



## Archived Information Rights Monthly Updates from the calendar year 2011

[Please note that as these updates were compiled in 2011 hyperlinks may be broken](#)

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### January 2011

#### Freedom of Information in the UK

##### Ministry of Justice announce FOI reforms

This month the [Ministry of Justice announced its intention to extend the scope of FOI legislation](#) to include a greater number of organisations considered to have a function of a public nature. Under the reforms, bodies such as the Association of Chief Police Officers (ACPO), the Financial Services Ombudsman, as well as any company wholly owned by any number of public authorities would be brought within the scope of the Act. The plans also included proposals to decrease the period for which government records are kept secret from 30 to 20 years. However, many of these proposals have a lengthy history, [as the Unit's Ben Worthy identified in his blog post on the topic](#), and some of these bodies were even brought within the coverage of FOI as a result of decisions taken during Gordon Brown's premiership.

[The announcement has been largely welcomed](#) by interested parties and by those more immediately affected. The campaign director of Big Brother Watch, Daniel Hamilton, praised the reform as "a very welcome step towards increasing transparency in government", while the president of the ACPO, Sir Hugh Orde, expressed his enthusiasm for the changes, saying that "[a]ny organisation that operates as part of a key public service should be accountable and open to public scrutiny". However, [Martin Rosenbaum highlighted some significant bodies that were excluded from the plans](#), including Network Rail as well as the private utility and water companies. He also noted that the plans fell

short of some pre-election proposals by the Liberal democrats, in particular the removal of the ministerial veto on tribunal decisions requiring the disclosure of information.

The proposals also include a review of FOI legislation to be carried out later this year, and [Lord McNally, the Minister responsible for freedom of information, has hinted at potential amendments](#) that may come out of the process. In an interview with Michael Rosenbaum, Lord McNally remarked that he is *“still in favour of abolishing the ministerial veto”*, but indicated that there might have to be a corresponding compromise in the form of an absolute exemption for cabinet minutes.

A controversial aspect of the proposed reform is the change to the exemption for Royal correspondence. Since 19 January, communications with the Monarch, the Heir to the Throne and second in line to the Throne are subject to an absolute exemption, whereas a public interest test was previously the case. The lifespan of the exemption, however, has been reduced from 30 years to 20 years, or 5 years after the death of the relevant person, whichever is the longer time. [Republic, a republican pressure group, condemned the change](#), claiming that it *“would make it almost impossible to hold the royal household to account for their actions and spending”*. [Speaking to The Independent, Professor Vernon Bogdanor put forward the case of the Royals](#), identifying political neutrality as a key driving force in the need to maintain the secrecy of Royal correspondence.

### **Scottish FOI reform for the next Parliamentary session**

Bruce Crawford, the Scottish Minister for Parliamentary Business, announced on 27 of January that the forthcoming session of the Scottish Parliament would see [reforms being made to strengthen the Freedom of Information \(Scotland\) Act](#). The main focus of the reforms will be a reduction in the period of time before historical records can be released, and a reduction in the limitation period for the offence of destroying records requested under the FOI(S)A. Currently, the appeals process in relation to FOI requests can take longer than the time limits to bring a prosecution under the Act, making it difficult to prosecute the offence.

In addressing the calls to extend the Act to include a greater number of organisations, Mr Crawford commented that *“Ministers believe it would be premature to extend coverage before the deficiencies in the Act can be put right and the opportunity is taken to strengthen and update the current legislation”*. Reforms under the relevant codes of practice were also raised as a potential means to amend the FOI scheme.

Responding to the news, [Scottish Information Commissioner Kevin Dunion](#), said that Scotland were *“in danger of falling behind in terms of the scope of Freedom of Information...Something like 81 per cent of people are in favour of hospitals being brought within the scope of Freedom of Information.”* Proposals were announced in December 2009 to extend the application of the FOI(S)A to cover private businesses who run prisons, trusts running local authority sports, leisure and cultural facilities, as well as the Glasgow Housing Association. The current reforms, however, will not take up these earlier proposals.

Carole Ewart from the [Campaign for Freedom of Information in Scotland](#) said: *“We are deeply disappointed that the government has reversed its position on extending the Act because of opposition from the private sector bodies themselves. It would have been obvious to ministers before making these proposals that the contractors did not want to be covered, and we are amazed that merely because they have said they don’t like the idea the government has shelved it.”*

However, the Confederation of British Industry (CBI) in Scotland, who lobbied strongly against the extension of FOI, warmly welcomed the government’s announcement. *“Extending freedom of*

*information obligations to private sector suppliers of public services would have been unnecessary, costly, and at odds with promises to simplify regulation and public procurement, so we are pleased that ministers have listened,”* said assistant director, David Lonsdale.

## **ICO publishes guidelines for communications professionals**

[Released on 12 January, the “top tips”](#) have been presented in order to help communications professionals view FOI as part of their communications strategy. The guidelines include suggestions for dealing with potential negative press exposure, encouraging bodies to factor FOI requests into their risk assessment process, as well as advice on practical issues, such as liaising with journalists seeking information. The author of the publication, Susan Fox, expressed her hope that the tips would *“serve as a useful checklist to help communications professionals ensure that freedom of information contributes to a good corporate reputation”*.

## **Upper tribunal to rule on when reliance on exceptions may be raised late in the appeals process**

Defra is appealing a decision of the first-tier tribunal not to consider exempting information from the scope of freedom of information laws, on the basis that the exception was not relied upon prior to appeal to the tribunals. This case may, in part, address the concerns expressed by Information Commissioner, Christopher Graham, who has criticised public authorities who shift their reasons for opposing disclosure when FOI decisions are not made in their favour. Although this decision turns on Environmental Information Regulations, the same issue arises under the FOIA, and so this decision should provide clarity to an area of FOI law that is currently opaque.

## **FOI and Parliament**

### **Refusal to release rendition documents continues under new government**

[The chair of the All Party Group on Extraordinary Rendition has spoken out](#) on the government’s refusal to release documents relating to the UK’s involvement in extraordinary rendition. In his comments, Andrew Tyrie MP suggested that *“[w]ithout transparency there can be no closure on rendition. The scope and limits of UK involvement are still not known and won’t be until information such as that requested by me under FOI is made available.”* Tyrie expressed his hope that the new government might lead to a cultural shift in relation to secrecy.

### **MPs call for debate on the role of FOI in scientific research**

[A group of MPs investigating the inquiries following “climategate” last year, have raised concerns about how the FOI Act applies to university research.](#) Although the focus of the [report](#) was on the two inquiries that followed the scandal, Andrew Miller, speaking as chairman of the Committee, highlighted the *“confusion about how freedom-of-information legislation should be applied to scientific research”* commenting that it *“must be resolved... as a matter of urgency”*.

## **FOI and Local Government**

### **Pro-active publication of council expenses faces difficulties**

[FOI has come under criticism from a number of local authorities](#) following the setting of a deadline for the publication of expenses in excess of £500. [Helen Goodman MP took up the case of councils in](#)

[criticising the communities secretary, Eric Pickles, for the move](#). She claimed that he was merely 'posturing' in placing financial burdens on councils at the same time as asking them to cut £100 million from their budgets. Mr Pickles MP responded by questioning the claims of Durham Council regarding the necessity of hiring additional staff in order to meet the requirements.

[Parliamentary questions from 17 January confirmed that](#) 193 councils of the 326 in England had published the data online as requested. As the deadline looms at the end of this month, there is speculation that many councils will fail to publish the information on time.

## FOI elsewhere

### Constitution Unit article provokes debate in Canada

Robert Hazell and Ben Worthy's article, '[Assessing the performance of FOI](#)' has provoked debate in Canada this month in relation to the government's record on FOI. In light of the study, [Canadian news sources have focused on a perceived failure of the Harper Government](#) to meet the promises of reform that it made prior to the 2006 elections. In a statement on the issue, Canada's Information Commissioner, Suzanne Legault recognised the existence of faults in the Canadian system of FOI, saying "*[w]e can use our own data, and come to the conclusion that our system is in decline.*" Applauding the article, Ottawa lawyer, Michael Drapeau expressed a desire that it should be a "*call to action*" for the general public to reinvigorate their system of FOI.

### US Supreme Court holds hearing on whether companies can have personal privacy

The US Supreme Court heard arguments this month as to [whether a corporation can be considered a person for the purposes of the privacy provisions of the Freedom of Information Act](#). If the court rules in favour of the AT&T et al in their case against the Federal Commutation Commission, then large amounts of company information will be exempt from US FOI legislation. This case provides the US Supreme Court with an opportunity to bring some clarity to the [ongoing debate](#) about corporate identity and personal privacy.

### House Oversight Chairman to investigate potential abuse of FOI by Obama administration

[Darrell Issa, the Republican Chairman of the House Oversight Committee, has contacted the Department of Homeland Security requesting information about possible abuse of the Freedom of Information Act](#). The request came following allegations that the Obama administration had been vetting Freedom of Information requests for political sensitivities. The investigation surrounds a policy that allegedly required political appointees to review freedom of information requests. Matt Chandler, a spokesperson for the affected Department, defended its actions, claiming that it had not withheld or edited any records that agency lawyers considered it proper to release.

### FOI progress in Africa

The new year has brought renewed attention to FOI in Africa. On 19 January, the [Tanzanian government made a promise to fast track FOI legislation](#). Dr Emmanuel Nchimbi, the Minister for Information and Culture, made a promise that "*[t]he government will do everything possible to make sure that the bill is enacted and implemented*". This news comes four years after a draft bill was initially submitted to the government, and as media pressure builds for a tangible outcome.

Similarly, several politicians in Nigeria have [expressed the desire and intent to pass an FOI bill in the coming session](#). Ahmed Aliu Wadada, the chairman of the House Committee on Information, was

quoted in the Vanguard as saying that his Committee would pass the bill. This comes following the [President of the Senate's expressed determination to pass the legislation](#). Adopting a more sceptical attitude, an article in the [Daily Independent](#) suggested that the forthcoming elections would ensure " *that nothing will now happen until the start of the new dispensation come May 29*".

## **Ireland- FOI reveals abuse of position amongst Revenue officials**

A freedom of information request led to the [release of details of Revenue investigations](#) into improper behaviour of officials within the organisation. The release identified officials who were investigated for improperly sharing tax information with third parties, and breaking rules in using colleagues to deal with tax affairs. The information has led some to question the culture within the organisation as comments came to light that suggested such practices may be common place, despite violating a clear code of conduct.

## **Data Protection**

### **Former Commissioner calls for reform of European data protection legislation**

[Richard Thomas, the former UK Information Commissioner, has called for the modernisation of the European framework for data protection](#). Recognising "*the poor reputation [of European data protections laws] for being bureaucratic, uncertain and burdensome*", he welcomed the latest review of the rules, and laid out his thoughts on the subject of reform. The two papers published by Centre for Information Policy Leadership, at which Richard Thomas is the Global Strategy Adviser, highlight two priorities as key for any reform, that of accountability, and a developing a framework of binding global codes "*to improve and streamline arrangements for international transfers*".

## **Data protection day**

[28 January was Data Protection Day](#), with commentators taking stock of the global state of data protection. In India, head of the Data Protection Security Council of India gave a speech pre-empting the Indian privacy reforms expected in the first half of 2011. He took the opportunity to draw attention to the need for "*a strong legal framework, proactive government initiatives, active involvement of, and contribution by the industry, and effective law enforcement mechanisms*". [Disagreements over data exclusivity between India and the EU are considered the biggest stumbling block towards a Free trade Agreement between them](#). Events were held to mark Data Protection Day in Germany, the UK, the US and Canada.

## **Lords criticise SOCA database**

A database used by the Serious Organised Crime Agency (SOCA) 'does not comply fully' with the Data Protection Act or the Human Rights Act, [a report from the House of Lords has said](#).

The ELMER database is SOCA's principal tool in identifying suspicious activity that may involve funds which are the proceeds of criminal activity.

The report by the Lords EU Committee, [Money laundering: data protection for suspicious activity reports](#), finds the ELMER database, holding 1.5 million records, was accessible to too many organisations. The committee also said that the database was used disproportionately to report transactions with a 'very low' level of suspicion.

Concerns over the database were raised in 2009, when the Lords asked the Information Commissioner to investigate use of the ELMER database by SOCA. The committee's latest report was informed by the Information Commissioner's findings. Lord Hannay of Chiswick, chair of the committee said, *"It is important that the government considers whether the current arrangements are still effective and can still be justified... We are glad that the commissioner agrees with our view that the database does not comply fully with the Data Protection Act and the Human Rights Act... We look forward to the response of SOCA and the government to the commissioner's recommendations."*

## **ICO decisions**

[January 2011](#)

## **Information Rights Tribunal**

[Latest decisions](#)

## February 2011

### Freedom of information in the UK

#### Free schools and FOI

The free schools project has been criticised this month for alleged secrecy. Free schools are in an unusual position in relation to the FOIA, as before they are established they are not classed as public bodies, and so cannot be the subject of a request for information under the Act. [Jane Eades, a campaigner against a free school in London, has complained that](#) while she is unable to get the information from the school itself, the Department of Education has refused, or allowed limited access to the documents it holds. She was quoted as saying, "*[t]he whole free school movement is shrouded in secrecy. By the time many people hear there is going to be a free school in their local area, it has already been approved by the government.*" Lisa, commented that "*[i]t is deeply worrying that there is such a lack of transparency around these schools given the impact they will have on children*". Although the Government did not respond to articles on the issue, Toby Young, who is heading plans to create a free school responded to criticism from the NUT and the Anti-Academies Alliance, claiming that their criticism was 'a bit rich' as they are far from transparent themselves.

#### Freedom of Information and Parliament

##### Protection of Freedom Bill to reform FOI

[This month saw the Protection of Freedoms Bill presented to Parliament](#), including a variety of changes to the FOI regime. Among those changes was the inclusion of companies owned by more than one public authority within the ambit of the FOIA.

Other provisions include "*that all data published by public bodies is published in an open and standardised format*", which should make it easier for requesters to manipulate data, and for third parties to access information that is released.

Finally, the reforms will prevent the Information Commissioner from serving more than one five-year term, something that [some commentators have seen as weakening the role](#), while the changes will extend the procedural powers of the IC allowing the office to issue guidance and appoint staff without the approval of the minister.

[Welcoming the announcement, the ICO commented that](#) "[t]he Bill engages with issues that have been longstanding concerns for us", but noted that it would be necessary to examine the Bill's proposals in detail to ensure that the proposals are properly realised in practice.

#### Rendition saga continues

Litigation surrounding the FOI requests of the All Party Parliamentary Group on Rendition was continued this month when Defence Secretary, Liam Fox MP, pursued the ongoing government opposition to the release of the information sought. [Lawyers for Mr Tyrie, the chairman of the group told the Information Tribunal](#): "*It is a particularly troubling aspect of these appeals that, in significant part, the MoD is maintaining its refusal to supply such information not on the basis of harm to public interest that would occur if such information were disclosed but rather on the basis that it would be too time-consuming to comply with the requests.*"

It should be noted, however, that government lawyers have also been opposing the release of information on the grounds that release might harm foreign relations with the United States, threaten national security, and cost more than the limit set by the FOIA. At the time of writing, the Information Tribunal was yet to publish its decision.

### **Project Merlin leads to proactive disclosure of bank payouts**

[Under the Merlin agreement announced by George Osborne](#) earlier this month, banks will have to publish the remuneration of the five highest paid 'senior executive officers' and the two highest paid executive directors on their boards. In announcing the agreement, Mr Osborne claimed that the project would make London the most transparent financial centre in the world on remuneration.

The deal has been controversial, as it will not require those banks that were bailed out during the height of the financial crisis to publish the bonuses of their highest paid employees, including traders. [Jon Terry, a reward partner at PwC, highlighted that](#) "many of the highest paid employees who do not have management responsibility" would not be covered, he added that "[i]t will therefore only provide a limited snapshot of bankers' pay". [Lord Oakeshott, meanwhile, said](#) that the agreement 'does not match up' to the commitments laid out in the coalition agreement.

### **High Court rules on costs exemption to FOI requests**

[A judgment rendered in January but published this month](#), has clarified the matter of the exception within the FOIA where the cost of providing the information would exceed the appropriate limit. In rejecting the arguments of the Chief Constable of West Yorkshire Police, Mr Justice Keith ruled that when calculating the costs of the request under this exemption, a public authority may not include the cost of removing information that falls within the exemptions. This decision should bring down the calculated costs for FOI requests, and may result in a greater number of requests leading to, at least, partial publication.

## **Local Government**

### **Harrow Council considers publishing 'everything'**

[Harrow Council legal head, Hugh Peart, was quoted in \*The Lawyer\* this month](#) calling for the proactive publication of everything that would be available under the FOIA, rather than waiting for requests:

*"The default model for most councils is that 'we won't give anything away unless we have to',"* said Peart. *"I want to turn the whole edifice on its head. I want us to move away from the defensive position of keeping everything to ourselves. I want to say that everything's public except for a few obvious areas."*

[The anonymous blogger "FOIman", responded to this article](#) highlighting some of the problems that would arise with such a scheme of proactive publication. In particular the routine publication of information such as emails could be a minefield. He cautioned public authorities against "*oversell[ing] what they're doing*".

### **Council expenditure publication ongoing**



The deadline for councils to publish expenditure over £500 came and went on 31 January, with eight councils failing to publish in time. While seven of the remaining councils promised to publish the information before the end of February, Nottingham City Council responded less cooperatively. Graham Chapman, the deputy leader of the council, is quoted as saying:

*"We have said that we will publish accounts over £500 if it becomes a legal requirement to do so. We are happy for information to be transparently available for public scrutiny but feel that the time and money needed to implement this change is wasteful and a distraction at a time when we are coping with £60million of cuts in government funding. The government talks about localism but as this issue shows, it seems intent on interfering at every opportunity."*

[Commenting on the refusal, Martin Rosenbaum](#) noted that *"[i]f Nottingham is the only council maintaining this stance, it will be interesting to see how it withstands the pressure and inevitable accusations of secrecy."*

[Eric Pickles made further announcements this month](#) launching a Draft Code of Recommended Practice for Local Government Data Transparency for consultation. The proposals include requirements for the publication of organisation structures including the names and responsibilities of employees who earn more than £58,200 (equivalent to the lowest grade of senior civil servants).

