

## **Constitution Unit – FOI Team Monthly Updates from January to December 2009**

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### **January 2009**

#### **Freedom of Information in the UK**

##### **Iraq Cabinet minutes**

The Information Tribunal upheld the Information Commissioner's decision that minutes of the March 13 and 17 Cabinet sessions should be disclosed. The Attorney General's advice on the legality of military action was discussed at these meetings. The Tribunal did not order the release of informal notes on which the official minutes were based.

Ministers have 28 days to decide whether to appeal to the High Court against the ruling. Such an appeal could only be made on a point of law.

Alternatively, the Cabinet could veto the tribunal's decision under section 53 of the Act. This would be the first use of the veto in the UK. If the government is to take this option, it must do so within 20 working days of the tribunal's decision and it must be based on reasonable grounds.

For more information see the Constitution Unit's [press release](#)

Read the [ICO decision](#)

Read the [Tribunal decision](#)

##### **New Information Commissioner**

With incumbent commissioner Richard Thomas set to retire in June 2009, Christopher Graham has been selected as the preferred candidate to succeed him.

Mr. Graham is currently Director General of the Advertising Standards Authority, Non-Executive Director of Electoral Reform Services Ltd, and Non-Executive Lay Representative on the Bar Standards Board.

Following the Justice Committee's pre-appointment hearing (see below), it will submit a report of Mr. Graham's suitability for the role. Ministers will then decide whether to confirm the appointment.

### **Justice Select Committee interviews outgoing ICO interview**

The Justice Select Committee interviewed outgoing Information Commissioner Richard Thomas on his role, the lessons he has learnt from his six and a half years as the head of the ICO, and the challenges that his successor may face.

Mr Thomas emphasised the importance that teamwork and cooperation play in the ICO whilst rejecting the suggestion that this may have eroded the demarcation of responsibility between the Information Commissioner and his office as a whole. He claims that the collegiate approach of the latter does not undermine the ultimate responsibility of the former.

Mr Thomas stressed that both data protection and freedom of information legislation deal with the subject matter of information rights and so it is proper that they be dealt with by the same public office. However, his experiences and issues with these fields are not identical (his discussion of data protection will be dealt with in the section below).

Whereas the ICO's funding for Data protection comes entirely from fees received from data controllers, the FOI funding comes entirely from grant-in-aid from the Ministry of Justice. The Information Commissioner shared with the committee his frustration at only receiving an annual FOI budget of £5.5m. He claims that the consequence of this is a staff shortage in the FOI department. With only 53 staff to deal with all FOI cases, despite productivity improving, Mr Thomas says that it is now typically six months before the investigation into a case can even begin.

When asked about the possibility of the ICO's Freedom of Information budget coming directly from Parliament, Mr Thomas admitted that following the row over MPs expenses, he was not as certain as he had been in the past but still thought "in principle that that is the right approach if it could be done."

Other than this issue, Richard Thomas did not have significant concerns regarding FOI and explicitly stated that he is not calling for "any changes in the basic structure of the legislation."

Read the (uncorrected oral) [evidence](#)

### **Justice Select Committee interviews incoming ICO interview**

On the 27th January the preferred choice to take over from the outgoing Information Commissioner when he stands down in June, Christopher Graham, was interviewed by the Justice Select Committee. Mr. Graham acknowledged the challenging nature of the role and stated that he expects it to get "even more challenging". However he emphasised his experience and regulatory background and remained confident.

Mr. Graham's policies will centre on educating people about their rights and responsibilities along with the threat of sanctions, the "big stick in the cupboard".

One of his central concerns is the backlog of cases that has yet to be dealt with. Indeed, Mr. Graham goes so far as to state his motto from his previous role, stating that "justice delayed is justice denied". However, he accepts that he does not hold a "magic bullet" that would instantly solve this problem.

One of the main barriers to dealing with this issue, as incumbent commissioner Richard Thomas pointed out, is the level of funding that the ICO receives from the MoJ. However, though he accepts that it is a serious issue, Mr. Graham admits that he had not had any discussions with the MoJ about ICO resources. However, when pressed, he does say that "if I form the conclusion that I have not got the resources to do the job, then there would not be any point in proceeding, but I have not had the discussion, so I do not know what the outcome will be.

When explicitly questioned on the possibility of the ICO receiving its funding directly from Parliament he only commits himself to saying that it "seems logical, it is the way they do things in Scotland. I would not resist it."

Read the (uncorrected oral) [evidence](#)

### **MPs' Expenses**

Over 2005 and 2006, four requests were made to the House of Commons for a detailed breakdown of certain MPs' expenses. The expenses in question were the MPs' ACA, or 'Addition Cost Allowance', the reimbursements that MPs for constituencies outside of inner London receive for the additional costs of living in London. When this request was rejected, the applicants appealed to the Information Commissioner. The Commissioner issued a notice demanding that the House disclose the expenses of the relevant MPs. The breakdown was to be given by reference to 12 categories of expense set out in the 2005 and 2006 'Green Book'. Both parties then appealed this decision to the Information Tribunal. The Tribunal dismissed the appeal by the Commons and ordered the House to disclose the full details of the relevant MPs' expenses. The Commons then appealed to the High Court but this appeal was also rejected.

The Commons began the process of scanning over 1 million receipts, to disclose detailed accounts of MPs expenses between 2005 and 2008. However, in January 2009, the government tabled a statutory instrument that would exempt MPs from the Freedom of Information Act blocking the disclosure of their expenses. Instead, expenses were to be published under 26 headings, rather than the current 13.

However, on the 21st January 2009 Gordon Brown announced to the Commons that as the Tories had withdrawn their support from the move, the government would not press ahead with the issue without cross-party consensus.

As it stands the full details of MPs expenses is set to be published. However, the government has promised further consultation and so the situation is liable to change.

Read the Campaign for Freedom of Information [webpage on FOI and MPs' expenses](#)

Read the text of the proposed [Freedom of Information \(Parliament\) Order 2009](#)

### **Disclosure of details of Prime Minister Blair's Meetings**

The Guardian [published](#) the details of all the people Tony Blair met on official business in June 2005. The release of this information was a result of a request made by Norman Lamb MP on 23rd June 2005. In May 2008 the Information Commissioner upheld Mr Lamb MP's complaint about the Cabinet Office's refusal to release the details of Prime Minister Tony Blair's official meetings in June 2005. He ruled that although the information is exempt under the formulation of policy, the balance of public interest favoured disclosure.

The Cabinet Office subsequently appealed that decision on the grounds of the scope of the request. The Cabinet Office sought to interpret the request in terms of the meetings the PM had rather than a list of people that the PM met. On the 5th January the Information Tribunal dismissed the Cabinet Office's appeal and ordered them to release the information. The Tribunal ruled that Mr Lamb MP's request was clear and related to the people that the PM had met on official business.

The list of the meetings can be found on the [Guardian website](#)

### **Dundee FOI Centre**

A new [Centre for Freedom of Information](#) has been set up in Dundee in a collaboration between Dundee Law School, University of Dundee and the Scottish Information Commissioner. The centre aims to provide the following:

- Conceptual space to reflect on and discuss current FOI issues and practice.
- A central point for the development of research into FOI issues, in particular modelling decision making and examining bureaucratic culture.
- Access to expertise from specialists in constitutional and civil law, FOI practitioners and the Commissioner's office.
- Opportunities to transfer knowledge and gain further learning.

The inaugural seminar and lunch took place on 29th January. There are two further seminars to be held in 2009, on the 26th March and the 28th May.

Visit the centre's [website](#)

### **Independent report argues for halving 30 year rule**

The [final report](#) of the independent review of the 30 year rule, set up by Gordon Brown in his 'Liberty speech', was published on 29 January. The report assesses whether, in light of changing public demands for official information and the impact of the Freedom of Information Act, the 30 year rule should be reformed. The report concluded strongly in favour of reforming the existing rule which it described as "anachronistic and unsustainable".

The Review did not advocate dispensing with a time period in which files are restricted entirely. Its recommendation was for a halving of the length of the rule to 15 years. This reform, it is argued, should be fully retrospective and pragmatically phased in through releasing two years of archives per year until the backlog has been processed. The review proposed that there should be a single government body to oversee the transition to the new rule.

The review estimates the cost of the reform to be approximately £75m which, when applied over a 15 year period, works out at £5m a year. Furthermore, the review recommends that the government makes "adequate additional provision" in the first three years and subsequent Comprehensive Spending Reviews for the remainder of the implementation period.

As well as a modification to the 30 year rule, the review also makes some other recommendations on government information policy. These include the consideration of an adjustment to the Civil Service Code such that there is an explicit injunction to keep complete and accurate records of government business, and confirmation that the records of political advisers are not exempt from the public records or FOI acts.

Read [the report](#)

### **Right to information in new NHS constitution for England**

The [New NHS Constitution](#) includes various patient rights to information. These include the rights to be given information about treatments in advance, to the privacy and confidentiality of personal information, and to the information required to make choices about your NHS care.

The constitution also includes NHS commitments to provide patients with the necessary information to make healthcare decisions and to provide "the information you need to influence and scrutinise the planning and delivery of NHS services"

Read the [constitution](#)

### **Localis Report on local government information**

The think tank [Localis](#) published a report entitled '[Information, information, information](#)' that examined how access to information can be improved at a local level. The report makes seven recommendations including that councils should release all information deemed to be beneficial to the local area and that there should be financial incentives for people to use the data or information in "a useful and meaningful way".

