At present statistics on time taken to carry out PITs and IRs present the most delayed cases as a single class of those taking an extension of “*more than 40 working days*” with no further breakdown of the actual extensions involved.

New statistics will also be collected from each monitored body on the eventual durations of those PITs and IRs which were recorded as being ongoing in the previous year’s annual statistics. Currently cases which are not complete by February of the following year are not included in either the current year’s statistics or those relating to the following year, so that many of the most delayed cases are represented in the statistics at all. The [Campaign for Freedom of Information](#) has welcomed the changes but remains concerned about severely delayed cases which will still not be identified by the statistics.

Telegraph wins four-year battle with Treasury

The Information Commissioner has ordered the release information about then-Chancellor Gordon Brown’s decision to [sell Britain’s gold reserves](#). Between 1999 and 2002, Mr Brown ordered the sale of almost 400 tons of the gold reserves when the price was at a 20-year low, a decision the *Daily Telegraph* calls “*one of the Treasury’s worst financial mistakes*.” The paper has been asking for the information from the Treasury over the last four years, and has accused ICO officials of missing a series of their own deadlines to order the information’s release.

FOI and local government

Council publishes FOI workload online

Moray Council has become the first local authority in Scotland to [publish online every FOI request it receives, and the responses](#). Deputy convener Allan Wright said: “*I think some may be surprised at what sort of information is being asked for, and the level of investigation required by council staff to produce the information. People will be able to judge for themselves how the Freedom of Information Act is being used.*”

Private details of those that have made the request will be withheld, but they are placed into groups, such as individuals, media, and researchers.

Bexley to make requesters’ identities public

Compared to Moray, Bexley Council’s approach is less subtle: individuals and organisations who make FOI requests [are to have their details published on the council’s website](#). Councillor Colin Campbell said there was no reason why the public should not know who was making the requests. He said 70 per cent of the Council’s requests from residents in the three months from July to September last year had come from just three individuals. The cost of processing their requests alone - using the minimum wage as a calculation - was more than the council leader’s annual salary.

Cllr Campbell also said FOI requests to Bexley Council had risen from 75 in the year ending December 2007, to 820 in the year ending December 2009.

Wirrals’ requests increase by 500 per cent

Similar sentiments are being expressed by Wirral Borough Council, who claim they have a serious staffing shortage to cope with the [exceptional number of FOI requests](#) they are receiving. The number of requests has soared from 135 in 2005 to 903 last year. This 2009 figure is much higher than other councils in the region.

FOI requests in Wirral reflect local topical issues such as the controversial Strategic Asset Review, which would have seen eleven of the borough's libraries closed, councillors' expenses claims, gritting of roads and allotment provision. The council's cabinet is being asked to review staffing levels in the FOI team.

Freedom of Information and Parliament

IPSA announces new expenses scheme for MPs

After extensive public consultation, Sir Ian Kennedy announced the [Independent Parliamentary Standards Authority's plans for a new MPs' expenses system](#) on 29 March.

- MPs in the new parliament formed after this year's election will lose the right to claim for second homes; taxpayers will now only take up the costs for rented properties.
- MPs will only be able to claim for rent if they live 20 miles from Westminster, or more than 60 minutes' travelling time. They will not be able to claim for first-class train travel.
- Only one family member will be able to work for an MP.

Every single transaction, contract of employment and even the claims that are rejected will be published online on a weekly basis to make the system entirely transparent. "*In contrast,*" [writes Polly Curtis](#), "*a year ago parliament was attempting to conceal details of expenses under the Freedom of Information Act.*"

Kennedy said that the new scheme would be "*fair, workable and transparent*".

MPs criticise 'secrecy' surrounding UEA climate data

The [House of Commons Science and Technology Committee](#) has strongly criticised the University of East Anglia for not tackling a "*culture of withholding information*" among the climate change scientists whose private emails caused a furore after being leaked online in November.

"What this inquiry revealed was that climate scientists need to take steps to make available all the data that support their work and full methodological workings, including their computer codes," says the committee's chair, Phil Willis MP. *"Had both been available, many of the problems at CRU could have been avoided."*

But the committee did not condemn the actions of Professor Phil Jones, the head of the UEA's Climatic Research Unit (CRU). Jones appeared before the committee and [admitted that some of the emails he wrote, which were subsequently leaked, were "pretty awful"](#).

The Committee concluded Jones should have been better supported by the university in dealing with requests for data under the Freedom of Information Act. It added that the [scientific reputation of Jones and the CRU was untarnished](#): "*The Committee considers that his [Jones] actions were in line with common practice in the climate science community but that those practices need to change.*"

Conservatives' proactive publishing plans

The Conservative Party have published their [technology manifesto](#), which includes a section on open data. They promise to legislate for a new "Right to Government Data", enabling the public to request government datasets, which they argue will increase accountability and allow "*businesses and social entrepreneurs to create billions of pounds of economic value by building innovative applications and services that make use of government data.*"

This echoes David Cameron's earlier pledges [in a speech in June 2009](#), where he promised to "set data free" as part of "giving power back to the people":

We're going to set this data free. In the first year of the next Conservative Government, we will find the most useful information in twenty different areas ranging from information about the NHS to information about schools and road traffic and publish it so people can use it. This information will be published proactively and regularly - and in a standardised format so that it can be 'mashed up' and interacted with.

The Party has also committed to online publication of every item of central government and quango expenditure over £25,000, government contracts worth over £25,000, and the details of UK projects receiving over £25,000 of EU funds. Further commitments include publishing online the names and salaries of central government and quango managers earning over £150,000 per year, and the salaries of the 35,000 most senior civil servants.

In terms of local government, councils will be required to publish online every item of spending over £500, and the names and remuneration packages of staff earning over £60,000. [Westminster City Council](#) has already begun to publish this kind of information, outlining the salary and other remuneration details (including lease car, pension scheme, and health insurance) of all 34 members of its senior management team.

You can read more about the Conservatives constitutional reform agenda in the [Constitution Unit's recent report](#) on their ideas.

FOI and 'non-doms' continues'...

Conservative MP Greg Hands has made a [FOI request about the appointment of "non-dom" Labour donor Lord Paul to the Privy Council](#). "*It is almost unprecedented for someone who held Lord Paul's relatively junior public office to be appointed to the Privy Council,*" Mr Hands said. "*We need to clear up whether his promises to bankroll Gordon Brown's election campaign in any way influenced Ministers in promoting his candidature.*" This request comes after Conservative Deputy Chairman and donor Lord Ashcroft was forced to admit that he was a non-dom by an impending Cabinet Office FOI disclosure.

MPs uncover Primary Care Trust spending defies government dementia strategy

[Health trusts are spending money intended for dementia on other things](#), says the All-Party Parliamentary Group on Dementia. They used FOI requests to question primary care trusts (PCTs) on their spending habits. More than two-thirds of trusts surveyed were unable to say if or how they spent money allocated to them last year by the Government when it launched its National Dementia Strategy. Only 31 per cent of PCTs who responded said they had allocated their proportion of the £150 million made available by the Government. The same

number could not say how dementia strategy funds had been spent because the money was inseparable from other funding.

SNP use FOI to question election TV debates

The [SNP](#) is to appeal a Freedom of Information decision by the BBC in which they refused to disclose any information on their negotiations with Labour, the Conservatives and the Lib Dems over television debates between the party leaders during the British general election campaign. The BBC refused the request, arguing that information for journalism was exempt. The SNP has asked the UK Information Commission to look at the case with all possible urgency, as the first debate could be only weeks away.

Freedom of Information abroad

Scotland

The Scottish Government is seeking [‘clarification’ of the Scottish FOI Act](#) in regards to the access the Information Commissioner has during adjudication on a case. They’ve called on the Court of Session to rule whether or not the Commissioner has a right to unlimited access to government documents, a move labelled “crazy” by Professor Dan Metcalfe, professor of law at Washington College of Law (one of the Constitution Unit’s [Research Associates](#) and the speaker at [this month’s FOI Seminar](#)). Similarly, Scottish Labour called on the SNP to abandon the legal attempt. Johann Lamont, the party’s deputy leader, said the “*whole affair smacks of cover-up and the public will be the losers if government cannot be properly held to account.*”

The [Scottish Information Commissioner has reported a 15 per cent increase in people appealing FOI refusal decisions](#). Of the 160 decisions taken by Kevin Dunion, he found in favour of the applicant in more than two thirds of the cases. Mr Dunion warned public bodies that they may face an increase in FOI requests from people concerned about spending cuts and urged their staff to “think FOI” regarding internal communications. He also welcomed the Scottish Government’s proposals to extend the FOI Act to a range of organisations not currently covered by the legislation, including private contractors who build and maintain schools and hospitals and housing associations.

The Scotsman newspaper has launched a [feature](#) to uncover how history could have been altered had the Freedom of Information Act been around in the past. The paper has teamed up with the National Archives of Scotland (NAS) in an attempt to solve some of the most mysterious questions of Scottish history using the principles of FOI. A team of NAS researchers will delve into the archives and investigate questions posed by *Scotsman* readers, treating the investigation as a genuine case submitted under Freedom of Information, with the results reported in the paper. The Scottish Information Commissioner, Kevin Dunion, will sit on the judging panel.

Ireland

The main Irish opposition party Fine Gael has [vowed to make FOI requests easier and cheaper](#), as part of its drive to make decision-makers more accountable. Leader Enda Kenny said he would introduce a new Freedom of Information Act within 100 days of being elected Taoiseach which would overturn restrictions placed on the current laws by Fianna Fail in 2003. Under the proposals in the party’s *New Politics* document, a “*nominal*” charge would also be applied instead of the present fees.

China

[Google has stopped censoring its search results in China](#), ignoring warnings by the country's authorities. The US company said its Chinese users would be redirected to the uncensored pages of its Hong Kong website, after complaining of a "*sophisticated cyber attack originating from China*" in January. China has accused Google of violating a "*written promise*" it made when entering the market to abide by laws requiring it to filter its search service. A Chinese official was quoted by the state-run Xinhua news agency as saying Google's decision to ignore the promise regarding its Chinese-language search portal Google.cn was "*totally wrong*". In reply on [its official blog](#), Google says it believes "*this new approach of providing uncensored search in simplified Chinese from [Google.com.hk](#) is a sensible solution to the challenges we've faced—it's entirely legal and will meaningfully increase access to information for people in China. We very much hope that the Chinese government respects our decision, though we are well aware that it could at any time block access to our services.*" For a good assessment of Google's growing political sophistication, you can read [John Naughton's column](#) in *The Observer*.

Chinese Ministry of Civil Affairs is being sued for allegedly failing to respond to a request for information about the [toll and cost of the 2008 Sichuan earthquake](#). The May 2008 earthquake has become a politically sensitive subject because of the large number of school children that died, and suspicions that shoddy construction and corruption were partly to blame. Ai Weiwei told The Associated Press that he filed a request in November asking the ministry how many buildings fell in the quake, the amount of donations received, the cost of recovery and other details, but has yet to receive a response. The government has been slow to release information that might clear up suspicions and took nearly a year to issue an official estimate — 5,335 — for the number of students killed. China enacted a freedom of information regulation on 1 May 2008, allowing citizens to request information and get a response from the government within 15 to 30 days, but implementation has been slow and uneven.

United States

President Barack Obama is [having difficulty getting all federal agencies to follow his order to deliver "a new era of open government"](#) according to a [study](#) of how they administer the Freedom of Information Act.

The National Security Archive, a private group that publishes declassified government information, has found a decidedly mixed record in an audit of how 90 agencies responded to [Obama's directives](#) to open more records, and the guidelines and training sessions that followed from the Justice Department. Rescinding a Bush policy of defending any legal reason to withhold information, Obama ordered agencies to release any information whose disclosure wasn't prohibited by law or wouldn't cause foreseeable harm. The report concluded however that the Obama administration "*has clearly stated a new policy direction for open government but has not conquered the challenge of communicating and enforcing that message throughout the executive branch*".

A separate review conducted by the [Associated Press reported](#) has found that in the fiscal year of 2009, 17 major governmental agencies refused to release information, claiming legal exemptions, 466,872 times. This is an increase of nearly 50 percent from the previous year.

The White House appears however to have taken note of recent criticism. White House Chief of Staff Rahm Emanuel and Counsel to the President Bob Bauer issued a

memorandum to federal agency and department heads reminding them that the default should be in favour of disclosure. "[W]e write to request that your agency take several specific steps to improve implementation of the President's Memorandum on the Freedom of Information Act... We appreciate your efforts to implement the Memorandum on FOIA, and we are confident that the Chief FOIA Officer Reports you filed will show progress. But more work remains to be done, and such work requires persistent effort."

Sunshine Week in the US has seen the introduction of new bills hoping to improve current freedom of information legislation. US Representative Steve Israel has introduced a piece of legislation to create greater governmental transparency by making [government information designated as 'public', available online](#). Israel argues the [Public Online Information bill](#) directly confronts the problem that massive quantities of government data and documentation are still largely inaccessible because they are difficult to find and difficult to read, despite being designated as 'public'. If the bill was made law, it would mandate that executive branch agencies publish all publicly available information online in a timely fashion and in user-friendly formats within three years of the bill being signed.

[Senators Patrick Leahy and John Cornyn have meanwhile introduced a bill that would push federal agencies to release information more quickly](#). Agencies are currently supposed to answer requests within 20 business days, but often take far longer. The 'Faster FOIA Act' would create a bipartisan commission to investigate the causes of delays in responding to information requests, and make suggestions to Congress for speeding things up.

Australia

An [Australian Senate committee has reported](#) on legislation currently before the Australian parliament proposing a number of reforms to the country's Freedom of Information laws. Under the bills, new public interest tests would be weighted towards disclosure, with political sensitivity or government embarrassment no longer being grounds for refusal, although sensitive intelligence would remain protected. The Senate committee report wants the government to consider whether it is "necessary and appropriate" for entire agencies and organisations to be exempt from the FOI scheme. The committee's biggest issue however is with the draft laws requirement that the party appealing an FOI decision made by the Information Commissioner bear the onus of proof in the Administrative Appeals Tribunal. It wants the concept of onus of proof removed entirely from the legislation and then the bills passed. Cabinet Secretary Joe Ludwig has said that the Labor Government would now examine the best ways to implement the report's recommendations.

Data Protection

The ICO has issued new Data Protection advice for political parties as the election campaigning season begins. [Rory Cellan-Jones from the BBC explains](#): "When it comes to making use of e-mail addresses or mobile phone numbers, the guidelines stress that before they start firing off e-mails and texts, candidates must make sure they have obtained the prior consent of those on their lists to be contacted in this way. And just because you've got hold of their e-mail addresses through some earlier campaign about a hospital closure, you can't assume that they've signed up to hear from you for ever more."

Care must be taken with using online social networking sites too. 'Peer-to-peer campaigning' is getting your supporters to tell their friends on Facebook about you. But the Information Commissioner Chris Graham stresses that these kind of campaigns are not a way of getting round the need for consent. "Arguably, where you ask an individual to forward your message

or promotional materials to an individual who has not consented to that contact, you are encouraging them to break the law in order to promote your party or point of view."

In Canada, [the British Columbia government is considering extending its powers to collect and share citizens' private information and store it outside of Canada](#). The idea is being floated during a review of the Freedom of Information and Protection of Privacy Act, which is carried out every six years. The government proposes public bodies be able to collect and share people's personal information without their consent "*for purposes of integrated program or activity*" where it's "*of benefit to the citizen and necessary to the delivery of the service or program,*" or for public health and safety. It would also change the act to allow information to be stored outside of Canada. Vincent Gogolek, the policy director for the Freedom of Information and Privacy Association watchdog group said the government were "*looking to change the basis of the act to remove people's control over their own information.*"

Google's Global Privacy Counsel, Peter Fleischer, has told the Associated Press he is "*still reeling*" from an Italian court decision which gave Fleischer and two other Google executives to six-month prison sentences for breach of the Italian Data Protection Code. "*This ruling...sets a very dangerous precedent*", Fleischer wrote on his blog. "*If company employees like me can be held criminally liable for any video on a hosting platform, when they had absolutely nothing to do with the video in question, then our liability is unlimited.*" Google has appealed the decision, which it said "*attacks the very principles of freedom on which the internet is built.*"

Information Commissioner's Office decisions this month

For March 2010 decisions, click [here](#)

Information Tribunal decisions this month

To search for March 2010 decisions, click [here](#)

April 2010

Freedom of Information in the UK

FOI policies of the main political parties

As votes for the general (and local) elections are cast, here's a quick summary of the similarities and differences of FOI and DP policies between the three main parties.