### **Council asked employee to waive right to use FOI and DPA in a compromise agreement**

[An FOI request carried on the WhatDoTheyKnow website](#) revealed this month, that an employee of Cheshire West and Chester Council signed a waiver of his or her right to use the FOIA and the Data Protection Act to seek information from that council as part of a redundancy agreement. Speaking to [the Chester Chronicle, Greg Jones, a spokesman for the Information Commissioner's Office said](#), *"the only way legislation doesn't apply is when there is an exemption. There is no way you can sign yourself out of both pieces of legislation."*

Asked for a comment on matter, council spokesman Ian Callister, said: *"I am assured by our senior solicitor that our compromise agreement with our ex-employee is entirely lawful and was agreed by that person's legal representatives"*. He declined to comment further on the agreement, on the grounds that to do so would, in itself, breach the agreement.

## **FOI Elsewhere**

### **Nigerian House of Representatives passes FOI Bill**

A FOI bill, initially introduced before the Nigerian National Assembly in 1999, passed the House of Representatives this month. While the Bill must pass the Senate and achieve the assent of the President, this event marks the most substantial progress on right to information legislation since former president, Olesegun Obasanjo, failed to assent in 2007. The news has been widely welcomed in Nigeria. [Speaking to next.com, an unofficial spokesman for the president said it he was confident that the president would agree the bill](#) remarking that, *"[b]ecause of the historic implication and its deepening our democracy, the president will not hesitate to sign this bill when it gets to his desk."* [The minority leader of the House, Femi Gbajabiamila, also applauded the news](#), saying *"[i]t's a welcome development and its long overdue. It will stimulate good governance which is predicated on access to information"*.

### **Pro-FOI protests in Ghana**

[This months saw FOI campaigners protesting outside Parliament House in Accra in favour of the passage of an access to information bill.](#) The consultation process, expected to precede Parliamentary consideration of the Bill, is due imminently but has been so far held up amid concerns about funding. A pledge by the World Bank to provide \$60,000-80,000 to fund the consultations, however, may aid this process.

[Nana Oye Lithur, leader of the Coalition for Freedom of Information in Ghana responsible for the protest, asked Parliament:](#) “why the delay?”. He added, “[w]e are picketing Parliament this afternoon to press home our point and we urge Parliament to demonstrate commitment to transparency and accountability and to ensure that this bill is passed”. Cletus Avoka, speaking as the majority leader of the Parliament, explained the delay on the basis that Parliament does not “*want to pass a law that would not stand the test of time*”.

## Data Protection

### Details emerge on failure of the Data Protection Act to meet the requirements of the EU’s Data Protection Directive

Following a request for information to the European Commission in 2007, a process that was brought to an end following the intervention of the European Ombudsman, the details of the Commission’s objections to the DPA have been released this month. [The response](#) includes questions about the compatibility of UK legislation with 11 of the 34 articles included in the Directive. Among those concerns were the scope of compensation, the right of access and rectification, as well as doubts over whether the ICO has sufficient powers to fulfil its supervisory authority.

[Responding to the release in his blog post, Dr Chris Pounder, data protection specialist and the initial requester,](#) addressed the comments of the Commission, but also railed against the delay and what he perceived as unwarranted secrecy. He said, “*they have delayed wherever possible, required me to endlessly chase them up, and provided bogus arguments in order to stop the release of these details*”. The release of these details comes in light of the Commission’s consideration of infraction proceedings, the result of which might require a reformulation of the UK’s data protection legislation.

### ICO cases

[February 2011](#)

### First Tier (Information Rights) Tribunal

[Most recent decisions](#)

## March 2011

### Freedom of Information in the UK

#### MoJ publishes impact assessment for changes to FOIA

This month saw the [Ministry of Justice publication of its impact statement on the extension of the FOIA to bodies owned by two or more public authorities](#). Currently, public bodies that are entirely owned by a number of public organisations fall outside the act, even if they are entirely funded with public money. The change will put an end to this 'loop hole'.

Although the assessment was not able to estimate the total cost of the reform, nor how many organisations would be affected, it was able to identify examples of those that will be included as a result, and how much it is likely to cost them. Of those likely to be most affected was Manchester Airport Group, for whom the cost of the first year's running was estimated to be £245,000. Of those who are likely to be more minimally affected, are care homes and services, such as waste disposal.

[Unfortunately, there is uncertainty within the current form of the Bill](#), as rather than limiting the scope of FOI to organisations owned by two or more authorities listed within schedule 1 of the FOIA, the Bill includes companies owned by "the wider public sector". This is a term not used previously in the FOIA, so it is not clear whether it would extend the scope beyond companies owned by two or more public bodies already covered by the Act. Beachcroft LLP suggest that this problem is unlikely to arise in the final version of the Bill, however, as it is likely that this provision will be tightened up as the Bill progresses through Parliament.

#### Scottish ICO releases annual report

[The Scottish ICO published its annual report on its performance this month](#). Figures showed that the ICO had issued 50 per cent more decisions in 2010 than the previous year, as well as showing a 10 per cent increase in decisions in favour, or partially in favour, of requesters.

Taking the opportunity to speak about the future of FOI, Kevin Dunion, the Scottish Information Commissioner, raised the issue of privatisation decreasing the scope of the FOI(S)A. [Writing in The Scotsman, Mr Dunion remarked that:](#)

*'[o]ur experience in Scotland has shown that multi-million-pound contracts with private consortia to build and maintain schools, hospitals and roads on behalf of public authorities mean that parents, patients and road users cannot get direct access to information about the operational performance of these companies - because they are not covered by freedom of information laws.'*

He also expressed concern that although local authority trusts providing leisure, recreational or cultural services may be carrying out the same functions and even operating from the same buildings as a public body previously covering those functions, they would now fall outside the scope of FOI.

#### HE researchers hold workshops on the effects of the FOIA on the HE sector

[The first of a series of regional workshops on the implications of FOI for the Higher Education sector was held on 22 March.](#) Held by the Information Network with the support of the Joint Information Systems Committee and a number of collaborating institutions, the groups considered how universities are subject to the Act as well as ways in which it can provide a useful tool for research. These events emerged out of the Roundtable meeting between the ICO and the HE sector in September of last year, with the aim of developing the knowledge of HE researchers and providing them support with their approach to FOI. The Constitution Unit at UCL will be taking part in the London workshop on 1 April.

## FOI and Parliament

### Caroline Lucas calls for extension of FOI

[Green Party Leader, Caroline Lucas, called for an extension of FOI](#) to banks, telecoms operators and other major corporations providing key services to the public. Speaking at the Green Party conference, she said, *'We depend on these corporations in just the same way as we depend on schools or hospitals to deliver our services. When they fail, we all suffer - so they must be opened up to public scrutiny.'*

[The proposal](#) did not take the form of adding private organisations to the FOIA, but of giving the ICO the power to determine classes of information that organisations would be required to release. If accepted, this policy would mean that companies would have to pro-actively publish more information, but would not have to respond to FOI requests.

### Private members bill to reform FOIA in Parliament

[Tom Brake MP's private members bill](#) to remove the ministerial veto on decisions of the ICO and Information Tribunal was on the order paper for 18 March, but a shortage of time led to the second reading being moved to June. [Lord McNally, the minister responsible for FOI, had indicated earlier this year](#) that he was still in favour of removing the veto, but that a proposal that sought to do so might require compromise in order to be passed. As a private members bill scheduled last for the 17 June, it remains unlikely that the bill will become law in the immediate future.

### IPSA unveil changes to rules on MPs' expenses

[IPSA announced several changes to the MPs expenses system on 25 March.](#) The alterations include a change to the definition of 'caring responsibilities' to provide greater support to MPs with dependent children, a change to the definition of the London Area to 20 miles from Westminster (to include 97 MPs), as well as a simplification of the structure of the budget for office costs, to make a clear distinction between business costs and personal expenses. IPSA chairman, Sir Ian Kennedy, said of the changes: *'It is right and fair to keep the rules on MPs' expenses under review, to make sure they are appropriate and to see they evolve as is necessary to meet the needs of the public and MPs'.*

## FOI Elsewhere

### European courts rule on transparency case

[The General Court of the EU ruled in favour of Access Info Europe](#) this month, in their challenge to the decision of the Council of the EU to keep the origins of proposed reforms to the European access to information scheme anonymous. AIE had been seeking information about proposed amendments

to European access to information rules, but while the Council were willing to release documents outlining the proposals, they had refused to identify the countries that had submitted and supported those proposals.

[In argument before the court](#), the Council had argued that making the identity of proposers public would lead delegations to become entrenched, as they would *'lose some of their ability ... to justify before their public a compromise solution'*. The court rejected this argument, stating that *'it is in the nature of democratic debate that a proposal for amendment of a draft regulation ... can be subject to both positive and negative comments on the part of the public and media.'*

Commenting on the ruling, the Executive Director of AIE said, *'[t]his ruling means that the European public will be better informed about and have a say in the decisions that affect our everyday lives.'* The hope for supporters is that in knowing which countries are campaigning for what legislation, people can become more effectively involved in the process of European legislation.

The court case arose as part of [an AIE study](#) into reform of European access to information regulations.

## **US Supreme Court rejects FOIA privacy protections for companies**

On 1 March, [the US Supreme Court ruled against AT&T's claim that their information was exempt from FOI because of the company's "personal privacy"](#). The exemption in question covered law enforcement records the disclosure of which 'could reasonably be expected to constitute an unwarranted invasion of personal privacy'. AT&T had argued that because corporations can be "persons", the term "personal" also covered them. The court rejected this argument, with Chief Justice Roberts expressing the unanimous view of the court, that this use of personal referred exclusively to human beings.

Commentators have been largely welcoming of the ruling. [Linda Campbell, a US journalist, described the decision](#) as *"big loss for corporate overreaching and a big win for open government records"*, while AT&T made no official comment on the decision.

[The decision came shortly before Sunshine Week, between 13-19 March](#), a campaign focusing on freedom of information. Media, civic groups, libraries, schools and other interested parties took the opportunity to discuss access to information, transparency, and the impact that they have had in the US.

## **El Salvador**

[The Legislative Assembly of El Salvador has approved the Law on Access to Public Information.](#)

Although originally passed in December of last year, the Act was caught up in Committee stages following President Funes' concerns about the time provided for implementation. The Act will now come into force in March 2012.

## **Data Protection**

### **ICO gives evidence to the Public Bills Committee on the Protection of Freedoms Bill**

UK Information Commissioner Christopher Graham has been speaking about the Protection of Freedoms Bill this month. [In evidence submitted to the Public Bills Committee](#), Mr Graham largely welcomed the provisions of the Bill, singling out the new rules limiting the retention of biometric

information held on individuals of no ongoing concern to the police, but was more sceptical about some of the changes to the CCTV regime, suggesting that aspects might need to be rethought.

[The commissioner also gave testimony at an oral hearing on 24 March](#) where he was questioned in relation to the Bill, as well as FOI and data protection more generally. Questions covered a wide range of topics, from the finer points of CCTV regulation to more policy oriented matters such as the length of the IC's term of office and whether the ministerial veto on decisions of the ICO and information tribunal should be abolished.

### **Controversy over a “right to be forgotten”**

[Viviane Reding, the EU Commissioner responsible for Justice, Fundamental Rights and Citizenship, spoke at this month's Privacy platform](#) in favour of creating a 'right to be forgotten' as part of reforms to European privacy legislation. Her proposed changes include that individuals should have a right to demand that their personal information be deleted, and that data processors “*must prove that they need to keep the data rather than individuals having to prove that collecting their data is not necessary*”.

Speaking at Westminster Media Forum event, [Jim Killock, the Executive Director of the Open Rights Group supported Viviane Reding](#), arguing that “[i]t's about a power balance- we have lost control of our data”. Dr Chris Pounder, of Amberhawk Training, raised problems involved in removing information from an international environment. Highlighting different attitudes to data, Dr Pounder raised the example of the USA, where “*Americans do not see privacy as applying to anything in the public domain*”. Richard Allen, Director of Policy EU at Facebook, raised the problems involved in removing data that is published on social networking sites. While companies such as Facebook could delete the information they hold, he said, once information has been published on Facebook, it has been published to the whole internet. The suggestion is that it can be difficult to trace where information ends up after it has been published online.

### **ICO cases**

[March 2011](#)

### **First Tier (Information Rights) Tribunal**

[Most recent decisions](#)

## April 2011

### Freedom of Information in the UK

#### ICO criticises Cabinet Office, MoD and Birmingham City Council over delays

[The ICO has announced a list of government departments facing regulatory action](#) over delays in carrying out their FOI obligations. The ICO has been monitoring the performance of 33 public authorities after concerns over delays in their response to FOI requests. Of 33 bodies monitored over the past three months, two-thirds had improved, but among those who fell short of the ICO's standards were the Cabinet Office, the Ministry of Defence and Birmingham City Council.

Commenting on the announcement, Information Commissioner Christopher Graham said: *"Responding promptly to FOI requests is key to delivering citizens' rights. Too many public authorities are taking too long to decide either way whether to release information or to refuse requests"*. [Blogging on the topic, Martin Rosenbaum remarked](#) that *"anecdotally from our own experience, I am not surprised that the Cabinet Office and the Ministry of Defence are two of the authorities focused on in this way"*. A spokesman for the Cabinet Office responded to the news, saying that *"[w]hile this is a long-standing issue for the department, the number of FOIs has also increased by over a third in just over 12 months. We take the information Commissioner's comments seriously and we have already taken steps to improve our performance"*. It is worth noting that the increase of over one-third is mirrored in local government, with our most recent survey of local government officials in England finding an increase of 38 per cent.

The ICO has added new organisations to its monitoring programme (see local government section below).

#### Exempt information leaked as a result of flawed redaction

The Ministries of Defence and Health have been embarrassed after [releasing documents where redacted sections could be read](#) by copying the text into another document or holding the document up to the light. Leaked information included reports on the ability of the British fleet to cope with catastrophic accidents, the names of individuals handling sensitive information about a submarine project, and details of a private meeting to discuss contaminated blood.

A [spokesman for the Ministry of Defence issued a statement](#) in response to the story: *"The MoD is grateful to the journalist for bringing this matter to our attention. As soon as we were told about this, we took steps to ensure the document was removed from the public domain and replaced by a properly redacted version"*. Commenting on the news, Graham Cluley of online security experts Sophos, said, *"it's a staggeringly stupid thing to do. Anyone with even an elementary knowledge of computing would know how to [access the redacted information]."*

#### Salmond appeals ICO decision on the release of tax documents

[Scottish First Minister, Alex Salmond, continued his opposition to releasing documents](#) in which his chief economic advisor discusses SNP proposals for income tax reform. The Telegraph lodged a FOI request over two years ago seeking access to the documents, but Mr Salmond is pursuing his case to the Court of Session, the highest civil court in Scotland, in opposition to release.

The litigation has been widely opposed by opposition leaders, with Labour's Holyrood leader calling the action *"pretty scandalous in the middle of an election campaign"*, and remarking that one cannot



escape the suspicion that the document contains information that would be damaging to Mr Salmond. Scottish Tory leader, Annabel Goldie, was also critical, claiming that there was some “*bad, bad news in the document*”. In response to the criticism, the First Minister argued that the information contained employment projections indicating how much would be raised by the tax, and that the economy had significantly improved since the document was written.

Meanwhile the Scottish Greens have outlined their plans for FOI before the Scottish elections on 5 May. They argue Scottish freedom of information legislation is riddled with weaknesses and loopholes, and have pledged to extend the coverage of the law and remove the £600 cost limit for requests. They also pledged to allow access to information held by contractors working on public projects. Party co-leader Patrick Harvie said “*All the parties talk a good game on freedom of information, until they get into office. But those high principles tend not to survive when ministers get desperate to retain power and keep their mistakes hidden away.*” While giving credit to Labour for introducing the legislation, “*the law is too weak and still too easily abused. Greens will commit to a true freedom of information scheme, one which brings in currently exempted public bodies and close these key loopholes.*”

## **Documents released under FOI suggest link between oil firms and invasion of Iraq**

[Documents obtained by the Independent under FOI have brought to light government discussion of the interests of British oil companies in the build up to the war in Iraq.](#) Among those documents are sections of a Foreign Office memorandum to the effect that “*Iraq is the big oil prospect. BP are desperate to get in there [Iraq] and anxious that political deals should not deny them the opportunity to compete. The long-term potential is enormous...*”, while minutes from a meeting with BP, Shell and BG read, “*Baroness Symons agreed that it would be difficult to justify British companies losing out in Iraq in that way if the UK had itself been a conspicuous supporter of the US government throughout the crisis*”.

## **FOI and Parliament**

### **Information Rights Tribunal orders MoD to disclose rendition documents**

[The Ministry of Defence has been ordered to disclose some of the information held regarding the practice of extraordinary rendition](#), requested by the All-Party Parliamentary Group on Extraordinary Rendition over three years ago. [Information ordered for release](#) includes details of the capture and detention of detainees in relation to the conflict in Afghanistan, but as a result of the exemption on information supplied or relating to security matters, the information about detentions during the Iraq conflict will not be made available.

The APPG Ext. Ren. made the requests following allegations by Ben Griffin, a former member of the SAS, that detainees captured by British special forces had been transferred to US forces under whose authority they had been tortured or unlawfully removed from Iraq.