Read [the report](#)

### **PASC report on 'Lobbying: Access and influence in Whitehall'**

The Public Affairs Select Committee (PASC) published a [report](#) outlining proposals for a drastic reform of lobbying regulation. The report argued that the current self-regulating system is failing and that a more robust system of regulation is needed. Reforms that the committee called for included the creation of a mandatory register for lobbyists and a single, independent body to regulate lobbying.

The mandatory register would contain a variety of information of lobbyists and decision makers within the public sector that would be available to the public. This would include the names of the individuals carrying out lobbying activity and of any organisation employing or hiring them, a list of the relevant interests of decision makers within the public service, and information about contacts between lobbyists and decision makers. PASC allows for exemptions to the disclosure of information on the register for reasons such as national security and commercial confidence but calls for such exemptions to "be defined as narrowly as possible."

Read [the report](#)

### **House of Lords Select Committee on Communications Report: Government Communications**

The Lords Communications Committee published a [report](#) outlining the findings of an inquiry assessing whether government communications had improved since an external review in 2003-04. It argues that government departments and officials need to further embrace the principle of "openness not secrecy" but that there has been some progress in the government's efforts to be more open, especially in making information available directly to the public.

Among the inquiry's recommendations are that new information should always be provided on a fair and equal basis to all interested journalists, that the morning briefing should be live on the Number 10 website, and that, where possible, the careers of such civil servants should include a period of service in departmental press offices or communications generally.

Read [the report](#)

### **FOI in Parliament**

*Documenting mentions and uses of FOI in parliamentary questions and debates*

Parliament's focus on FOI concerned the publication of MPs' expenses. In Prime Minister's Questions, Douglas Carswell (Conservative backbencher) [asked](#) the PM why he is "whipping his party to vote to keep MPs' expenses secret? When it comes to freedom of information, why should there be one law for the people and another for the politicians?" Prime Minister Brown

replied that as Conservative support has been withdrawn the government no longer has cross party support and so will no longer pursue the policy.

David Heath (Liberal Democrat) [asked](#) the Leader of the Commons whether it is in order to proceed with a publication scheme that is expressly not in accordance with the judgment of the High Court. Harriet Harman replied that "however freedom of information requests are dealt with, it is still important that as well as having tough rules and robust audit, we have a scheme to put in the public domain, without it having been asked for, information about what all Members are spending every year, and on what." Jo Swinson (Liberal Democrat) [followed this up](#), wondering whether the attempt exempt MPs from freedom of information legislation has been dropped not just for today, but for good. Harriet Harman replied that there is to be a full debate on the issues and that a more robust audit and tougher rules will be introduced.

John Mann (Labour backbencher) [asked](#) the Leader of the House what discussions she has had with members of the 1922 Committee on the exemption of MPs from the FOIA in respect of their expenses. Chris Bryant (Parliamentary Secretary, House of Commons) replied that the leader of the Commons has "frequent private discussions with Members from all parts of the House on a range of issues relating to her ministerial responsibilities."

Other FOI mentions included the usual variety. During a debate on reforms to the uniform business rates regime, Paul Farrelly (Labour backbencher), [recalls](#) only receiving a "resounding silence" after his FOI request to a local council. Lord Campbell-Savours (Labour) [asked](#) the government whether conversations about the Icelandic banking sector would be made available under the FOIA. [Lord Myners](#) (Parliamentary Secretary, HM Treasury) responded that any disclosure would be down to individual public authorities and subject to exemptions.

Eric Pickles (Shadow Secretary of State for Communities and Local Government) did a round robin question for the names and addresses of each public health observatory, regional tobacco control manager, regional technical advisory board, and region climate change partnership and whether they were classified as a public body accord under the FOIA. They are.

Norman Baker (Liberal Democrat) [asked](#) the Secretary of State for Transport if he will encourage Network Rail to respond to requests for information held as if they were subject to the FOIA. Paul Clark (Parliamentary Under-Secretary, Department for Transport) replied that as Network Rail is an independent company and as it is not part of the public sector, it is not covered by the FOIA. Norman Baker also inquired when the public consultation on section 5 of the Act concluded; and when he plans to publish his response. Jack Straw (Lord Chancellor, Ministry of Justice) replied that the public consultation on section 5 of the Freedom of Information Act concluded on 1 February 2008 and the government will publish their response by summer.

For a round up of FOI disclosure stories in the media, see the [Campaign for Freedom of Information blog](#)

## FOI Abroad: Obama special

Freedom of Information and transparency featured strongly in President Barack Obama's first days in office. The [Collaboration on Government Secrecy](#) (the place to watch for FOI in the USA) produced this statement on Obama's information policy:

### Transparency in the Obama Administration

In a sweeping "Day One" memorandum to the heads of all executive branch departments and agencies that has the effect of an executive order, President Barack H. Obama declared his firm commitment to government transparency: "My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. . . . Government should be transparent." Entitled "Transparency and Open Government," this unprecedented presidential directive calls upon federal agencies to "harness new technologies" to make information about their operations "readily available to the public" and to "provide information for citizens about what their Government is doing" in their name. Toward that end, and the prompt end of an era of secrecy, President Obama directed officials at the White House, the Office of Management and Budget (OMB), and by extension the Department of Justice and the National Archives and Records Administration, to immediately begin coordinating recommendations within the next 120 days (i.e., by May 21, 2009) for an "Open Government Directive" to be issued by the Director of OMB "that instructs executive departments and agencies to take specific actions implementing the principles set forth in this memorandum." And in a companion directive on the Freedom of Information Act directly, the White House announced, President Obama "instructs the Attorney General to in that same time period issue new guidelines to the government implementing those same principles of openness and transparency in the FOIA context."

In other words, two 120-day clocks are now ticking toward action required by May 21 and then well into the Obama Administration thereafter -- all of which provides a unique opportunity for those who are most interested in and concerned about government transparency and secrecy (as two sides of the same coin), and government information policy more broadly, to involve themselves in the these areas of public policy development and implementation. And they may do so, as President Obama has put it, in a manner that is both "participatory" and "collaborative" with federal government agencies.

Quotes of the month:

- "For a long time now, there's been too much secrecy in this city. . . . Let me say it as simply as I can: Transparency and the rule of law will be the touchstones of this presidency."  
President Barack H. Obama, speaking of his new transparency and

Freedom of Information Act directives (Jan. 21, 2009).

- "And those of us who manage the public's dollars will be held to account, to . . . do our business in the light of day, because only then can we restore the vital trust between a people and their government."  
President Barack H. Obama's Inaugural Address (Jan. 20, 2009).
- "Transparency -- President Obama has committed to making his administration the most open and transparent in history . . ." The Briefing Room: The White House Blog, "Change Has Come to WhiteHouse.gov." (Jan. 20, 2009, 12:01 p.m.).
- "Transparency is the best thing."  
Attorney General-Designate Eric H. Holder, Jr., before the Senate Judiciary Committee (Jan. 15, 2009).

<http://www.wcl.american.edu/lawandgov/cgs/about.cfm>

## **Data Protection**

### **Justice Select Committee interviews outgoing ICO interview**

Outgoing Information Commissioner Richard Thomas emphasised the importance of pragmatism when assessing data protection. In the wake of recent leaks of personal data there have been criticisms about the amount of data that is kept. He asserts that "there are some very deep and difficult issues but they are not black and white. You cannot say all collection of data is bad all, all data protection is good. It is all about getting the right balance."

The Information Commissioner accepts that there have been instances of serious data security breaches but states that now "things are improving." He emphasises the need for data minimisation as well as data security, the importance of not keeping more information than you need. As he points out, the more unnecessary personal information that is kept, the higher the propensity for abuses, mistakes and security breaches.

Read the (uncorrected oral) [evidence](#)

### **Personal Information Promise**

On 28 January 2009 the Information Commissioner launched a new [Personal Information Promise](#). The signatories, who included various heads of organisations and government departments, pledged their commitment to data protection in a bid to restore public confidence. Among other things, they pledged to "go further than just the letter of the law" when it comes to handling personal information and to "keep personal information to the minimum necessary and delete it when we no longer need it".

Read [the promise](#)

## **ICO Privacy Notices Code of Practice Consultation**

The ICO has drafted a Privacy Notices Code of Practice and has opened it up for public consultation. The code is designed to “help organisations to draft clear privacy notices and make sure that they collect information about people fairly and transparently.”

The ICO is accepting public comments until Friday 3 April 2009.

The draft itself and the comment forms can be found [here](#).

## **FT Data Loss Article**

The Financial Times published an [article](#), based partly on Freedom of Information request, detailing the most significant breaches of data security in the US and UK in the last four years and arguing that whilst increasing amounts of confidential personal data are being stored by governments and businesses, they appear unable to adequately protect this data. The FT claims that the “policies of government departments are inconsistent and insufficient to stem the tide of data loss.” The article quotes experts calling for government to cease the use of unencrypted and physical hard copies of data.