The Conservatives announced on 25 April they would [expand the scope of the Freedom of Information Act](#) "*within weeks of the general election*" to include taxpayer-funded bodies such as Northern Rock, Network Rail and The Carbon Trust, together with bodies such as the Local Government Association and Traffic Penalty Tribunals. The Conservatives have also supported the Labour government's [recent decision](#) to include APCO and Academy Trusts under the Act, which has yet to be carried out (it requires Parliamentary debate). Similarly, the Lib Dems noted in their [manifesto](#) they want to extend the scope of FOI "*to private companies delivering monopoly public services such as National Rail.*"

[Labour](#) have stated they want to "*open up government, embedding access to information into the very fabric of public services*" and will look at how to make data held on individuals by public agencies interactive so people can control their own personal data. As reported in [previous updates](#), the Conservatives have pledged to "*create a powerful new right to government data*" which would enable individuals to request for government datasets which they say could provide a £6 billion boost to the economy.

In the wake of the 'climate-gate' scandal and the inability of the ICO to undertake a prosecution because the offence was more than six months ago, a change to the Act to allow prosecution further after an event seems likely regardless of who takes power. Both the ICO and the [Commons Science and Technology Committee](#) are advocating this change.

The biggest difference lies in the approach to cabinet documents and the veto, which was made clear after the two uses of the veto by Jack Straw last year. The Liberal Democrats prepared a [draft bill](#) to abolish the veto provision, while Conservative Justice spokesman Dominic Grieve supported [amending the FOI Act to exclude Cabinet papers altogether](#), bringing the UK into line with Australia, Canada and Ireland. Grieve believes the effect of being subject to a potential FOI disclosure hampers Cabinet discussion: "*officials would feel unable to give impartial advice freely, and Ministers would feel unable to discuss matters candidly,*" he argued. The Information Commissioner [disagreed](#) with Jack Straw's decisions to use the veto, and [Straw refused to be drawn](#) about whether the government's default position for all cabinet material ordered for release would be to veto. The Commissioner has said he would rather the government be honest about its intentions and change the law to exempt cabinet papers, rather than use the veto.

Irony lost on BBC as they refuse FOI request regarding FOI programme

The BBC has turned down an FOI request which asked how many people tuned in to watch the TV drama about FOI campaigner Heather Brooke.

The show, *On Expenses*, which dramatised Brooke's attempts to make Parliament more accountable by publishing MP's expenses, was originally shown on BBC Four and later put on their online iPlayer service. Despite showing some iPlayer viewing figures on its website, Lorraine Stiller, the BBC's legal and business affairs manager, explained that it was "[excluded from the act because it is held for the purposes of 'journalism, art or literature'](#)".

You can read a review of Heather Brooke's recent book about using the FOI Act (and her role in uncovering the MPs' expenses scandal) by Peter Riddell from [the Times](#).

Ben Leapman from the Sunday Telegraph, who with Brooke pursued the information about MPs' expenses, has been interviewed about the scandal by a Nigerian media outlet *Next*. You can read his reflections [here](#).

ICO orders release of academic data

Queen University of Belfast has been [ordered to release data collected from tree rings](#), to climate sceptic Douglas Keenan, "*well-known for his questioning of scientists who propose a human cause for climate change.*"

The university claimed that as the information was unfinished, had intellectual property rights and was commercially confidential information, it did not have to pass it on. But the Information Commissioner has ruled that Queen's had failed in its procedural requirements and had wrongly used legal exemptions to withhold the information.

Mr Keenan, who hopes to use the data to reconstruct temperatures during the Medieval Warm period, said "*this has taken three years, but it is worth it. It is an important victory for FOI on research data.*"

BBC environment correspondent Richard Black said Mr Keenan's victory has a wider context. "*This is the latest development in an on-going process that has seen 'climate sceptics' attempting to obtain raw data and documentation on methodologies from researchers, especially those working to understand the climate of the past.*"

Oxburgh Review finds UEA scientists clear of impropriety

A [second inquiry](#) into the climate change controversy, surrounding the release of thousands of emails from the University of East Anglia's climate scientists on the internet last November, found that there was "*absolutely no evidence of any impropriety whatsoever*" and that "[the basic science seems to have been done fairly and properly](#)".

Meanwhile, other universities are facing other FOI challenges.

The [Oxford University Student Union](#) has been trying to find out what the influential Russell Group has submitted to the university funding review being carried out by Lord Browne. The Russell Group represents the UK's elite universities. The review is considering how much students should pay to go to university in England - and whether the current maximum of £3,225 paid by students should be increased.

The students say they deserve to know what is being said by an organisation representing their university. The Oxford students' union has tried to use the Freedom of Information to force the Department for Business, Innovation and Skills (BIS) to publish what has been submitted to the Browne Review. The government has refused, citing the 'public interest' and the request for confidentiality of the Russell Group.

The Oxford students say that holding back the publication until next month is an attempt to avoid public debate before the election. Union vice-president Jonny Medland said there had been a "*cynical gambit*" over the timing of the review.

FOI and Local Government

FOI reveals interesting data on rates of crime amongst age groups

Several Freedom of Information requests by local media over the last month have been used to highlight criminal offenders amongst both the old as well as the young in society.

Local newspaper the Kent Messenger were [told](#) that following their FOI request regarding the ages of those arrested in their county, 148 people aged 70 years or older were arrested in 2009. The most common reason for offence was alleged violence. This fits in stark contrast to information revealed from the West of the country which showed a high number of crimes that were perpetrated by children. [This is Cheshire said](#) that it was discovered that 548 offences were committed by boys and girls aged 10-17. Shoplifting was the most common crime of a list that included burglary and actual bodily harm.

Paranormal activity unconfirmed

Hospitals across the UK have been asked through FOI about any [sightings of ghosts or other paranormal activity](#). Norfolk and Norwich University Hospital Trust "*can confirm that the trust has not received any such complaints about haunted buildings or other paranormal activity.*"

FOI and Parliament

Prince Charles' marriage legal advice withheld

Advice from Lord Falconer, then Lord Chancellor, on [the legality of Prince Charles' marriage to Camilla Parker-Bowles](#) will remain secret as an appeal against the Ministry of Justice has been dismissed by the ICO.

Doubts about the legality of the marriage persist because of the Marriage Act of 1836, which prohibited Royals from marrying in registry offices. Liberal Democrat MP Norman Baker argues, "*The public, and indeed Prince Charles, have a right to know what advice was given and why this information is being covered up.*"

Lord Falconer insists the subsequent 1949 Marriage Act "*clearly intended to allow Royals to take part in civil weddings*" but the information on which he based his final judgement has never been made public, and will now remain a secret until after the Prince of Wales' death.

Commons on FOI 'break' because of election

The outstanding bills of MPs for dining in the House of Commons have been [withheld until after the election](#), when Parliament becomes FOI-able again.

After being asked for the names and details of each MP owing money in September last year, the *Scotsman* reports the Commons "*delayed responding for many months, while exploring its legal avenues under the Data Protection Act.*" Last month it agreed to publish those bills over 90-days overdue, but as Parliament has been dissolved for the election, the Commons technically ceases to exist as an organisation under the FOI Act.

"*This means that a further response under the FOI act cannot be given by, or on behalf of, the House of Commons during this period,*" says Bob Castle, head of information rights for the Commons. "*The House will first meet again on 18 May and a response will be sent to you as soon as possible after that date.*"

FOI abroad

Global press freedom deteriorates again

Freedom House has again carried out its annual press freedom survey and found that for the ninth straight year, media rights and freedoms have deteriorated, with setbacks in nearly every region. Only one in every six people in the world live in countries with a free press.

With China, Russia and Venezuela boosting already strong controls on media, Freedom House said 2009 "*was notable for intensified efforts by authoritarian regimes to place restrictions on all conduits for news and information.*"

About 120 bloggers and online reporters are currently in jail because of their work, according to [Reporters Without Borders \(RSF\)](#). It has published a list of 12 "*enemies of the internet*" including China, Iran, Uzbekistan, Saudi Arabia and Egypt. Deemed to have seriously violated their citizen's free speech online, these countries were said to have used a "*range of measures from Internet filtering and blocking Web sites, to imprisoning bloggers and journalists*".

Ireland - Ombudsman critical of FOI coverage

Ombudsman and Information Commissioner Emily O'Reilly has used her [annual report on FOI in Ireland](#) to express her disappointment that the National Asset Management Agency (Nama) remains outside of the FOI Act. She believes making Nama subject to FOI requests will help shore up public trust in this organisation, which is "*an important part of people's lives.*" She contrasted the refusal to make Nama subject to the Act with the situation in the UK, where both the Bank of England and the financial services authority are subject to requests. She also expressed disappointment that An Garda Síochána, the Central Bank, the Financial Services Regulatory Authority and the National Treasury Management Agency remain outside the Act.

In total, 14,290 FOI requests were made last year in Ireland, up 13 per cent on 2008 numbers.

India

The impact of FOI requests to India's democracy and governance are illustrated in this fascinating article from the [Huffington Post](#). Lina Khan writes, "*In India, use of RTI has hit close and hard, piercing to the core of the citizen-government relationship and leaving it forever altered...That the fundamentals of democratic expression have emerged through a single piece of legislation is both rare and remarkable, a feat that even the most optimistic activists didn't foresee .*"

Guernsey

Despite earlier statements, it now seems unlikely Guernsey will be implementing an FOI regime any time soon. The Policy Council has been looking at the idea for two years, but now Deputy Lyndon Trott says a law is unlikely, and even a code of practice - the Council's preferred option - may take some time. Guernsey's Chief Minister has confirmed there have been high level discussions with the UK's Ministry of Justice as well as academics and officials from Britain and Ireland about implementing an FOI Act. Trott says the reservations of the policy council are based on the perception "*that people go out of their way to get round the Freedom of information legislation rather than adopting a strong culture of openness and transparency.*"

United States

Following the Open Government Directive of December 2009, every federal department has now published its own Open Government Plan – "*a concrete and specific roadmap for making operations and data more transparent, and expanding opportunities for citizen participation, collaboration and oversight.*" You can see how each agency is faring [here](#).

The Department of Justice has confirmed the first 'dashboard' reports of FOI compliance among 92 federal agencies will be published in September this year. Meanwhile, new statistics show its own processing of FOI requests is falling behind. More than 6,200 requests to the DOJ were pending at the beginning of fiscal 2009. By the end of the fiscal year, that number had increased to more than 7,400 — an 18 per cent jump. A Justice Department spokeswoman said it takes longer to process

requests since a new Obama administration policy on requests was implemented last year. The new policy instructs government lawyers to lean towards disclosure when reviewing requests.

The Senate Judiciary Committee has sent a FOI bill with bipartisan support to the full Senate for consideration. Sponsored by Patrick Leahy (Democrat - Vermont) and John Cornyn (Republican – Texas), the Faster FOIA or Freedom of Information Act 2010 would establish a new oversight commission to study why agency responses to information requests are often incomplete or delayed.

People can now submit Freedom of Information Act [requests to the FBI electronically through a new eFOIA form \(PDF\)](#). The FBI hopes the new electronic form will make requesting information easier.

Data Protection

New fines for data protection breaches came into force on 6 April. Now the ICO is empowered to impose monetary penalties of up to £500,000 for 'serious breaches' of the DP Act 1998. Information Commissioner Christopher Graham said in a statement he "*will not hesitate to use these tough new sanctions for the most serious cases where organisations disregard the law*".

Denmark

Guidelines for whistleblowing in Denmark have been changed, extending the category of subjects allowed to submit a report under a company's whistleblowing scheme. The amendment to the previous guidelines - which excluded the possibility for 'persons other than employees and board members' to file a whistleblowing report acknowledges that 'it is necessary for other individuals connected with the company to make such reports'.

China

An amendment to the Law on Guarding State Secrets has been submitted to the National People's Congress Standing Committee for a third review. The amendment would require telecom and internet service providers to notify and cooperate with public security and state security authorities if they detect any disclosure or sharing of state secrets on their networks. The draft defines a 'state secret' as information that, if disclosed, would harm national security and interests. If the draft law is approved, domestic providers as well as international service providers operating on Chinese territory will have to comply with the requirement.

ICO decisions this month

For April 2010 decisions, click [here](#)

Information Tribunal decisions this month

To search for April 2010 decisions, click [here](#)

May 2010

Freedom of Information in the UK

Transparency 'at the heart' of new government

[David Cameron has written to each of his ministers on his plans and hopes for transparent government.](#)

As well as codifying previous manifesto promises (publishing government spending and contracts, crime data and [salaries of civil servants](#)), Cameron has ordered departments to publish data in an open-source format so it can be reused by third parties. Further, he wrote, "to oversee the implementation of our transparency commitments, a Public Sector Transparency Board will be established in the Cabinet Office, which will be chaired by the Minister for the Cabinet Office Francis Maude."

[Francis Maude has also made a statement on transparency and trust](#): "Transparency is at the heart of the Government's programme, which is why the Cabinet Office, at the heart of government is taking the lead. All departments will open up their data in the weeks ahead. We are pulling back the curtains to let light into the corridors of power. By being open and accountable we can start to win back people's trust. Openness will not be comfortable for us in government; but it will enable the public to hold our feet to the fire. This way lies better government. Transparency is key to our efficiency drive, and will enable the public to help us to deliver better value for money in public spending." However, [Michael White of the Guardian is not convinced](#).

Extension of FOI?

[Included in Section 10 of the new government's coalition agreement](#) is a promise to extent "the scope of the Freedom of Information Act to provide greater transparency," as promised by both parties in the run-up to the election. However, the MoJ's recent consultation on extending the Act found significant stumbling blocks that resulted in [only a few more organisations being covered](#). Reasons for not extending further - regulatory burden, reducing competitiveness, the problems of defining 'functions of a public nature' - have not gone away, and further consultation, if desired by the new government, could take considerable time.

MOJ release 2009 FOI Report

The latest report from the Ministry of Justice detailing implementation statistics on Freedom of Information requests to central government have shown continuing trends in recent years. Most notable were an *increase* in the number of 'resolvable requests', and interestingly, an increase in the number that were withheld, and a decrease in the number that were disclosed.

The number of 'resolvable requests'— the total number of requests minus those that have an outstanding charge, those that were directed at the wrong government department, and those that were responded with a request for clarification – totalled [30,124](#), an increase of 16% on the [previous year](#).

Interestingly, there has been a consistent rise since 2006 in the percentage of resolvable requests that have been withheld.

[The BBC's Martin Rosenbaum](#) has argued there are discrepancies in the data. He also outlines the problems that may arise as Labour-government documents are requested under the new administration:

"Government departments rejected 267 applications under section 36 of the FOI Act, which requires "the reasonable opinion of a qualified person" that releasing the material would damage the effective conduct of public affairs. In the case of a government department, the "qualified person" is a minister. But given the constitutional convention that most ministers do not see papers from a previous administration of a different party, and many requests made now will still be for documents from Labour's time in office, it could be time-consuming for the two ministers who are generally allowed access to such papers - the government law officers. So the new Attorney General Dominic Grieve and Solicitor General Edward Garnier may now be putting aside time in their diaries to come to reasonable opinions on whether a variety of freedom of information requests would prejudice the effective conduct of public affairs."

'Cash for Royal Access' story reignites debate over privacy for Royals

Following the revelations regarding Sarah Ferguson's [indiscretions](#) about her providing access to her former husband, debate over the extent to which the Royals should be subject to Freedom of Information has heightened. The fact that the News of the World failed to notify the Duchess in advance of the publication, coupled with the dubious reputation garnered from the type of ['entrapment journalism'](#) that the 'Fake Sheikh' approach has gained in recent years.

The question of transparency with regards to the Royal Family has caused some writers, notably Heather Brooke (of MP's expenses fame) to [point out](#) the larger issues surrounding the exemptions of the Royal Family from the FOI remit. One of the laws rushed through the previous parliament granted an absolute ban on communications involving the royal household. Off the back of the decision of the Information Commissioner to allow correspondence between the Palace and the government regarding subsidies for upkeep to be released to [The Independent](#), the development of this area of disclosure will be interesting to watch.

33 crimes committed against students in Manchester each day

Over 2000 crimes against students were committed within a 2-month period, an FOI request from a Manchester [student newspaper](#) reveals.

The figures from this request also reveal some inconsistencies within Greater Manchester Police's (GMP) data-keeping practices. Superintendent John Graves, speaking on the authority's ability to analyse crimes in the area, said that the GMP was able to "identify university students by their age and occupation". This claim contradicted the response from the FOI officer which stated that the age of a victim was not logged.

Sea monsters?

Despite an interest in sea monsters dating back to the [19th century](#), the Royal Navy has confirmed that neither they, nor the Ministry of Defence overall, holds a database on any sightings of strange marine mammals.

In response to an official Freedom of Information request from a marine biologist enquiring as to whether the MoD held records on “abnormally large or dangerous sea monsters”, the official reply confirmed that there was in fact no “central repository of information” devoted to such sightings.

This follows the decision by MoD in December of last year to [shut down](#) its UFO hotline service which had been operational for over [50 years](#) citing that there was “no defence benefit”. It is expected to save some £44,000 a year.

The Royal Navy does not want to deter monster-spotters from reporting such findings though. In the official reply it is said that people are [encouraged](#) to do so and that “these are forwarded to the UK Hydrographic Office in Taunton”.