An internal MoD review concluded in 2008 that there was no evidence of unlawful rendition but it later admitted that two detainees captured by British forces in Iraq had been rendered to a jail in Afghanistan. [APPG Ext. Ren. chair, Conservative backbencher, Andrew Tyrie, said](#), “*For closure on rendition we need disclosure. One way or another, the truth will eventually come out. Unless the MoD decides to appeal, this judgment will add to the drip-drip of information on rendition in recent years. Far better for us to get to the bottom of this quickly, to learn the lessons and to move on.*”



## Local Government

### Eric Pickles announces further data requirements for councils

Following up on January's publication of data on all spending over £500, Secretary of State for Communities and Local Government, Eric Pickles, [has announced a list of 27 "data collection demands"](#). Included within the list are Comprehensive Area Assessments and the Place Survey. Seeking to counter fears that this is just the next demand of many, Mr Pickles MP said "*[f]or too long council staff have worked to the whims of Whitehall, waiting for the next data demand to increase their workload. If it is not on [this] list, we won't be asking for it*".

The ICO's monitoring of public bodies with 'problems' complying with FOI [has seen 17 new additions who will be monitored over the next three months](#). Eleven are local councils, including Nottingham City Council, who refused to publish spending data in accordance with demands from Eric Pickles' previous publication drive, as well as Kirklees Council, whose leader was involved in a [scandal about allegedly amending responses to freedom of information requests](#).

### Council reports a surge in FOI requests

[Perth and Kinross Council has reported a significant increase in its workload under the FOI](#). The council reported that it has experienced a 25 per cent increase on requests compared to its previous year's figures, increasing the cost of requests to £105,000 for the year, an average of £120 per request. The council's projections indicate that requests may rise to as high 1200 per year by 2013, an increase of over 70 per cent on this year's figures. Despite concerns about the increasing workload of councils in the face of funding cuts, Kathleen Baird, the Committee convener said, "*I welcome the opportunity to examine the performance of the council in responding to FOI requests and to look at some of the issues and challenges this work raises*." The Unit has just launched the latest survey of English local government FOI officers, with each officer invited to complete the survey online by September.

### Councillors use FOI to criticise spending

Opposition Conservative councillors on [Darlington Borough Council have used the itemised spending published by the Council, and FOI requests](#), to identify 'needless spending'.

Councillor Heather Scott, the Conservative group leader said, "*A simple review of published information demonstrates there is ample scope for savings without hitting the front line. The fact Labour has maxed out Darlington's credit card demonstrates it cannot be trusted to take the right decisions in the years to come*." The Conservatives attacked spending on advertising, PR, external consultants and staff suspended on full pay.

The council much of the advertising spending was public notices which are required by law. Consultants and agency staff were used for hard to recruit areas like social work or for short-term projects where hiring staff would not be cost effective.

## FOI Elsewhere

### USA

Accusations of politicisation of FOI in the USA

[The Committee on Oversight and Government Reform, under the Chairmanship of Darrell Issa, published its report into the FOI practices of the Department of Homeland Security.](#) The report alleges that political staff under DHS Secretary Janet Napolitano, *“have corrupted the agency’s FOIA compliance procedures, exerted political pressure on FOIA compliance officers, and undermined the federal government’s accountability to the American people”*. The report found that it was common for requests to be forwarded to the office of DHS Secretary, Janet Napolitano before a response was made.

[Commenting on the publication, DHS General Counsel Ivan Fong, criticised the report](#) claiming that *“[it] reads more like an advocacy piece rather than a sober, substantive, dispassionate investigative report”*, while Democratic congressman Gerald Connelly defended the practice of the secretary’s office reviewing FOIA requests. A second report into the department, by the DHS Acting Inspector General used more moderate language than the Oversight Committee, but did highlight a need for changes. In particular, the report identified instances where potential embarrassing language was redacted as inappropriate.

Controversy over political motivated FOI campaigns against university professors

News coverage has been emerging from the US this month about political bodies requesting details about academics and copies of their correspondence. In particular, the Mackinac Centre has filed a number of requests with the University of Wisconsin and Michigan State University asking for emails that mention collective bargaining disputes.

[Ken Braun, the director of MichiganTransparency.Org for the Mackinac Centre, explained the organisation’s actions saying](#) , *“we were interested in determining whether the LSC and the labour faculty of Michigan’s ... large public universities had actively employed the university resources to enter the political debates [on labour rights]”*. [Ian Robinson, a lecturer in the Department of Sociology at the University of Michigan](#) who has collected 1600 signatures on a petition with the aim of protecting academic freedom on campus, has questioned the motives of requesters asking whether *“they are trying to intimidate individuals ... making them not participate any more ... making them fearful of participating”*.

Such requests have moved beyond Wisconsin labour disputes, with [climate scientists at the University of Virginia also being targeted by groups with political agenda.](#)

## **Jersey says no to FOI**

[The Jersey Council of Ministers has decided against passing FOI legislation, citing cost as the main inhibiting factor.](#)

Jersey has had a code in place since 2000 which covered access to personal information kept by departments. After public consultation, a draft FOI law - modelled on the UK’s - [was drawn up earlier this year by the Privileges and Procedures Committee.](#) But there was little enthusiasm for FOI within the Council of Ministers, who have said there would need to be cuts in the business plan and strategic plan to afford the £5.6m needed to implement it, and the £1.3m a year afterwards.

While it said that it fully supported the principles of the law, it was inadequately resourced and had little chance of success. The freedom of information bill will be debated on 3 May 2011.

## **World Bank publishes database on FOI laws**

The World Bank launched a database on FOI laws this month as part of its [Public Accountability Mechanism initiative](#). The online tool takes a sample of 75 countries- weighted towards less developed countries- that have a constitutional requirement for access to information, although not all had further legislation. The database covers a wide range of aspects of FOI regimes, taking account of legal framework, coverage of information, exemptions, enforcement mechanisms, and sanctions for non-compliance as well as a number of other aspects. The project has taken more than four years to develop, building on a pilot started in 2006, and should provide a useful tool for those wishing to conduct comparative studies of FOI regimes.

## Data Protection

The ICO has been [criticised for not utilising the potential of increased fines for data protection breaches](#). But the ICO contends its critics has misinterpreted the information relating to the fines issued so far.

A Freedom of Information request from encryption specialist ViaSat, made public on Wednesday, revealed that 2,565 data breaches had been reported to the government watchdog in the year since a tougher enforcement regime was introduced in April 2010. Just 36 of these cases have resulted in any form of action by the ICO to date. Only four have resulted in civil penalties.

Further, the four penalties have only added up to £310,000 in total, despite the statutory maximum fine set at £500,000. *"The ICO has stated that the embarrassment and poor image of a fine will act as a deterrent and an incentive to improve an organisation's grasp of the Data Protection Act,"* said Chris McIntosh, chief exec of ViaSat UK. *"However, if fines are rare and well below the maximum allowed limit, their value as a deterrent drops."*

But the ICO hit back, [saying ViaSat had misinterpreted the information about breaches supplied to them by the ICO as an FOI request](#).

The ICO released a statement claiming that one of the statistics, relating to the number of data breaches reported between 6 April 2010 and 22 March 2011, supplied to ViaSat, has been misinterpreted. This claim is denied by the firm. According to ViaSat, 2,565 potential data breaches were reported during that period, while the ICO claims the actual figure is far fewer.

A ICO spokesperson explained: *"While it is true that the ICO has concluded that in 2,565 cases compliance with the DPA was unlikely, the figure for self-reported security breaches - where information has been disclosed or lost - is far lower."*

*"The 2,565 [figure] cover all types of compliance including a company sending unwanted postal marketing, incorrect data being held or an organisation not handling a subject access request appropriately."*

In total, the ICO said it received 603 self-reported data breaches, 37 of which resulted in action being taken. The representative continued: *"These [self-reported security breaches] vary from minor administrative errors, where enforcement action would not be appropriate to serious data losses which led to the ICO imposing a monetary penalty."*

Meanwhile, the ICO will also gain new monetary penalties of up to £500,000 to use for serious breaches of the Privacy and Electronic Communications Regulations (PECR) from 25 May 2011, when an amendment to PECR will come into force (the amendment transposes the revised e-Privacy

Directive into UK law). Breaches of PERC include making unwanted marketing phone calls or sending unwanted marketing emails to consumers.

Information Commissioner Christopher Graham welcomed the new powers, saying, "*the ICO has been calling for increased powers to regulate breaches of PECR for some time...we will be issuing guidance to reflect the changes that are being introduced.*"

[ICO decisions - April 2011](#)

[Most recent First Tier \(Information Rights\) Tribunal Decisions](#)

## May 2011

### Freedom of Information in the UK

#### Charity with government funds says it is not subject to FOI

A housing charity funded by the government has [come under pressure](#) from a Labour councillor after saying it is not subject to the Freedom of Information law.

When Labour Harrow Road ward councillor Guthrie McKie asked Westminster Community Homes (WCH) for the minutes of its meetings, he was told they could not be released because of a risk of disclosing 'confidential' information. McKie, in turn, took the complaint to the Information Commissioner.

The [Homes and Communities Agency](#) gave WCH £36million to fund its building programme but, despite its close links to the council, the charity is autonomous and is not legally required to respond to FOI requests, according to Philippa Roe, cabinet member for housing.

The story comes only a few months after the Ministry of Justice, the department responsible for administering the FOI law, [announced its plans](#) to expand the scope of the law to include organisations contracted by the public sector.

#### Plans for one-stop shop for data delayed

An organisation meant to group together all government data services has been delayed from April to, possibly, September, as ministers and officials discuss its purpose.

"Our intent remains to put in place a coherent data policy framework by autumn 2011," [stated Cabinet Office Minister Francis Maude](#), in an answer to a written question from Mark Pawsey MP.

Ministers are looking to "*facilitate the development of a Public Data Corporation through a sponsoring department and the subsequent establishment of a PDC Shadow Board*".

The new Public Data Corporation is meant to reorganise the largest [trading funds](#) - government owned companies that earn more than 50 per cent of its revenue from the goods and services it provides - and provide a one-stop shop for data.

The Corporation will include its mapmaking agency Ordnance Survey (OS), the Met Office and the Land Registry. When plans for the PDC were announced last year, [The Guardian](#) quoted Maude as saying the government is considering privatising the Corporation after it is established.

#### Nobel laureate said FOI misused to intimidate scientists

Freedom of Information requests are being used by interest groups to delay research and harass scientists, said Sir Paul Nurse, president of the Royal Society.

Nurse's comments come after the launch of a study on how to make science research more accessible and open, which the institute plans to publish next year, according to [The Guardian](#).

Nurse said that information should be made available as widely as possible, but FOI has “*opened a Pandora’s box*” and said some researchers in the climate change community told him they had been asked for drafts of scientific papers and then questioned on the changes made between one draft and another. He questioned whether the requesters’ intentions were honest information seeking, or just a way of disrupting scientific work. His comments follow the allegations of ‘FOI-harassment’ of Canadian professors by conservative politicians in regards to their comments on labour laws.

## FOI and Parliament

### Cameron’s home refurbishing costs revealed

Labour MP Tom Watson has finally received an answer to his questions regarding the costs of refurbishment of Prime Minister David Cameron’s Downing Street flat.

Nearly a year after the Cabinet Office refused to release information regarding the cost of refurbishing the kitchen in the apartment, the ICO ordered release. But the Cabinet Office missed the 7 April deadline.

They have now released the information: the costs have been £653,192 since last May, which government spokesmen say is within the range of expenditures made by former prime ministers.

The alterations to the home were funded, in part, from a £30,000 annual allowance for the maintenance of the Prime Minister’s home, reported [The Telegraph](#).

Tom Watson, a Labour MP, criticised Mr Cameron for spending public money on the flat. “*The Prime Minister heralded the age of transparency and said we’re in a for a period of austerity. Lo and behold the taxpayers subsidised a £30,000 kitchen. He’s not living up to his pledges.*” Responding to the criticism, a spokesperson said that the refurbishment was part of a works programme started in 2006 by the previous government.

### Government agrees with Committee on ‘climate-gate’ report

The [Government has formally responded to the Science and Technology Committee’s inquiry](#) into ‘climate-gate’, drawing a line under the affair.

The Committee’s report about East Anglia University scientists, published in January, concluded the Climate Research Unit was too secretive, but did not manipulate data. MPs said the scientists, who track long-term changes in temperature, were honest but disorganised and naïve.

The Government response was prepared by the Government Office for Science (GO-Science), with input from the Department for Business, Innovation and Skills, the Ministry of Justice, the Department of Energy and Climate Change and the Department for the Environment, Food and Rural Affairs.

The Government agreed with the Committee *‘that research findings should be fully replicable and that publicly-funded research data should be readily available to others, to both allow them to replicate analysis and to develop their own ideas.’*

However, it also noted the *“ethical, legal and commercial constraints which may preclude data-sharing which must be considered, to which the Government is giving attention to in its broader work on transparency. A set of common data access principles is being developed across the Research*

*Councils: these principles start with a presumption in favour of openness and transparency, whilst ensuring appropriate protection and safeguards are in place to protect commercially sensitive and personal data."*

## **FOI elsewhere**

### **Jersey decides to take on the cost of an FOI law**

Despite Jersey's Council of Ministers announcing Freedom of Information would be too expensive to support, when the bill was debated on 3 May, it was passed.

[The bill](#), without amendments, was moved from the Privileges and Procedures Committee to the Executive, where plans will be made to implement the law by 2015, according to Anna Heuston, the Committee clerk.

In anticipation to the debate on the Freedom of Information law, the Council of Ministers had [published a report](#) stating the law would cost a minimum of £5.6 million a year, in addition to running costs of £1.3 million per year. The [BBC](#) reported that the Council of Ministers gave the bill poor chances of survival.

Jersey has had a code in place since 2000 which covered access to personal information kept by departments. Its new law is modelled after the UK FOI legislation.

### **Canada's liberals accused of politicising FOI**

The New Democrats, Canada's official opposition party, has accused the Liberal Party of delaying Freedom of Information requests they identify as coming from the opposition.

The NDP obtained e-mails from the Liberal Party - the third strongest party in Congress - showing that staff are identifying FOI's as either 'contentious' or 'opposition'.

In a December 2009 e-mail exchange, quoted by the [Toronto Sun](#), the FOI co-ordinator for the finance ministry, Suzette Collins tells a legislative assistant that a particular file is not "*contentious*" and asks him to "*Pls make it one*".

Finance Minister Dwight Duncan said the NDP-led government in 1990 issued a directive telling staff to inform ministers of potentially contentious FOI requests, so that they can be ready to respond if the issue is brought up in a debate.

Canada's Access to Information Act has been judged as one of the worst among Westminster governments such as Australia, the UK, Ireland and New Zealand. The main problem, critics say, is not with the law itself but with a lack of political will to implement it properly (See the Constitution Unit's [Canada Country Profile](#)). In order to make an FOI in Canada, a requester must pay a fee, provide his or her full address in writing, and requests cannot be sent via email. The legislation has no overriding public interest test and excludes Cabinet documents. Requests can only be made by Canadian residents or persons or corporations present in Canada.

### **AP seeks Osama bin Laden's capture photos**

The Associated Press news agency has filed a Freedom of Information request asking the Obama administration to [release photographs of Osama bin Laden's body](#) after a US raid left him dead in April.

After the request was denied, the agency appealed directly to the Department of Defense, according to [USA Today](#).

The request asks for military personnel video and photos taken during the raid and on the ship that conducted Bin Laden's burial in the North Arabian Sea, as well as contingency plans for the al-Qaeda leader's capture and DNA tests confirming his identity.

Despite the administration's statements to the contrary, the photos will eventually have to be released, [says Dan Metcalfe, a Constitution Unit Associate](#), who headed the Justice Department's office of information and privacy for more than 25 years.

In a 2006 case regarding the release photos showing abusive treatment of detainees by US military personnel in Abu Ghraib, the 2nd US Circuit Court of Appeals ruled the government needed to demonstrate that releasing the photos would harm specific individuals.

But there are other possible actions the government could take, like classifying the photos, making them exempt under FOIA. Still, Metcalfe says, it would be difficult to classify photos that don't show sensitive material about military operations. Better yet, they may have sent the photographs to White House entities which are exempt from the Act, like the National Security Council. [You can read Dan's analysis here](#).

### **Australia : more funding necessary for Archives for FOI to work**

Australian National Archives are struggling to comply with new Freedom of Information laws requiring the government to release all public records within a shortened period of time, according to Australia's public sector union.

The new legislation requiring records to be released after 20 years instead of 30 was introduced in November, and AU\$16 million (around 10 million British pounds) was allocated to the new storage site at the National Archives of Australia.

But the funding will not be released until the 2016-2017 financial year and Community and Public Sector Union says this is far too late, reported the Australian news organisation [ABC](#) .

Though CPSU national secretary Nadine Flood says the NAA has already run out of space in some storage facilities, National Archives acting director-general Stephen Ellis says the institution is still complying with the statutory response period of 30 days.

Australia was the first Westminster-style government to adopt a Freedom of Information law and new amendments were passed in May of last year intended both widen its scope and make requesting the information less financially burdensome (see the Constitution Unit's [country profile](#) for more information).

The legislation includes a new 'public interest test' which will demand greater accessibility to previously exempt documents. The public interest test said to be "actively weighted towards disclosure." The AU\$30 fee for requests was eliminated, as well as many other procedural fees. It's



still costly to make a request, however: AU\$15 an hour for time spent researching and retrieving documents in response to an FOI request - a process which takes, on average, more than 18 hours.

### **Nigeria gets an FOI law**

The West African country's congress has passed a freedom of information law, which is waiting to be signed by president Goodluck Jonathan, who was sworn in May 31.

The law gives government bodies one week to respond to information requests and makes it a criminal offence to destroy records. The law is said to be stronger than a 2007 version that then president Olusegun Obasanjo, the first elected president after years of military rule, refused to sign, the [Associated Press](#) reported.

Nigeria's 16 years of military rule ended in 1999 with a new constitution and a democratic government. According to the [CIA World Factbook](#), many resources in the petroleum-rich country have been squandered through corruption and mismanagement.