Read [the article](#)

## February 2009

### Freedom of Information in the UK

#### Government uses veto for first time on release of Iraq Cabinet minutes

For the first time, Justice Secretary Jack Straw exercised the government's right to veto the decision of the Information Tribunal that ordered the government to release the minutes of the Cabinet meetings in which it was decided to take military action against Iraq. The government has this right under Section 53 of the Act and has undertaken to consult Cabinet before using it. Mr Straw argued that the withholding of the minutes was essential to preserve the conventions of Cabinet confidentiality and collective responsibility that are "crucial to the accountability of the executive to Parliament and to the people."

As expected, the decision has faced a flurry of criticism from the media. This included a front page 'What do they have to hide?' headline in the *Daily Mail*, whose editor Paul Dacre chaired the recent review into the 30 Year Rule. [Martin Kettle's](#) verdict in the *Guardian* stressing the necessity of confidentiality for the effectiveness of cabinet government and that "Straw is right to keep his head. It is time the critics did likewise" bucked the trend.

Others seem to fear what the first use of the veto may portend. The [Information Commissioner](#) issued a press release to emphasise that "anything other than exceptional use of the veto would threaten to undermine much of the progress made towards greater openness and transparency in government since the FOI Act came into force." This fear may be in part a reflection on the Australian experience. Once the veto was first invoked, its use became a regular occurrence (48 times in the first 4 years). However, in Australia the veto can be exercised by a single minister and is thus easier to use than in the UK.

The Campaign for Freedom of Information also feared the creation of a precedent for the veto of information at a much lower level and interpreted Jack Straw's comment that the 30 Year Rule review recommended the government consider protection for certain categories of information under the Act as a sign that the government is "actively considering doing so".

In the Commons, Shadow Justice Secretary Dominic Grieve argued that the veto "classically illustrates what has been wrong with the Government's approach to freedom of information", claiming that the public have had their expectations raised only to be "brought down to earth". But despite reiterating the Tory commitment to an inquiry over the Iraq war, Mr Grieve stated that he agreed with the decision to veto.

Read the full text of [Jack Straw's statement to the House](#).

Read the [ministerial certificate](#)

Read the [statement of reasons](#)

Read the [Constitution Unit's press release](#)

## **House of Lords case on FOI: BBC ordered to disclose report in Middle East coverage**

The House of Lords ruled, by a 3-2 majority, that the BBC must disclose a report into its coverage of the Middle East (the Balen Report).

The report was initially requested in 2005 by Steven Sugar. The BBC refused the request on the grounds that it is only subject to the act with regards to information not "held for the purpose of journalism, art or literature". It claimed that the information Mr Sugar requested was held for journalism and is therefore exempt from the act.

Mr Sugar then appealed to the Information Commissioner arguing that the information was not held for the purposes of journalism but for the purposes of management of the BBC's journalism. The Information Commissioner rejected the appeal and ruled that he had no jurisdiction over the matter as, in this respect, the BBC is not subject to the Freedom of Information Act. Mr Sugar subsequently appealed to the Information Tribunal. The Tribunal ruled that the information requested was not held for the purposes of journalism and so the Commissioner did have jurisdiction and the report was subject to the act. The BBC was therefore ordered to disclose the information.

Following an appeal by the BBC, the High Court ruled that the Information Tribunal did not have jurisdiction and thus overturned its decision. This decision was then upheld by the Court of Appeal.

Mr Sugar then appealed to the House of Lords. The Law Lords voted by a 3-2 majority to overturn the Court of Appeal's ruling. The BBC was thus ordered to disclose the report as decided by the Information Tribunal.

Read the [Law Lords' ruling](#)

A full [timeline](#) of these events can be found on the Guardian website

## **Government comment on 30 Year Rule review**

The government issued a supportive statement following the publication of the review into the 30 Year Rule (as mentioned in the [last month's updates](#)). Justice Secretary Jack Straw said that "the government will respond to its recommendations in due course, but agrees that there should be a substantial reduction in the period after which official papers should generally be released to the public, and that this should be introduced on a phased basis."

Read the [Ministry of Justice announcement](#)

## **Justice Committee report on the work of the Information Commissioner**

The House of Commons Justice Select Committee published a report on the work of the Information Commissioner.

Following an interview with Christopher Graham, the preferred candidate to become Information Commissioner, conducted last month (see [January monthly updates](#)) the Justice Committee endorsed his selection. The

committee found that Mr Graham's wide range of experience makes him clearly suitable for the role.

The Committee also called on the Ministry of Justice to ensure that sufficient funding is given to the Information Commissioner's Office to allow it to resolve the backlog of cases within a reasonable timescale.

Finally, the committee emphasises the importance of maintaining the personal responsibility of the Commissioner and argued against the case for a change from an Information Commissioner to an Information Commission.

Read [the report](#)

### **Cabinet Office discloses list of senior officials' hospitality**

The Cabinet Office disclosed a [list](#) of hospitality received by permanent secretaries and departmental board members for 2007, the first time such a list has been published.

Read the [list in full](#)

### **ICO guidance on transparency for senior officials**

The ICO has published [guidance](#) calling for the salary of senior public officials to be published as a matter of routine. However, it argues that such disclosure only needs to be to the extent necessary for public interest and suggests publication to the nearest £5000 band. The ICO said that only in exceptional circumstances should exact salaries be published and in almost all cases it would be unfair to publish the exact salaries of junior officials.

Assistant Information Commissioner Gerrard Tracey argued that those "who are paid from the public purse should expect information on their salaries to be made public."

Read the [guidance in full](#)

### **New guidance on internal reviews**

The ICO issued new [guidance](#) stating that internal reviews, the first stage in the appeals process, must be "impartial, thorough and swift". More specifically, the guidance says that reviews should be completed within 20 working days in the absence of exceptional circumstances and should never exceed 40 working days.

The guidance is an attempt to combat apparent inconsistencies in the ways that internal reviews are carried out by different public bodies. A particular aim of the guidance is to speed up the process and thus decrease the number of complaints made to the ICO due to unreasonable delays.

Read the [guidance](#).

### **Commissioner rejects appeal over Princess Diana's correspondence**

The Information Commissioner dismissed an appeal following a denied request for information relating to communications with Diana, Princess of Wales and/or her representatives. Though the Royal Family is not

considered a public authority under the Freedom of Information Act, the information was held by the Cabinet Office which is. The Cabinet Office rejected the request on three grounds: that the information consists of communication with Her Majesty, with other members of the Royal Family or with the Royal Household, that the information was provided in confidence and that the information was of a personal nature. After weighing up the public interest in disclosure, the Information Commissioner agreed with the Cabinet Office that these were grounds to refuse the request and dismissed the appeal.

## **FOI in Parliament**

### *Documenting mentions and uses of FOI in parliamentary questions and debates*

Jack Straw's statement of the government's decision to exercise the veto obviously attracted comment in the House. Ben Wallace (Shadow Minister, Scotland) [asked](#) the Secretary of State for Justice why, if preserving the confidentiality of Cabinet discussions is so important, he did not exempt them from the FOI Bill when it went through the House. Jack Straw insisted that he has already explained that in the unusual circumstances of this case, a veto was appropriate. Lord Butler of Brockwell [argued](#) that those taking part in important government discussions will always feel inhibited unless firm boundaries on what can and cannot be released are set, if necessary, by amending the FOIA. He therefore recommends that "clear lines need to be drawn" in the matter.

The Speaker's decision to sign a certificate exempting details of trips abroad with the British Council was also probed. Bernard Jenkin (Conservative backbencher) [asked](#) the Speaker of the House for the reasons behind his ruling that trips abroad by the British Council are not subject to FOI requests. Michael Martin (Speaker) replied that he has nothing to say about that on the floor of the House.

Gordon Prentice (Labour backbencher) [asked](#) the Secretary of State for Justice what he plans to increase the ICO's budget to. In reply, Michael Wills (Minister of State, Ministry of Justice) pointed out that in 2008-09, there has been an additional £500,000 on top of the £5m baseline as well as a secondment scheme paid for by the employee's home department. Mr Wills also revealed that discussions are continuing about funding for next year.

In response to a [question](#) from Dominic Grieve (Shadow Secretary of State for Justice), Michael Wills informed the House that the government will publish its response to the consultation on the designation of additional public authorities under the FOIA by summer.

Other MPs were interested in the money and manpower required to process FOI requests. Mike Hancock (Liberal Democrat) [asked](#) the Home Secretary how much, on average, it cost her department to process an FOI request. Phil Woolas (Minister of State, Home Office) revealed that the Home Office does not routinely record the average cost of processing requests and that such information could only be obtained at a disproportionate cost. However, he confirmed that an equivalent of 19.6 full time posts in the department manage FOI requests. Dominic Grieve (Shadow Secretary of State for

Justice) [asked](#) the Secretary of State for Justice the same question (the answer is 17). Graham Brady (Conservative backbencher) [asked](#) the Secretary of State for Health how many freedom of information officers are employed by his department, its agencies, health authorities, and trusts and an estimate of their annual cost. Ben Bradshaw (Minister of State, Department of Health) replied providing a table listing the number of employees and estimated their annual cost at £360,000.

For a round up of FOI disclosure stories in the media, see the [Campaign for Freedom of Information blog](#).