FOI and Parliament

New ministers are finding out for the first time what it is like to be on the other side of the FOI system, as the first requests hit the new government. [The Spectator reports that one of the first tasks for the new Work and Pensions Minister Iain Duncan Smith was reviewing his own FOI requests.](#)

FOI abroad

Ban Ki Moon, World Press Freedom Day and the 40 Enemies of Press Freedom...

United Nations Secretary-General Ban Ki Moon’s [Message for 2010](#) called for world-wide press freedom and that he would “welcome the global trend towards new laws which recognize the universal right to publicly held information”. His message, timed to coincide with World Press Freedom day on 3 May, emphasised the barriers imposed by some Governments such as high taxes, intimidation, detention and death.

[World Press Freedom day](#) was celebrated all over the world, was used to highlight abuse of human rights in some countries. In [Iran](#), Amnesty International and Article 19 used the day to call on Iranian authorities to release journalists and bloggers who had been detained as prisoners. In [Malaysia](#), increased pressure was put on the government to put through a reclassification of documents so that they no longer came under the Official Secrets Act. Freedom of Information came under scrutiny in [Algeria](#) and [Cameroon](#), and a decision in Ireland to exclude the National Management Asset Agency, which deals with commercial information, from the FOI remit came under [fire](#).

Reporteurs Sans Frontieres released a list, entitled the [40 Enemies of Press Freedom](#). The list contains those that are described as not being able to “stand the press, treat it as an enemy, and directly attack journalists”. The list includes the

Israeli Defence Force, the executive and security forces in the Palestinian Authority, Kim Jong-Il, Ali Khomeini and many others.

For a fuller list of World Press Freedom day events please click [here](#).

Data Protection

Google appeared to have “illegally tapped into private networks”

While compiling archives for its Street View service, [Google](#) has revealed that they may have inadvertently collected private web information from wireless networks. Pressed by European officials over the matter, Google apologised and said that it intended to delete the information in discussion with regulators.

In Germany however, Ilse Aigner, German minister for Food, Agriculture and Consumer Protection, said that “it appears that Google has illegally tapped into private networks in violation of German law. This is alarming and further evidence that privacy law is a foreign concept to Google”.

Google spokesperson in Germany, Kay Obereck, said that the company was in contact with data protection officials in Germany and the rest of Europe to address their concerns.

DNA databases of millions of newborn babies kept without consent

A Freedom of Information act request has [revealed](#) that 4 million blood samples taken from a heel-prick, a standard procedure used regularly to check for serious conditions, are being retained by hospitals, in some cases for over 20 years.

Going against Government guidelines which advise hospitals to destroy the DNA after 5 years, this information has been accessed by police, medical researchers, coroners and private medical companies.

Shami Chakrabati, Director of civil rights group Liberty, said “I’m horrified that anyone would breach my trust, keep my child’s sample for years on end and use it for all sorts of extraneous purposes”.

A spokesman for the Department of Health has said “there are strict safeguards in place that protect the sample once it is taken. Parents are well informed about newborn screening and the sample storage. They receive a number of information packs during pregnancy and afterbirth.”

ICO decisions this month

For May 2010 decisions, click [here](#)

Information Tribunal decisions this month

To search for May 2010 decisions, click [here](#)

June 2010

Freedom of Information in the UK

Latest FOI requests statistics

The [latest quarterly FOI statistics covering January-March 2010](#) have been published by the Ministry of Justice. The number of requests in this quarter is up nine per cent on 2009's comparable quarter. Slightly more requests are being answered on time, but fewer are being answered in full. [Statistics for the cases taken to the First Tier \(Information Rights\) Tribunal have also been released.](#)

Transparency Board created

Located within the Cabinet Office, [the new Transparency Board](#), chaired by Frances Maude has been tasked with setting open data standards across the whole public sector, ensuring that all Whitehall departments meet the new tight deadlines set for releasing key public datasets, and listening to the public's ideas for open data.

It held its first meeting on 24 June - [you can see the data-sharing principles they discussed, and the papers from the meeting.](#)

The Transparency Board consists of [Sir Tim Berners Lee](#), [Nigel Shadbolt](#), [Tom Steinberg](#), and [Rufus Pollock](#).

The Cabinet Office too has began a series of proactive publications, including the salaries of [quango](#) heads, [senior civil servants](#), and salaries of [SpAds](#).

Coins government data released

In a signal of the new government's intent for transparency, [COINS data was released in accessible form](#) on 4 June, as part of what David Cameron says are efforts to end the "*cloak of secrecy*" around government. The Combined Online Information System includes what departments were authorised to spend, what they actually spent and what they are forecast to spend in future.

The BBC's Martin Rosenbaum asked for the database last year but was refused. [He has asked his blog readers to help go through the data now accessible.](#) The government has warned that as the database contains millions of rows of data, accessing the files will demand "*some degree of technical competence*" and they expect expert organisations to make most use of the details initially.

You can see the other newly-released latest datasets on the home page of [data.gov.uk](#).

New Academy schools under FOI-spotlight

Education unions opposed to the government's plans to let schools become academies independent of council control, have [used FOI requests to find the number of schools who have expressed an interest in the scheme.](#)

Lord Hill, the Schools Minister, said: *“I am delighted that so many schools have expressed an interest, and that [over 900 outstanding schools are interested in becoming academies](#).”* While Christine Blower, general secretary of the National Union of Teachers, said the number of schools expressing an interest represented a *“tiny percentage”* of the 21,000 state schools in England. *“The vast majority are extremely wary of cutting themselves free from their local community of schools and from the in depth support and advice provided by their local authority,”* she said.

Meanwhile, [Lord Lucas on 3 June asked new Justice Minister Lord McNally](#) about whether academies will be subject to FOI – McNally said the government was *“currently considering how best to give effect to this aim, one option for which is making further bodies subject to the Act.”* On 30 June however, Lucas proposed an amendment to the Academies Bill (which enacts the policy) which would add academies to Schedule 1 of the FOI Act. Schools minister Lord Hill said in response, *“Having thought about this, and having come newly into the department, I think that he [Lucas] makes a very good point in his new clause. I can see no reason in principle why academy proprietors, in relation to their function of running academies under academy arrangements, should not be subject to the Freedom of Information Act in the same way as all other state-funded schools are.”*

ICO orders release of ContactPoint audit

In early 2008, Deloitte carried out an independent audit of ContactPoint, the database system that was due to include the names, addresses and contact details of all 11 million under-18 year olds in England. It was envisioned to provide social workers, police and hospitals with common access to contact details on children, their guardians and other professionals who might be working with a potential vulnerable child.

The previous government published a summary of Deloitte’s report but refused FOI requests for the full report. [The Information Commissioner has now ordered publication](#) following a long-running battle by children’s rights campaigners who thought security breaches would leave children more, rather than less, vulnerable. They now say the report confirms their fears, as the study found the security processes used by IT departments at local authorities *“pose a significant risk to ContactPoint and its assets”*, as they do not reach a *“recognised standard”*. It states there could be *“information leakage”* if electronic and printed copies of material from ContactPoint are not disposed of properly.

Freedom of Information and Local Government

Councillors accuse council of excessive secrecy

Wolverhampton council has been criticised for refusing to answer 20 per cent of its FOI requests. [These figures were revealed via an FOI request placed by the Express & Star](#). The council refused to answer what questions they had previously refused to answer.

Councillor Milkinder Jaspal, Labour’s Heath Town representative said the Council’s FOI performance was *“nonsense and it is very disappointing.”* Paul Uppal,

Conservative MP for Wolverhampton South West, suggested the council re-structuring the way it collates information if that would allow more information to be released. Councillor Joan Stevenson, cabinet member for organisation, people and performance, said: *“Many of the requests we receive are complex and require a considerable amount of officers’ time gathering, collating and checking the data. We have put more resources into answering FOI requests and improving our performance in this area is a priority.”*

More from FOI Friday

David Higgerson continues his round up of the best FOI-news stories from the week – [you can see a good round-up of local government, police and NHS stories here](#). Topics include the *Herald Express* in Devon getting new detail on spending on consultants, the costs of fuel for Hillingdon Council going down this year, and prison escapes and smuggling.

Freedom of Information and Parliament

ICO rules on WhatDoTheyKnow vs. The House of Commons

The [ICO has ruled that the House has to comply with a freedom of information request submitted through whatdotheyknow.com](#), even though it means that its response will be automatically published on that website.

In July 2008, Francis Irving from WhatDoTheyKnow asked for documents on the possible deployment of electronic petitioning systems in Parliament. The Commons said it could provide the material, but not through WDTK. They argued the automatic publication of their reply via the site would breach its copyright (Brent Council have run similar arguments against WDTK too).

The Commissioner considers “that, for the purposes of section 8(1)(b), the email address that was generated from the website and used for sending the request constitutes ‘an address for correspondence’ and that by making his request from this address, the implication was that the House should provide its response to it... The Commissioner does not believe that issues relating to how an email address is connected to a publishing mechanism are relevant in terms of considering whether a valid address has been stated for correspondence.” [\[Decision Notice FS50276715\]](#)

FOIs beat PQs

[Martin Rosenbaum has written about the disparity between Parliamentary Questions and FOI requests](#) – the latter being more effective, to the dismay of some MPs.

Labour MP Tom Watson asked a PQ about how much Arts Council England paid Lothar Gotz for his role in the redecoration of its head office in 2008. He was told the information was commercially sensitive.

“This prompted [Mr Watson to tweet](#): “Why should this parliamentary answer be commercially sensitive? ...If it was FOI'd I bet it would be answered.” It turns out that Mr Watson is right. Under freedom of information, the BBC posed the same question

to Arts Council England. Yesterday we were informed that the sum of money in question is £13,500.”

Freedom of Information abroad

India

Following the [Huffington Post in April](#), media attention towards India’s FOI Act continues, with [Akash Kapur from the New York Times](#) describing the Act as having the ‘potential to transform governance in India’.

A major study into the use of India’s Right To Information Act was completed last year by the [RTI Assessment & Analysis Group \(RaaG\) and the National Campaign for People’s Right to Information \(NCPRI\)](#). Many other studies have also emerged from NGOs, government and academics on India’s Act, seen as a breakthrough for the developing world. Alasdair Roberts, one of the [Constitution Unit’s honorary associates](#) based at Suffolk University Law School in Boston, has written an overview evaluation of these studies, [which you can read here](#).

Iceland

Peter Timmins, an Australian FOI expert, [has turned his attention to Iceland](#). It’s parliament has recently voted to urge the government to make Iceland a world-leader in terms of freedom of information and expression, and to amend the current law to make it conform with the Council of Europe convention and the Aarhus treaty on environmental information. Ideas include reducing or eliminating absolute exemptions, including more public bodies and creating a standardised request form.

[Parliamentarians affirmed](#): “*The legislative initiative outlined here is intended to make Iceland an attractive environment for the registration and operation of international press organisations, new media start-ups, human rights groups and internet data centres. It promises to strengthen our democracy through the power of transparency and to promote the nation’s international standing and economy. It also proposes to draw attention to these changes through the creation of Iceland’s first internationally visible prize: the Icelandic Prize for Freedom of Expression.*”

Isle of Man

Chief Minister Tony Brown has confirmed that the Council of Ministers last month approved a draft Freedom of Information Bill, with public consultation beginning on 6 July lasting for eight weeks.

Canada

The Supreme Court of Canada has [ruled that Canadian citizens have no ‘constitution right’ to access information](#). The ruling relates to the case of an internal police report, which the court has ruled can potentially be suppressed without violating constitutional guarantees to free expression and informed public debate.

However, the Court also recognized the importance of information in a democracy and recognized a right to obtain suppressed information that is necessary to a full public debate of an important issue. Thus opinion is divided on what this means for freedom of information for Canadians.

Paul Schabas, a lawyer representing the Canadian Newspaper Association and other media organizations says "*Canada, in the 1980s . . . was a trailblazer in access to information laws. Now we are behind. We are out of step.*"

However, the Globe and Mail reports lawyers have welcomed the ruling as a long-awaited recognition of the role that access to information plays in a democracy.

Chief Justice Beverley McLachlin and Justice Rosalie Abella said the ability to obtain government documents might be constitutionally protected in certain cases, if those seeking access can show suppressing the information would prevent "meaningful commentary" on public issues. But countervailing considerations could also work against releasing information, they said. The court's 7-0 decision had been on hold for 18 months, though in the end, the decision was only 15 pages long.

Scottish Health service wins case withholding cancer statistics

The [longest Freedom of Information case in Scotland's history](#) has ended in defeat for the Scottish Green Party, which made the request concerning the incidence of leukaemia amongst children. In 2005, Michael Collie, a researcher for the then Scottish Green MSP Chris Ballance, wanted to find out whether those who lived along the Solway coast were adversely at risk from plutonium washing on the sea front from an offshore nuclear plant.

The Scottish Health Service initially refused the request on the grounds that it breached the Data Protection Act and could enable patients to be identified. Mr Collie launched Scotland's first ever FOI appeal which, despite Scottish Information Commissioner Kevin Dunion concluding the information could be released, as well as the Scottish Court of Sessions upholding Mr Dunion's conclusion in an appeal, was ultimately defeated by the House of Lords in July 2008. As a result Mr Dunion conducted a second investigation, concluded he agreed with the House of Lords, and ruled that the information as requested should not be released.

He did, however, order the health service to provide aggregated statistics for the whole Dumfries and Galloway Health Board area. Mr Balance argues this will not show the very local effects that he suspects. "*Confusion over the definition of personal data is likely to remain for some time,*" said Mr Dunion.

Data Protection

The [European Commission has told the UK government to improve data protection in order to comply with the EU's Data Protection Directive](#). This is the second stage of the EC infringement process taken against countries which are failing to follow European law. The next step would be the Commission referring the UK to the Court of Justice.

Justice Commissioner Viviane Reding said: "EU rules require that the work of data protection authorities must not be unbalanced by the slightest hint of legal ambiguity. I will enforce this vigorously. I urge the UK to change its rules swiftly so that the data protection authority is able to perform its duties with absolute clarity about the rules."

The Commission's main problem with the UK is with the powers of the Information Commissioner – its 'inadequate' powers to check other countries' data protection practises and its inability to perform random checks on people or data processing organisations. The Commission is also unhappy with court powers to refuse the right for people to have information about themselves corrected or deleted.

A [spokesperson for the ICO](#) said they look forward to discussing the Commission's detailed concerns with the Ministry of Justice and providing input into the UK Government's response. Last month the ICO reached the unhappy milestone of receiving the 1000th report of a personal data breach.

ICO decisions this month

[June 2010](#)

Information Tribunal decisions this month

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July 2010

FOI in the UK

ICO promises to get tough with serial S.10 breaches

Deputy Information Commissioner Graham Smith, speaking at the Westminster Legal Policy Forum, says the ICO is to launch a new enforcement policy to get tough on public bodies that consistently fail to meet deadlines for answering freedom of information and data access requests.

"We are saying we will work with you, but if there is no improvement we will issue an enforcement notice," he said.

Constitution Unit Director Robert Hazell also spoke at the forum, and warned FOI could suffer as the public sector faces budget cuts in the coming year.

"FOI teams, relatively recent in most Whitehall departments, are not likely to be regarded as frontline services." When staffing cuts had been introduced in other countries such staff had often been the first to go, he said.

Chilling effect alive and well

Barrister and historian Jonathan Sumption QC has spoken of his fears for future historians as Freedom of Information changes record keeping practises.

He argued that ministers and officials are so worried about leaks to newspaper and premature disclosure through the Freedom of Information Act that they have simply stopped writing things down

In a lecture to the Friends of the National Archive on 9 July, Sumption explained that he had asked senior civil servant friends, who had recently retired, about their record-keeping practices. "With one exception, every one of them admitted to having omitted significant information from internal documents, which in earlier times would have been included, and to having communicated them informally instead, so that they would not be recorded in writing."

Similarly, Oliver Morley, Acting chief executive of the National Archives says 'Some of the more indiscreet communications that have been found in official publications might not be there for the future.' But he also said that greater transparency was a good thing and although the official records might not be as interesting as they used to be as a result, it will be more than made up for by the vast treasure trove of e-mail correspondence. "The huge volume of the digital record will provide rewarding material for the canny researcher."

Coins database not as extensive as hoped

Lisa Evans from Where does my money go? is angry that the COINS database

doesn't include what she sees as the most important data: The Whole of Government Accounts. So she made an FOI request for the data, but it was rejected by Treasury on the grounds of protecting the space for free and frank policy discussion. "So," she argues, "when we hear about greater transparency on public spending, it is important to bear in mind that we have made great progress but we don't have the full picture yet."

Russell review of East Anglia: The Science is ok, FOI is not

The last of the three main reviews of the Climatic Research Unit (CRU) at East Anglia University has been completed by former civil servant Sir Muir Russell.

Russell's team found the scientific methods used by the CRU were robust and they were easily able to replicate the CRU's results, which climate sceptics said was not possible.