### **Hungary's new constitution weakens FOI**

President Pál Schmitt signed a new constitution last month that media freedom groups say limits the public's right to access information, according to [Freedominfo.org](#)

The new Constitution, which passed in Parliament by a vote of 262 to 44, has replaced the independent Data Protection and Freedom of Information Commissioner with an administrative authority.

The South East European Network for Professionalism in the Media, a Budapest-based centre for independent journalism, stated last month that though it does not have full knowledge of the new body that will oversee the public's right to information, *"it is unlikely that the body will have the same powers or independence as the Commissioner enjoyed to date."*

The [new constitution](#) is meant to break with the legal framework designed during communist rule, but Human Rights Watch has asked President Schmitt to [send the document back to Congress](#) for reconsideration, saying it puts the rights of people with disabilities, women, and LGBT people at risk.

Hungary was one of the first European countries to adopt freedom of information legislation and, in 2003 individuals [gained access](#) to their own files created by the communist-era secret police.

## June 2011

### Freedom of Information in the UK

#### Leicester City Council and zombies

The Freedom of Information Act has received much attention thanks to a 'concerned citizen' who asked about Leicester City Council's preparedness for a [zombie attack](#).

*"Having watched several films it is clear that preparation for such an event is poor and one that councils throughout the kingdom must prepare for,"* wrote the requester, who [The Leicester Mercury](#) identifies as 26-year-old politics graduate James Dixon.

The Council said there were no specific references to zombies in their contingency plans. Lynn Wyeth, Head of information governance, spoke to local radio and the BBC about the request, saying that though it made her laugh, *"to different people it actually means something."*

On Saturday, Leicester was [filled with people dressed as zombies](#) mimicking an attack, and copycat requesters have already jumped on the new fad. According to [WhatDoTheyKnow.com](#), nine other individuals sent requests about zombies to their local authorities and the BBC. Most of them are still pending.

#### Cabinet Office, Ministry of Defence found to be slow on FOI

The Cabinet Office, the Ministry of Defence and Birmingham city council have agreed to [reply to Freedom of Information requests more quickly](#) after the Information Commissioner's Office threatened regulatory action.

This follows a three-month exercise in which the ICO evaluated the performance of 33 authorities when responding to FOI requests, after receiving complaints.

Councils Hammersmith and Fulham, Islington, Westminster and Wolverhampton have already agreed with the ICO evaluation and have promised to improve.

Chris Ames writes about his experience with requests to the Cabinet Office regarding the 'dodgy dossier' - and his take on the ICO's regulatory action - [in a blog post here](#).

### Elsewhere

#### Isle of Man

Implementing FOI in the Isle of Man will cost £1 million, [which is too high a price to pay, according to its Chief Minister Tony Brown](#).

Brown has based this figure on administrative FOI costs estimated for Jersey, whose own FOI legislation was passed earlier in the year.

A bill to implement an FOI regime in the Isle of Man - with similar features as the UK legislation - has had its first reading, but there is a general election scheduled for September, leaving any further progression to the incoming administration.

## European Parliament

The European Parliament [will permit](#) access to a controversial report on allowances paid to parliamentarians after the General Court of the European Union ruled there was an 'overriding public interest' in its disclosure.

The Galvin Report, a 2006 audit of the Parliamentary Assistance Allowance was leaked in 2009, but [only the outline of abuses of the system were revealed, with details of MEP's actual claims remaining hidden](#).

Irish lawyer Ciaran Toland sought access to the Galvin Report, but it was withheld on the grounds that premature disclosure would 'seriously undermine' decision-making, leading [Toland to bring a legal case against the European Parliament](#) in October 2008. The General Court disagreed with the decision to withhold.

The ruling is likely to guarantee more transparency within the institution, Toland said. *"This case has now established new rights of access to a wide range of documents by both citizens and the media. In particular, an institution will not be able to claim that political controversy is a ground to refuse access,"* he said.

The report will likely cause discontent among EU member countries that are being persuaded to accept tough austerity measures, wrote [The Independent](#).

The [European Union](#) has a right of access to documents enshrined in the Community Treaty. Title II, art. 15(3) [3], provides that: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents."

Further links: The Constitution Unit's research on [FOI and Parliament](#).

## Brazil

After a pledge to rapidly enact a Freedom of Information law, Brazilian president Dilma Rousseff has backed off amid pressure from the Senate.

According to Greg Michener, a Freedom of Information expert based in Brazil, Rousseff had initially said she would enact an access to information law on World Press Freedom Day, coinciding with President Barack Obama's visit and his invitation for Brazil to co-chair the [Open Government Partnership](#).

Brazil's constitution states that 'everyone shall have the right to receive information of his own interest or of public interest from public entities, which shall be given within the time prescribed by law.' There are, however, provisions that allow for certain public information to remain secret in perpetuity. The proposed changes intend to make this information accessible to the public.

Changes in the law would also help the government to establish a Truth Commission to examine human rights abuses during Brazil's military government from 1963-1985. According to Michener, Brazil's armed forces have so far vetoed attempts to bring out the archives from that period.

The main pressure from the Senate comes from its president, Jose Sarney, and Foreign Affairs Committee Chair Fernando Collor. Sarney was the first civilian president to take power after the fall

of the military regime in 1985. Collor was president between 1992 and 1994 and was impeached on charges of corruption.

According to Michener's article in the [Christian Science Monitor](#), the average Brazilian spends half a year's work on taxes – more than any other country on the hemisphere - yet they have no way of knowing where that money is allocated. An FOI law may help change that.

## USA

Nearly 25,000 pages worth of [emails](#) from vice-presidential candidate Sarah Palin have been released three years after Freedom of Information requests were filed.

The e-mails, which span the period in which she was governor of Alaska, [did not provide much new, or entertaining information about Palin](#), who is now flirting with the idea of running for president.

The emails spanning Palin's first two years as governor were requested during the 2008 election when she was Senator John McCain's presidential running mate.

Almost 2,300 pages were withheld due to data protection issues.

## South Africa

The ruling African National Congress party has conceded in limiting the scope and sanctions relating to a controversial bill to protect government information, amid resistance from opposition parties and freedom of information advocates.

The Protection of Information bill, which may be discussed in the second week of the new parliamentary session starting July 22, proposes a rules to classify and protect sensitive state information.

The ANC's proposed bill originally applied to "all organs of state," which [opponents](#) said could mean more than 1,000 public entities would be able to classify sensitive information. It had also proposed harsh jail sentences for those who do not comply with the law.

Towards the end of this month, the ANC has [backtracked](#), limiting the application to security services and agreed to remove the current minimum jail sentences without the option of a fine for those who disclose classified information, except if espionage is concerned.

## Nigeria

Nigeria has a [Freedom of Information law](#), after President Goodluck Jonathan signed the bill on 28 May, shortly after he took office.

Some of the [provisions of the law](#):

- Right of access to information held by public institutions, irrespective of the form in which it is kept, is guaranteed.
- Private institutions are included if they use public funds, perform public functions or provide public services.

- All institutions must disclose basic information about their structure and processes proactively. The law mandates they be adequately equipped to comply with the provisions of the Act.
- Protection for whistle-blowers is provided.
- All exemptions are subject to a public interest test.
- All institutions covered must provide an annual report to the Federal Attorney General's office – which will oversee the implementation of the law. This body will then make them available to the National Assembly and the public.
- The Federal Attorney-General must report on its duty as overseer to the Parliament once a year.

A Nigerian FOI bill has been in the works since 1999. In 2007, it was passed by both chambers but vetoed by President Olusegun Obasanjo.

## **Morocco**

Morocco's King Mohammed VI unveiled a plan for a new constitution with a provision guaranteeing freedom of information as a right.

Said Essoulami, director of the Centre for Media Freedom in the Middle East and North Africa (CMF MENA) was quoted in [FreedomInfo.org](http://FreedomInfo.org) saying the provision will open the door for an FOI law in the future.

The king detailed reforms that would boost the power of the prime minister and take away some of his own, following protests calling for a parliamentary monarchy such as that of Spain and Britain, reported [CNN](http://CNN).

The draft constitution is set for a national vote 1 July and will allow the public – instead of the king - to select a prime minister. The prime minister will be able to dissolve the House of Representatives, but the king will still be 'supreme commander' of the armed forces and will still be able to appoint ambassadors and diplomats.

Here is an unofficial translation of Article 27 in the draft of the constitution from FreedomInfo.org:

*Citizens have the right to access information held by public authorities, elected institutions and bodies invested with a public service. The right to information can be restricted by law, in order to protect national defense, internal and external security of the state, the privacy of individuals, the prevention of infringements on the rights and freedoms enshrined in this Constitution and to protect sources and areas specifically determined by law.*

## **Mongolia**

The Asian country has adopted a law on Information Transparency and Freedom of Information, which will come into effect on 1 December 2011.

The passage of the law came on June 15, the same day US president [Barak Obama met](http://BarakObama.net) with Mongolian president Tsakhia Elbegdorj.

## Egypt

A Freedom of Information bill has been drafted for post-revolutionary Egypt, according to Egyptian newspaper [AlMasry AlYoum](#) .

The current draft is being considered at the cabinet's Information and Decision Support Centre (IDSC) together with a group of human rights advocates, academics and journalists.

While advocates are optimistic that the bill will be accepted by the ruling military council, they are cautiously so.

The military government assumed power as long-time leader Hosni Mubarak was ousted by a popular revolution in January, and has held a constitutional referendum to push through democratic reforms, including limiting the terms a president can serve.

The bill may not be accepted by the cabinet and the ruling military council in its current form, according to Ahmad Ezzat, a lawyer at the Law Unit of the Association for Freedom of Thought and Expression, an independent NGO.

*"The state still treats information like arms and explosives, from the highest-ranking employee to the lowest. It's a long-standing heritage that can only change if there is a true political will,"* he told the newspaper.

A freedom of information law may help Egypt receive funds from organisations such as the World Bank and the International Monetary Fund, the newspaper mentions. Egypt incurred [large economic losses](#) during the unrest in January.

The draft law that Egypt is considering has been written by Toby Mendel, an expert on information legislation, president of the Centre for Law and Democracy in the US and a consultant for the World Bank.

## July 2011

### Freedom of Information in the UK

#### The phone-hacking scandal

The News of the World controversy may alter the way information on government ministers' meetings with the media is recorded and issued to the public.

[Prime Minister David Cameron said](#) he wants to amend the [ministerial code](#) to require ministers to record and publish "*all meetings with newspaper and other media proprietors, senior editors and executives - regardless of the nature of the meeting.*"

The BBC's Freedom of Information specialist [Martin Rosenbaum helps put the effects of the measure into perspective](#), comparing it to the regulations already in place.

Today, ministers must reveal meetings with external organisations on a quarterly basis (though, as Rosenbaum remarks, the list stops short of year 2011), according to the ministerial code. The public can also look at details of hospitality received by ministers and special advisers.

Cameron's pledge would amplify the definition of meetings and also cover permanent secretaries.

The public can request all this information with the FOI Act, but if meetings are informal or private, they may not be subject to the Act. It is unclear how Cameron's words will ultimately be interpreted.

Read the [Constitution Unit's blog](#) for more information.

#### Government will publish new data on the National Health Service and more

The Cabinet Office announced this month it will be [publishing data](#) on GP practices as well as on courts, schools and transport. [Prime Minister David Cameron said](#) the disclosures would give the public better information to make choices, but he also stresses it will generate competition among colleagues.

*"All the evidence shows that when you give professionals information about other people's performance, there's a race to the top as they learn from the best,"* he said. Cameron also said he believes the information will enhance the economy by keeping tabs on spending and curb waste, duplication of services and salaries.

The information published will include:

- prescribing data, clinical results and the treatment of lung cancer and other medical conditions by teams of doctors in different hospitals.
- Hospital complaints and staff satisfaction levels
- Anonymised data on the effectiveness of schools from the National Pupil Database
- Courts' anonymised criminal sentencing data (it won't include the names of those sentenced, but it will include age, gender, ethnicity, sentence and the time taken from offense to completion of the case in court).
- On transportation, data on road conditions, car parks, rail timetables, performance, roadwork will be published.

- According to the Guardian, ministers will also be [publishing all spending on government credit cards](#) as part of the transparency plan.

Just hours after Cameron stated the government's plans, Bernard Jenkin, [chairman of the Commons Public Administration Select Committee](#), said publishing data on government websites is not enough. The information must also be accessible and the government must engage more proactively with the public, he said.

At the [Constitution Unit's FOI Live conference](#) last month Tim Kelsey, the Cabinet Office official overseeing the government's transparency strategy highlighted the lack of information the public has on GP performance and said transparency could improve performance.

### **More open datasets in Canada**

Echoing developments in the UK, the province of British Columbia, Canada, also launched an [open data site](#) with around 2,500 data sets on subjects such as public-sector salaries and school test scores.

The aim was to proactively release raw data to the public, giving people the liberty to reinterpret and reorganise it however they like.

The B.C. government also announced it will be posting data from Freedom of Information requests at [openinfo.gov.bc.ca](#). [According to the Vancouver Sun](#), the government will give the original requester 72 hours or more to review records before posting them online, so as to let journalists break stories using their own FOI requests.

### **Updates to the veto provision announced in Parliament**

[Justice Secretary Kenneth Clarke published changes](#) to the [veto provision](#) in the Freedom of Information Act last month, placing guidelines on when the veto can and cannot be used.

### **'Accountable person'**

The focus of the update is on [section 35\(1\)](#) which states that information held by a government department is exempt if it relates to formulation of government policy and ministerial communications, and other related circumstances.

The update looks to set the criteria under which the veto can be used.

The Freedom of Information Act states that an 'accountable person' can override the Information Commissioner or the Tribunal when a decision is made whether to release information ([section 53](#)).

The 'accountable person' is defined in the Act as *"a Minister of the Crown who is a member of the Cabinet, or the Attorney General."*

This means that the 'accountable person' can decide that it is not in the public interest to release information such as the communication between ministers – by providing a certificate with their reasons for exercising the veto, and placing it before the two houses of Parliament . This way he or she overrides the public information authority.



According to the act, the 'accountable person' has 20 working days following the effective date to exercise the veto.

In the updated policy, the definition of the 'accountable person' is defined as "*the Cabinet Minister with responsibility for the policy area to which the information relates.*" If the subject involves documents from a previous administration, the Attorney General will be responsible.

### **Public interest**

To exercise the veto, the 'accountable person' will have to undergo two steps in their analysis. First, they must evaluate whether withholding information outweighs the public interest in disclosure. If it does, the new policy provides another set of criteria to consider.

- The release would damage the Cabinet Government
- It will harm "collective responsibility" (the convention that ministers are entitled to discuss policy confidentially before a public statement is issued together)
- It must revisit the public interest arguments

### **Collective responsibility maintained**

[The government have made clear however that the convention of using the veto only after a collective decision by the Cabinet will continue:](#)

*"This policy statement relates only to the exercise of the veto in respect of information that relates to the operation of the principle of collective responsibility. It does not apply to all information that passes to and from Ministers, for example. This policy statement – though limited in scope – does not preclude consideration of the veto in respect of other types of information. However, in accordance with our overarching commitment to use the power only in exceptional cases, such consideration would be preceded by a collective Cabinet view on whether it might be appropriate to exercise the veto in a given case. In making his or her decision, the Cabinet Minister or Attorney General (acting as the accountable person) would be entitled to place great weight on the collective assessment of Cabinet in deciding whether or not to actually exercise the veto."*

The [FOI veto power was first used in 2009](#), when the government blocked publication of cabinet minutes containing debate on the 2003 invasion of Iraq.

Jack Straw, the Secretary of State for Justice at the time, said publication would seriously damage the Cabinet Government, would "*drive collective discussions into informal channels,*" and damage the recording of history.

### **Prince Charles accused of meddling after FOI requests reveal meetings**

Prince Charles has been accused of meddling in Government policy after [the Mail on Sunday revealed he has had at least nine private meetings with cabinet ministers in less than ten months.](#)

Prince Charles summoned ministers for private talks at Clarence House, sometimes accompanied by their mandarins. Documents obtained by *The Mail on Sunday* via FOI show he focused on meeting ministers responsible for his 'hobby horse' issues, such as global warming, conservation, architecture and agriculture. However, he also met with Chancellor George Osborne, Education Secretary Michael Gove and Work and Pensions Secretary Iain Duncan Smith.

Most departments refused to give further details of the meetings, using the FOI exemption designed to protect members of the royal family.

[Martin Rosenbaum notes](#), however, that some requests regarding the Prince may actually fall under the Environmental Information Regulations, as many of his personal interests lie in environmental issues.

*‘The EIR stem from a European Union directive and do not have any specific provisions protecting members of the Royal Household,’* he said.

Read the [Constitution Unit’s blog](#) for more information

### **Academic wins right to read UEA climate change data**

A physics professor at Oxford University will be able to read data on climate change held by the University of East Anglia that was previously withheld, after an appeal to the Information Commissioner, said the [Guardian](#).

Jonathan Jones, who has described himself as a ‘climate change agnostic,’ will have access to an archive of world temperature records, which was collected jointly with the Met Office.

The ruling has clarified the limits of commonly used exemptions by universities to protect their data.

Information Commissioner Christopher Graham gave the UEA one month to deliver more than 4 million individual thermometer readings taken from 4,000 weather stations over the past 160 years, among other sets of data.

[Jeff Tollerson from Nature has broken down the key arguments used by UAE](#) that were unsuccessful in keeping the data from Jones:

- The CRU argued that un-processed datasets were publicly available; the ICO ruled that UAE could not rely on the public having information technology skills to process the data.
- The CRU said release could damage relations with research partners around the world; The ICO said specific threats needed to be identified and then these subject to a public interest test.
- The CRU argued it has intellectual property rights and rights to commercial exploitation of its own data. The ICO said this argument is not valid because the un-processed data is already publicly available.