## FOI in Scotland

### **Current issue in Scotland: designation of organisations as public authorities**

The main legislative issue surrounding FOI in Scotland is currently the designation of private sector organisations as public authorities under the Act. In November 2008, the Scottish Government published a discussion paper entitled [Coverage of the Freedom of Information \(Scotland\) Act, 2002](#). Over the Christmas period and until 12th January, it invited responses to its proposal to look into extending the designation of the Act.

The Scottish Government was responding to concerns that the public have lost rights to access information from certain bodies under the Act because of changes which have been made to how public services are delivered. The Scottish Information Commissioner, in particular, has been particularly vocal in expressing concern about this issue. As a result, the discussion paper asks for views in relation to making a section 5 order so that further bodies will come under the legislation.

The bodies which the paper suggested may be designated under the Act are contractors who provides services which are a function of a public authority, registered social landlords (housing associations etc.), and local authority trusts or bodies set up by local authorities.

#### *Responses*

In general, the third sector in Scotland has been fairly negative with regards to the proposition that they could become designated under the Act. On the 16th January the SCVO (Scottish Council of Voluntary Organisations) published [its response](#) to the government's consultation paper on designation. It voiced concerns over the costs of compliance if voluntary organisations were brought under the scope of the Act, and also stressed that smaller organisations may be unfairly burdened. At the same time, the SCVO rejects the idea that organisations should be designated in relation to their size. In sum, the SCVO state that they find that, "the current outline proposition would be unworkable in practice".

Similarly Community Care Providers Scotland (CCPS) [responded](#) to the consultation paper by stating, " We would not, in principle, support extending the coverage of the Act to care service contractors, on the basis that doing so is both unnecessary and unworkable".

In contrast to representatives of the voluntary sector, the trade union, UNISON Scotland, has been extremely supportive of extending designation. In their response to the consultation paper they have stressed that they believe that "there are anomalies and unfairness created by the current position, and the Scottish public expects those to be rectified" ('Extend Information Coverage to all Public Services', January 2009). They argue that it is unacceptable that the non-public sector can now provide the same services that were previously provided by the public sector and yet not be required to comply with the same standards of openness and accountability.

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## **Data Protection**

### **House of Lords Constitution Committee report on surveillance**

The House of Lords Constitution Committee has published a report entitled [Surveillance: Citizens and the State](#). The committee's wide range of recommendations included expanding the remit of the Information Commissioner to include responsibility for monitoring the effects of surveillance on the rights of the public at large under Article 8 of the European Convention on Human Rights. The committee also recommended that the government's decision to provide a statutory basis for the Commissioner to carry out inspections of public authorities that process personal information should be extended to the private sector and that a Joint Committee on the surveillance powers of the state be established.

The ICO [responded](#) by welcoming many of the Committee's proposals with Assistant Information Commissioner Jonathan Bamford, reiterating the "dangers of sleepwalking into a surveillance society".

Read the Constitution Committee's [report](#)

Read the [ICO's response](#)

*NB: Regulating Surveillance is the subject of a forthcoming [Unit seminar](#)*

### **ICO reports increase in data breaches**

The ICO has [announced](#) that there has been a significant increase in the number of data breaches that have been reported to it. It states that nearly 100 breaches have been reported in the last three months alone. In order to combat such breaches, the ICO has called on CEOs to make data protection part of corporate governance.

In tackling breaches of the Data Protection Act, the ICO has taken enforcement action against Hastings and Rother and Brent Primary Care Trusts. In both cases the breaches were the result of computers containing sensitive information being stolen. The Primary Care Trusts were forced to

sign a formal Undertaking outlining that in future they will process personal information in line with the Data Protection Act.

Read the [announcement](#)

### **ICO calls for clearer small print**

The ICO has [called](#) for an end to the use of obscure and confusing small print in privacy notices. It is argued that such small print results in many members of the public being unsure as to how their personal information would be used. Indeed, the ICO's research revealed that 47% of those questioned believed that such small print was intended to be "as woolly as possible".

Information Commissioner, Richard Thomas said that "no-one should need a magnifying glass or a lawyer to find out what will happen to their information, what their choices are and what their rights are."

The ICO has launched a national consultation on a new [Code of Practice](#) for more user-friendly privacy notices. The consultation will run until 3 rd April 2009 and you can take part [here](#).

## **March 2009**

### **Freedom of Information in the UK**

#### **Jack Straw speech on openness**

In February Jack Straw gave a speech on the government's record on openness and transparency, including FOI and its impact. The aim of the speech was to 'puncture a few myths'.

The Justice Secretary described FOI in positive terms. He stated that it has achieved two of its objectives: a cultural change, or 'a fundamental shift from a presumption of secrecy to a presumption of openness', and the ability to understand more about how government works – '[t]he Act opened up the internal workings of government and public authorities, making them accountable and significantly changing the relationship between the citizen and the state'.

But he also described some boundaries. FOI without limits, he stated, would have two effects. First, it would be 'self-defeating'. This is true: the paradox of FOI is that, with less than 1% of the population at large making requests, it only works when hardly anyone uses it. Second, he made the link between FOI and 'poor decision-making'. This link is harder to substantiate, as Constitution Unit research has so far found, though it is the reasoning behind the recent ministerial veto.

The Justice Secretary described other drivers towards openness independent of FOI, including the select committees introduced by Margaret Thatcher in 1979, changes in the criminal justice system, the expansion of judicial review (from 160 applications in 1974 to 5,400 in 2005) and a more active House of Commons.

Read the [speech](#)

#### **Liberal Democrat 'Freedom Bill' and FOI**

The Liberal Democrats have published a 'Freedom Bill' as part of a campaign to protect civil liberties and stop the creation of a 'surveillance society'. The Bill contains clauses related to the FOI Act, which the Liberal Democrats see as in need of strengthening.

One clause would raise the bar for withholding information, from 'prejudice' to 'substantial harm', as in the Scottish Act. The same clause would also give the ICO more data protection powers. Another clause would remove the ministerial veto, and allow appeals to the High Court on a broader basis than the current 'point of law'.

The Bill is a small sign of the support of FOI in parliament and the difficulty a government would have passing what could be seen as restrictive amendments.

Read more about the [Freedom Bill and FOI](#)

## **ID card Gateway Reviews released but no change to working assumptions**

The OGC has released two Gateway Reviews on the Home Office ID cards Programme. The Reviews are 'stage zero', or 'strategic assessment'. The appeal process in this case was lengthy, with a High Court decision sending the case back to the Tribunal because the Tribunal's reasoning was seen to have infringed Parliamentary privilege. The disclosure, which contains among other things recommendations for the next stage of the programme and its potential risks, follows the Tribunal's subsequent decision.

The OGC states that it will continue to deal with requests for Gateway Reviews according to Ministry of Justice working assumptions. They are, in brief: release information on whether a Review has been carried out, the aims of the programme, basic information about the review and the documents reviewed, but withhold names of review members and the conclusion and findings under section 33.

Read the [Tribunal decision](#)

Read the [releases](#)

Read the [working assumptions](#)

## **ICO Practice Recommendation to the Department of Health**

Following its admission as a result of an FOI request that it could not account for the whereabouts of a number of files, the Department of Health was issued a records management practice recommendation by the ICO.

The Practice Recommendation is based on a records management assessment carried out the by the National Archives, and draws attention to the DoH's frequent reorganisation.

Read the [Practice Recommendation](#)

Read the [National Archives assessment](#)

## **Scottish Information Commissioner Annual Report**

The Scottish Information Commissioner has released his Annual Report for 2008. In his first report since reappointment, Kevin Dunion describes his intention to shift the focus of the Office from processing applications and reducing its backlog to monitoring the performance of authorities.

A number of trends are also highlighted. The number of applications to the Office fell from 482 in 2007 to 367 in 2008, and more applications were dealt with informally. The report also shows both awareness of the Commissioner rising, and the proportion of respondents to his survey agreeing that 'FOISA is useful to me'.

Read [the report](#)

## **FOI in Parliament**

*Documenting mentions and uses of FOI in parliamentary questions and debates*

Peter Luff (Conservative) [raised](#) a point of order with the Speaker, stating his concern that it is easier to get information using FOI than written parliamentary questions. The Speaker said this would worry him, and pointed out that parliamentary questions should be a priority for any minister.

The experience of Lord Faulkner of Worcester may indicate otherwise. During the second reading in the Lords of the House of Lords Bill he [reveals](#) that his request for the minutes of the meetings of the working party on Lords Reform White Paper has been denied.

Other mentions of FOI show at least that it has improved the circulation of information in a small way. Derek Wyatt (Labour backbencher) recounts how he [discovered](#) through an FOI request that the local authority in his constituency was not prepared to spend £3000 on free swimming. This shocks and saddens Gerry Sutcliffe, the Parliamentary Under Secretary (Sport) at the DCMS. The petition on police interpreting submitted by John Leech (Liberal Democrat) notes that FOI requests have [shown](#) how outsourcing this function can lead to the use of interpreters not on the National Register as is required.

In a Lord's debate on the Border's, Immigration and Citizenship Bill, the Earl of Sandwich cites some statistics [received](#) under FOI on returns of asylum seekers to their original countries, but criticises the Home Office for not collecting more information which would help protect children under Article 3 of the Convention on the Rights of the Child.

David Willets (Shadow Minister for Innovation, Universities and Skills) [poses](#) an oral question about the Learning and Skills Council. FOI requests have shown that DIUS officials attended every meeting at which the moratorium on capital expenditure was discussed, so how can calling for a review be necessary? John Denham, Secretary of State replies that the necessary information did not become available until a later date.