However, the CRU was strongly criticised for its approach to FOI requests, which the review describes as "unhelpful and defensive". Further, Muir's review calls for science to embrace a new age of transparency: "Like it or not, this [demand for openness] indicates a transformation in the way science has to be conducted in this century."

Martin Rosenbaum points out that "While the review strongly criticises the conduct of those scientists who refused to embrace a culture of openness, it is important to note that it also places much of the blame on the broader university administration. It argues that the university's senior management should have accepted more responsibility for implementing compliance with FOI."

Similarly, a review by the Dutch Parliament into the Inter-governmental Panel on Climate Change (IPCC) has also upheld the scientific findings and reports of the IPCC, but argues more transparency would be beneficial.

On the same day the Russell review was published, the Information Commissioner's Office published a decision notice stating that UAE had breached the EIRs by not answering requests in the specified time frame.

Child detention manual published

After five-year FOI battle, children's rights campaigners have welcomed the decision by the government to publish a manual used by staff in children's detention centres. The government was ordered to publish the manual by the ICO but had been considering taking the case to the Tribunal.

However the manual - published by HM Prison Service in 2005 and classified as a restricted government document - has been severely criticised for describing techniques to be used to restrain children and illicit compliant behaviour. The manual was condemned last night by campaigners as "state authorisation of institutionalised child abuse".

Megrahi subject of Cameron-Obama talks

David Cameron and Barack Obama have met in Washington and say they 'violently agree' that the release by the Scottish government of Lockerbie bomber Megrahi on compassionate ground was wrong. Cameron is refusing a formal British inquiry into the release, saying there is no mystery about how the decision was taken. But as a concession, Cameron has ordered Cabinet Secretary Gus O'Donnell "to go back over all the paperwork to see if there is anything else that should be released, so that there is the clearest possible picture out there of what decision was taken and why."

There have been calls for Megrahi's medical records to be released, along with the minutes of two phone calls between BP lobbyists and the former justice secretary, Jack Straw, in January 2009. Earlier this year, Straw turned down a freedom of information request for this information

British officials say: "The previous government have already released a lot of information under FOI requests. If there is any further pertinent information deemed to be relevant, we would be happy to consider that." Ministers from the former government including Tony Blair, Gordon Brown and Straw would have to be consulted first, but would not have the power to veto any release, the officials said.

Court secrecy under fire

FOI activist Heather Brooke has criticised the secretive manners of UK legal system in her article in The Times.

Ms Brooke calls for action on making courts of justice more open for scrutiny. She particularly criticises the prohibition of tape recording during hearings, a decision itself not recorded: "To close a court, effectively, from public scrutiny in a ruling of which there is no record strikes me as something straight out of Kafka."

Death tolls from Iraq War: NGO makes case for government wilful neglect

Action On Armed Violence has used FOI requests to present their case that the UK government wilfully neglected their responsibilities to ascertain the extent of civilian casualties as a result of the war in Iraq from March 2003.

A State of Ignorance argues "that the UK government actively sought to maintain a position of ignorance regarding measurements of death, injury and deprivation resulting from violence in Iraq. This means not simply that UK officials did not know the impact of violence, but that they worked – in various ways – to avoid knowing. The FOI material that this report is based on suggests officials selectively used information to undermine studies that estimated relatively high casualty figures, made little effort to develop a systematic understanding of the tallies being offered, and did seemingly nothing to ensure figures were produced by the Iraqi government as the UK said it should ." The report also criticises the FOI process itself, with Action on Armed Violence reporting different ministries releasing or redacting the same information differently.

Freedom of Information and Local Government

Council will charge for FOI requests

FOI campaigners in North-West England are baffled by Cheshire West and Chester council's decision to charge for FOI requests.

The council argues that answering mostly vexatious or ridiculous questions cost taxpayers an estimated £250,000 in staff time and materials, an amount they wish to reduce significantly. According to the leader of the council, Cllr Mike Jones, questions asked don't reflect the original purposes of the Act: "Many of these inquiries are from companies simply using FOI to answer questions for market research purposes at the expense of the taxpayer".

However, FOI activists disagree with Mr Jones. Liam Byrne, member of anti-incinerator group CHAIN: "It should not be forgotten that it was only by asking awkward questions under the Freedom of Information Act that the Westminster MPs' expenses scandal was exposed. Who knows what skeletons are lying in local government cupboards, waiting to be discovered by similar means".

Council spending data goes private

The decision of some councils to outsource all their spending data to a private company has raised confusion amongst open data activists.

It has been considered against the spirit of open government for councils to give a private company an exclusive access to their detailed invoice information, of which the company then publishes an extract on SpotlightOnSpend website. Critics argue the data presented is not 'open', and moreover, Windsor & Maidenhead's data differs with data published on its own spending website.

The UK Transparency Board reminded those involved of Board's principles for publishing open data. The case remains under the scrutiny of Transparency Board.

Discrimination against journalists?

Wycombe Council has apologised to the Bucks Free Press for withholding a document under FOI, only to release it later to a member of the public.

Editor Steve Cohen said: "We were stunned when we realised that the council treated our request differently [from that of a member of the public] but we are pleased that the council was big enough to accept its error and apologise."

The Council issued a statement apologising to the paper "for any inconvenience or confusion" caused by not releasing the document, which concerns the controversial development of a local stadium.

Freedom of Information and Parliament

Denham uses FOI to clear his name

Former communities secretary John Denham has made FOI requests to prove that another of his colleagues made the decision to buy expensive sofas for his department.

Denham's spokesman says he "sought the truth" through FOI after Eric Pickles, the Conservative Communities Secretary, "repeatedly claimed that [Denham] had approved excessive expenditure on furniture."

The reply to his request states that £135,000 was spent on red sofas for the Department of Communities and Local Government. It also confirms that the spending was approved by Yvette Cooper, the former chief secretary to the Treasury, in a letter to Hazel Blears, Denham's predecessor.

FOI fight over school's legal costs

A Welsh MP has been involved in a prolonged FOI battle concerning a school's reluctance to disclose the total sum of legal costs in a lost case about pupil's right to wear religious jewellery.

The case has cost the school at least £170,000 but despite repeated interventions from the Information Commissioner, the school has yet to release the final figures of their legal costs.

"I have asked questions of the school and its governing body as an elected representative and I ask those questions on behalf of the public. All of it is information held by the school, none of it is difficult to provide, and I believe the reasons for its non-disclosure have been to shield those responsible from the disapproval of the public for decisions they now regret", said Cynon Valley MP Ann Clwyd.

FOI request on Forgemasters loan forms a basis for parliamentary debate

A Labour MP has used an FOI request to question a Minister about reasons to cancel a loan to Sheffield-based steel company Forgemasters.

Labour MPs argue that true reasons behind the cancellation can be found in a letter sent to minister of state for Business, Innovation and Skills Mark Prisk from a major private donor of Conservative Party. Angela Smith MP: "I have here correspondence released following a freedom of information request. It indicates that Andrew Cook, of William Cook Holdings, wrote to the Government to urge the cancellation of the loan". Sheffield MP Clive Betts continued: "There was not one other shred of evidence thrown at the review that could have led the Government to change the decision [on granting the loan] that had been taken previously".

The Minister defended Government actions by stating that the reluctant decision not to grant a loan was made on the grounds of unaffordability only and that Government has acted as transparently as it could possibly had while handling the matter.

Freedom of Information abroad

Scotland

The Scottish government has backed down on its demands to restrict Scottish Information Commissioner Kevin Dunion's access to government files.

Row started in March, when SNP ministers wanted the Court of Session to rule whether Mr Dunion should have unfettered access to state papers during his investigations, which was seen by FOI campaigners as an unprecedented attack on the law underpinning FOI. Finally the Court dismissed the government's appeal after ministers dropped their demands.

Meanwhile, the Scottish government has started to seek views whether the existing Freedom of Information legislation should be widened to cover more bodies delivering public services. The consultation process will run for 14 weeks, until 2 November.

Amongst organisations to be consulted are contractors who build and maintain schools, hospitals and roads, private prison operators, leisure, sport and cultural trusts set up by local authorities and Glasgow Housing Association and the Association of Chief Police Officers in Scotland.

Minister for Parliamentary Business Bruce Crawford on the possible costs of action: "A key part of the consultation will be our examination of any possible costs associated with any extension of coverage. The Government is committed to increasing sustainable economic growth and will only introduce legislation that is measured and proportionate."

India

The Commonwealth Human Rights Initiative are hoping to extend the limits of transparency in India by making requests for to compile a list of topics discussed at the Cabinet meetings.

The agenda of the meetings of the Indian government's Cabinet are rarely publicised in advance. Information about what was discussed in the Cabinet is also not fully proactively published, however some information is selectively circulated through the Press Information Bureau. Although Cabinet papers are treated as secret documents prior to Cabinet meetings, Cabinet decisions along with reasons and the material basis of such decisions are within the remit of Indian's ATI Act. However, in actual practice, not much information about Cabinet meetings is available to people.

Australia

The Australian Minister for Finance and Deregulation, Lindsay Tanner MP, made an official Declaration of Open Government on July 16.

According to the new Gillard government (former Prime Minister Kevin Rudd was ousted as Labour leader on 24 June), is “committed to open government based on a culture of engagement, built on better access to and use of government held information, and sustained by innovative use of technology”. In the declaration the government also states its three key principles in supporting openness and transparency: informing, engaging and participating.

Declaration is part of a wider Australian initiative of Government 2.0, which hopes to make government “willing to engage with and listen to its citizens; and to make available the vast national resource of non-sensitive public sector information”.

South Africa

The new Protection of Information Bill has caused controversy in South Africa, where campaigners argue that new legislation will result in “drawing an iron curtain of secrecy around much government activity” and is inconsistent with country’s constitution (Section 32 gives access to information held by the state).

The bill is being criticised over its allowance to classify virtually any information whose disclosure might be embarrassing, not only information with a connection to national security. Defenders of the Bill say, however, that there is a clear prohibition against using classification to cover up wrong-doings.

European Union

In June 29 the European Court of Justice made a decision that forces members of public to provide good reasons for disclosing the names of civil servants if they want to know you are working on their behalf. FOI activists have deemed the verdict as devastating for European transparency.

The issue started several years ago when an entrepreneur wanted to take part in one of the meetings of the European Commission, was refused and followed up by asking the minutes of the meeting including the list of participants.

Despite the fact that the Court of First Instance already in 2007 reached a conclusion that the disclosure of names “does not affect the private life of the persons in question, given that they participated in the meeting as representatives of the bodies to which they belonged”, the ECJ states that any mentioning of as much as a name is personal data and has to be protected according to data protection rules.

Turkey

Following a series of complaints about material insulting former president Kemal

Ataturk, Turkish government has decided to block an access to several Google services. The row is part of a long-standing struggle which started in 2008 when Turkey decided to ban YouTube.

The controversial decision derives from a law which allows a court to block any website where there is a “sufficient suspicion” that a crime has occurred. According to Turkish legislation insulting Ataturk is a criminal offence.

Africa

Nancy Dubosse, manager of research in Institute for Democracy in Africa’s Economic Governance Programme, argues that the current weakness of many African parliaments may leave them unable to legislate for the right to information and without the right of access to information, “parliamentarians remain second-class public servants, vulnerable to political party machinations and autocratic executives”.

Despite recent attempts to enhance transparency, accountability and openness, the state of access to information in Africa is “poor and embarrassing”. In addition, Kigali Declaration on the Development of an Equitable Information Society in Africa, a document which recognized that equitable access to information is a right for all and that there are vast inequities to equitable access to information, was signed by parliamentary representatives of only 27 out of 53 African countries. And despite the fact that the right of access to information is considered a human right in the African Charter on Human and People’s Rights, only five African countries have passed legislation guaranteeing freedom of information.

Afghanistan and WikiLeaks

Julian Assange, founder of the organisation behind the leak of secret Afghanistan war logs is being repeatedly described in media as a man who “has structured his life around the quest for freedom of information”.

WikiLeaks is a web-based organisation which aims to disclose classified information with a wide public interest and which, according to the organisation, should not be kept secret in the first place. WikiLeaks describes itself as “a multi-jurisdictional public service designed to protect whistleblowers, journalists and activists who have sensitive materials to communicate to the public”.

Data Protection

“A call for evidence about data protection”: McNally

Laws on data protection need to move with times, and individual citizens along with public sector organisations and business groups are all encouraged to have a say on the subject, minister of state for Justice Lord McNally states in Guardian.

On July 6 the coalition government announced a call for evidence about the Data Protection Act and the Data Protection Directive. According to McNally, the government is asking for the views of individuals, consumers, businesses, charities,

the public sector and other groups about how the law is currently working on the ground.

Government is hoping to get an answer to questions whether “the definitions under the directive and the current act are still relevant; the rights of data subjects and the obligations of data controllers; whether the powers and penalties available to the information commissioner need to be strengthened, and how to deal with international transfers of personal data”. Government will then use evidence they receive as a mean to develop UK’s position in the negotiations on the new European data protection instrument.

“The increase in data protection complaints is a cause for concern”: ICO

According to the ICO’s annual report, there have been this year more data protection cases than any other so far. In total the watchdog recorded an amount of 33,324 data protection enquiries, which is alarmingly higher than was recorded in 2008/09.

Information Commissioner Christopher Graham would like to tackle the problem by giving courts the power to jail offenders in addition to their current ability to dole out fines up to £500,000. “ I continue to believe that the courts should be able to impose a custodial sentence, where appropriate, to tackle the unlawful trade in personal data that is the scourge of the digital world. Data theft is no victimless crime ”, the Commissioner stated.

Supreme Court: privacy trumps transparency in workplace monitoring case

The Supreme Court of Wisconsin ruled on 16 July 2010 that emails of a personal nature sent by government employees from workplace computers should be kept private. The case - Schill v. Wisconsin Rapids School District - revolved around a citizen’s request for the release of personal emails sent by five teachers.

The Supreme Court largely justified the ruling on the basis of precedent from courts in other US States, where similar cases have been heard. “We know of no state that has reached the conclusion that the contents of such personal emails should be released to members of the public”, read the 16 July judgment. “We too now conclude that while government business is to be kept open, the contents of employees’ emails are not part of government business.”

The Court however acknowledged that in some circumstances – for example where the emails are required as evidence in a disciplinary investigation, or as a necessary source to look into an alleged misuse of government resources - personal emails of government employees can be released.

ICO decisions this month

[July 2010](#)

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Freedom of Information in the UK

DCLG books open to armchair auditors

[Department for Communities and Local Government has announced their ambition to “lead the charge for transparency”](#) after being the first government department to put all spending on goods and service over £500 online.

Communities Secretary Eric Pickles hailed the move as a signal of new era in central government transparency: *“Greater openness in spending is the best way to root out waste, spot duplication and increase value for money. That is why I have been asking councils to ‘show me the money’ so local taxpayers can see where their hard earned cash is going”*.

Proactive disclosure of spending data is hoped to encourage 'an army of armchair auditors' to create innovative ways to use information in favour of public interest. However, the [Independent](#) warns: *“By deriding ‘a culture of excess’ in the department, Mr Pickles risks breeding petty-mindedness and paranoia which could come back to haunt him.”*

Westland FOI case to be settled in Info Tribunal

[BBC’s Martin Rosenbaum’s request for the minutes of cabinet meeting which ended in resignation of Michael Heseltine in 1986](#) is to be settled in Information Tribunal in September.

Mr Rosenbaum’s initial request in 2005 has been followed by a debate on the grounds of release and whether disclosure of cabinet minutes would lead in 'chilling effect', where ministers would be more cautious on what they say and civil servants on what they write in official documents. According to the current 30-year rule and if Tribunal decides in favour retaining secrecy, papers would be disclosed in 2016.

MoD documents: Churchill ordered a UFO cover up

Recently declassified Ministry of Defence documents reveal that [Sir Winston Churchill ordered a covering up of a close encounter between an RAF aircraft and an UFO](#) during the Second World War.

According to the documents, Churchill stated: *“This event should be immediately classified since it would create mass panic amongst the general population and destroy one’s belief in the church”*.

Churchill’s views on UFOs were included in a total of 18 MoD files which were made available online by [the National Archives](#).

The BBC’s FOI requests

The Guardian has [published every FOI request made to BBC since the instalment of FOIA in 2005](#). During this time span the company had received total number of 3,701 FOI requests covering information "held for purposes other than those of journalism, art or literature". The total cost of handling these requests from 2005 to September 2009 was approximately £3m.

Complete data sets of FOI requests can be downloaded from the [Guardian Data Blog](#) website.

Network Rail to be opened up to FOI

The case for placing [Network Rail](#) in the remit of FOI has been strengthened by accusations of misbehaviour by senior staff. [The Financial Times](#) reports Philip Hammond, transport secretary, wants FOI to apply to Network Rail, in the wake of allegations in *Private Eye* over of irresponsible spending.

Requesters can share their motives on WhatDoTheyKnow

MySociety.org have enables users to [add a photograph and some information on what they've been searching](#) to their [WhatDoTheyKnow](#) user profile. Developers of the website hope this will lead to mutual understanding between requesters and eventually to more collaborative research.