### **Tobacco giant accused of FOI harassment**

Another University has lost the right to withhold its information - the [Scottish Information Commissioner has ruled](#) that Stirling University’s Centre for Tobacco Control Research must respond to Philip Morris International’s requests for information.

The [Herald Scotland](#) reported that Philip Morris International has tried for almost a year to obtain “full details of a project about smoking and young people.” The university has refused, saying the request was “vexatious” and “designed to cause disruption.”

Stirling also provided evidence of other cases in which the tobacco industry used FOI to harass health professionals, according to the Herald.

The tobacco giant appealed to Information Commissioner Kevin Dunion, who responded in favour of PMI. The Commissioner accepted that PMI's request would impose a significant burden on the University, but argued that Stirling had not given sufficient proof that the request caused "*disruption and annoyance.*"

### **Information Commissioner warns Welsh government**

Commissioner Christopher Graham [told the Welsh Government](#) it should review the way it handles Freedom of Information requests.

He also ruled that a report by management consultants on the NHS, which criticised some aspects of the way the institution was functioning, should be released.

This came in response to a complaint made by Conservative assembly leader Andrew RT Davies, who asked to see the correspondence and details of meetings between former Health Minister Edwina Hart, her officials and the management consultants McKinsey & Company. He did not receive a "*substantive response*" until January of this year, seven months after the request was sent

Hart said the consultants had produced a "*discussion document*", not a report and denied concealing the information.

The Welsh Government was given 35 days from 18 July to disclose the information, and 28 days from that date to appeal the ICO's decision.

A spokesman for the Welsh Government said it "*will consider the content of the judgment and respond to the Information Commissioner's office in due course*" [according to the BBC](#).

### **Northern Ireland: Special advisers' salaries not public**

News Letter, one of Northern Ireland's main daily newspapers has used FOI to report that Stormont has about double the number of special advisers than Scotland and Wales.

This has led to [calls for Stormont to publish](#) SpAd's exact salary, following [Westminster's disclosure last month](#).

The Northern Ireland parliament publishes wide pay bands, which show the advisers are paid between £656,500 and £1.4 million each year.

Traditional Unionist Voice leader Jim Allister has been asking about special advisers since he was elected two months ago and has found that a special adviser had been paid almost £14,000 for IT equipment, as well as a generous salary.

Westminster revealed that Craig Oliver, Prime Minister David Cameron's head of communications and the new director of political strategy are the highest paid SpAds, earning £140,000. The total pay for SpAds between 13 May 2010 to 31 March 2011 was £4.5 million, about £2 million less than the 6 April 2009 - 31 March 2010 period.

### **Is a tweet a valid FOI?**

Yes, according to the ICO. [Andy Mabbett hosts an interesting discussion on this topic on his blog.](#)

## Parliament

### MPs answer 60 per cent of messages on public accountability website

The likelihood of getting a response on [WriteToThem](#), a popular website that allows the public to write their representatives depends on the type of representative contacted, according to [MySociety.org reports](#) .

MPs answer about 60 per cent of messages they receive, while users writing to a councillor have about 50 per cent chance of getting a response. Ministers of European Parliament write back the least, with an under 50 per cent response rate.

MySociety.org, which operates ten websites on facilitating communication and accountability between government and the public, commissioned [Tobias Escher](#) of the Oxford Internet Institute to conduct a study to assess the effectiveness of two of their websites: [TheyWorkForYou](#) and WriteToThem.

The results showed the websites met the goals set by the organisation seven years after they were launched.

Users considered that both websites are user-friendly and effective watchdogs. More than four out of five users would recommend WriteToThem to a friend; and most users said TheyWorkForYou – a website that shows information on the members and the proceedings of all parliaments and assemblies in the UK- is better than the [official parliamentary site](#).

The survey also suggested the websites may play a role in increasing democratic participation.

- Sixty per cent of TheyWorkForYou visitors had never looked up their representatives before they encountered the website
- Two in five users of WriteToThem had never contacted a representative.

The report also provides a sense of the demographics of users. For both websites, most WriteToThem users have a higher degree and a higher income and are mostly male, white, and over 35.

### Figures released on how much was saved with the “bonfire of the quangos”

Using the Freedom of Information Act, Labour has accused the government of presenting service cuts as savings incurred by dismantling hundreds of public bodies and merging others.

The government has [admitted](#) that less than 10 per cent of its savings came directly from the “bonfire of the quangos.”

The government says it will save £33 billion from the quango reforms, but just under £2.6 billion is from the administrative changes, according to information revealed by the request.

*"It beggars belief that [Francis] Maude ( Minister for the Cabinet Office) has sought to present frontline cuts to housing and universities as savings from public bodies' reform. This deeply cynical*

*use of figures shows the degree to which the Tory-led government cannot be trusted with our public services," the shadow Cabinet Office minister, Tessa Jowell told the Guardian.*

The "[quango bonfire](#)" involved the elimination of 192 bodies, the merger of 118 and the reform of 171, including the Health and Safety Executive, Charity Commission and the Environment Agency.

## Local government

### **Kirklees council leader accused of inappropriate use of FOI law**

Counsellor Mehboob Khan of [Kirklees](#), a metropolitan borough of West Yorkshire, is being [investigated for misconduct](#) in relation to the Freedom of Information Act.

A [Huddersfield Daily Examiner investigation](#) alleged Khan was intervening in the FOI process to prevent information from being released.

Kirklees Council had refused to investigate and Khan denied he had done anything wrong, saying he was trying to put information into context. The newspaper reported 15 July that the Council had decided to take the investigation on following an official public complaint, but did not give details on the time and place.

*The Examiner* printed emails sent between Khan and FOI officers at Kirklees Council, allegedly showing Khan instructing officers not to release information and asking about the requester. You can see them [here](#).

### **Liverpool also amended FOI responses**

An internal audit investigation in Liverpool Council leaked to the *Liverpool Daily Post* showed [items were deleted](#) in response to a Freedom of Information request sent by the newspaper.

The request asked for "*details of the register of hospitality received by officials in September 2009.*" Councillor Joe Anderson, who was leader of the Labour opposition at the time, requested the same information, according to the newspaper.

The investigation, dated January 2011, concluded that items were deleted in the response and there were discrepancies between information in the original register and that which was released.

### **DfE angers councils with inaccurate information**

Several London councils are furious with the Department for Education for answering FOI requests inaccurately.

The [New Statesman](#) asked for the number of SureStart centres that had been closed since May 2010. DfE replied that 20 had, half of which were in London boroughs.

[But Redbrige insisted that its seven had not shut - five of them had merged.](#) DfE said Greenwich closed five centres, while Greenwich claims it has actually closed none at all. Wandsworth and Hackney also dispute DfE's figures.

### **Scotland: Council leader wants FOI change to prevent 'trivial' requests**

A Scottish council leader wants to [end responses to trivial Freedom of Information requests](#).

Councillor Bob Myles, who has lead Angus Council since 2007, made the comment when describing a request which revealed the council spent thousands on credit cards during the same 15-month period in which it announced 500 redundancies.

He said the FOI requests often served to create *“sensationalist stories.”*

*“I don’t know why we have to spend thousands of pounds responding to freedom of information requests whenever a journalist gets a bee in their bonnet,”* he said.

*“Angus Council recently spent £2000 responding to one request. How is that kind of expenditure justifiable?”*

*“I’m all for being open and honest with the public but when people start querying insignificant amounts it’s a waste of everybody’s time. Maybe they should ask how much we spend responding to FOI requests every year.”*

## Elsewhere

### Isle of Man slow on FOI bill

After four years in the works, Manx chief minister warned that a Freedom of Information law would be expensive to maintain.

In the [last sitting](#) of the House of Keys on 28 June, chief minister Tony Brown said the [Code of Practice on Access to Government Information](#) – the self-governing Crown Dependency’s current regulation *“has served this island very well,”* and added that ministers would have to consider whether they were willing to take on the cost.

Brown said the government would have to spend £1 million a year to administer the law, and a further £2 million to set it up.

[General elections](#) in Isle of Man will take place September 29, so the bill will be passed on to the next chief minister and council. The [last sitting](#) of [Tynwald](#), the island’s parliament, was July 12.

Read more on the [Constitution Unit’s blog](#).

### 45th anniversary of FOI Act in US

The anniversary of the US Freedom of Information Act may be greeted with the same fireworks as Independence Day, but some are not too happy with the way it’s working.

[A recent analysis](#) by the National Security Archive at George Washington University, which collects and publishes declassified government documents, shows that it is common for responses that take a year or more.

The [New York Times](#) reported, just a few days before the anniversary of the Act, that only 49 of 90 federal agencies *“reported making concrete changes to their FOIA procedures”* in response to President Barack Obama’s inaugural call for more transparency across government.

David Sobel, a transparency advocate, told the newspaper the backlog did not necessarily have to do with lack of staff, but rather an agency's desire to control its public image.

The [Nieman Watchdog Journalism Project](#), which suggests requests the media should make to government, said the response to terrorism has also led government agencies toward greater secrecy. It also questioned whether Wikileaks will threaten the use of FOIA, making leaks much more prevalent than information requests.

In May, Democratic Senator Patrick Leahy and Republican Senator John Cornyn introduced the [Faster FOIA Act](#), which would establish an advisory panel to examine the backlog of more than 69,000 FOIA requests. It passed unanimously in the Senate but is still to be taken up by the House, [reports the Washington Post](#).

## Data Protection

### Police officers breach DPA

Freedom of Information requests have revealed that 904 police employees were found to have breached the [Data Protection Act](#) in the last three years.

The privacy lobby group Big Brother Watch obtained [figures](#) from 36 police forces in England and Wales. In Merseyside, a metropolitan county in North West England, 207 officers and staff were subject to disciplinary action with one person receiving a criminal conviction.

Seven forces either did not reply or did not provide information.

[The Guardian highlighted](#) a few interesting cases from the report: A police sergeant in Nottinghamshire was convicted of accessing police systems for purposes that did not involve his job and was sentenced to jail for a year. A police community support officer in Norfolk was found guilty of relaying details of a call to the police to a family member and was dismissed from his or her post.

### EU cookie policy affects visits to ICO website

The opt-in cookie policy implemented in the UK in May has driven visits to the Information Commissioner's Office website [down 90 per cent](#), as revealed by a [Freedom of Information request](#).

The revised Privacy and Electronic Communication Regulations came into force in the UK on 26 May after an EU directive was passed on to member states. It outlines that websites need consent from visitors if cookies are stored in their computers.

The [ICO's website](#) was one of the first to adopt the policy, but businesses will have until May 2012 to implement it on their websites.

The [data](#) obtained by analytics expert [Vicky Brock](#) shows that recorded visits dropped from an average of 8237 from the period of 5-24 May 24, to 883 from 26 May-14 June.

Companies use cookies to show advertisers where their audience is located.

### Australia revisiting controversial data retention plans

Plans to force internet providers to maintain records of all subscribers for potential use by law enforcement agencies [is being considered for the second time](#), reports *The Australian*.

The government's plans were prompted by the 2006 [European Union Data Retention Directive](#), in which member states must store citizens' telecommunications data for six to 24 months. An April departmental briefing note to the Attorney General the newspaper obtained through a [Freedom of Information request](#), states that the proposed plan will be modelled on the EU directive.

According to the brief, information on the identity of the sender and receiver will be retained.

Meanwhile, the [EU data protection authority condemned](#) the 2006 directive in May, saying it doesn't meet data protection and privacy requirements.

The office of the European Data Protection Supervisor issued an [16-page opinion](#) calling on the European Commission to consider the impacts of the directive and to either look at the possibility of repealing it, or draft a more "*targeted measure*."

[Links to the ICO decisions of July 2011](#)

[First-tier Tribunal \(Information Rights\) decisions of July 2011](#)



## August 2011

### Freedom of Information in the UK

#### 'Making Open Data Real'

The public has been asked to pitch ideas on how to improve access to information as part of the Government's initiative to further open up government.

The [consultation](#) document titled "*Making Open Data Real*" is part of what Cabinet Office minister Francis Maude calls "*the most ambitious open data agenda of any government in the world.*" While the focus is on proactive publication of official data, there are also proposed changes to FOI. The government is not attempting to widen FOI's scope. Instead, the consultation proposes raising the overall cost limit from £600 to £1000 pounds and allowing the public to lodge a request that takes more than 18 hours to process (currently, a request can be refused if it surpasses that time limit). The initiative hopes to reduce the administrative burden of dealing with FOI requests by asking authorities to release more data proactively.

Further changes proposed are:

- Reviewing the Information Commissioner's powers to enforce FOI legislation. The document states: "*The commissioner [...] has powers of entry and inspection in specified circumstances. It is an offence [...] to alter, deface, block, erase, destroy, or conceal information with the intention of preventing its disclosure. This offence can apply to any individual. Are these powers sufficient to enforce an enhanced right to data?*"
- Setting statutory time limits for authorities to evaluate if and how to release the data requested during the internal review stage. At present, the ICO recommends that internal reviews be completed within 20 working days (or 40 in exceptional circumstances) but this is not mandatory.
- Introducing a new requirement that all public bodies proactively publish data about their services. Right now, public bodies can choose what information to publish. Some questions to be considered are whether the public body will have the right to refuse to publish datasets because of cost, what costs will be considered to be unreasonable, and how to make sure authorities don't inflate the costs.

The [Campaign for Freedom of Information](#), an FOI advocacy group welcomed the consultation.

*"The more that is published proactively, the less opportunity there will be for individual authorities to resist disclosure when the figures show that their performance is poor."* However, CFI warned the Localism Bill would take more public services into the realm of the private sector, hidden from FOI and thus undermining scrutiny overall.

The [consultation](#) closes on 27 October. Responses will be reviewed, and a White Paper with impact assessments will be issued in autumn.

Read more on the [Constitution Unit's blog](#).

#### UK riots data

The media has been given access to court information regarding people accused of offences in relation to the UK August riots, as they try to piece together the spontaneous looting and arson that took place after the death of Mark Duggan in Tottenham.

*"In an unprecedented act of government transparency, the Ministry of Justice has instructed Magistrates Courts across the country to provide full court results details of all riot-related cases," wrote the Guardian. "These are compiled by the individual courts themselves and have never been released on such a scale before."*

Bloggers and columnists have been weighing in on the causes of the riots - some citing youth discontent with wider society, others government cut and the failings of the welfare system.

[The Guardian](#), the [BBC](#) and [the Telegraph](#), among others, have displayed details of suspects, including their age, gender, charges, and the court in which their case is being heard. The Guardian is using a data in a larger project to analyse the underlying causes of the riots.

But as courts review examine the cases of riot suspects, civil liberties groups warn against inconsistent sentencing. Court data, now open to the public may invite further public scrutiny, leading to unjust punishment.

*"We know the courts are swamped with cases and handing down hurried and overly punitive sentences [that] will result in many criminal appeals which will act as a further drag on the system," Andrew Neilson, director of campaigns for the Howard League for Penal Reform, told the Guardian.*

### **Cuts in services to blame?**

The magazine [Children and Young People Now](#), sent round-robin Freedom of Information requests to every local authority in the country to find data on government spending for young people.

*"Figures [...] show that several areas affected by last week's violence and looting have made substantial cuts to spending on youth services and Connexions,"* wrote the magazine.

In Haringey, the first London borough affected by riots, CYP Now found that services had been slashed by 62 per cent this year and expect a further 30 per cent cut next year. Salford, which was also affected by rioting, cut its services for youth by 30 per cent and plans to cut another 18 per cent in funding next year.

### **Council member crunches numbers on Freedom of Information Website**

[Mark Goodge](#) a programmer and member of [Evesham Town Council](#), has compiled an overview of requests to local authorities in [WhatDoTheyKnow](#), a website that acts as a middleman between Freedom of Information requesters and the government.

Goodge built a database of the success rate of requests made through WhatDoTheyKnow by adding together the statuses of the requests as displayed on the website.

His findings are set up in very easy to read [tables](#). Here is a summary:

- York City Council is the most open authority with a 94 per cent success rate for requests (though there is less than 1 per cent difference between the top three)

- The top ten most open authorities are in local government, with a 'success' rate over 90 per cent. *"That's almost certainly partly because local authorities get fewer of the unanswerable [...] requests that go to some central government departments, but, even so, I think this is something which reflects well on local government in the UK,"* [Goodge said](#).
- The authority receiving the largest number of requests is the UK Border Agency (it's also the second "tardiest")
- The number one "tardiest" authority is Her Majesty's Courts Service, with 16.7 per cent of requests overdue
- The least open authority in the UK is the BBC, which refuses 38 per cent of requests. The BBC [is permitted to refuse requests](#) related to material held for journalistic or artistic reasons, but Goodge decided to include it in the survey anyway because, he says, he's *"not at all convinced that this is being used as much more than a convenient loophole – just because you can refuse to supply some information, it doesn't mean that you should."*

WhatDoTheyKnow is one of [MySociety.org](#)'s ten websites on facilitating communication and accountability between government and the public. In July, the organisation released a report on the effectiveness of two of their websites (read [July's Monthly Updates](#)).

### Thatcher's Hillsborough papers

The government has [confirmed it will release](#) cabinet discussions on the 1989 Hillsborough stadium disaster after the number of signatures on an e-petition calling for disclosure [reached the 100,000 mark](#).

The manner in which the information is being made public satisfies the Hillsborough Family Support Group, which represents the majority of the families, but not the original requester.

The demand for the meeting minutes involving Margaret Thatcher's cabinet deliberations on the 1989 tragedy, started with a Freedom of Information request made by the BBC in April 2009. When this was refused by the Cabinet Office, the BBC took the case to the Information Commissioner. [The ruling](#), published last month, asked the Cabinet Office to release the papers, saying public interest outweighed considerations against disclosure.