Greg Mulholland (Liberal Democrat) [added](#) information obtained under FOI to a debate on care homes and their failure in unannounced inspections. Robert Goodwill (Shadow Minister for Transport) [asks](#) whether information revealed under FOI will affect the decision to close Kidderminster Driving Test Centre. The answer is no. In an Opposition Day debate on an Iraq War Inquiry, John Baron (Conservative Whip) [asks](#) whether information revealed under FOI and the Hutton Inquiry strengthens the case of an independent inquiry. Paul Rowan (Liberal Democrat) [refers](#) to an FOI survey by the Manchester Evening News that that 903 out of 1,043 schools in greater Manchester contained asbestos

On more administrative matters, Caroline Flint (Minister of State for Europe, FCO) [responds](#) to a question from Mike Hancock (Liberal Democrat) on staff employed to respond to FOI requests in the FCO. There are 10 FOI and DP staff in its information rights team, with staff throughout the department also playing a role.

Following the use of the ministerial veto last month, Dai Davies (Independent) asked the Secretary of State for Justice whether there are

any plans to repeal the corresponding section 53(2) of the FOI Act. Michael Wills [replies](#) that there are no such plans.

## **Data Protection**

### **Data sharing clause in the Coroners and Justice Bill**

Clause 152 of the Coroners and Justice Bill, which would allow public authorities to share information by way of an 'information-sharing order' to 'secure a relevant policy objective' is to be dropped.

In response to a parliamentary question, Michael Wills stated that government policy on the matter is that 'sharing information across Government Departments in a safe and proportionate way, with proper safeguards in place, is vital to the delivery of modern public services'.

## **Freedom of Information Abroad**

### **Government unsupportive of FOI in Canada**

An article in the Globe and Mail describes the Canadian Information Commissioner's ire at the Harper government's approach to FOI. He describes how requests are delayed longer than the 30 allotted days and the lack of political leadership for FOI.

Read the [article](#)

### **FOI on the up down under?**

The Australian Government has published two draft bills which aim to reform the Freedom of Information Act 1982. These aim to fulfil election promises made in 2007, but are surprising given current spending constraints on governments around the world, and the lack of support for federal FOI with which Australia is associated.

One bill is to establish an Information Commissioner. This is important since the absence of a Commissioner enforcing the Act has been a significant factor in the Act's stagnation. The Office of the ICO would contain an FOI Commissioner and a Privacy Commissioner. The Freedom of Information Amendment (Reform) Bill has more changes. It will, among other things:

- amend the Archives Act to make most government records accessible after 20 years rather than the current 30, and Cabinet notebooks accessible after 30 rather than 50. This will be phased in over a 10 year period.
- reformulate the public interest test so that there is one single form, and it favours disclosure.
- narrow and clarify the Cabinet papers exemption
- restate the objectives of the Act as increasing public participation and thereby informed decision making, and increasing scrutiny and discussion of the government's activities.

The reforms are currently being consulted on. Read more [about the proposed reforms](#)

## April 2009

### Freedom of Information in the UK

#### Is access to information a human right? Landmark European Court of Human Rights decision

The European Court of Human Rights has for the first time recognised that the European Convention of Human Rights includes under Article 10 the right to information from public bodies.

The judgement indicates that there is a general right of access – rather than just for the protection of individual rights – particularly for, as in this case, press or NGOs which act as ‘social watchdogs’.

Read the judgement, [Társaság a Szabadságjogokért v. Hungary](#)  
More on [access-info.org](#)

#### Final quarterly statistical bulletin for 2008

The Ministry of Justice has published the [Statistics on Implementation in Central Government](#) for quarter 4, 2008. Adding these statistics to the 3 previous bulletins, it seems provisionally that:

- Overall, more requests were received in 2008 than 2006 and 2007, though still less than 2005.

	All monitored bodies	Departments of state
2005	38108	19717
2006	33688	17924
2007	32978	16903
2008*	34883	19161

*\*Provisional*

- Departments of state (but not monitored bodies overall) are applying fewer exemptions year on year, with a corresponding reduction in the number public interest tests.
- Timeliness in monitored bodies has stayed roughly stable since the end of 2006, though has been declining in departments of state (see Figure 3).
- The proportion of requests disclosed in full was 57% for Q4 2008. This is the same as Q3, though is lower than the proportion for the 2005, 2006 and 2007 as a whole.

Read the [statistical bulletin](#)

#### Government response to Justice Select Committee report on Information Commissioner

The government has responded to the Justice Select Committee's report on *The Work of the Information Commissioner: appointment of a new Commissioner* (see [February update](#)). In the report the Committee notes that on two previous occasions it has recommended that the Commissioner be responsible to and funded by Parliament, but it does not make another recommendation here. It does draw attention to the Commissioner's backlog, recommending that the MOJ provide sufficient resources to resolve the backlog in a reasonable time. In its response, the MOJ state that additional funding has been provided for 2009-10 specifically to reduce the backlog, and that 7 civil servants from government departments have been seconded to the ICO to work on the backlog. In his hearing with the Justice Select Committee Christopher Graham recognised the problem of a backlog, stating 'justice delayed is justice denied'.

Read the [government's response](#)

### **ICO begins publication scheme monitoring**

The ICO has begun to monitor compliance with the new model publication scheme, which came into effect on 1 January 2009. With the new approach the ICO aims to support those who take their responsibilities seriously but raise the possibility of enforcement of action with those who do not.

Read [the release](#)

More [about publication schemes](#)

### **New Appointments to Advisory Panel on Public Sector Information**

Michael Wills has announced 4 new appointments to the Advisory Panel on Public Sector Information, which advises ministers on the reuse of public sector information. The appointments are Prabhat Vaze, a senior civil servant economist at the Department for Transport; Bill Oates, Head of Cartographics at the Welsh Assembly Government; David Lammey, head of the Central Freedom of Information team at the Office of the First Minister and Deputy Minister in Northern Ireland; and Michael Jennings formerly at Surrey Council.

Read [the release](#)

### **Analysis of MOD FOI requester data**

Prof Al Roberts of Suffolk University Law School and an [Associate of the Constitution Unit](#) and has carried out an analysis of data collected by the MOD on its requesters between 2005 and 2008. Among other things, the largest categories of requester are found to be private individuals with 17.1% overall - though this is in decline - and 'other' with 50.2%.

Download '[Preliminary analysis of data relating to the processing of Freedom of information act requests received by the UK Ministry of Defence](#) '

### **FOI in Parliament**

*Documenting mentions and uses of FOI in parliamentary questions and debates*

In a debate on the Service Complaints Commissioner, Lembit Öpik (Liberal Democrat) [states](#) that he has tried to use the Freedom of Information Act to obtain the report by the Devon and Cornwall Police into deaths at the Deepcut Army Barracks. He notes that it is on the record that a full public inquiry should take place if the police inquiry is not published.

Recommendation 21 of the Foreign Affairs Committee report on Overseas Territories, it is noted in a debate on the subject, relates to encouraging overseas territories to adopt Freedom of Information legislation. Jo Swinson (Liberal Democrat) [takes the opportunity](#) to praise the improvements in transparency that FOI has given rise to in the UK - though not as much as in Scotland.

There are only 19 park wardens to police the 124 open spaces in Croydon it was revealed through a *Croydon Advertiser* FOI request, and [brought to the attention of the House](#) by Andrew Pelling (Independent).

Baroness Miller (Liberal Democrat) is [shocked](#) that the responses to FOI requests from the Home Office reveal that it offered the company Phorm the department's draft paper on how targeted online advertising (see next section) would comply with the Regulatory and Investigative Powers Act.

Jack Straw (Secretary of State for Justice) [refers](#) to an FOI disclosure which showed the number of possible sites identified by the government for new prisons, and to the need to come to planning decisions fairly privately.

## **Data Protection**

### **Start of debate on reform of data protection directive**

The Information Commissioner presented a draft of the RAND Review of the EU directive at the European Privacy and Data Protection Commissioner's conference on 24 April. Richard Thomas stressed the need for Commissioners to recognise the weaknesses of the current framework (such as its lack of clear objectives, bureaucratic nature and the existence of some out-of-date elements) as well as its strengths (such as the enduring Data Protection principles) and to take the lead in working up reform and improvement.

Read the speech, '[Promising Themes for Reform](#)'

### **Possible action by European Commission over UK adherence to ePrivacy directive**

EU Telecoms Commissioner Viviane Reding has expressed concern over the UK's implementation of ePrivacy and personal data protection rules. The issue arises from use of 'Phorm' technology, which analyses web users' behaviour in order better to tailor advertisements to them. The Commission is concerned that this may contravene ePrivacy and data protection regulations, under which interception and surveillance without the user's consent are prohibited.

Read the [European Commission's release](#)  
Read related article in [The Register](#)

## May 2009

### Freedom of Information in the UK

#### MPs' expenses

The most high profile series of FOI disclosures in the UK has been the revelations relating to MPs' expenses, covered in previous updates. This has been an ongoing issue since 2005 but has culminated in the recent leaks of unredacted expenses to the Daily Telegraph, which were due to be published under FOI in July. The disclosure has affected all political parties and contributed to several [ministerial resignations](#). It may yet lead to further reform of both Parliament and the constitution.