Freedom of Information and Local Government

Council will charge for FOI requests

Following last month's report on Cheshire West and Chester's desire's desire to charge of FOI requests, the Council Executive has voted unanimously to implement the plan. Council leader Mike Jones [writes in a press release](#), "*We are all in favour of openness and transparency but some of the questions are vexatious, ridiculous. Sometimes even anonymous (Justin Time)... and in no way reflect the admirable spirit of the Act. What concerns us greatly is that these FOI queries sometimes request copious detail, requiring a considerable amount of staff time to research - all of which is costing the Council taxpayer money, much of it unnecessary in these times of financial stringency.*"

How they are going to do this is not clear at this stage: "*Council legal, finance and solutions staff will be putting together the final details of a charging policy for FOI requests in accordance with the conditions laid down in the Act,*" writes Jones. [FOI journalist David Higgerson](#), in response, outlines five ways councils could reduce the burden of FOI with the tools they already have. He also questions how charging fees is legal:

"Here's the bad news for Cllr Jones. Councils can't just charge for FOI requests. If it costs less than £450 in staff time to collate the information, then you can't refuse to provide it on grounds of costs. Nor can you charge for that time. How do I know this? Because I asked the ICO this question:

So I understand that the guidance says that so long as an FOI request does not exceed £450/£600, it should be released for free, with the only costs being those of contacting the person involved and/or reproduction fees, but not staff time?

To which I got this reply: That's right. Most authorities are not able to apply standard charges for requests and staff time taken to find the information should not be charged.

[...] Anyone for an FOI on what the solutions team actually does, or how much research Cllr Jones did before getting onto his PR high horse?"

Meanwhile, [one member of the public has suggested FOI charges to help cut the budget deficit](#). Thousands of suggestions have been received by the Treasury from civil servants and ordinary members of the public to pull Britain out of the red. 'Suggester' argues that "FOI was never designed to cater for lazy journalists" and pointed out one particular request made to 400 public authorities, which took each FOI officer one hour to respond, cost the public sector £10,000.

Local Data Panel on FOIA s43 and local data

Some local authorities [have been unsure about the new regulations concerning the release of data on payments for goods and services over £500](#). Of particular interest has been data with "commercial confidentiality", and whether its release would threaten commercial position of a third party and thus should be covered by exemptions in [FOIA's section 43](#).

David Evans, Senior Information Policy Officer at the [ICO](#) has stated that local authority has to be able to provide strong evidence why the disclosure of information would threaten the commercial position of the third party and that it cannot merely speculate about this. [An outstanding case of the commercial relationship between Derry City Council and Ryanair](#) has been mentioned as an example of Tribunal case on the subject.

Freedom of Information and Parliament

Commons withholds resettlement information

An ICO appeal is expected after a [regional press lobby correspondent was refused information on resettlement grants awarded to former MPs](#).

Mr Joe Watts of Nottingham Post put in a FOI request to the Commons Authorities to find out which politicians had drawn the funds they were entitled to - but has been refused details as according to authorities, this would breach data protection rules. Mr Watts writes in his [blog](#): "It looks like Lobbydog will be forced to go to the Information Commissioner to get a few facts that should be in the public domain".

Power co uses FOI to reveal opponents

A power company in Wales has been criticised for [asking the Welsh Assembly for the correspondence from campaigners fighting to save a local reservoir](#). Critics say the power company will use the information to take opponents to court.

Western Power Distribution was given permission to drain Llanishen Reservoir by the Environment Agency and is pushing ahead with its plans despite repeated planning refusals of its proposal to build 300 homes on land adjoining the lake.

WPD asked for copies of correspondence passing between the Assembly Government, including both officers and AMs, and all 'third parties' relating to the reservoir. It listed the Environment Agency, Cardiff council, MPs, members of the Reservoir Action Group (RAG) and 'any residents of Cardiff'. They however specifically asked for their own correspondence with the Assembly to not be included in the request.

The information released from the Assembly includes a letter from an eleven-year-old girl who wrote to Environment Minister Jane Davidson to stop the draining as she 'loves sailing on the reservoir'. Cardiff North AM Jonathan Morgan, a fierce opponent of the drainage who had three of his letters released, branded the company "juvenile". He added, *"I do think it is ironic that a company that is so secretive when it comes to its only dealings with the media is willing to use a piece of legislation to gain information."*

FOIs reveal abuse by MPs of IPSA staff

The [Independent](#), [Metro](#), [Guardian](#) and others have reported the information released by IPSA to an FOI request, detailing harassment of its staff by MPs.

Denis MacShane MP has come forward to reveal that he is the MP in one of the ten incidents described in the information, as bullying an IPSA volunteer to the brink of tears. He says he returned the following day with chocolates to apologise for his behaviour. He questioned why IPSA was 'keeping secret' files on MPs. Commentators have noted that it is routine for any organisation to keep files on the wellbeing of its staff, and that IPSA has responded appropriately to this FOI request.

[The Independent](#) reports an IPSA staff member recorded a meeting with an MP who repeatedly likened the new expenses system to an "abortion", a comment the official found "deeply inappropriate and offensive". The MP is then claimed to have said the scheme "will make the only people who want to be MPs rich people and losers". Another member arrived at the Ipsa office "purely to criticise in an aggressive fashion", before warning: "I am going to attack you at every step." Last month, [Benedict Brogan writing in the Daily Telegraph](#) described *"MPs, in a bizarre reversal of how politics is usually conducted, crowded into the public gallery of a committee room to jeer and heckle the civil servants who run IPSA. For a disgraceful moment, and under the very eyes of the Speaker, the rulers became the mob."*

Earlier this Month, Labour MP Tom Harris wrote in the [Daily Mail](#) voicing the anger of many MPs with the new expenses system: *"Since its very first day in operation it has served as an obstacle to MPs trying to do their jobs on behalf of their constituents. Not only is IPSA's preferred (and mandatory) system for filing claims time-consuming*

and complicated, IPSA is costing the public three times more than the system it replaced.”

Only last month, Conservative MP Adam Afriyie, tabled a bill to reform IPSA by reducing its budget.

Freedom of Information abroad

Republic of Ireland

Republic of Ireland is suffering from a dangerous democratic deficit in the area of government openness, according to the [Irish Times](#) which cites a [discussion paper by Dr Nat O'Connor](#) published in late July.

The article argues that proactive opening of public sector information in openly accessible and reusable format has further benefits than a mere government transparency: *“Costs, as O’Connor points out, are almost certainly outweighed by economic advantages. And if all the talk about a technology- driven smart economy means anything, where better to lead the project than by opening up the processes of our democracy to scrutiny and analysis by all?”*

New FOI laws in Malaysia, Liberia and Kazakhstan

[The Federal state of Selangor](#) becomes the [first Malaysian state to introduce a freedom of information legislation](#) after creating The Selangor Freedom of Information Enactment. This has been warmly greeted several NGOs, including the [Centre for Independent Journalism, which recently has added to calls for the federal government to introduce FOI act](#) arguing that it would be one of the best tools to keep corruption at bay.

The House of Representatives of Liberia unanimously voted to [pass the Liberia Freedom of Information Law on July 22](#), making Liberia the latest African nation to adapt FOI legislation. The law is expected to be signed by President Ellen Johnson-Sirleaf by the end of August. The passage of the law has come about after intense lobbying of local NGOs and FOI campaigners.

In Kazakhstan, academics, government representatives and NGOs took part in [public hearings to discuss a new bill on improving the state of FOI in Kazakhstan](#). Kazakhstan does not currently have FOI legislation, and the proposed law establishes methods and procedures for acquiring and disseminating public information, while also stipulating the rights and obligations by which users of the information must abide.

The bill, developed as part of a UN Development Program initiative, would strengthen Kazakhstan’s position in the views of international freedom of press and information watchdogs, who have criticised country for the lack of a free press and access to public information.

South Africa

The introduction of the new Protection of Information Bill keeps causing controversy in the Rainbow Nation. [Nicholas Dawes, the editor-in-chief of South African newspaper Mail & Guardian](#), has called the bill a grotesque law which “*would close down plural voices that enrich democracy but sometimes discomfit those in power*”.

The Law is being criticised to allow state officials to classify practically anything that goes inside the government in a fashion that is usually reserved for military secrets. [To read more about the state of FOI in SA, read this month's Country Special](#)

Canada

British Columbian government's Freedom of Information Act consultation process [ended in several recommendations to improve the Act](#) and to 'restore the integrity of the original legislation'.

It is believed that the government bodies far too often abuse the Act – which was hailed as groundbreaking when it was adopted in 1992 – to delay the release of information and deter the public from making requests.

Criticism made during the consultation processes noted that a public bodies used to have 30 calendar days to release the records, but that had changed to 30 business days, extending the deadline by two weeks. Public bodies also have a 30-day extension which they can use whenever they want and they can withhold information if they are planning to publish it within 60 days.

WikiLeaks

Whistleblowing site WikiLeaks continues to be under much international scrutiny after the controversial disclosure of Afghanistan warlogs.

“These [FOI legislations] are useless and do not work. They are created as an illusion and are not relevant. And they'll say something must not be published and then you'll be given an excuse that it poses threats to national security”, [argued Daniel Schmitt, a member of WikiLeaks website, when speaking after the revelation of classified Afghanistan war logs in July](#).

Mr Schmitt argues that leaking sensitive material to the public is not merely entertainment but an important part of making sure that people get the real information in order to fight government corruption and maladministration.

However, [Reporters sans Frontières](#), an international organisation campaigning for freedom of the press, [has deemed the revelation of Afghanistan war logs incredibly irresponsible](#). RSF states that WikiLeaks has played in the past an important role by making available information with public interest but the recent disclosure of the identity of hundreds of people who collaborated with the coalition in Afghanistan is highly dangerous.

Spokespersons of RSF, Jean-Francois Julliard and Clothilde Le Coz end their open letter to Mr Julian Assange: “*Wikileaks must provide a more detailed explanation of*

its actions and must not repeat the same mistake. This will mean a new departure and new methods”.

Data Protection

FOI watchdog asks DWP for explanation on the use of credit info

The Information Commissioner has asked The Department for Work and Pensions to [explain its plans to use credit agencies in order to track down benefit cheats](#). DWP's plan is based on regional trial with housing benefits in nine areas, which saved £17 million.

According to ICO, the Data Protection Act “*is not a barrier to sensible information sharing and some sharing already takes place with credit reference agencies*”, but ICO still has a reason to believe that the latest proposals by DWP may go further and therefore the plans need to be analysed.

Police defends caller database

North Yorkshire Police has [defended its policy to log personal information of innocent callers on a computer database](#). The vast majority of those more than 180,000 people who have reported information - including their date of birth and ethnicity - have not committed any crime.

While privacy campaigners have questioned the need for compiling such a database, the police have said it has been working to government recommendations and that callers were not compelled to give the information.

New Zealand - Ombudsman wants texts and emails stored for potential access

The Office of the Ombudsman is pushing for telecommunication companies to [store text messages for up to a year](#) in order to fully implement Official Information Act. Under the OIA, citizens have the right to ask for any MP's, minister's or government official's texts or emails, and the Ombudsman argues requests for this kind of information are increasing. Currently, telecommunications companies have no obligation to store messages or emails, though if they do, the average storage time is about a month.

The Police Association – the union of NZ police officers - is also calling for all private texts to be stored for potential use in criminal investigations. The whole scheme has raised questions of personal privacy and privacy experts have advised people to be aware of the fact that their private messages could be stored and requested under the OIA or the Privacy Act.

ICO decisions this month

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September 2010

September 28 was World Right to Know Day. [The World Resource Institution has some Q and As](#) about how and why FOI laws are spreading across the globe. [Article 19 celebrate some FOI milestones](#), including the fact that 5 billion people have access to official information now.

Freedom of Information in the UK

Tony Blair regrets FOI

In his [recently published memoirs](#), the former Prime Minister Tony Blair regrets his party introduced the Freedom of Information Act while he was in power. In his self-criticism over the passing of the FOI Act, Blair even calls himself 'an idiot', 'naive' and 'irresponsible'.

Blair argues that FOI is used mainly by journalists instead of ordinary people for whom the act was designed. In [an interview with the Guardian](#) he also states that FOI endangers reasonable decision making:

"It's not practical for government... If you are trying to take a difficult decision and you're weighing up the pros and cons, you have frank conversations... And if those conversations then are put out in a published form that afterwards are liable to be highlighted in particular ways, you are going to be very cautious. That's why it's not a sensible thing."

Mr Blair's recent hostility towards the Act has sparked a lively debate on the purpose and effects of FOI in UK, with likes of Lord Prescott, former deputy prime minister during the Blair years, [siding with his former boss](#) and numerous FOI campaigners and journalists [baffled by the former PM's words](#).

MoJ plans to extend FOI, and their latest FOI stats

Ministry of Justice has [announced their plans to extend the current freedom of information legislation](#) in order to increase transparency. The previous government's plans to extend to organisations such as private prisons were [scuttled following public consultation](#).

The [latest FOI statistics collated by MOJ](#) were released on 23 September: Answers to FOIs made to departments of state were more timely; and more likely to be granted in full than the previous quarter.

National Archives launches the first UK Open Government Licence

The National Archives has launched the [first UK Open Government Licence](#), "*making it faster and easier than ever before to freely re-use public sector information*". [The Government says](#) the move is a key element of their commitment to greater transparency. Tim Berners-Less of the Transparency Board argues that "*It will enable inventive people to build innovative new applications and websites which help people in their everyday lives.*"

The new licence removes the existing barriers to re-using information – it is a streamlined, single set of terms and conditions which provides assurance to anyone wishing to use or license government information at a glance. Being machine readable, it is completely flexible and works in parallel with other internationally recognised licensing models such as Creative Commons.

It will replace the existing Click-Use Licence and enables free re-use of a much broader range of public sector information, including Crown Copyright, databases and source codes. In addition, the new UK licence will not require users to register or formally apply for permission to re-use data.

ICO outlines its policy

Katherine Gunderson from the Campaign for Freedom of Information blog [has helpfully publicised the ICO's publication of its 'Lines to Take' policy](#). The policy documents “*set out how the ICO approaches certain types of Freedom of Information complaints. The disclosure follows a request by Alex Skene, a volunteer who helps maintain the WhatDoTheyKnow.com website.*”

Guardian in Information Tribunal over Prince Charles's lobbying letters

The Guardian has been involved in an [Information Tribunal case on whether the newspaper is entitled to access Prince Charles's lobbying letters](#) sent to cabinet ministers. For five years ministers have resisted the Guardian's freedom of information request for a set of the prince's letters from 2004 and 2005.

Furthermore, it has been recently claimed that the [royal family has pressured government to tighten up FOI regarding to the publicity of Prince Charles's letters](#). The royals would like to make sure that there is no chance his lobbying will be made public under the legislation for 20 years or five years after his death, whichever is longer.

Parliamentary lobbying by Prince Charles is considered controversial by some who claim his letters go [straight 'to the top of the pile'](#), but the extent of his influence in policy-making remains hidden from the public.

The Palace is also facing criticism after documents obtained by the Independent [show the Palace tried to claim a heating grant from a programme designed to help low-income families](#). The [Daily Mail](#) too has revealed the Palace also spent £96,000 on chandelier cleaning.

BBC wins Information Tribunal case

[Information Tribunal has reached a verdict in favour of disclosure](#) on a case whether the government should release the minutes of the 1986 cabinet meeting during which Michael Heseltine walked out and resigned as defence secretary.

Cabinet minutes, which were [requested by the BBC's Martin Rosenbaum in 2005](#), will now be published unless the Cabinet Office decides to appeal against the

decision or use its right of veto to overrule the tribunal. Cabinet Office has five weeks to make its decision.

Meanwhile, on the other side of FOI, the [BBC has released information showing it has spent £392,896.05 in legal fees to external lawyers to deal with Freedom of Information \(FOI\) requests since 2005](#). The costs were disclosed after a request made through WhatDoTheyKnow.

The Guardian reports that [Mark Thompson, the BBC director general, highlighted the frustration caused by some requests](#) made to the BBC in a lecture in Edinburgh in August: *"You can get an idea of the intellectual weight of some of the attacks [on the BBC] from the freedom of information requests we get in. At the BBC, we believe in FOI as journalists and as a public body we believe we should be as open as we can...But I have to say it's still painful to spend public money that could be invested on programmes answering weighty questions like – all these are real by the way: How many toilets do you have in Television Centre and how many accidents take place in them each year? What's your policy on biscuits? And does Gordon Brewer have two fully-functioning ears? He does, by the way."*

Transparency catalogue of charities established

Chris Haggart, the founder of website [OpenlyLocal](#), a local transparency catalogue, has set up a similar platform for the charity sector. [OpenCharities](#) will "open up the information on the UK's Register of Charities, and make it available to the community in a variety of forms."