The Cabinet Office, this month, [appealed](#) the ICO decision to the Information Rights Tribunal, arguing that the Thatcher papers must instead be released through an [independent panel](#) set up by the previous Labour government, which is assessing what information should be made public. *"The government's view is that it is in the public interest for the process that is under way through the Hillsborough Independent Panel be allowed to take its course."*

The government argued the same point when the appeal was taken to the ICO, but Commissioner Christopher Graham discarded it because the panel had not been set up at the time of the request.

When the e-petition pushed the government to clarify its position, it affirmed it would release the information through the panel. However, according to the news organisation's FOI specialist Martin Rosenbaum, the [terms of reference for the panel](#) restrict a large portion of the information first requested by the BBC. For instance, its programme of disclosures excludes *"information indicating the views of ministers, where release would prejudice the convention of Cabinet collective responsibility."*

Collective responsibility is protected by an exemption in the FOI Act. But in his decision to release the papers, the Commissioner affirmed that while cabinet discussions fitted within the parameters

of the “collective responsibility” exemption, he concluded the exemption did not withstand the test of time (read the [Constitution Unit blog](#) for more details on the ICO decision).

Though release through an independent panel does not satisfy the BBC or the ICO, it is what the Hillsborough families want. The Hillsborough Family Support Group prefers the *“papers be released to the panel first so they can be put into context, and then shown to the families, before then being released to the wider public,”* [said Margaret Aspinall](#), the chair of the HFSG.

Since the [e-petition](#) system was [introduced last month](#), only one other petition, which called for rioters to lose their benefits, has hit the 100,000 signature target. Rosenbaum questioned whether the [e-petition may have more effect](#) on government policy than the Information Commissioner.

## **Bloomberg News fights FOI case over Anglo-Iran trade**

The Information Commissioner has changed his mind about backing Bloomberg News in their attempts to obtain information about UK companies trading with Iran, [the news organisation has claimed](#).

Bloomberg, based in New York, made a Freedom of Information request to the Department for Business, Innovation and Skills (BIS) in 2009, to *“release the names of British businesses that applied to ship controlled goods to Iran in the first half of that year.”* The request *“was part of an investigation into a string of Iranian air disasters that killed hundreds of people, including a February 2003 crash in which 276 died in central Iran,”* according to Bloomberg. *“It’s critical to understand who’s doing business with a pariah state,”* said Mark Stephens, Bloomberg News’ lawyer.

BIS refused the request, saying that banks may cut off their services to the companies involved out of fear of being targeted by US authorities.

Bloomberg alleges the Information Commissioner’s Office initially backed the organisation but then reversed its decision after BIS *“filed secret third-party responses with the ICO.”* The case was heard in a two-day tribunal hearing in London.

According to the Guardian, Iran traders [are supporting the British position](#). *“Publicity in newspapers brings our members, who undertake legal trade with Iran, to the attention of the US authorities, who pursue them, and to their own banks, who withdraw banking facilities,”* Martin Johnston, director general of the [British-Iranian chamber of commerce](#) told the newspaper.

## **FOI in Scotland**

### **Scotland independence and EU membership questioned with FOI request**

The Scottish National Party’s [has refused to give Labour MEP Catherine Stihler information](#) on whether an independent Scotland can join the European Union.

Stihler’s FOI request asked if the SNP, which champions Scottish secession, but wants to stay in the EU, had sought legal advice on the matter. The party’s response, according to Stihler was: *“We consider that to reveal whether the information you have requested exists, or is held by the Scottish government, would be contrary to the public interest.”*

Stihler said she would appeal the refusal, saying the information is in the public interest and questioned whether the SNP is as certain as it appears.

*"If he is so confident that a separate Scotland would automatically be part of the EU, then why on earth have I received a letter full of arrogant secrecy?" [Stihler said](#). "If they had nothing to hide, they wouldn't be trying to hide it."*

The European Commission has said that Scotland's entry as a member state would have to be "negotiated," and terms may include joining the Euro. Stihler said there is a risk Scotland will end up outside the UK and the EU, which, she said, will be disastrous for the economy.

The SNP believes Scotland's membership of the EU is straightforward. Leader Alex Salmond wrote in the Scotsman that, *"Scotland is already a member of the EU and that would continue. It is not easy to leave the EU as we saw with the attempts by Greenland when they won autonomy from Denmark."*

### **Stirling's Tobacco research centre targeted by Philip Morris**

In 2009, law firm Clifford Chance [made a request on behalf of Philip Morris International to University of Stirling's Centre for Tobacco Control Studies centre](#). It did not divulge a 'name' for the purposes of the request, and thus the University's refusal to answer the request was upheld by the Scottish Information Commissioner.

However, the requests were made again, this time naming PMI, and the University again refused, citing the vexatious applicant exemption. PMI appealed, and has won (see the decisions [here](#) and [here](#)). The University now plan to engage the cost-limit exemption.

The case again highlights the problems researchers face when undertaking research in controversial areas (a topic [recently discussed](#) at a series of workshops across the UK).

The University's research involves confidential interviews with thousands of children aged between 11 and 16 about their attitudes towards smoking and cigarette packaging. PMI's request comes as a ban on cigarette packet branding is being discussed.

The centre, which is part of the University's Institute for Social Marketing, was established in 1999 by Cancer Research UK and aims to discover why children start smoking.

The researchers believe release of the data will seriously harm co-operation with other academics who fear that sharing their own unpublished data with Stirling will lead to it being handed over to the tobacco industry. It will also harm the relationship with research participants.

*"They wanted everything we had ever done on this," said Professor Gerard Hastings, the institute's director. "These are confidential comments about how youngsters feel about tobacco marketing. This is the sort of research that would get a tobacco company into trouble if it did it itself."*

*"What is more, these kids have been reassured that only bona fide researchers will have access to their data. No way can Philip Morris fit into that definition... For me the crux is the trust we have with young people. How easy will it be for us to get co-operation from young people in the future?"*

Hastings also mentioned some of the same frustrations that Prof. Phil Jones articulated following his Climate Research Unit's inundation with FOI requests. He noted Philip Morris's demands have taken up large amounts of time and resources, diverting his department's attention from its primary role of investigating smoking behaviour. *"A research unit like ours simply can't afford this."*

Philip Morris argue they do not want any personal data of the study's participants, and "as provided by the FOI Act, confidential and private information concerning individuals should not be disclosed," said Anne Edwards, director of external communications at Philip Morris. "We made the request in order to understand more about a research project conducted by the University of Stirling on plain packaging for cigarettes."

[Heather Brooke](#) has argues that PMI is entitled to use the FOI Act like any one else, and notes the very British reluctance to share public data with corporations. Others, like Campaign for Freedom of Information Director [Maurice Frankel](#), note Stirling may wish to consider using the Scottish FOI Act's section 27 exception, which protects disclosing information that would be detrimental to a programme of research. This is exemption is unique to Scottish researchers over their other British counterparts. It was inserted into the Scottish Act after lobbying by universities during the bill's drafting.

*The Independent* also notes [tobacco companies have used FOI to obtain minutes of meetings](#) between Department of health officials and cancer researchers, as part of a 'global campaign' by tobacco companies to target public organisations with FOI.

## Elsewhere

### US

Legislation passed to hasten FOI process

The American Senate passed the "[Faster FOIA Act](#)," which aims to establish a panel to evaluate the reasons for request backlogs, and make recommendation to the congress and government agencies on how to improve the way the act works.

*"This Faster FOIA Act would identify methods to reduce delays in the processing of FOIA requests and ensure the efficient and equitable administration of FOIA throughout the federal government,"* said Senator John Cornyn, who introduced the bill, in a [press release](#).

This is the second time the legislation passes in the Senate. The first time, the bill was killed as part of an effort to raise the debt ceiling.

The House Rules Committee [approved a rule](#) allowing House Speaker John Boehner to replace the text of the Faster FOIA Act (S. 627), which was approved by the Senate in May, with his [budget proposal](#), to [expedite Senate consideration](#).

It was reintroduced by senators Patrick Leahy (a democrat) and Cornyn (a republican).

The National Security Archive at George Washington University greeted the 45th anniversary of the signing of the FOI Act on July 4th with sombre news about its efficiency.

It conducted a survey of 35 federal agencies. The results, released on the 45th anniversary of the signing of the FOI Act, showed that every agency had requests that were more than 2 years old, and many had a number of requests that were 10 or more years old.

*"[The Knight Survey] shows that the oldest requests in the U.S. government were submitted before the fall of the Soviet Union. These unfulfilled requests – some are for documents that are themselves*

*more than 50 years old – are victims of an endless referral process in which any agency that claims “equity” can censor their release,”* said a [July 4 press release](#) on the NSA website.

## **India**

Another Indian FOI activist killed

Freedom of information activist and blogger Shehla Masood was shot in the neck when she was on her way to a demonstration where tens of thousands of people rallied in support of jailed anti-corruption leader Anna Hazare.

Masood, 29, had campaigned for the enforcement of the Indian Right to Information Act for the past two years, according to [Reporters Without Borders](#), who called for an independent investigation on her death. The activist had complained that a police officer had been harassing her, and when nothing was done, she wrote the local police chief saying she feared for her life.

Her death is part of a larger trend of attacks on people who have tried to expose corruption through the newly introduced RTI Act. According to the Hindustan Times, [at least 10 RTI activists were killed](#) last year.

The newspaper, which also published a list of the RTI activists killed last year, said they are routinely harassed and *“slapped with fraudulent cases to make sure they do not speak up .”*

Shekhar Singh, RTI activist and founder member of the National Campaign for people's Right to Information said the best way to prevent these attacks is making sure the information the activists were seeking is published as soon as possible.

*“The only deterrent against such attacks is to quickly make public the information that the activist was trying to get out,”* she said. *“When those with vested interests realise that such attacks will only expose them quicker, they will refrain from them.”*

## **Europe**

The OSCE launches a freedom of expression report

A report by the Organization for Security and Cooperation in Europe showed that only 30 per cent of the member states surveyed recognise access to the Internet as a basic human right.

[“Freedom of Expression and the Internet”](#) – a study of existing legislation and practice regarding the free flow of information and media diversity on the Internet, is based on responses to a questionnaire sent out to OSCE participating states in September 2010, and *“presents the conclusions of the first comprehensive research on Internet content regulation in the OSCE region.”*

Almost 18 per cent of the participating States did not respond to the questionnaire. These are some of the report’s findings:

- In more than 12 per cent of the participating States, access to the Internet can be restricted to protect national security and public health or in times of state emergencies (more than 60 per cent of the citizens of the OSCE area are Internet users)
- More than half of the participating countries said they have no legal provisions on the right to access the Internet.



- Only seven States (12.5 per cent) responded that they have general legal provisions which could restrict users' online access.
- Forty-one per cent of participating countries have no legal provisions "outlawing the denial, gross minimisation, approval or justification of genocide or crimes against humanity in their country."
- Only Finland has specific legal provisions regulating "net neutrality" in their jurisdiction

Since July 2010, all [Finnish citizens have a legal right](#) to access a one megabit per second broadband connection. Technology experts have said Finland is the first country in the world to do so.

*"Network neutrality is an important prerequisite for the Internet to be equally accessible and affordable to all," stated the report. "It is, therefore, troubling that more than 80% of the participating States do not have legal provisions in place to guarantee net neutrality. Finland and Norway stand out as best practice examples with Finland having anchored network neutrality in its corpus of laws while Norway, together with the industry and Internet consumers, developed workable guidelines."*

In June, the OSCE issued a [Joint Declaration](#) on the matter together with the United Nations, the Organization of American States and the African Commission on Human and Peoples' Rights, stating that countries have the obligation to encourage access to the Internet for all.

*"Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. "*

[Links to the ICO decisions of Aug 2011](#)

[First-tier Tribunal \(Information Rights\) decisions of August 2011](#)



## September 2011

### Freedom of Information in the UK

#### Local Data Panel: "Public transparency should follow public money"

Responding to the government's FOI review, The Local Public Data Panel is proposing the government [should consider amending the legislation to apply it to all publicly funded services](#) "regardless of the organisation that delivers them". (This is a similar sentiment as expressed by the Public Accounts Committee – see below). The LPDP also proposed that data that the public has the right to obtain under FOI should be published as open data.

*"These two proposals reflect the principle that public transparency should follow public money," the Panel said. "Implementing them would provide consistency in the application of this principle across all publicly funded services."*

[You can read the LPDP's statement in full here.](#)

#### Information rights need to be taught in schools says ICO

The Information Commissioner's Office is [arguing for information rights to be embedded in the school curriculum](#). They have launched a research tender to investigate how to do this.

The ICO notes research which has found 88 per cent of secondary school and 39 per cent of primary school children have a profile on a social networking site. However, 60 per cent of respondents hadn't read the privacy policies of the networking sites they use, 32 per cent didn't know what a privacy policy was, and 23 per cent said they didn't know where to find it.

The ICO notes its own initiatives to educate young people about privacy and information rights "have only limited chances of success unless the education of information rights becomes a more mainstream component of a young person's formal education."

#### New guidance for Higher Education institutions

The [ICO has released guidance for Higher Education institutions](#) responding to FOI requests. The guidance comes after the Commons' Science and Technology Committee urged clarification following its investigations of the 'climate-gate' scandal involving the University of East Anglia.

The guidance uses case studies from various requests to illustrate the exemptions available (or not available) for academics that can help address some of the issues that emerged following the East Anglia case (and those to come out of a series of workshops regarding research and FOI).

The [ICO's Steve Wood said](#) "It is important that all higher education institutions comply with their obligations under freedom of information legislation. However, we appreciate the distinctive challenges that requests can pose. This guidance should help institutions to understand when they can apply exemptions to protect important research information."

The guidance also follows a conference hosted by JISC (a body dedicated to information technology use in education) regarding research integrity, covering themes such as good data management and principles for sharing and archiving data. All the resources from the conference are [here](#).

The issue of access to academic data is being discussed in several different forums at the moment. *The Lancet* has published an article by London-based epidemiologists regarding access to researchers' data for the benefit of public health. [Time for fair trade in research data](#) argues that despite ethical and practical barriers, researchers must be encouraged to share their data. This needs to happen with explicit incentives – built into funders' criteria, journal publication and university guidance.

Meanwhile, a case is going to the [European Court of Human Rights](#) regarding the dismissal of a Swedish academic for their refusal to release their work on Attention-Deficit Hyperactive Disorder to other researchers.

Prof Christopher Gillberg undertook a research project involving behaviour disorders in children. Assurances were made that sensitive data provided by the children and parents participating in the study would not be disclosed.

Two other researchers applied for the data of the study, and were granted access, however with stringent conditions on its re-use. After various court appeals and decisions, Gillberg refused to provide the data, and later his colleagues destroyed it. He and his colleagues were fined and given suspended sentences. [Gillberg's case](#) to the European Court on Human Rights centres on Article 10 – *"because his promise of confidentiality to the participants in the research was allegedly imposed on him by the university's ethics committee, as a precondition for carrying out his research."*

### **NHS reforms "damaging to health information rights"**

The [Campaign for Freedom of Information \(CFOI\)](#) has criticised the coalition government's NHS reforms, *"expressing concern that the public's rights to information about the NHS are likely to be increasingly constricted by the reforms in the Health and Social Care Bill."*

CFOI's concerns have been expressed in a [letter to Health Secretary Andrew Lansley](#), and centre around the information sharing between NHS bodies and the providers they commission work from. NHS bodies are subject to FOI, and those working for them are also contractually obliged to provide information to those bodies to help them answer FOI requests.

However, the clause in the Bill that explains this relationship notes specifically the types of information that the contractor will have to supply to the NHS body for FOI purposes, thus omitting the many other kinds of information that would otherwise be obtainable via FOI.

Financial Times alleges Gove uses personal email to avoid FOI

The [Financial Times](#) [paywall] claims it has copies of emails showing top-ranking officials in Education Minister Michael Gove's office advocating the use of personal email addresses to avoid disclosure under FOI.

The newspaper quotes one of Mr Gove's advisers, in an email to his colleagues, saying he will not answer emails to his official department account, but only those sent to a Gmail account. It alleges that officials have avoided answering FOI requests, as they have been "unable to find" information not stored on their official government web addresses.

However, the [BBC reports](#) a source from the DfE claims the email from Gove's advisor is referring to emails about Conservative Party business only, not to government business. *"The FT story gives an*

entirely misleading impression of [the] email." (Whitehall officials are also encouraged to not use .gov email accounts for party-political business.)

The [Huffington Post UK](#) claims it has "seen emails from a Department for Education official, in which he appeared to be putting pressure on a primary school in England to convert to academy status before the end of the last summer term.... sent at the end of June from the official's personal Hotmail account, in clear violation of Department for Education rules on email correspondence." The *Independent* also [claims lobbyists have admitted liaising with government officials and advisors via text message](#) as an attempt to avoid FOI.

The ICO has written to DfE's permanent secretary regarding the *Financial Times* allegations. A spokeswoman for the ICO said the Information Commissioner was making inquiries but had not decided whether to launch an investigation.

Journalist blogger [David Higgerson](#) notes, "For a government which is allegedly committed to transparency and openness, it's a worrying sign that one of the most senior ministers... appears to be acting in such a secretive way." Anonymous [FOI officer 'FOI Man'](#) notes the problems of attempting to avoid FOI in this way:

*"The DfE have argued that the emails related to Conservative Party business. If so, then technically there is nothing wrong with what they are doing. But the flip side of s.3(2) is that even if such business was carried out on DfE accounts, it would not be subject to FOI. So there's really no need for it to be carried out using separate email addresses. In fact, many might well take the view that it isn't a good idea – aside from the risk of somebody concluding that you might be trying to hide something, there are also potential security risks connected with using private email accounts which are not generally subject to the same levels of encryption as Government email accounts."*

CFOI too [are calling for tougher sanctions](#) on officials who attempt to destroy or hide information to avoid FOI. Another anonymous local government blogger discusses of the implications of Section 77 of the FOI Act in this case, [here](#).