Parliamentary expenses, and politicians' expenses more generally, have been an issue in many FOI jurisdictions. Disclosure of MSPs' expenses in Scotland led to the resignation of the leader of the Scottish Conservatives in 2006, though the commitment to publish all expenses online has taken much of the sting out of the [issue](#) since. The Irish Parliament has also suffered from a similar string of [revelations](#) concerning both members of Parliament and ministers. In the 1980s, ministers in Australia, Canada and New Zealand also suffered due to FOI disclosures related to expenses.

In August 2009 the Constitution Unit will begin a study into [the impact of Freedom of Information on Parliament](#). More details can be found on our [research pages](#).

#### Christopher Graham approved as next Information Commissioner

In a written [Ministerial Statement](#) Gordon Brown announced that The Queen has approved the appointment of Christopher Graham to the post of Information Commissioner. On 29 June 2009 Mr Graham will replace the current Information Commissioner, Richard Thomas. Christopher Graham has previously held the post of the Director General of the Advertising Standards Authority.

Read the [statement](#)

#### Jeremy Hayes' 'A Shock to the System' report launch

Jeremy Hayes of BBC Radio 4's 'The World Tonight' launched his paper 'A Shock to the System: Journalism, Government and the Freedom of Information Act 2000' at the Reuters Institute for the Study of Journalism on 20 May 2009. His report explores FOI's effectiveness in Britain in the context of the pressures on the Civil Service and government. He reveals the growing role of campaign organisations use of the Act to bolster their agenda, and explains why to some journalists interested in public bodies like health trusts and national agencies, FOI has become a crucial source of information.

Mr Hayes will be presenting a seminar on his report at the Constitution Unit on 13 September 2009.

Find out more about [the report](#)

Find out more about the 2009 [Government Information Policy Seminar Series](#) at the Constitution Unit

### **Private Data, Open Government: Questions of Information**

On 13 May 2009 the ICO's 'Private Data, Open Government: Questions of Information' conference took place. In his speech Richard Thomas discussed the opportunities for 'making a difference' created by FOI. He explored the challenges created by the enforcement of both FOI and DP, 'two principles that are novel, controversial and threatening', within a complex institutional set-up, dynamic context and many diverging interests.

Other speakers at the event included Justice Secretary [Jack Straw](#) who, with reference to dropped provisions in the Coroners and Justice Bill (see FOI March [update](#)), emphasised the need for public consultation on data collection and sharing.

Justice Minister [Michael Wills](#), meanwhile, hinted at the government's plan to extend FOI to cover those private bodies that carry out functions on behalf of public authorities.

Read Richard Thomas' [presentation](#).

### **ICO Corporate Plan 2009-12**

The new [Corporate Plan 2009-12](#) presented at the ICO Conference on 13 May outlines the priorities of ICO's activity for the next three years. These are: educating and influencing, resolving problems, enforcement, and developing and improving the ICO's strategic objectives. The ICO's grant-in-aid for Freedom of Information is to maintain the same level of £5.5m for 2009/10, with any further increase in funding described as "uncertain" due to the economic situation. The focus of the Corporate Plan is therefore on increasing efficiency in using human and financial resources, given the anticipated rise in the FOI caseload.

The Corporate Plan assumes a small increase in the data protection fee notification income (from £13.5m for 2009/10 to £16 for 2010/11 and 2011/12), notwithstanding the possible adverse impact of the economic situation.

### **Prime Minister pledges greater freedom of information**

In an appearance on BBC Radio 4's 'Today' programme, Prime Minister Gordon Brown pledged greater openness and accountability in public life, in particular through greater freedom of information, as a crucial element of constitutional reform. Affirming his position as a long-standing FOI advocate, Gordon Brown argued for greater freedom of information with regard to the Parliament and government, as well as an extension of FOI across a series of public bodies "including health authorities, local authorities, maybe even including the BBC so that people have to publish transparently things that are going on and at the same time, [we can] assure the electorate that we are taking the action that is necessary".

Listen to the [broadcast](#), or read a transcript on the [CFOI blog](#)

## **David Cameron on Transparency**

In a speech delivered on 26 May 2009, David Cameron expressed his ideas for 'Fixing Broken Politics'. Along with issues of redistributing power and increasing accountability, he portrayed transparency as a crucial means of getting people more involved in politics and public policy and helping end 'that despairing sense of powerlessness that pervades our society'. As a starting point for reform, Cameron called for 'a near-total transparency of the political and governing elite, so people can see what is being done in their name'.

Cameron also argued for measures which would allow 'an army of armchair auditors' to have a greater impact on public over-spending, for example through publishing all national spending over £25,000 online, the creation of a national right of legislative initiative, and publication of all parliamentary information online in an open-source format

## **FOI in Parliament**

*Documenting mentions and uses of FOI in parliamentary questions and debates*

In a written answer to David Winnick (Labour), Nick Harvey (Liberal Democrat), representing the House of Commons Commission, [stated](#) that the House of Commons has incurred external costs of £142,838 in legal actions concerning freedom of information since FOIA came into force.

In an answer to Andrew Lansley (Conservative), Ben Bradshaw (Minister of State (Health Services) Labour) [submitted](#) that while the Department of State is open about its use of expenses, determining how much members of the Departmental board claimed in expenses in each financial year between 2004-05 and 2007-08 would involve a disproportionate cost.

Notwithstanding recent answers to parliamentary questions and freedom of information requests covering expenses, there is no statutory requirement to collect and report on this data in the format requested.

In a House of Lords debate on Blatchey Park, Lord Davies of Oldham (Labour) [remarked](#) that "there is nothing beyond the reach of the Freedom of Information Act".

## **Freedom of Information Abroad**

### **President Obama orders review of government secrecy**

President Obama ordered two studies into government secrecy on 27 May. He asked the national security adviser James L. Jones to carry out consultations and make recommendations on amending the presidential order on national security classification. He also ordered Attorney General Eric Holder and Homeland Security Secretary Janet Napolitano to set up a government-wide task force on standardising so-called controlled but unclassified information.

While no changes in government secrecy have been introduced yet, there seems to be no doubt as to the move towards greater openness that the US President wishes to take. In particular there seems to be a drive towards standardisation of procedures of classifying information to ensure that "information is not restricted unless there is a compelling need."

Read a related [article](#).

More on the [Collaboration on Government Secrecy website](#)

### **White House does not have to hand over e-mail records.**

On 19 May 2009, the federal appeals court in Washington, DC upheld that the Office of Administration is not subject to the Freedom of Information Act over disclosure of its documents. The judgement is a victory for the Bush administration which sought to shield its internal communications.

Case: *Citizens for Responsibility and Ethics in Washington v. Office of Administration (08-5188)*.

Read the related [article](#).

### **Data Protection**

#### **Government's response to Lords' 'Surveillance: Citizens and the State report'**

On 13 May 2009 the Government published a response to the House of Lords Select Committee on the Constitution's Report 'Surveillance: Citizens and the State' (see February [update](#)).

The Lords' report, published in February, recommended that the government should be required by law to consult the Information Commissioner on bills or statutory instruments which involve surveillance or data processing. In its response the Government maintained that the House of Commons is best placed to decide when it is appropriate to draw on IC's expertise.

The Government also rejected Lords' call for a formal review of the law governing citizens' consent to use their personal data. It indicated, however, that the National Policing Improvement Agency is planning to undertake research into the effectiveness of CCTV, in line with the report's recommendations.

In the opinion of the Government "it is essential that we all understand that the government must strike a balance between the right of the public to their privacy, their right to the more effective delivery of public services and their right to protection from crime and terrorism".

On 29 April 2009, Prof Charles Raab (University of Edinburgh) and Dr Benjamin Goold (Somerville College, University of Oxford), both Specialist Advisers to Lords Constitution Committee inquiry into 'Surveillance: Citizens and the State', gave a Constitution Unit seminar on 'Regulating Surveillance'.

Read the Government's [response](#).

More about the [Unit seminar](#)

## **Review of the EU Data Protection Directive**

On 12 May 2009, the Information Commissioner's Office (ICO) published the review of the strengths and weaknesses of the EU Data Protection Directive carried out by RAND Europe. The RAND study concludes that, in an increasingly global, networked environment, the Directive will not suffice in the long term.

The report acknowledges that the Directive has helped to harmonise data protection rules across the European Union and has provided an international reference model for good practice. However, the report also says that the Directive is often seen as burdensome and too prescriptive, and may not sufficiently address the risks to individuals' personal information.

Read ICO's press release on the [report](#).

Read RAND's [report](#).

## June and July 2009

### Freedom of Information in the UK

#### New Information Commissioner

Former head of the Advertising Standards Authority Chris Graham began his tenure as Information Commissioner on 29 June 2009. Outgoing Commissioner Richard Thomas used his last speech to call for more routine publication of information, and greater funding if the FOI regime is to be expanded. [Read the ICO press release here](#)

#### Expanded FOIA

On 10 June Gordon Brown outlined [proposals](#) to extend the FOIA to cover more institutions, with private prisons initially suggested as an example of what [the Government had in mind](#).