FOI and Parliament

MP using FOI to obtain polling data

Walthamstow Stadium is being proposed for development, and residents of E17 are being cold-called by a polling company for their views.

But local MP Stella Creasy [has received complaints from residents who say that the option to return greyhound racing to the stadium](#) – favoured by many– was not allowed as a response to the survey questions. They were also angry that the caller did not immediately reveal they were polling on behalf of London & Quadrant, the stadium owners whose plans are to build homes in place of the stadium.

Ms Creasy claims L&Q have refused to reveal the results of the survey to her, so she has made an official complaint to the Market Research Society and has applied for the data under the Freedom of Information Act.

MP facing problems when requesting information

[During a parliamentary debate](#), Leicester MP Keith Vaz (Lab) has revealed an interesting insight on practical aspects of how FOI works.

He had asked every Primary Care Trust how much they have spent on preventing diabetes. According to him, some PCTs thought his question was a FOI request and

thus instantly became very defensive. After it turned out that he would not get the information needed, he asked the Minister of State for Care Services to 'get this information from his Department and place it in the Library of the House'. Vaz pondered whether it is usual that an initial response to a FOI request by MP would be a defensive one.

Amendment of FOIA

In a recent Commons debate, Tom Brake MP (Lib Dem, Carshalton and Wallington) [has proposed an amendment to the FOI Act to abolish the ministerial veto](#). The amendment also proposes “*to limit the time allowed for public authorities to respond to requests involving consideration of the public interest and to amend the definition of public authorities*”.

The moving of the bill prompted Denis MacShane MP to suggest extending the Act to all media organisations too: “*They have far more power than many public agencies, local councils and the rest, which are covered by FOI legislation. What our media organisations and the oligarchs - often from overseas - who own them decide to do has a huge impact on our public life, and any company that is in receipt of taxpayers' money should also be covered by FOI*”.

FOI and Local Government

Councils begin to speak out about the cost of FOI

This month's edition of the [Local Government Chronicle](#) has a focus on the costs of transparency, and features findings from [our annual survey's of local government officials](#).

Malkiat Thiarai from Birmingham City Council fears that new regulations to publish items of council spending over £500 will only increase the number of FOI requests he receives. “*If we say a payment was made to company X, but it doesn't tell you why we spent that money, it is likely to lead to more enquiries.*”

Northamptonshire County Council CE Paul Blantern too fears the moves to greater transparency will only encourage more requests, which are already stretching tight local council budgets. He's calling for limitations to round-robin or 'fishing' requests.

In Aberdeen, the [City Council has approved a new plan to reorganise records management](#) after the Scottish Information Commissioner investigated its consistent failing to respond to requests on time.

Councillor Kevin Stewart said: “*Some of the requests are costly in terms of the amount of staff time it takes to gather the information. I believe information should be open and transparent but I think that some of the requests are ludicrous. We have to put it across to the public, and those who are making the requests, how much it costs to get the information – how much of their money it costs.*”

Data Protection

EU to take UK to court

The European commission is taking the UK government to court for breaching European Union laws on internet privacy. The that the court action follows complaints made by broadband users to the Information Commissioner relating to the secret use of Phorm activity-tracking software used by BT. It enabled BT to monitor users' online habits, an experiment they dropped in 2009 after tests in 2006 and 2007.

The European commission twice wrote to the UK government in 2009 asking it to change privacy laws and it has now said it will use court action to force the UK government to more fully implement the Privacy and Electronic Communications Directive.

BT argue it is "simply inaccurate" to link the court action to the company. "*The potential infraction proceedings relate to an alleged mis-implementation of EU law by the UK government. As such, they are a matter for the EU and the UK government. It is simply inaccurate to describe them as relating in any way to BT,*" the company said.

ICO investigating TalkTalk and ACS:Law

A series of complaints by internet service provider TalkTalk's customers has triggered [an investigation by Information Commissioner's Office on processes by which TalkTalk collects data about websites that its customers visit.](#)

TalkTalk defended the move stating that it is "*not interested in who has visited which site – [this is] simply scanning a list of sites which our customers, as a whole internet community, have visited.*" The recording of customers' browsing behaviour has been a part of a trial for a new security product, which aims to create a master blacklist and a whitelist of dangerous and safe URLs.

However, Commissioner Christopher Graham says he is "*concerned that the trial was undertaken without first informing those affected that it was taking place. You will be aware that compliance with one of the underlying principles of data protection legislation relies on providing individuals with information about how and why their information will be used.*"

The ICO is also going to investigate ACS:Law after the firm accidentally exposed personal details of 5,300 Sky Broadband customers suspected of illegally downloading adult films. ACS:Law is an anti-piracy law firm which takes legal action against individuals accused of breaching copyright laws. The details of the Sky Broadband customers - which had been collected for the purpose of pursuing these individuals in court - were accidentally disclosed when ACS:Law reinstated its website following an online attack by piracy activists. Sky has announced that it is suspending all contact with ACS:Law following the breach.

UK government launches consultation on E-Privacy Directive

DataGuidance reports that the Ministry of Business, Innovation and Skills (BIS) has launched a consultation into how the revised E-Privacy Directive (2002/58/EC) - including the opt-in cookie provision - should be transposed into national law. '[I]t is important that the [opt-in cookie] provision is not implemented in a way which would damage the experience of UK internet users or place a burden on UK and EU companies that use the web', reads the consultation.

FOI Overseas

Ireland

Results from the [annual survey of Irish workplaces](#) has found increasing pressure on public servants as a result of accountability mechanisms, including FOI. The survey finds this unsurprising in the political context of 2009:

“Accountability is also an issue for a substantial proportion of the public sector: 32 per cent of the public sector experiences intense pressure as a result of scrutiny by the media; 25 per cent as a result of requests under the Freedom of Information Legislation... [which has risen from only 7 per cent of the sector in 2003]...”

“In early 2009, there were a number of high profile controversies involving travel and other expenses of politicians and senior officials in public sector organisations and intense media interest in the extent to which large expenditures in the public sector were delivering value for money. In this context, it is not surprising that the issue of accountability and media scrutiny were sources of intense pressure.”

Isle of Man

[Peel Commissioners](#) have [criticised the draft of Freedom of Information Bill](#) for focusing too much on local authorities rather than central government and containing too much loopholes to be an effective scrutiny tool for citizens and media.

Commissioner Alan Jones said of the bill: *“If you are going to have a Freedom of Information Bill, it should make absolutely clear what is to be kept secret, but this bill doesn't do that.”*

Some of the provisions of the bill which are said to be vague or overly restrictive include the exemption of the Lieutenant Governor and Council of Ministers and the fact that information can be refused if it relates to the formulation or development of government policy, communications between ministers or advice from the Attorney General.

Liberia

In September, the Liberian Senate [approved the new Freedom of Information Act](#), which aims to empower both the media and ordinary citizens to freely seek information about the operation of both Government and NGOs.

Among others, Article19, [has welcomed Liberia's new FOI legislation](#) and has urged President Ellen Johnson Sirleaf to immediately sign and implement the law.

According to them, the law includes many progressive features, including a pre-emption of existing secrecy laws and rules, the creation of an independent Information Commission, and a public interest test to limit exemptions.

Australia

The Treasury has [released its briefings to the incoming Coalition Government](#). The brief prepared by Treasury in the event of a Coalition election victory stressed the policy challenges it would face managing long-term structural changes, including the ageing of the population, poor productivity and climate change.

The briefs were heavily censored before being released under a Freedom of Information request, with Treasury's entire commentary on the Coalition's broadband policy blacked out. However, the briefs show Treasury was unhappy with the Coalition's election promises over cutting immigration, arguing instead that population growth rates over the past five years had significantly improved Australia's ability to deal with an aging population.

USA: Mixed report on efforts to open the government

OpenTheGovernment.org, an American NGO campaigning for freedom of information, has released their annual [Secrecy Report Card](#), which indicates that Obama administration has made noticeable progress in several areas of government transparency, but also has areas to still work on.

For example, the report states that the backlog of FOI requests dropped 40 per cent, but at the same time the percent of Federal Advisory Committee meetings that were closed to the public rose to a new high – 73 percent.

USA: Supreme Court to decide whether corporations are entitled to 'personal privacy'

The Supreme Court is set to look at the case of whether corporations are entitled to privacy like other individual persons. The matter concerns whether records AT&T turned over to the government as part of a 2004 billing investigation should be disclosed to its competitors.

[The Huffington Post reports](#) that in 2005, the Federal Communications Commission ruled that AT&T should not be entitled to the disclosure law's 'personal privacy' exemption. But a Third Circuit court reversed the FCC's ruling in 2008. In interpreting the phrase 'personal privacy', the court included corporations in the law's definition of a 'person'. Corporations, the court held, should enjoy the same right as individuals to challenge the release of documents submitted to the government because such a release infringes on their right to personal privacy.

Six public interest groups have argued that unless the Supreme Court reverses this Third Circuit ruling, "*records about safety violations at a coal mine, environmental problems at an offshore oil rig and financial shenanigans at an investment bank,*" could be kept secret.

New Zealand

The Official Information Act 1982 has been examined by the [Law Commission and its discussion paper on improving the Act is open for comment](#).

While acknowledging the law works well - and concluding that "*change to the basic philosophy of the Acts is not in contemplation*," - the Commission has identified some shortfalls.

"Agencies find some of the withholding grounds difficult to apply, and requesters can also have difficulty understanding them. We ask whether any of the grounds would benefit from being expressed differently, or whether more guidance is needed to assist users in working with them. Compliance with the Acts can also sometimes involve considerable resource, and we ask whether there is any way in which unreasonably large requests can be contained so that benefit and cost can be kept in proper balance."

Submissions close 10 December.

Mexico

Washington-based think tank the National Security Archive have [expressed doubts over the fairness and effectiveness of Mexico's much lauded FOI regime](#).

The NSA officials are visiting Mexico to take part in a week of activities launched by México Infórmate, a civil society initiative that promotes FOI.

Thomas Blanton of the NSA says while Mexico's system of access to information is institutionally strong, and even serves as a model worldwide, government officials routinely ignore Federal Institute for Access to Public Information (IFAI) decisions, with no consequences.

It is incredible, he argues, "*that the attorney general, who should be the first person to abide by the law, chooses to disregard the IFAI's decisions.*" He predicted that the next battles over access to public information in Mexico would play out in the Supreme Court. "*The culture of secrecy lives on, which is a worldwide problem, but in Mexico it is more difficult because of the levels of corruption. The IFAI cannot punish unless people go to court.*"

Further, restrictions on access to information from public entities have been stiffened in the second administration of the conservative National Action Party (PAN), under President Felipe Calderon, who took office in late 2006. "*This is a difficult time now in Mexico with regard to access to information, because they have realised (in the government) that these laws are causing problems, and they don't like it.*"

South Africa

Criticism continues over the bill to amend the South African FOI Act. The minister for State Security has expressed his [concern over the negative publicity SA's new information bill could cause](#).

In addition, Pansy Tlakula, the African Union special rapporteur for media and freedom of expression, has said that the bill “[will undo the good work the Republic of South Africa has done to ensure the freedom of information](#)”.

Other critics of the new bill include writer Andre Brink, who believes the bill shows “*apocalyptic arrogance*” and that it recalls the “*worst of apartheid regime*”.

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Freedom of Information in the UK

Cabinet Meeting Minutes Disclosed

The 1986 Westland Cabinet minutes requested by the [BBC's Martin Rosenbaum](#) in February 2005 have been released by the government, compiling with a recent ruling by the Information Tribunal. The minutes concerned a session in which Defence Secretary Michael Heseltine suddenly resigned during a discussion over the possible financial rescue of the struggling Westland helicopter company. He was protesting at then Prime Minister Margaret Thatcher's insistence that all public pronouncements by ministers on the Westland crisis would first have to be cleared by the Cabinet Office. This is the [first time Cabinet Meeting minutes have been disclosed under the UK FOI Act](#).

Government departments warned over tardy FOI answers

The [ICO has started putting into action its tougher approach](#) to Freedom of Information. Public authorities who have not respected the 20-day response requirement are being 'named and shamed'. [33 public bodies](#), including the Ministry of Defence, the Cabinet Office and the Metropolitan Police, have been told to 'get their houses in order' over the issue by the Information Commissioner. The watchdog said the organisations under review had either failed to meet the deadline by a "significant margin" on several occasions or had been the subject of at least six complaints within a six-month period about their processes.

New FOIMAN Blog

A new blog on Freedom of Information has appeared on the Web. The blog, [named FOI Man](#), is written by an anonymous FOI practitioner based in London.

The blogger's aim is to give its readers a view from within which, according to him, has up to now been largely unheard and therefore enriches the debate about FOI's effectiveness and impact on our organisations. [Campaign for Freedom of Information](#) has qualified it as 'interesting'.

Government willing to amend FOI act to make all data reusable and machine readable

Some Councils have been criticized for proactively publishing their spending data in formats which are not machine readable and are hard to reuse (In the Brent Council case for example, the latter released of information in password protected ZIP files to prevent the Whatdotheyknow.com website from publishing it). In response, Cabinet Office minister Francis Maude said [an amendment to the FOI Act](#) would enable information received under the Act to be "*available to everyone and able to be exploited for social and commercial purposes*". He said, "*Thousands of commercial and social entrepreneurs have been frustrated by their inability to obtain and reuse datasets. I'm sorry to say that some councils spend time and money deliberately making data unusable to anyone else.*" The change will prioritize CSV (comma separated value) files and Excel files over PDF documents, which often prevent people from exploring the data in standard spreadsheet software.

Tony Blair's presents

A FOI request made by Lee Rotherham, campaigner against government waste, revealed that Tony Blair left office with [76 prime ministerial gifts](#). It took Rotherham 10 months to obtain the list and required two interventions by the Information Commissioner. Until now Tony Blair was known to have taken 22 items. In the new list, it is revealed that that he took with him three guitars, one signed and presented to him by Bono. However, he left a nativity scene given by Yasser Arafat and an Ipod given by Arnold Schwarzenegger. Under the ministerial code, gifts become the property of the government. Ex-prime ministers are allowed to keep any present they received which is worth less than £140. For items which cost more, they have to pay the market price minus £140 to be able to keep them. Both the Cabinet Office and Mr Blair's office have refused to confirm how much he paid for the items.

Police chief wants FOI fees

Sir Paul Stephenson, the Commissioner of the Metropolitan Police, has urged the Home Secretary to [introduce fees for FOI requests](#) in order to avoid court action against officers. In 2009-10 the force received 3,373 such requests, which he says takes time and personnel to process. Money is being wasted on speculative claims, argues Stephenson, with lawyers gaining large fees that would be better spent fighting crime. Maurice Frankel, chair of the Campaign for Freedom of Information, said the plan would help police hide from scrutiny and cost the taxpayer more money: *"The intention would be to discourage people making requests. The effect would be to shield the police from many of the requests they get."* The [Lib Dem London Assembly policing spokesperson, Dee Doocey](#) has also reacted to the lobbying of Stephenson: *"It seems the Met is just seeking to wriggle out of being held accountable"*.

Local Government

It is now possible to do [one click FOI requests](#) on individual spending items on the [Whatdotheyknow](#) website. Furthermore, the requests are tagged which allows one to see on a transaction page if any requests have already been made about it.

FOI and Parliament

ICO criticised by MP on Google investigation

Tory MP Robert Halfon has slammed Christopher Graham, the Information Commissioner for ['lily-livered' Google probe](#). Indeed, the ICO faces sharp criticism in Parliament over his handling of an investigation into Google's Street View Wi-Fi data harvesting operation. According to Halfon: *"When its officers first investigated this outrage, they visited Google's headquarters, had a nice chat with its senior executives, went through their computers and decided to do nothing."*

Cost of MPs Golden Parachutes revealed

The cost of the golden parachute payments has been disclosed by the House of Commons for the first time following a Freedom of Information [request from The](#)

[Daily Telegraph](#). According to the official figures obtained, MPs who resigned or lost their seats at the general election received more than £10.3 million in these controversial "golden parachute" payments.

FOI Overseas

Australia

Next month Australians will be able to make [FOI requests by email](#) and without charge as changes are made to the 28 year old law. John McMillan, the Commonwealth's first Information Commissioner – the post was only created this year - said that these changes "would transform government as departments realised old rules were gone and there was a new emphasis on pro-disclosure."

The IMF

In an open letter to the IMF's Board of Governors, a coalition of leading international economists and development specialists called for governance reforms. These include better disclosure policies to ensure greater transparency in the agency's otherwise opaque procedures. [The 13 signatories suggest](#) "*a significant improvement to the limited and outdated disclosure standards of executive board decision-making with presumed predisclosure of board documents and timely disclosure of board transcripts, to allow citizens of member countries prompt access to its proceedings.*"

Liberia

The president of Liberia, Madam Ellen Johnson Sirleaf, signed on 8 of October the [Freedom of Information Act into law](#). This move has made Liberia the first West African country to adopt such legislation and only the fourth of the African continent as a whole. A few days later, Ellen received the title of '[Friend of the Media](#)', a prestigious award given bi-annually to political leaders, who contribute to a media-friendly environment during their terms in office. This FOIA now gives every resident in Liberia the right of access to information held by any public authority or private body carrying public functions; and with the exception of exempt documents no authority shall refuse to give access to document requested.