### **Improving campaigning using FOI**

Many NGOs hesitate to use FOI, says Tom Baker from the National Council for Voluntary Organisations, despite its usefulness. His blog on the *Guardian* website offers some helpful tips to encourage FOI use and get good results.

His tips include being specific and asking for advice. On a related note, [Baker](#) has also blogger on his experiences using FOI to 'measure' the campaigning done by NGOs.

Sending FOI requests to the 18 biggest government departments, asking for information about the campaign letters, postcards, emails or leaflets that seemed to be part of a wider coordinated campaign, he has compiled data on the activities of campaigning organisations.

His FOIs had identified that "Government departments have received at least 946,000 actions in the 12 month period from 1st May 2010 and 1st May 2011," and "the majority of actions are on the issues of Sustainable Development including Climate Change, nuclear and energy policy; International Development; Animal Welfare."

### **ICO orders release of previously vetoed minutes**

The ICO has ordered partial release of Cabinet minutes from 1997/98, which were previously ordered for release but then vetoed by then-Justice Minister Jack Straw. This was the second time the ministerial veto had been used.

For a discussion of the ICO's latest decision, see [Katherine Gunderson's blog for the Campaign for Freedom of Information](#).

## Parliament

### FOI needs to be extended to help improve Private Finance Initiatives

The Public Accounts Committee has [recommended FOI be extended to private companies](#). Their call comes as they release a report looking at lessons to be learned from PFI projects.

The Committee criticises previous governments for their reliance on PFIs as the “*only game in town*” while the results – value for money for the taxpayer – have been far from realised.

Rt Hon Margaret Hodge MP, Chair of the Committee of Public Accounts, said: “*We have seen information which strongly suggests that investors are making excessive profits from selling on shares in PFI projects. However, the Government currently lacks sufficient information on the returns made by investors, who have been able to hide behind commercial confidentiality... The Government should extend freedom of information to private companies providing public services and should introduce arrangements for sharing equity gains.*”

The full text of the Committee's report [can be found here](#).

## Data Protection

### Facebook flooded with requests for personal data

The [Guardian](#) reports Facebook is being inundated with requests to release the personal data of its users, as part of an ‘annoyance campaign’.

The campaign, [How to annoy Facebook](#), was started by a user on the social news site Reddit. According to [technology blog ZDNet](#), the company's data access request team have been forced to send out emails telling users there will be a significant delay in getting their personal data out to them.

“The amount of data would include a user's photo gallery, wall posts and all other personal data such as date of birth. ZDNet reported that a typical personal data file will be a PDF that runs to more than 1,000 pages and more than 100MB in size.”

The UK information Commissioner noted that while some data protection laws in Europe specify the data must be provided to the applicant in CD-ROM format, the UK law allows Facebook to supply it in any form that is most convenient for it.

## Elsewhere

### United States

## Photos of bin Laden's death need to stay secret says US government

The [ABC](#) reports court documents filed by the Obama Administration claim public disclosure of graphic photos and video taken of Osama bin Laden after he was killed in May by US commandos *"would damage national security and lead to attacks on American property and personnel."*

The court documents have been filed after a FOI Lawsuit by Judicial Watch, after the Associated Press' requests were declined by the Pentagon. The AP asked for a range of information, such as contingency plans for bin Laden's capture, reports on the performance of equipment during the raid on his compound, and copies of DNA tests confirming the al-Qaida leader's identity. The AP also has asked for video and photographs taken from the mission, including photos made of bin Laden after he was killed.

Tom Fitton, president of Judicial Watch, accused the Obama administration of making a 'political decision' to keep the bin Laden imagery secret. *"We shouldn't throw out our transparency laws because complying with them might offend terrorists...The historical record of Osama bin Laden's death should be released to the American people as the law requires."*

Open Government Partnership launched – 38 member states declare their commitment to transparency in New York

The member states of the [Open Government Partnership](#) met at the Waldorf Astoria Hotel in New York this month. The 38 states have issued a [Declaration](#), which includes:

*"We commit to promoting increased access to information and disclosure about governmental activities at every level of government. We commit to increasing our efforts to systematically collect and publish data on government spending and performance for essential public services and activities. We commit to pro-actively provide high-value information, including raw data, in a timely manner, in formats that the public can easily locate, understand and use, and in formats that facilitate reuse. We commit to providing access to effective remedies when information or the corresponding records are improperly withheld, including through effective oversight of the recourse process. We recognize the importance of open standards to promote civil society access to public data, as well as to facilitate the interoperability of government information systems. We commit to seeking feedback from the public to identify the information of greatest value to them, and pledge to take such feedback into account to the maximum extent possible."*

The eight founding member states include Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom, and the United States.

President Obama used the OGP launch as a platform to launch further [Open Data initiatives](#) in the US. Included is an initiative called '[We the People](#)' allowing people to directly petition the White House, as well as plans for more published datasets in different areas of government activity.

## Australia

New website to thwart journalists' scoops

The government of the Australian Capital Territory (ACT) is to start proactively publishing responses to FOI requests in order to stop journalists' 'scoops'.

The [Canberra Times reports](#) the new website is part of Chief Minister Katy Gallagher's plans to push FOI further: *"There ought to be a presumption that information available to the government should also be made available to the community... The immediate thing is to start from a philosophical position that more communication is better than less communication; that more openness is better than less."*

Gallagher told the Legislative Assembly that *"one of the perverse and unintended consequences of freedom of information"* has been that the information released to an applicant has been edited by that applicant, *"with only bits that suit their argument being made public."*

The new website, which will also be a repository for government reviews, briefings, background government reports as well as FOI responses, would help prevent the media and political parties from selectively publishing the information as their access to the information would not be exclusive.

## **Guernsey**

### **Plans for more transparency, but no plans for FOI...**

An [independent discussion paper commissioned by the Policy Council](#) has set out a series of recommendations for the implementation of an 'information strategy', aimed at improving the relationship between the States and the community.

The report was written by Belinda Crowe, a former senior civil servant at the Ministry of Justice in the UK. Crowe said the aim of the strategy *"is to integrate good practise into the culture and working of government."*

The paper does not set out to transpose the UK freedom of information model into Guernsey, nor does it advocate or oppose freedom of information legislation at some point in the future. Instead it sets out a series of principles that would need to be in place before an informed consideration of the need for any formalised code or legislation could take place.

Some Guernsey States Members [responded to the report](#) saying as legislators they too felt they needed better access to information. *"Members of the public know as much as me.. so there needs to be information for all of parliamentarians as well as members of the public and that may be a unique challenge for Guernsey I think,"* said Deputy Barry Brehaut, Scrutiny Chairman.

The document also suggested that the island's government could use social media to interact with islanders, and allow residents to attend all States department meetings.

[Links to the ICO decisions of Sep 2011](#)

[Search the First-tier Tribunal \(Information Rights\) decisions of Sep 2011](#)

## October 2011

### Freedom of Information in the UK

#### Hillsborough documents to be released

Following the signing of an e-petition by nearly 140,000 people, the [Commons was called to debate the full release of documents relating to the 1989 Hillsborough stadium disaster](#) in which 96 people died. During the debate, Home Secretary Theresa May stated that [all official documentation](#) (including Cabinet minutes) would be given to the independent panel reviewing the incident, a decision backed by MPs. Hailed as a [“victory for democracy and people power”](#) by Labour MP Steve Rotherham, the debate was the first ever to be held as a direct result of an e-petition. Furthermore, the decision to release Cabinet minutes and correspondences relating to the disaster (which had been withheld by both Labour and Conservative governments) marks a wavering of 30-year disclosure rules which exempt Cabinet minutes from being released.

Whilst the Hillsborough disaster illustrates how governments past and present have taken different stances on this issue, [David Higgerson](#) points out that, ultimately, the Government must abide by the same FOI rules as other authorities.

Families of victims have called on The Sun newspaper to reveal its sources for their [infamous story entitled “The Truth”](#), released just days after the tragedy. The story purported that the drunken and disorderly behaviour of Liverpool fans had ultimately led to the 96 deaths.

#### FOI to be extended to bodies providing public services

The [extension of FOI](#) (via the Freedom of Information (Designation as Public Authorities) Order 2011) has been approved by both Houses of Parliament, thus extending the FOI Act to four bodies with public functions or to contractors providing public services: the Association of Chief Police Officers, Financial Ombudsman Service and the Universities and Colleges Admissions Service. All four have been earmarked for FOI inclusion since July 2009.

#### FOI to be scrutinised by the MOJ

The way in which FOI has worked in practice since its enactment in the UK is soon to be examined. Known as [“post-legislative scrutiny”](#), the procedure could have an impact on how FOI develops in the future. Whilst advocates worry that FOI may be scaled back as a result of scrutiny, private companies worry that it may be extended. [Martin Rosenbaum reports](#) that Minister Lord McNally acknowledged there was ‘a tension within government’ on how much to [extend](#) freedom of information to private sector bodies, although he added that the split was not along party lines.

### Local Government

A guest post on FOIman’s blog site gives a [unique insight into the world of an FOI officer](#). According to the guest blogger, increasing work loads are coinciding with the cutting of resources. Resultantly, deadlines for answering requests are being missed, complaints are on the up, and morale amongst committed FOI officers is at a low. Please note that The Constitution Unit’s Local Government Officers Survey will soon be published, so keep an eye on the website. (We’d also like to note the guest blog on FOIman’s blog was due to his absence in order to get married – congratulations!)



The above insider account potentially helps to explain the situation in York, where [North Yorkshire Police](#) have been found to be exceeding the 20 working day limit on responding to FOI requests in 56 per cent of cases. A local journalist received a response 98 days after requesting information through FOI. Their failure to comply with FOI timelines has resulted in their being monitored by the ICO. Echoing the account given by FOI man's guest blogger, the [director of legal and compliance services for North Yorkshire Police](#) explained that *"Maintaining front line policing services means that changes have, of course, been made to the resourcing of functions like civil disclosure"*.

## FOI Elsewhere

### The EU adapts FOI Law to increase access for EU citizens

The European Commission's proposed amendments have been supported by the Constitutional Affairs Committee. The proposed changes would update EU FOI Laws to [increase citizens' rights of access to files held by the EU](#). Whilst amendments to the Law are minimal, it is hoped they will help to clarify rules and increase transparency.

### Emerging Regimes: The Bahamas, Singapore and Brazil

An FOI Act has been proposed in the [Bahamas](#), providing the framework for individuals to request information from any public authority. However, the proposed Act includes a vast number of exemptions and wording of the legislation would allow public authorities to withhold information under many different circumstances. The Act would not apply to numerous public authorities and bodies of information including the Police and Defence forces, Department of Customs, Department of Immigration and the Financial Intelligence Unit. The Act has therefore been described as weak, and the [Government criticised for protecting their own power](#).

In [Brazil](#), the Senate has finally approved an FOI Bill after eight years of trying. The Bill will amend the country's constitution, establishing a right of access to information held by federal, state and municipal governments, state-owned and some non-profit organisations. The legislation also outlines obligations to proactively disclose information.

In [Singapore](#), Pritam Singh MP has called for the introduction of an FOI Act, arguing it would promote a more informed and engaged citizenry. His party (the Workers' Party) have proposed the creation of an FOI Act in both their 2006 and 2011 manifestos.

## The USA

### White House holds FOI workshops...in secret

The White House has been criticised for holding workshops on how to handle the obligations of FOI requests in [complete secrecy](#). Reporters were not allowed to attend the workshop which was held in December 2009. Judicial Watch, a Washington-based organisation that uncovers and prosecutes government corruption is claiming to have found emails documenting the decision to block journalists from the discussion which was conducted by the Office of Information Policy in the US Department of Justice.

### Controversial proposal to deny the existence of information

The Department of Justice have proposed a regulation that would allow federal law enforcement agencies to [deny the existence of sensitive data](#) to people seeking that information by means of



FOI. The DOJ has been fiercely criticised for the proposal, which would apply only to information that: 1) might “tip off” someone under criminal investigation, 2) compromise the identity of informants or 3) relate to information held by the FBI about intelligence or terrorism. Fundamentally the proposals contradict the administration's pledge to increase transparency.

#### CIA ‘let off’ by Manhattan Judge

A [Manhattan Judge](#) has declined to hold the CIA in contempt for destroying videos which legally should have been preserved. In 2005 the CIA destroyed 92 videotapes documenting the interrogation of 9/11 detainees, which had been the subject of FOI requests from numerous courts. Despite wilfully breaking the law, the CIA will not be held accountable in any way as, according to Judge Alvin Hellerstein they have provided a description of what they say was on the tapes and have established new measures to insure that the same does not happen again.

#### FOI request tracker in Iowa

The [Governor of Iowa](#) has created an internet site to monitor and track the progress of all FOI requests received by his office. The creation of the website is designed to increase transparency. Interestingly, requests for information have been made relating to lawsuits that have been made against the Governor, Terry Branstad. Apparently therefore the website is being used as a mechanism for accountability.

#### **Big Tobacco v. Australian Dept of Health**

Cigarette manufacturers have been swamping the Australian federal health department with FOI requests as a deliberate campaign against the government's plans to pass a [law forcing tobacco companies to sell cigarettes in drab packaging](#), the first law of its kind. The health department has received 63 FOI requests, 52 of which were from ‘big tobacco’. British American Tobacco Australia argues that it has been forced to make freedom of information applications because the Health Minister has refused to hold discussions with representatives from the tobacco industry.

This case highlights the difficulties which arise when FOI is used for controversial topics. See the [Constitution Unit's August 2011 FOI update](#) for the case of Philip Morris International's FOI request to Stirling University's Centre for Tobacco Control Studies.

#### **Film-making competition to increase FOI awareness**

[Reporters without Borders have joined forces with CNN](#) to hold a competition in which student film makers must make a short film answering the question: “why should we care about FOI?” Organisers of the competition say its aim is to raise awareness about the importance of FOI within contemporary democracies.

Reporters without Borders, who work to defend journalists and media rights have also carried out an investigative study of [media control and censorship in North Korea](#), documenting attempts being made by others to fight against the regime and for FOI. North Korea is becoming increasingly less sealed off from the rest of the world with information flowing both in and out of the country. Smuggling and unofficial markets allow for the buying and selling of radios, mobile phones and DVDs, facilitating the circulation of imported media.

#### **Venezuela moves to promote greater freedom of expression**

The International Freedom of Expression Exchange (IFEX) is to meet with the United Nations Human Rights Council to discuss the [promotion of greater freedom of expression in Venezuela](#). Endeavour to prevent escalation of attacks against the press in the 2012 election cycle. IFEX will make seven recommendations designed to prevent the escalation of attacks against the press in the 2012 election cycle.

## Data protection in the UK

### ICO must have power to conduct compulsory audits

[Information Commissioner Christopher Graham has called for the ICO to be given the power to conduct compulsory audits](#) for local government, the NHS and the private sector to ensure compliance with data protection laws. As it stands, only central government departments are subject to compulsory data protection audits. Certain organisations and sectors (such as those listed above) are causing concern with regard to their handling of personal information, yet have the right to decline when the ICO offer to carry out an audit. Speaking at the Tenth annual data protection compliance conference, the Information Commissioner stated:

*“Helping the healthcare sector, local government and businesses to handle personal data better are top priorities, and yet we are powerless to get in there and find out what is really going on.”*

MPs have supported Graham’s cause, stating that greater power must be given to the ICO if private sector organizations are to be compelled to undergo data protection auditing.

### MPs call for criminals who steal personal details to be jailed

The Information Commissioner has been supported by the Justice Select Committee in his calls to give [tougher sentencing](#) to criminals who obtain personal details through deception and break data protection laws in so doing. The issue will be debated next week, so we await the outcome.

### “Properly” anonymized data to be released

Up to now, anonymized data has been considered as “personal data” if an individual could still be recognized by the organization in possession of the data. The UK Information Tribunal has now ruled that [“properly” anonymized data can be released under FOI](#). “Properly” anonymized data can be understood as data which has had certain identifiers removed so that in its releasable form, the original data controller would not be able to identify the individual.

## November 2011

### Freedom of Information in the UK

#### Duchy of Cornwall loses appeal on EIR status

The [Information Tribunal](#) (case no. EA/2010/0182) has ruled that the Duchy of Cornwall must deal with a request for information under Environmental Information Regulations as it has ruled it is a public authority under the scope of the EIRs.

In 2008 Michael Bruton requested information under the EIRs from the Duchy regarding the introduction of non-native oysters to the [Port Navas Oyster Farm](#), a designated conservation area. The Duchy refused to give the information, arguing it did not regard itself as a public authority under the EIRs. The Information Commission agreed with this argument and ruled it had no jurisdiction to consider complaints against the Duchy.

The Tribunal found however a "*preponderance of factors point to the Duchy carrying out functions of public administration*", including its functions are similar to that of a government department, it is accountable to Parliament, and exists on a statutory basis (see pages 28-30 [of the ruling](#)).

It has subsequently been reported that the Duke of Cornwall, Prince Charles, is to challenge the ruling. However on 23 November [Lord McNally told peers](#) the government would make no comment on the ruling until a decision had been formally made regarding an appeal.

#### Prime Minister must disclose costs of refurbishing Number 11

The Information Commissioner has stated that David Cameron [must publicise further](#) details of works he had carried out to his Downing Street flat. This is the result of an FOI request made by Tom Watson MP for information regarding the refurbishment of the bathroom in David Cameron's grace-and-favour Downing Street home (including costs and instructions given to contractors). Whilst the Cabinet Office initially delayed in replying to the request and ultimately refused to release the information sought by Watson, the Information Commissioner's decision means they must now back down. This illustrates the way in which FOI can be used by Parliamentarians to highlight a particular issue (even if it is not particularly high profile, as in this case) and then successfully influence the outcome. See the [Constitution Unit's study of FOI and Parliament](#) for more on how Parliamentarians are using FOI.