The Ministry of Justice's publication [Freedom of Information Act 2000: Designation of additional public authorities](#) (16 July 2009) announced the Act will be extended to cover four new categories: the Financial Ombudsman Service, academy schools, the Association of Chief Police Officers, and UCAS (the university admissions service).

The Government cited a number of reasons to not extend the Act to contractors, charities or utilities: reluctance to increase the administrative burden; the availability of FOIA-type information already; the costs associated with becoming a FOIA regime (which would be passed on government/consumers); and the extensive accounting and reporting standards that businesses currently must comply with. MOJ will *'keep under review'* the issue of whether the FOIA should be extended to cover *'prisons, detention centres and foster care homes provided by private sector contractors on behalf of public authorities'*. The Campaign for Freedom of Information has called the announcement "[a useful but disappointingly modest result](#)".

Last June the Scottish Government announced its intention to expand its FOIA regime to cover such bodies as leisure trusts, social landlords and contractors. [Stakeholder responses](#) have been canvassed, but the Scottish government has yet to make any final announcements.

#### Cabinet papers

Following the recommendations of the Dacre review, Gordon Brown has announced that the that the thirty year period before official papers are made public will be reduced to twenty years.

In line with his statement in the [Commons](#) of the *'need to strengthen protection for particularly sensitive material'*, he raised the possibility that Cabinet papers and royal documents could be absolutely exempt from FOIA for a period of twenty years.

#### Delays in the ICO

The issue of delays in the ICO's processing of complaints regarding FOIA and EIR was raised by the Campaign for Freedom of Information. Their [research](#) released on 3 July found on average it took 19.7 months from the date on which a complaint was made to the ICO for a decision notice to be released.

The ICO [defended the findings](#), saying it was '*fully aware of the issues raised in the report*', and that it is '*working with the resources available to us and continue to make further improvements to speed up our complaint handling*.' The ICO's own [Annual Report](#) released only four days later showed that in the first quarter of 2009/2010 it received 200 more appeals than in any previous quarter.

The ICO has also [announced](#) it will start proactively publishing a list of cases it's currently investigating, in line with the Scottish Commssioner.

### **New 'best practice' guides**

More 'best practise' guides have been released for practitioners of the Freedom of Information Act and the Data Protection Act:

On 12 June the ICO launched a new [Privacy Notices Code of Practice](#) to help organisations provide more user-friendly privacy and marketing notices. Earlier this year, the ICO called for an overhaul of privacy notices after consumer research revealed that half of consumers don't understand what they're signing up to when they fill in forms.

The Ministry of Justice has released [new guidance](#) for the retention and dissemination of records in the UK, in regards to Section 46 of the FOIA. The first code was released in 2002, and the new code addresses technological change since this time, as well as emphasising '*the business benefits of good records and information management and its relevance to data protection and other information legislation*.' (Michael Wills, Minister of State, Ministry of Justice)

The ICO has produced new [guidance for local councillors in regards to environmental information](#). It explains when information produced or held by elected members may be requested under the FOIA or the EIR.

### **Freedom of information in Parliament**

Lord Dubs introduced an amendment (number 205 to the Corners and Justice Bill) to increase the time period allowed to begin prosecution again those who alter, deface, block, erase, destroy or conceal records (section 77 of the FOIA), arguing that '*with a very tight time limit, I contend that it is virtually impossible to bring a successful prosecution*.' However, it was argued that there was in fact no problem on this matter and the amendment was withdrawn.

Dubs had also asked in a written question for the names of individuals and organisations that have asked for FOIA requests about members of the

House of Lords, and what information was sought, over the last three years. In response, Lord Brabazon of Tara refused the first request, citing the Data Protection Act, but instead provided a [list of the topics of requests, the date, and whether they were met or refused](#). The Unit will be looking at this list during our FOI and Parliament study which you can read about [here](#).

## **FOI abroad**

Routine [publication of MP's travel and accommodation expenses](#) has begun in New Zealand, prompted by the expenses scandal in the UK. Speaker Lockwood Smith and Prime Minister John Key said the disclosure was 'a commitment by members of Parliament to be open and accountable to the people of New Zealand'; however there are no plans to make the disclosures compulsory in law, nor to bring Parliament under the Official Information Act.

Similarly, [Australian federal MPs are coming under pressure](#) to reveal details of how they spend their electorate allowances – at least \$32,000 per MP a year which is designated for spending on parliamentary/constituency resources. The allowance is paid direct into MPs' bank accounts but no official agency monitors the spending, which totals over \$8 million a year.

The Obama Administration has launched a [blog](#) it hopes will provide a forum for members of the public to comment on and inform the Administration's policy on Open Government. Over several weeks in May, the [Policy Declassification Board](#) received over 150 comments with specific, detailed recommendations for revisions to [Executive Order 12958, as amended, "Classified National Security Information."](#) (23 March 2003) The suggestions from the public have now been summarised and the Board states that classification and declassification policy has been '*strengthened by the enthusiastic and substantive public participation in the Declassification Policy Forum.*'

## **Data Protection**

Forty construction firms have been [implicated in the creation and use of a 'secret blacklist'](#) which for fifteen years was used to vet potential employees. The database – with over 3,000 names - included dates of birth, national insurance numbers and details of whether an individual had any connection to trade union activity. The prosecution for the ICO told the court the '*information was to be used covertly. Individuals on the database were not aware of it and could not challenge the accuracy of the information.*' Ian Kerr, of the Consulting Association, in Droitwich, Worcestershire, pleaded guilty to breaching the Data Protection Act and was fined £5,000 for administering the list. Seventeen firms who paid Kerr for the details on the workers have been served enforcement notices by the ICO.

The ICO has issued a [reminder](#) to parents that taking photos of their children at sport day or in a school play does not breach the Data Protection Act.

The Conservatives have promised radical [changes to the use of medical records](#) if elected to Government. Dubbed 'Wiki-health', the scheme would

allow patients to access health records online. Patients would be prevented from changing key details, but could amend personal details and leave comments on symptoms, medication and treatment. They could even share this information with third parties such as gyms or weight loss groups. Currently under the Data Protection Act, patients have the right to see their medical notes, but access can be restricted or refused by GPs and hospitals on the grounds that the information could be detrimental to a person's health. On 25 June David Cameron [spoke to Imperial College](#) where he characterised personal data collection as Labour's 'surveillance state'. He promised his Conservative government would scrap the Contact Point database of children's details, the ID Card scheme, and would remove innocent people's records from the DNA database.

## **August 2009**

### **Freedom of Information in the UK**

#### **'Ordinary people' use the FOIA in Northern Ireland**

The latest government [report](#) from the Northern Ireland Executive on FOI requests shows the eleven NI departments responded to 3,015 requests in 2008, 69% of which were from private citizens. 9% of the requests were from the media and 8% from businesses.

First Minister [Peter Robinson said](#) government "*should be as open and transparent as possible*" and the government's commitment to that principle was exemplified "*by the solid performance of our departments in responding to the steady stream of requests for information.*"

The report said 93% of the requests received were answered in time and that information was fully disclosed in 73% of cases. The most commonly used exemption for withholding information was 'personal information', followed by 'commercial interests' and 'formulation of government policy'.

Writing in the Belfast Telegraph, David Gordon believes the report shows that FOIA in Northern Ireland is [here to stay](#), despite earlier doubts expressed by then First Minister, Ian Paisley.

#### **Guidance for local government to 'catch up'**

The Ministry of Justice has launched [new guidance](#) for those organisations covered by the Freedom of Information Act that do not currently report statistics through the MOJ statistical release process.

The guidance is to encourage local government and other bodies "to publish to the same standard as the central government and Crown-body information that is currently produced by the department."

### **Freedom of Information in Parliament**

Labour MPs have been accused of using the Freedom of Information Act to smear the outgoing head of the British army, General Sir Richard Dannatt. Blogs accused Veterans Minister Kevan Jones of trying to [unearth Dannatt's expenses claims](#), after Dannatt publicly criticised the lack of resources given by the Government to the troops in Afghanistan. The MOD and Jones deny the allegation, while the [BBC reported](#) Labour peer Lord Foulkes submitted parliamentary questions about Gen Dannatt's expenses which he wants the MoD to answer during the summer recess. Meanwhile, the [Daily Mail](#) published answers to its own FOIA requests about Gen. Dannatt's expenses.

### **FOI abroad**

#### **United States**

After a five year battle with the American Civil Liberties Union, on 24 August the Justice Department released documents related to the treatment of detainees in U.S. custody overseas. This latest release, as ordered by the courts from two Freedom of Information Act lawsuits, includes an [official](#)

[description of the CIA's detention, interrogation and rendition program](#). The document from 2004 describes the use of sleep deprivation, dietary manipulation and stress positions by CIA agents on detainees. Having urged the Obama administration to make good on its commitment to transparency and accountability, the [ACLU welcomed the release](#), saying, "*the American public has a right to know the full truth about the torture that was committed in its name.*" [The New York Times](#) marvelled over the document's "*painstaking, eye-glazing detail beloved by any bureaucracy*".

Following the release, Attorney General Eric Holder Jr. has [chosen a federal prosecutor](#) to review whether a full criminal investigation of the conduct of CIA employees or contractors is warranted: "*Given all of the information currently available, it is clear to me that this review is the only responsible course of action for me to take.*" In response, Former Vice President [Dick Cheney](#) defended the actions of CIA employees.