Meanwhile, in Morocco, The Secretary General of Morocco's Ministry of the Modernization of Public Service has told a newspaper that an inter-ministerial committee has been established to [draft a law on access to information](#). The proposal is expected to be prepared mid-2011 when Morocco will host the fourth conference of the UN Convention against Corruption (UNCAC).

Kazakhstan

ARTICLE 19 has released [an analysis of the Kazakh draft law](#) highlighting many of its positive features, including broad definition of the right to access information, good process guarantees, specific obligations of proactive disclosure, and the recognition of a right to attend public meetings. The analysis also identified the weaknesses of the draft law and recommends a number of improvements aiming to

bring the draft in line with international standards. The most serious shortcomings of the law are the broad regime of exceptions and the mechanism securing the enforcement of the law. ARTICLE 19 calls on Parliament to urgently adopt the draft law, subject to its recommendations, and make it fully operational.

South Africa

The [Right2Know coalition](#), with its more than 350 civil society member organisations, was able to mobilize a broad front of protesters against the Protection of Information Bill this month in Capetown. They [marched to Parliament](#) to make their message heard: “*The Protection of Information Bill is bad for all of us. Freedom is not a gift voucher handed out by the government, redeemable for a limited time only, terms and conditions apply.*” The Right2Know campaign hopes that this march will make State Security Minister, Siyabonga Cwele, have a hard think about his law which is “*an appalling threat to transparency.*”

This march comes in response to [the government's support for the major thrust of the Bill](#) reaffirmed earlier this month. Cwele [urged Parliament not to buckle to pressure](#) for the inclusion of a public interest defence that could shelter whistle blowers who violate state secrecy.

Data Protection

Oxford University starts first DP journal

Oxford University Press has launched International Data Privacy Law (IDPL), which, according to the [Information world review](#), is the only international journal to offer specialist coverage of the law relating to data protection and privacy. The launch comes amid intense data protection and privacy concerns. Christopher Kuner, the journal's editor-in-chief says “*IDPL has three main missions, namely to be global; to span the gulf between scholarship and practice; and to help solidify the position of data protection and privacy law as a central area of importance for the individual, the economy, and the development of new technologies.*” Bojana Bellamy, director of data privacy, Accenture expects IDPL to become “*an indispensable tool for in-house lawyers and privacy officers working in this field.*”

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Freedom of Information in the UK

Interview with the Information Commissioner

In an interview held early November, the [Information Commissioner, Christopher Graham, outlined the challenges the Office will have to face in the years to come](#). These include trying to do “*more for less*” due to the spending cuts affecting public organisations including the ICO. At the moment, it receives over £5m for FOI through grant in aid from the Ministry of Justice, and according to Graham, “*the office has never been busier*”. This trend can be explained by the fact that the office received publicity with the MP expenses scandal and that the government has changed and put information rights at the top of the political agenda. This puts the office in “an exciting place” but Graham admits it will be tough dealing with the workload with the planned cuts. Graham also talked about his priorities for the coming year which include making his office more obviously independent of government. He says it would help him “*see off some of the swivelled-eyed critics of the Information Commissioner’s Office who thinks it’s all a government plot*”.

Chris Graham is the last speaker in [our 2010 FOI seminar series](#), on 7 December.

More government spending online

[Cabinet Minister Francis Maude on 18 November launched new spending data](#) on data.gov.uk – now every Whitehall payment over £25,000 is available for download and mashup. The coalition Government committed to releasing this spending information pro actively, in a format that allows scrutiny by anyone with the necessary time, software and skills. [Information Commissioner Chris Graham welcomed the publication](#), describing it as “*the start of a new and exciting chapter for freedom of information – or what could be called FOI version 2.0*”. However, The FT noted [analysing the data still posed significant technical challenges](#) (although no files were released as locked PDF documents as was sometimes done before). They argue comparing spending across Whitehall will continue to be difficult unless the data is subjected to an extensive ‘cleaning’ process; for instance, ensuring departments are describing categories of spending in the same way, or identifying payees by the same name (e.g. BT or British Telecom). Helpfully, the [Open Knowledge Foundation](#), are developing a series of database lookups to regularise the data in order to collate suppliers and expenditure types across departments. FOIman – an anonymous FOI officer based in London – [feels the usefulness of the data is limited by a lack of context](#): “*I’m not saying that these details shouldn’t be scrutinised, but if you’re going to report it with an arched eyebrow, in words dripping with insinuation, shouldn’t you first be sure of the context of the spending? Shouldn’t you report that alongside the figures?... It’s not truly Open Government if we’re just thrown batches of figures and cheap shots at the public sector.*” This month, [FOIman has been interviewed by HelpMeInvestigate](#) – a website for investigative journalism – about the impact of FOI legislation, the difficulties both users of the Act and FOI officers face and the future of government ‘transparency’.

University's proactive publication

As financial pressures mount on the university sector, [the principal of a leading Scottish higher education institution has promised total transparency over travel expenses](#). The Royal Scottish Academy of Music and Drama (RSAMD) in Glasgow will become the first such institution in the country to publish detailed staff expenses online. Spending by its principal, John Wallace, will appear on the RSAMD website from January, with the expenses of senior staff and other employees following soon after. Mr Wallace said he wanted to make the information public to show how essential it is for the institution to incur travel expenses. These, he says, are needed to ensure foreign students keep coming to Glasgow, and to raise the cultural profile of Scotland. The move was welcomed by Glasgow MSP Bill Butler, who recently criticised university professors for claiming tens of thousands of pounds in expenses last year. He said it should be compulsory for university expenses to be made public. "These people are employed by the public purse," he said. *"I would congratulate this principal on this initiative and I would hope others follow in his footsteps."*

Scotland extension of FOI unwelcome

CBI Scotland, a leading business organisation, is [opposed to the Scottish Government's proposal to extend the Freedom of Information Act to firms providing public services](#). The firm said there was "*no convincing case*" for the move which it claimed would create confusion and increase red tape. It added that it would also become more costly for firms to operate. But [FOI commissioner Kevin Dunion disagrees](#): *"It was always anticipated that the Act would be extended to such bodies, to keep pace with the trend towards delivering public services through contractors, local authority trusts and others, and I support the Government's proposals."* He also added that *"Billions of pounds are being spent from the public purse to pay contractors to provide health, education, and prison services. It is reasonable to expect them to respond to requests for information about what they are delivering."*

Local Government

Hampshire county council wants to charge for requests

[Hampshire County council has expressed its will to charge for some FOI requests](#). It believes that people who make profit out of the information they request via FOI should be charged for it. Councillor Davidovitz said of the media: *"They are benefiting from research we do on their behalf, at our expense. I see nothing wrong with charging organisations who benefit from the information we give them, for the service we provide. Why should taxpayers pay for newspapers to benefit?"* Maurice Frankel, from the [Campaign for Freedom of Information](#), stressed charges needed to be specifically designed to remain fair: *"The Act is designed so companies looking for information to improve their own contracts, or compete with the council, can be refused. We have no real objection to straightforward commercial requests carrying a charge. But researchers work for charities and universities, as well as for companies, while newspapers are an important point of scrutiny of local authorities. Neither should be discouraged from their work, which is an important part of transparent government. We'd definitely oppose such a measure."* [Local Government Minister Eric Pickles subsequently rejected Hampshire County Council's plea](#). And Bob Satchwell, the Society of Editors' executive director, [called the Hampshire initiative "ludicrous"](#).

Woking Council to keep better tabs on FOI

Prompted by a councillor looking for how much FOI costs, [Woking Borough council will introduce a centralised recording system FOI requests next year](#). Cllr Bryan Cross, in a five-part submission to council officers, asked for details on how much money had been spent by the borough council preparing answers to requests over the past two years, and how many had been received in total. Cross tried unsuccessfully to find out the highest number of requests made by one individual, and also asked what proportion came from media organisations.

Council Leader John Kingsbury, told Cross he was unable to divulge specifics as the information was not centrally or separately monitored.

Now the matter is will be discussed at a meeting of the executive committee in late November. In the official notice of motion, Cross has asked the council to update its policies so that each request must go before a director or head of the council's legal service before it could be released. In a statement responding to Cross's request, the council confirmed a central record of FOI requests would be kept from next April, which it hoped would serve three main purposes: "*First, it will identify areas of information that might benefit from pro-active dissemination; Second, it will help to ensure that FOI requests are properly and consistently dealt with; Third, it will make it easier to identify persons who abuse the system by submitting repeated requests for information.*" But the council confirmed it would retain its current system for allocating responsibility for requests, rather than referring all automatically to a senior level.

Waste contractor's details to remain secret

[The Court of Appeal has ruled that Veolia Environmental Services does not have to reveal details within the schedule of their contract with Nottinghamshire County Council](#).

The case centred on the Audit Commission Act 1998, rather than on Freedom of Information legislation, and the right of 'any person interested' to inspect and take copies of council accounts and contracts during a council's audit. The appeal judge ruled that the company had "a right to privacy and quiet enjoyment of possessions" under the European Convention of Human Rights.

Kirsten Whitfield, an associate of the law firm Wragge, said the outcome would reassure contractors. "*The [previous] High Court decision left suppliers to the local authorities feeling vulnerable given the potential for a back door to their confidential and commercially sensitive information.*" The appeal case judge argued that an unlimited flow of information did not necessarily benefit the public because the result was "*potentially anti-competitive*". Veolia Environmental Services managing director Steve Mitchell welcomed the ruling: "*We have always believed that it was wrong to make commercially sensitive material available to our direct competitors as this could potentially have an adverse effect on the benchmarking process and drive up the cost to the local taxpayer.*"

FOI and Parliament

IPSA won't publish receipts

The Independent Parliamentary Standards Authority (IPSA) has announced that it would be [too expensive to publish MPs expenses receipts online](#). "The cost of preparing tens of thousands of receipts for publication would be more than £1 million a year and would not provide value for taxpayers' money," said a spokesman. Instead, MPs' claims under the new expenses regime will be published on IPSA's website under general categories - such as 'travel' - with a description of each claim. [Unlock Democracy have reacted furiously to the announcement](#), urging supporters to write to chair Sir Ian Kennedy: "Publishing expenses and receipts was the reason IPSA was created in the first place – to clear up the secrecy behind MPs expenses Don't let them get away with what will be business as usual. IPSA was set up to be independent of MPs and to promote transparency and restore trust. How does this decision do that?" [IPSA too has been criticised by the ICO when MPs personal details were accidentally placed at risk on the MPs expenses database](#).

Parliamentary Privilege no defense for MPs

The [Supreme Court has ruled against the three ex-MPs being protected by Parliamentary Privilege](#). David Chaytor, Elliot Morley and Jim Devine are facing criminal charges over their expenses lost their final appeal. They had appealed against an earlier ruling which had decided that PP does not apply to expenses cases. The Court of Appeal explained that the 302-year old law was designed to encourage free debate in parliament by freeing MPs of anti-slander laws and those governing contempt of court. However, the court ruled PP was never supposed to apply to "ordinary alleged crimes". This month, the Supreme Court agreed, and ruled the MPs [should not have their fate decided in Parliament](#) but instead should be tried in a criminal court. The former MPs will now face separate trials at London's Southwark crown court, the first of which is due to begin on 22 November. If found guilty of theft by false accounting, all three could face a maximum sentence of seven years in prison.

Secretary accused of 'bias' as MPs' request 'snubbed'

Scottish Secretary Michael Moore has been [accused of turning down a freedom of information request because of the political affiliation of the person who made it](#).

Scottish Labour's general secretary Colin Smyth has made a formal complaint to Information Commissioner Christopher Graham after a request for details on correspondence, discussions and meetings between Mr Moore and Deputy Prime Minister Nick Clegg over the clash of the Holyrood election and alternative vote referendum next year was rejected. The basis of the complaint is a briefing document sent to Mr Moore from a civil servant on answering the question from Gordon Aikman. The briefing paper was accidentally forwarded to Mr Aikman instead of the answer. In the opening sentence, the document reminds the minister that Mr Aikman is "a Labour Party researcher". Mr Smyth said the identity and political affiliation of the person making the request was irrelevant and not a legal ground to refuse it. He has questioned why Mr Aikman's job and political affiliation were

included in the briefing document and suggested that it was the real reason for the refusal. A Labour spokesman said: "*This is an extraordinary admission from the Scotland Office. It is outrageous to use someone's political views as the basis of deciding whether information should be released or kept secret.*" A Scotland Office spokesman said: "*The decision was made on advice received by the Cabinet Office and in accordance with the correct procedure. The identity of the person making the request was in no way a factor in the decision-making process.*"

FOI in the House

The House of Lords has approved the [FOI \(Time for Compliance with Request\) Regulations 2010](#) giving academy schools longer to respond to Freedom of Information requests.

The [question of extending the FOI Act to the National Union of Students and the Local Government Association remains unanswered](#), despite a parliamentary question by Conservative MP David Morris. Jonathan Djanogly replied: "*The Government are considering a range of options to increase transparency, including extending the scope of the Freedom of Information Act to additional public authorities. The Government will announce their intentions in due course.*"

FOI overseas

Australia

This month has seen the commencement of [the most significant reform of freedom of information laws in two decades in Australia](#). According to The Office of the Australian Information Commissioner (OAIC) media release, 'the Commonwealth Freedom of Information Act 1982 (FOI Act) has been revised to inject a much stronger pro-disclosure philosophy. A new Information Publication Scheme will require government agencies to publish far more information. Other changes include the simplification and narrowing of the range of exemptions from access, a new single public interest test weighted towards disclosure, and the abolition of application fees for accessing documents.' Professor McMillan, head of the OIAC, said that "[t]hese changes reflect a broader policy change that acknowledges that information held by the Government is a national resource to be managed for public purposes."

See this [month's country profile](#) for more information about Australia's revamped FOI regime

France

[AccessInfo and Regards Citoyen allege a Bill in the French parliament](#) before the end of the year will result in the police carrying out "behaviour" checks on members of the public and organisations wanting to reuse information obtained from public bodies. The groups said proposed amendments to the 1995 Police Security Act would [significantly complicate and slow access to information in France](#). "*This is an extremely dangerous law which would seriously limit freedom of expression in France,*" said Helen Darbishire, Executive Director of Access Info Europe. Access

Info Europe and Regards Citoyens have drafted a letter to ask the MPs involved to withdraw the amendment.

Sierra Leone

The fight for the [enactment of the Freedom of Information Bill \(FOI\) has taken a further step ahead](#) when on Thursday 11 November, Parliament gave the government-proposed bill a first reading and referred it to a [legislative committee for further scrutiny](#). The [Society of Democratic Initiatives](#), a leading member of the Freedom of Information Coalition, said it *“hopes for a speedy resolution of due process and therefore prompt enactment of the Bill into national legislation.”*

South Africa

The chairman of the ad hoc committee in the South African parliament working on the controversial [Protection of Information Bill has said, according to media accounts, Parliament will not likely pass the Bill this year](#). *“Parliament has got specified time periods in which bills have to be completed before it can be debated. We have not been able to meet those time periods,”* he explained. Looking ahead, [The Times said](#) that MPs *“are expected to spend coming weeks trying to harmonize the contentious Protection of Information Bill with liberal post-apartheid laws that guarantee access to information.”* In another development, State Security Minister Cwele promised that the media will be consulted when regulations detailing the introduction of the Protection of Information Bill are drafted. Cwele said editors would be consulted on the drafting of the regulations to ensure that the law is not used to infringe on the work of media specifically.

United States

President Obama has established [a new system for the handling of certain sensitive government documents](#) which will replace an ‘inefficient, confusing patchwork’ that *“has resulted in inconsistent marking and safeguarding of documents, led to unclear or unnecessarily restrictive dissemination policies, and created impediments to authorized information sharing.”* [Under the new policy](#), agencies would use only one term, ‘Controlled Unclassified Information,’ to describe documents that officials believe should be safeguarded but that are not delicate enough to warrant being classified. That label would replace almost 120 markings that various agencies had developed to protect information. [Gary D. Bass, Executive Director of OMB Watch said](#), *“This order creates a fair and public process that acknowledges the need for some information control categories while also making clear the need to limit them. As always, implementation will determine if this policy succeeds or fails.”*

Out of concern that many countries fail to fully and effectively implement their freedom of information laws, [The Carter Center has developed the access to information legislation Implementation Assessment Tool](#) (IAT), which serves the dual purpose of diagnosing the extent to which the public administration is capacitated to respond to requests and to provide information, as well as providing an implementation roadmap for the government. The organization said that *“at present there is no objective means of analysing and addressing this critical problem.”* The Center will begin piloting the tool in selected countries, adapting the tool based on its

initial application. *“Before the end of 2011, the Center plans to complete the first series of pilots, utilizing Global Integrity’s Indaba, an online platform for researchers, engage in a series of additional peer reviews, and make all necessary modifications to the tool in order to begin the final series of pilots.”*

Despite assertions that body scanners used in public buildings would not store images, a Freedom of Information request by the [Electronic Privacy Information Center](#) revealed the U.S. Marshals Service had saved tens of thousands of images of employees and citizens who passed through one courthouse scanner in Florida. Now tech site Gizmodo has published 100 of these 35,000 low-resolution body scans that were saved improperly.