#### Hillsborough disaster documents to be released by June 2012

The [Cabinet Office has agreed to release documents](#) relating to the Hillsborough football stadium tragedy of 1989 in which 96 people died by June next year. The documents record cabinet discussions involving the then Prime Minister Margaret Thatcher in the aftermath of the tragedy, and were the focus of an FOI request made by the BBC in 2009. Now that a date for the release of the information has been set, the Tribunal hearing which had been scheduled to consider the government's appeal against the FOI request has been cancelled.

#### FOI has negative effect on governing, says Cabinet Secretary

Echoing former Prime Minister Tony Blair's sentiments, Sir Gus O'Donnell has stated that the [FOI Act was a mistake](#) which has impacted negatively on governing by restricting the freedom with which ministers can discuss policy. The top civil servant (who is soon to retire) argued that because all

official documents are now accessible to the general public (and media), ministers are wary of what they say for fear of it being publicised. [See the Constitution Unit's blog for more on this.](#)

## **Animal Rights campaigners win FOI battle against Newcastle University**

[The Information Tribunal has ruled](#) that Newcastle University must disclose licences regarding its experiments on primates. Requests for information about the use of animals in scientific experiments are common and in 2008 [the British Union for the Abolition of Vivisection \(BUAV\) filed an FOI request regarding tests](#) carried out on up to 21,000 animals by researchers at Newcastle University. The University rejected the claim for information stating both that (a) it did not have the information in question, but also (b) if details of the research were released before its completion, other sensitive research programmes could be jeopardised. This landmark decision (a result of BUAV's appeals) is likely to pave the way for other animal rights activists to make similar challenges in the future.

## **Northern Ireland government departments taking longer to answer FOI requests**

Northern Ireland's [annual Freedom of Information report for 2010](#) has found that one in ten requests sent to governmental departments are not being answered within the statutory twenty working day limit. Worryingly, governmental departments appear to be getting worse, with time limits being missed more frequently in 2010 than prior to the restoration of the devolved government in 2007. Furthermore, there has been a decline in the proportion of requests resulting in full disclosure of information.

## **FOI and Parliament**

### **Peers debate transparency**

The government's commitment to transparency and openness was debated by members of the House of Lords this month. [Lord Elton](#), who tabled and opened the debate, described the government as a leader in bringing transparency to its overseas aid programme. Lord Prescott, the former deputy Prime Minister, was particularly scathing towards the government's commitment to transparency and made [direct accusations](#) relating to the behaviour of Michael Gove, Eric Pickles and Liam Fox. Baroness Warsi responded to Lord Prescott by saying that Cabinet Secretary Gus O'Donnell would look into the claims.

### **Plans to extend FOI to 100 more organisations**

In the same month as the Lords' debate, [the government announced plans to widen the scope of FOI](#) to 100 more organisations. Furthermore, Jonathan Djanogly MP, Parliamentary Under-Secretary of State for Justice, told the Commons that the government was holding discussions with a further 200 bodies and plans to consult 2,000 housing associations in the following year. In October, FOI was extended to include three more organisations (UCAS, The Association of Police Chief Officers and Financial Ombudsman Service).

### **Extraordinary Rendition: information must be disclosed**

The [All-Party Parliamentary Group on Extraordinary Rendition](#) continues their fight to access documents. This month, the Information Tribunal ruled that documents evidencing British involvement in the secret rendition of UK residents to Guantanamo Bay and other similar jails [must](#)

[be disclosed](#). The Labour government denied being involved in rendition, a claim which after persistent questioning was years later found to be false. The All-Party Group argues that disclosure of documents relating to rendition is vital in restoring faith in the Foreign Office.

### **Open Data: Ministry of Justice release court data**

The [Ministry of Justice has released 1.2 million records](#) relating to sentencing in 322 magistrates and crown courts in England and Wales. Whilst the names of defendants' are omitted from the database, other personal details such as age and ethnicity are included. The move is part of the coalition government's aim to increase transparency and was described by transparency campaigner William Perrin as "[a great leap forward for transparency in the UK, for which MoJ should be warmly praised.](#)"

### **Local Government**

The Constitution Unit has just published its report on [English local authorities' experiences complying with the Freedom of Information Act 2000](#) and the Environmental Information Regulations (EIRs) throughout 2010. The report aimed to gain an understanding of the numbers and types of requests local authorities received throughout 2010, the problems they encountered with compliance and their thoughts about different aspects of FOI. The study estimated that numbers of FOI requests to local authorities have increased by 20 per cent from the 2009 estimate. Despite the increase in requests, [councils seemed to be coping better](#), with an increased number of requests being answered within the 20-day limit and at a lower cost than in previous years.

### **FOI Elsewhere**

#### **The Associated Press: access denied**

This month, the [Associated Press](#) published their findings of a world-wide study of FOI, in which they submitted questions to 105 countries with FOI legislation. Fundamentally they found that countries are not following their own FOI laws. [Only 14 countries answered requests for information in full](#) and within their set deadline, with a further 38 eventually providing most of the requested information. Thirty-five countries failed to even acknowledge that they had received a request.

Interestingly, newer democracies seemed to be more responsive than many older democracies. Guatemala, Turkey and Mexico all proved efficient, providing information promptly. In stark comparison, Canada requested a 200 day extension, and Associated Press had to wait 6 whole months for the USA FBI to send them "*a single sheet with four dates, two words and a large section blanked*".

#### **Australia**

Even in Australia, a country perceived as being an open and well established democracy, access to government information is not absolutely guaranteed. According to one newspaper, "[Our bureaucracies have adopted the comparative secrecy of Whitehall, where information is made public only after weighing up the risks of doing so](#)". Specifically within the [state of Victoria](#), an ombudsman has said bureaucrats are failing to comply with FOI rules, and instead use the Act to protect information.

#### **Transparency International: Corruption Perception Index 2011**

[Transparency International](#) (TI) has released findings of its annual study of perceptions of corruption in public sectors throughout the world. The study uses information gathered by a number of organisations (such as Freedom House and the World Bank) which is then collated to produce a final score for each country. Assessments and surveys were carried out in 183 countries, with questions focussing on perceived levels of corruption in public authorities fundamentally because corruption by definition is illegal and thus secretive in nature. Included in their measure of corruption perception were questions relating to government transparency, accountability and the ease with which citizens could access information relating to public affairs. In their report, TI highlights the number of protests which have occurred over the past year, and note one common cause: the need for increased transparency and accountability of leaders. According to TI, the vast majority of countries assessed score below 5 points (“0” meaning “highly corrupt” and “10” meaning “very clean”). New Zealand scored highest (“9.5”), with North Korea and Somalia both scoring just “1”.

## **Isle of Man**

The Isle of Man is yet to make any final decisions with regard to passing an FOI Act. Alan Bell, the Chief Minister has said that implementation of an FOI Act could come at a high cost, and therefore [more government analysis is needed](#) to consider the financial impact of its introduction onto the Isle of Man. The cost of FOI has long been cited as a reason to not pass the Law, discussed in more detail on the Constitution Unit’s blog. Because of on-going delays, the Isle of Man government has been accused by a local political lobby group of showing "no commitment" to bringing FOI to the island.

## **USA: “Climategate” continues**

In Virginia, the “climategate” scandal continues. Last year Attorney General Ken Cuccinelli requested the [research papers of Michael E. Mann](#), a climate scientist who advocates the theory of man-made climate change, and former professor at University of Virginia. Cuccinelli aimed to discover whether Mann had fraudulently obtained grants to pay for his research. Whilst this request was being considered by a court, a conservative think tank filed a request for the same documents and 12,000 emails. The University of Virginia is resisting the request. This case sits within the larger climategate scandal in which leaked emails allegedly revealed that scientists were manipulating data relating to climate-change to support their theories.

## December 2011

### Freedom of Information in the UK

As 2011 ends and 2012 begins, information policy in the UK is being pulled in different directions. The government continues to push ahead with its Open Data agenda, and remains committed to extending the remit of the Act to new public bodies. [The ICO has confirmed that 'private emails' that contain public business are indeed public](#), and various public servants and politicians are beginning to voice more loudly their discontent with FOI legislation.

All these opinions will help inform the [Justice Select Committee's post-legislative scrutiny](#) of FOI in the UK, which will be informed by the Ministry of Justice's own take on the law in their recently published [Memorandum](#). The MOJ have gathered evidence from civil servants, and while costs and vexatious requests feature as common complaints, [Martin Rosenbaum notes](#) it "*is striking that few more fundamental concerns are reported by the Ministry. The basic structure of how FOI works - a general right to know, subject to exemptions and in many cases a public interest test - therefore seems to be widely accepted by public authorities.*"

#### Frustration at the end of 2011

Officials from all levels of government have expressed frustration with FOI as the year comes to a close. The country's highest-ranking civil servant, outgoing Cabinet Secretary Sir Gus O'Donnell, has expanded on his previous comments to parliament regarding Freedom of Information in an interview with [The Times \(pay wall\)](#). While 'believing in transparency', he has 'become convinced that the Freedom of Information Act went too far.'

*"Freedom of information that allows the public to ask questions about things is fine but the bit that I'm really against is where it reduces the quality of our governance. I want Cabinet to have real discussions, for people to be able to say, 'I disagree with this policy'...I want the minutes to accurately reflect what people have said. I don't want us to be fudging the issue by saying that there was a little discussion. I'm not fudging it now but I'm really nervous. Can I guarantee that this is going to stay private? No, I can't."*

Speaking on the use of the veto to protect cabinet minutes, Sir Gus described it as a necessary, 'nuclear' option. He would like to see the legislation amended to make clear that Cabinet meetings should remain private. *"If we could draft it in a way that would really enhance openness and transparency while allowing some safe space, that would be good for all of us. I think that we would have better government,"* he said.

Similarly (and at the other end of the government spectrum), the BBC reports [Walberswick Parish Council Chairman David Clark has described FOI as an 'unbearable burden'](#), as he has been forced to make cuts to services after facing a 'blizzard' of FOI requests. Likewise, Dyfed Powys Chief Constable Ian Arundale has hit out [frivolous FOI requests about UFOs and witches](#). *"We have to make 20 per cent cuts yet cannot touch a range of statutory obligations such as Freedom of Information....It is worrying that we are spending on that and not beat and service delivery."*

[Simon Hart MP](#) has taken up Arundale's argument: *"Some questions are totally legitimate and the FOI Act is a vital tool in increasing the transparency and accountability of public bodies. However when it comes to spurious, time-wasting questions from anonymous email accounts I really do think it's time to tighten up."* Examples of spurious questions have recently been compiled by the Local Government Association in its list of the [Top Ten most bizarre FOI requests of 2011](#). The winner? A



request for information relating to the preparedness of soldiers defending against invasion by Napoleon's marauding hordes, made to West Devon District Council.

Other sectors are taking a more serious approach to FOI reform in 2012: The Higher Education sector hopes to [secure an exemption for on-going academic research information](#), like the Scottish FOI Act, while The Duchy of Cornwall is to [appeal an Information Tribunal ruling](#) in regards to its responsibilities under the EIRs.

[The ICO's 'clarification' of the status of public information stored on private email](#) accounts was delivered with a subtle salvo aimed at Whitehall ministers who may have been displeased: *"It should not come as a surprise to public authorities to have the clarification that information held in private email accounts can be subject to Freedom of Information law if it relates to official business,"* said Information Commissioner Christopher Graham. *"This has always been the case – the Act covers all recorded information in any form."* He noted the issuing of the guidance was in response to reports back in September of Education Ministry officials using private email to conduct government business. The clarification was welcomed by the [Campaign for Freedom of Information's Maurice Frankel](#), noting that *"officials [can't] avoid FOI simply by doing their work on their home computers, using private email accounts or keeping official files under their beds. If it was that easy to avoid FOI, Whitehall would have closed down and government business would be carried out from people's homes."*

But the *Guardian* reports the [Public Administration Select Committee may hold an inquiry](#) after the ICO's clarification, with Chairman Bernard Jenkin 'understood to believe the law is in danger of being discredited by over-interpretation... He has argued that if the judiciary overplays its hand, the act will become less and less effective because its credibility is undermined by over-extension of its original intent.'

## Coalition remains committed to expansion

[At an event held by think-tank Demos](#), Nick Clegg reiterated his intention to bring non-state institutions that carry out a public function under FOI (indicating Network Rail as an example). Meanwhile, Housing Minister Grant Shapps hit out at Housing Associations for [refusing to 'open their books' to greater scrutiny](#), despite his repeated calls for them to follow the government's lead and become more transparent. In a letter to the National Housing Federation, Shapps warned that *"With Whitehall taking the lead, and Town Halls following suit, these landlords are increasingly looking outdated and out of touch. And with our plans to consult on the potential extension of the Freedom of Information Act to housing associations, the clock is ticking for those landlords who keep their books stubbornly closed."* You can read Federation chief David Orr's sharp response [here](#).

Prime Minister David Cameron has [outlined plans to share NHS patient data](#) with researchers in order to boost the £50bn life sciences industry. He announced a £180m 'catalyst fund' that will make it easier for drug companies to run clinical trials in hospitals and to benefit from the NHS's collection of patient data. But privacy campaigners are worried about the government's guarantees of patient anonymity in any data shared. Nick Pickles, director of privacy campaign group Big Brother Watch, said there was a need for more information about how patients' health data was currently being used and how it would be used under the new proposals. He said a lack of detail was an "unnecessary concern", [the Guardian reports](#).

## Overseas

### Reform in Scotland



Scotland is similarly [to review its own FOI legislation](#) (as well as amend the law to iron out some technical deficiencies), as the Scottish government continues to face criticisms for its decision to not extend FOI to private organisations carrying out public functions (the most [notable critic being outgoing Commissioner Kevin Dunion](#)). Scotland's legislation and its operation was praised however at a recent conference in Edinburgh held by the ICO and Holyrood. Dunion spoke of the rarity among commissioners worldwide to sit and meet officials and requesters in settings such as the conference, highlighting the cordial political atmosphere FOI operates within in Scotland.

### **Positive movements towards transparency: Burma, US, Brazil and Victoria**

There is hope for Burma/Myanmar, despite its ranking as the fourth-worst country for media freedom: [Jen-Francois Juliard from Reporters without Borders says](#) the head of Burma's Press Scrutiny Board called for press freedom in the country, saying his own department should be closed down as part of reforms being pursued by the new nominally civilian government. The Board is unique in the world as it requires print media to submit articles for approval before publication.

Agriculture experts on the National Research Council in the US have [advocated the online publication government meat, poultry and egg inspections and testing data](#). The committee studied the possible consequences of publishing such detailed information on the Internet, and concluded that it could introduce a new incentive for processors to avoid disease-causing contaminants. Information from inspections by the federal Department of Agriculture's Food Safety and Inspection Service has previously been available to consumers and consumer advocacy groups only through FOI requests. Making data public outside of the FOI process 'would enable consumers to make more informed choices about what foods to purchase, while motivating processors to improve their food safety performance, the committee said. It would also make information more readily available to epidemiologists and researchers.'

Brazil's new FOI law is being helped along by the [creation of an online request portal](#) modelled on the UK's own WhatDoTheyKnow. A group of hackers created Queremos Saber (We Want to Know), as they "*wanted to make people understand that they have a right to this information, and to make the law a practical, everyday reality in society,*" explained Queremos Saber founder Pedro Markun. The introduction of Brazil's law coincides with corruption allegations against six of President Dilma Rousseff's cabinet ministers.

The Australian state of Victoria will get its first Information Commissioner in 2012, as it overhauls its widely criticised FOI legislation. Other Australian states New South Wales and Tasmania have recently updated their laws, and FOI expert Professor Rick Snell notes Victoria's changes are long overdue. [He told The Melbourne Age](#) "*the idea of having a specialised body devoted to information management and handling is a very worthwhile path in helping to make the system work.*" However, Premier Ted Baillieu is being criticised for the lengthy delays to implement new legislation, and the Labor opposition says it is [continuing to be stonewalled](#) by Baillieu's own office when making requests. [Farrah Tomazin](#), politics reporter for The Age, remains disappointed of the reforms: "*The new commissioner will not be able to review decisions by ministers or department heads. He or she will not have authority to release "cabinet-in-confidence" documents (one of the main reasons to refuse access) or anything relating to national security... If the government is serious about being more open, it would give its new watchdog some real teeth.*"

### **Data Protection and Parliament**

Rob Halfon MP [has expressed his anger at the London School of Economics' rejections of his FOI requests](#) regarding the awarding of a PhD to Saif al-Islam, son of late Colonel Gaddafi. He called for

Higher Education Minister David Willetts to “urge the LSE to publish what really went on in this disgraceful episode of taking blood money for PhDs.” Commons Leader Sir George Young suggested Halfon take his complaint to the ICO, but noted data protection provisions can protect information relating to individuals. “I can understand your deep concern about this,” he added.

Similarly, Baroness Deech has [lamented data protection provisions](#) that, in her opinion, disrupt the universities admission process. Deech was a law tutor at Oxford for 20 years. She went so far as to say, “If I was prime minister for half a day I would abolish the Freedom of Information Act and the Data Protection Act and start all over again.”

*“Before the Data Protection Act, we got references from schools. They might say, ‘Young so and so may be very shy and quiet, but we assure you she’s very bright, give her a chance. Her mother’s an alcoholic, her father left her, but we know she will deliver’... They won’t say that now. All references just say, ‘Young so and so will get three As, she’s been a good student...’ because they know the parents can see it... They’re not worth the paper they’re written on and I think that’s really wrong. It’s destroyed the ability to choose.”*

[DP expert Tim Turner has criticised Baroness Deech's understanding](#) of how the Data Protection Act works in practice: “In the years I have been working on Data Protection, I have encountered some ludicrous views on the Act’s idiosyncrasies, so I cannot say for certain that the noble Baroness’ musings are the worst... Her antipathy to transparency would shift power from individuals back to organisations, allowing them to say what they like about people with impunity. It’s an elitist and undemocratic approach – but I did mention that she is a member of the House of Lords...”

[Link to ICO cases from December](#)

[Link to First Tier \(Information Rights\) Tribunal cases from December](#)