Data Protection

ICO proposes post-legislative scrutiny for privacy legislation

[An updated report on the state of surveillance in the UK has been presented by the ICO to Parliament](#). The update follows the 2006 ‘Surveillance Society Report’ and warned that ‘since 2006, visual, covert, database and other forms of surveillance have proceeded apace, with regulators working hard to apply their often limited powers to anticipate and control the next developments’. Information Commissioner Christopher Graham has put forward a proposal to introduce a ‘more formal and consistent approach to ensuring post legislative scrutiny’ for privacy legislation.

“[Many of the new laws that come into force every year in the UK have implications for privacy at their heart](#)”, said Graham. “My concern is that after they are enacted there is no one looking back to see whether they are being used as intended, or whether the new powers are indeed justified in practice.”

The ICO also recommended the imposition of a requirement on the government to ‘conduct a privacy impact assessment when bringing forward any law which engages concerns about increased collection and exploitation of personal details of citizens’, claiming such a requirement ‘may aid parliamentary scrutiny’.

December 2010

Freedom of Information in the UK

End of Year roundup

Martin Rosenbaum's [Open Secrets blog has a good summary of how FOI has developed over 2010](#), covering Wikileaks, the ICO backlog, open data (and the changing face of journalism), Tony Blair, and the wait-and-see-game played by the Coalition Government. *"I think we're at an intriguing stage in the development of freedom of information in the UK. A year ago the context surrounding FOI was dominated by the role it had played in the MPs' expenses saga and the repercussions. Now that we're moving on from that particular while important matter, we can discern some interesting general themes...Data, data, data. That's what we've been getting - and that's what we're going to get more of."*

[Channel 4 News says the "obvious question of 2010 was where does freedom of information end, and too much information begin."](#) They note the 2010 trend of increasing intrusion into public authorities - whether it be taping MPs during constituency surgeries, Wikileaks or 'lobby-gate': *"Did we learn much from Cable (or Julian Assange, or Lord Mandelson's autobiography, or the outing of David Laws over expenses claims) that we hadn't already guessed? Was it enough to justify breaching the assumed confidentiality of MPs' relationships with constituents, and risking less frank exchanges in future?"*

They also note, in defining 2010 as 'the year of the secret that could not stay secret', public figures' willingness to share private information. *"The parameters of privacy appear to be shifting for good."*

They also wonder if information overload is masking the real stories: *"But the bigger question is why we unearthed mountains of gossip but missed big buried truths - the scale of the cuts that would follow the election, precisely how many ministers thought Brown unelectable, what Andrew Lansley's technical-sounding asides about NHS reform actually meant. Amid the noisy cacophony of a multi-platform media, is mainstream journalism losing sight of which secrets matter?"*

My Society watching the bonfire of the quangos

MySociety has noted in its blog that many of the [quangos up for abolition](#) will soon disappear off the FOI radar too. It warns that time is running out:

"This is a great opportunity to highlight that mySociety's Freedom of Information site [WhatDoTheyKnow](#) covers nearly all of these little-known bodies that spend public money (we currently have just over 3,800 public authorities listed on the site). Given their impending doom, there is little time left to find out what they spent public funds on, as only their most important records will be transferred to the National Archives or successor bodies for permanent storage. The remainder are likely to be shredded, or deleted, as only "[records identified as valuable for future administrative need](#)" are kept."

Cabinet manual addresses FOI

The Cabinet has launched [Britain's first cabinet manual \(draft\)](#), which lays out basic conventions for the proper conduct of government. Martin Rosenbaum from the BBC [has found fault with a few of the statements made regarding FOI](#):

"For example, paragraph 389 states that information may be exempt from FOI if it 'relates' to defence or international relations or numerous other matters it lists. In fact, for most of these areas, what the Freedom of Information Act actually says is that the exemption can only apply if disclosing the information 'would, or would be likely to, prejudice' defence, et cetera... The same paragraph also asserts that another exemption is 'if the cost of complying with the request would exceed £600'. Strictly speaking this isn't an "exemption", but putting that more pedantic point to one side, the statement is still extremely misleading."

FOI and Parliament

Libel and WhatDoTheyKnow - Lord Lucas' amendment could help...

[Francis Davey has blogged about the potential damage a libel case could do to WDTK](#) - a charity with little means to run a test case on libel and publishing FOI requests:

"Consider the recent case... in which one of the alleged libels was contained in a 'briefing report' prepared by the local authority and sent to the Department of Education. If a member of the public made a successful FOI request via WDTK for that report, WDTK's software would automatically republish it on their site. The Claimants might well ask WDTK to remove the disclosed material — what then is WDTK supposed to do?..."

There is an absurdity about this since if one FOI request is successful then (because of the 'applicant blind' approach) so ought a subsequent one...

The common law might recognise this absurdity and decide that publication of FOI responses was a form of qualified privilege. There is a line of old authorities that the publication of a fair and accurate copy of (or extract from) any register kept pursuant to statute and which by law the public are entitled to inspect attracts the defence of qualified privilege...

That reasoning appears to be equally applicable to republication of an FOI request... All this is not of much use to WDTK. The last thing they would wish to do is to litigate this question. What is interesting to lawyers is rarely rewarding to their clients. It would be much better if the question were settled by statute."

Francis calls for an amendment to the Defamation Act 1996, and an anonymous comment has recommended [Anthony Lester QC's bill](#) as a way to do this, as "*Bills drafted by Lord Lester have a habit of turning into laws.*"

Lib Dems 'furious' over Royal exemptions

The [Daily Mail has reported Liberal Democrat MPs are angry that the Royal Family is set to get a blanket FOI exemption](#), against the spirit of the Coalition Agreement which endorsed further openness.

A new 'right to data' law, it is claimed, will not cover information held by public authorities about the royals, nor the royal households themselves. FOI requests to public authorities have disclosed Prince Charles' lobbying of government ministers, and the costs of Prince Andrew's trade ambassador role.

[Katherine Gunderson from CFOI](#) notes that currently, Section 37(1)(a) of the Act "*provides an exemption for communications with Her Majesty, other members of the Royal Family or with the Royal Household, but the exemption is currently a qualified one subject to the Act's public interest test.*"

The [Constitutional Reform and Governance Act 2010](#), amended Section 37 creating a new absolute exemption for communications with the monarch, heir to the throne and second in line. However, this change still has to be enacted via a statutory instrument. The Mail reports a senior Lib Dem with access to the new bill's negotiations said he was 'livid' over the attempt to restrict the reforms. "*It was written into the Coalition agreement that the scope of the Freedom of Information Act would be extended... Openness in Government is part of the spirit and philosophy of the party, and that should extend to finding out how the monarchy is spending taxpayers' money. We have made enough compromises as it is to take our place in the Coalition and we are not really in the mood to make any more.*"

FOI and Local Government

The Unit has produced our latest report of the state of FOI at local government level. [The FOIA 2000 in 2009: The experience of local authorities in England](#) is the report of our 2009 English local government survey, which elicited 117 responses from council FOI officials all across England. Findings from the survey include:

- The number of requests made to English local councils has increased by 38 per cent from 2008 to 2009.
- Requests are being processed faster, and at a lower cost per request.
- The proportion of requests which resulted in full release of information has slightly decreased from 2008 levels, as has the proportion of requests processed within the 20 day time limit.

You can access our previous Local Government surveys on our [Local Government project page under the Surveys tab](#).

Councillors asked to cut back on making FOIs

[Tending Councillors have been asked to make 'less formal' approaches for information](#) after Finance controller Peter Halliday says their FOI requests are taking too much time and money to process.

Tending does not keep any detailed records on the source of FOIs, but Halliday says from October to December, the council has received over 50 FOIs, three of which were from councillors. "*Our officers are under a lot of pressure and we have to look at where they are spending their time. Every hour they spend on the requests, they are not spending on delivering services for the taxpayer.*"

However, councillors Pierre Oxley and Chris Griffiths disagree and believe Halliday's stance undermines the spirit of FOI. "*This totally undermines the principle of the requests,*" says Oxley, who made two requests in the last two months. "*The whole idea is it's official. You would potentially get only half the information.*" Griffiths, who has also used FOI, says he did not think asking a councillor for information was always the most appropriate first step. "*If you ask people with a political background, then you get a political slant.*"

FOI elsewhere

Wikileaks divides opinion

While [Wikileaks' Julian Assange has been granted bail](#), opinion among transparency advocates remains divided. Millions of diplomatic cables have been revealed and disseminated by leading news organizations - the New York Times, The Guardian, Le Monde, El Pais and Der Spiegel - unlike previous Wikileaks releases which were placed straight into the public domain.

This somewhat tempered approach has been supported by Reporters Without Borders head Jean-Francois Julliard. "*We like this partnership with the newspapers and this work to put things in context, verify the information and draw lessons from it,*" he said.

[Assange's current - and former - supporters are divided on his motives and what Wikileaks can achieve.](#)

An associate of Assange says there is something of the 'naive libertarian' in Assange's approach. "*He makes that connection between government and conspiracy. He really does think that WikiLeaks is going to change the world ... he constantly expects that it will achieve change through telling the truth.*"

Laurent Joffrin, editor of France's left-wing Liberation daily, a champion of media freedoms, has warned, "*In a world criss-crossed by violent conflict, a state can not permanently operate under the constant gaze of opinion.*" The Financial Times agrees, stating, "*Much, but not all state information should be public. In order for states to conduct their affairs effectively, and ensure the security of their citizens, some secrets must remain.*"

[Filmmaker Michael Moore disagrees.](#) "*We were taken to war in Iraq on a lie...Hundreds of thousands are now dead. Just imagine if the men who planned this war crime back in 2002 had had a WikiLeaks to deal with. They might not have been able to pull it off.*"

Australian FOI advocate Stephen Collins is hopeful: "*We can adopt a new worldview where we allow acts such as Cablegate to become the catalyst for change and we renew diplomacy, change journalism and open up government.*" His post is part of an [interesting discussion among FOI advocates in Australia, where opinion of the consequences of 'cablegate' \(and of Julian Assange himself - are deeply divided.](#)

Scotland - Dunion warns cuts will effect FOI

Scottish Information Commissioner Kevin Dunion is warning that impending public spending cuts will negatively impact the processing of FOI requests. Adding to this, he believes the number of FOI requests will increase as public authorities come under pressure to cut costs and streamline services. *"There is a recognition that the public will want to know why certain choices have been made, and how services are going to be affected,"* said Dunion.

His comments follow the findings of a survey of public sector managers, legal advisers, civil society organisations as well as other FOI specialists, conducted by the Scottish Information Commissioner's Office and Holyrood magazine. The [E-Gov monitor reports](#) that *"64 per cent respondents say that they would have less resources to follow through FOI requests from the public. 21 per cent respondents believe that the current economic malaise strengthens the case for FOI."* You can read the more from the survey on the [Scottish Information Commissioner's website](#)

International Aid transparency lacking

[Publish What You Fund](#) (PWYF) has developed an Aid Transparency Assessment. This is the first global assessment for aid transparency. It compared the transparency of 30 major donors, ranking their commitment to aid transparency, the transparency of aid to recipient governments and transparency of aid to civil society organisations.

[Jonathan Glennie from the Guardian's Poverty Matter's blog](#) notes, *"the weight given to these three areas can be adjusted, but when weighted equally, the World Bank appears the most transparent donor, while Japan ranks as the least."*

The Netherlands and the UK come second and third respectively, while France, the US and Italy are in the bottom ten.

PWYF were also limited in their assessment by a lack of primary data: *"Our first major finding is that there is a lack of comparable and primary data available. This meant we couldn't do the type of bottom up assessment we wanted to and highlights the essential nature of what donors are doing in building an international standard."* You can read the whole PWYF 2010 report here: [Aid Transparency Assessment 2010](#)

The Guardian has also published an [interactive Global Corruption Index for 2010](#).

National Budgets Survey 2010 - limited improvement across the world

The [International Budget Partnership \(IBP\)](#), has published its latest [Open Budget Index](#) (OBI), which is the 'only independent, comparative, regular measure of budget transparency and accountability around the world'. The index is based on a survey carried out in 94 countries, measuring access to national budget processes and opportunities to participate, and the strength of formal oversight institutions.

[The Guardian's Poverty Matters blog notes](#) that *"Overall the state of budget transparency is very poor. Despite progress being made, with almost all countries*

improving a little or a lot (there is always more information being published) 74 of the 94 countries do not provide comprehensive budget data to their citizens."

It is interesting to note that there have been some small victories, but what many countries' lack is not data, but a will to share it: *"After the 2008 survey was published, Brazil sent an official to the IBP offices to ask for advice and now publishes a citizens' budget report. Peer pressure works... The most striking finding is that countries can improve their ranking simply by publishing the documents they produce anyway. The work is done, the data is known, but it is not shared."*

Other notable findings include:

- A number of middle-income countries do better than richer countries, including South Africa, which tops the index, meaning it has the most open budget in the world
- Latin America does well (except for Bolivia and Honduras, which do terribly)
- India and Sri Lanka are also near the top, beating Spain and Italy for budget transparency.
- The most improved countries are Egypt, Liberia and Mongolia.

Politics, culture, economy: the reasons why FOI is not embraced

[Journalism researchers from the University of Arizona have been studying the reason why FOI is so underdeveloped in the Arab world](#). Of the 22 Arab states, only one - Jordan - has FOI legislation. There are currently draft FOI bills in several Arab states, and the researchers wanted to look at the context in which these bills were progressing.

"Interestingly, the US Agency for International Development has provided funding support in the region for news media and civil society networks that are advancing government transparency ideology," said Jeannine Relly, a co-author of the study.

Study authors Relly and David Cuillier examined twelve political, cultural and economic factors that have been associated with countries that adopt freedom-of-information laws, such as press freedom, lack of corruption, women's rights, literacy, wealth and telecommunications infrastructure. The study is published in the recent issue of *Government Information Quarterly*. They found that Arab countries closely mirror other countries that haven't adopted freedom-of-information laws, suggesting that the political, cultural and economic environments are not conducive for government transparency in the Arab world.

In the area of the economy, some Arab countries should be able and prepared to set up the infrastructure necessary for implementing freedom-of-information laws. They share the wealth of many countries that have access laws. But as the study indicates, just because a country is wealthy doesn't mean its government will be forthcoming with information. Further, much like the Unit's conclusions [in our book on Freedom of Information in the UK](#), the researchers found political will appears to be one of the most important factors in government transparency.

Data Protection

First fines for Data Protection breaches

[The first two fines for Data Protection Act breaches have been issued by the ICO](#) since it was given new powers in April to issue monetary penalty notices, up to £500,000 pounds.

Herefordshire County Council has been issued a fine for £100,000 for two 'serious incidents' where employees accidentally faxed personal details - including criminal records and care proceedings of three children - to the wrong recipients. Employment services company A4e has been fined £60,000 for the loss of an unencrypted laptop which contained personal information relating to 24,000 people.

In relation to the first case, Information Commissioner Chris Graham said, "*It is difficult to imagine information more sensitive than that relating to a child sex abuse case. I am concerned at this breach – not least because the local authority allowed it to happen twice within two weeks. The laptop theft, while less shocking, also warranted nothing less than a monetary penalty as thousands of people's privacy was potentially compromised by the company's failure to take the simple step of encrypting the data.*"

Home Office to meet groups over RIPA

[Data Guidance](#) has reported that after dismissing a wide public consultation as 'unnecessary', the Home Office is set to meet civil rights and privacy campaigners to discuss the changes planned for the Regulation of Investigatory Powers Act (RIPA).

The Home Office launched a consultation on RIPA in early November 2010. The proposed changes aim to bring the Act into line with EU law, following demands from the European Commission. The Home Office initially stated a meeting with civil rights groups would be unnecessary. "*This is a targeted consultation, not a public consultation*", a spokesperson for the Home Office told DataGuidance, "*therefore a full 13 week period is not necessary. We had already liaised with the relevant parties who would need to respond on the issues.*"

The Open Rights Group (ORG), Privacy International and other digital and civil rights organisations wrote to the Home Office, arguing the consultation was too short and unfair.

The consultation period has now been extended by 10 days, to 17 December 2010, but the groups believe the Home Office needs to do more. The consultation period is "*still extraordinarily short, basically a way of stopping individuals from responding*," says Jim Killock, Executive Director of ORG. "*It is a targeted consultation - one that is targeting the companies who are potentially going to violate the law that they are trying to correct. It's the same as meeting with burglars to discuss burglary charges.*"