[OpentheGovernment.org](#) has launched its latest [Secrecy Report Card for 2009](#). This year's report "*chronicles slight decreases in secrecy across a wide spectrum of indicators in the last year of the Bush-Cheney Administration, after five years of continued expansion.*" For this year only, the report includes two special sections: one on fiscal transparency and one providing a quick look at the Obama Administration's openness promising policies and, in some instances, discouraging practice.

## **Data Protection**

### **Information Commissioner 'let down' in snooping cases**

New Information Commissioner Christopher Graham has [told MPs about his disappointment](#) at the efforts of other organisations in the fight against the illegal information trade.

Last week he gave evidence before a the Commons culture, media and sport select committee, which is investigating phone-hacking and the use of illegal subterfuge by newspapers as part of an inquiry into press standards, privacy and libel.

Graham said the ICO had tried to "*sound the alarm*" about the scale of the problem. "*We were let down by the courts, who didn't seem to be interested in levying even the pathetic fines they had at their disposal; we were rather let down by parliament in the end, with no legislation; and we were let down by the newspaper groups, which didn't take it seriously.*" He again called for [custodial sentences](#) for breaches of the Data Protection Act.

The ICO's Motorman investigation into the activities of private investigator Steve Whittamore uncovered 17,500 requests for private information on behalf of 400 journalists working for some of the UK's biggest papers. News of the World royal reporter Clive Goodman was found guilty of hacking into people's mobile phones to find stories. He was jailed in January 2007.

Graham defended the ICO's decision not to prosecute all the reporters implicated by its investigation. He told MPs that his office did not have the resources to pursue all the cases.

## **MP wins fight to remove his DNA from database**

Damian Green, the Conservative immigration spokesman, has won a four-month battle to have his DNA, fingerprint and police records [removed from the national database](#). Green's records were created after he was arrested last year during an inquiry into leaks from the Home Office. The charges were dropped in April. Green's application to have his DNA removed was made under the 'exceptional cases procedure' which gives chief constables the discretion to destroy samples and profiles of selected individuals. 231 people have requested to have their DNA removed from the database so far this year; 31 requests have been granted. It is estimated that in Britain the records of 850,000 innocent people - who have been arrested but never charged - remain on the database. Last December the [European Court of Human Rights](#) ruled that a blanket policy of retaining profiles of innocent people indefinitely was illegal. The Home Office is reviewing the database in light of that decision. In the meantime, chief constables have been advised to resist [individual requests to delete DNA profiles](#) and to wait for the government response

## **Routine checks reveal illegal database access**

[Computer Weekly](#) has reported that nine local authority officials have been dismissed for accessing the records of celebrities and acquaintances from the core database of the National Identity Scheme. The sacked officials are among 34 council workers who illegally accessed the Customer Information System (CIS) database, run by the Department for Work and Pensions. The database holds the biographical data of 92 million people. Using a freedom of information request, Computer Weekly found that [Cardiff and Glasgow Councils](#) sacked people who had looked up celebrities, and Tonbridge and Bromley councils sacked workers for looking up their friends. Most of the illegal activity was uncovered from sample checks of the system.

A Home Office spokesman said the CIS breaches should not reflect badly on the National Identity Scheme, which is still in development. The CIS might be pegged as the biographical store for the Identity Scheme, he said, but Home Office data would be stored separately from data held by the DWP and protected by "*strict access controls*". However, Gus Hosein, a management systems academic with the London School of Economics, said that breaches were inevitable. "*Human nature and the propensity of governments to abuse privacy means that the only real safeguard is to not collect this information in the first place,*" he said. "*Create a central store and you will get abuse*".

## September 2009

### Freedom of Information in the UK

#### Another appeal body for Freedom of Information

With the passing of the [Tribunals, Courts and Enforcement Act 2007](#), the structure of the Information Tribunal within the Justice system is [set to change](#).

In November last year, Tribunal reform began with the establishment of 'First-tier' and 'Upper' Tribunals. In January 2010 - subject to Parliamentary approval - the Information Tribunal will transfer into the new General Regulatory Chamber (GRC) within the First-tier Tribunal. The GRC is a new chamber that will bring together individual tribunals that hear appeals on regulatory issues.

From then on, information rights proceedings will generally be heard in the GRC, in the First-tier Tribunal. Onward appeals will be heard in the Administrative Appeals Chamber of the Upper Tribunal.

This change has been welcomed by [Hawktalk](#), the blog of Amberhawk Training: *"Instead of the expense of going for judicial review or appeal to the Courts on a point of law, an aggrieved [FOI] complainant can ask for the case to be placed before the Upper Tribunal... the new arrangement in many cases should mean that simple blokes like me (or pressure groups) should be able to refer cases of particular interest or merit to the equivalent of the High Court without the risk of paying the other side's costs. Now that's a prospect to think about."*

#### Latest stats on FOI released

The Ministry of Justice has released the [April-June 2009 statistics](#) on FOI requests to central government departments. These statistics only cover 'non-routine' information requests, and do not give a representative picture of all requests for information received in government. The highlights:

- The 9,964 requests across all monitored bodies received in the second quarter of 2009 is 12 per cent greater than the 8,865 received during the corresponding quarter of 2008 (but 3 per cent fewer than in the preceding quarter).
- Of the Departments of State, the 'most popular' for requests is the Ministry of Justice (679), followed closely by Ministry of Defence (670). The Home Office (638), the Department for Work and Pensions (596), and the Department for Transport (560) round out the top five.
- The most commonly applied exemptions or exceptions used in the second quarter of 2009 were those listed at Section 40 of the FoI Act (relating to personal information), Section 30 (investigations and proceedings conducted by public authorities), and Section 44 (prohibitions on disclosure).

#### Freedom of Information in Parliament

## **MPs and the ICO**

The Secretary of State for Justice has released [figures](#) on the number of MPs' Freedom of Information requests being investigated by the ICO. This is in response to a written question from Labour MP Gordon Prentice. They show that in 2008-2009, 32 MPs went to the ICO over 72 different cases; only two of those had been resolved within 12 months.

## **Hunt for the 'expenses leaker' called off**

Speaker John Bercow has [called off the hunt](#) for the 'mole' who leaked the details of MPs' expenses to the Daily Telegraph. *"A witch hunt of this kind is wrong in principle and offers the impression that MPs, not taxpayers, are the victims in this expenses affair, a view that is manifestly mistaken,"* he said. Bercow's predecessor Michael Martin began the investigation – undertaken by a former intelligence officer – when the leaked details were published in May.

Meanwhile, the Daily Telegraph has reported the mole who leaked details of MPs' expenses was [motivated by anger at inadequate equipment for UK troops](#). Andrew Pierce, the Telegraph's assistant editor, says the mole alleges that Commons staff sorting through MPs' receipts during the redacting process were guarded by servicemen on leave, moonlighting to earn extra money. The mole said the contrast between conditions facing soldiers and the MPs' expenses claims *"helped tip the balance in the decision over whether I should or should not leak the expenses data"*. The MOD says it is doubtful whether serving soldiers would be allowed, or have the time, to moonlight as security guards.

## **FOI abroad**

### **United States**

US Federal Government is resisting requests from Bloomberg News for information about the bailout package passed in the wake of the collapse of Lehman Brothers in late 2008. The Federal Government has gone to court to protect the information, which it says would stigmatize banks and frighten customers into removing their deposits. They lost the case, but are considering an appeal. [Matthew Winkler](#), the Editor-in-Chief of Bloomberg News, has laid down a challenge to President Obama: *"Taxpayers, to whom the Fed is beholden, have no idea how their money was used to save banks from their own recklessness... This is basic information necessary to understanding the financial crisis and its aftermath, and it belongs to all Americans... This is an opportunity for President Obama to make good on his promise to create the most transparent government. By forgoing an appeal, he can show that he means what he says."*

## **Data Protection**

### **Anti-Surveillance protests in Germany**

Over 20,000 demonstrators gathered in Berlin on 12 September to protest against increasing surveillance and data retention by the government and

the private sector. The demonstrators - an alliance of 67 organisations gathered under the motto, 'Freedom not Fear' - called for major cutbacks on surveillance measures, including the removal of permanent CCTV camera surveillance.

### **DP strengthened for outsourcing**

The Data Security Council of India has published a data protection best practice guide for companies in sectors such as IT-business processing outsourcing (BPO), banking and financial services, and telecommunications. Som Mittal, President of NASSCOM, says the guide "*reinforces India's commitment towards data security and strengthens our position as a secure destination for outsourcing... We believe that a service provider in India should be able to demonstrate compliance with data protection requirements similar to those of the country where the client is located, and/or where the data originates from.*"

### **Other DP news**

The subsidiaries of HSBC have been fined £3 million by the Financial Services Authority for breaching data protection law. Alan Calder, chief executive of security and compliance organisation [IT Governance](#), says these fines are an example of [weak data protection enforcement](#), and has called on politicians to boost the powers of the ICO.

The Hyatt Hotel has become only the fourth UK company to get [ICO approval](#) to send personal data outside the EU.

[Sky](#) are set to provide a service to their customers to help them monitor when their personal data is being shared illegally.

## October 2009

### Freedom of Information in the UK

#### Bexley Council: FOI Act is 'out of control'

Bexley Council is calling for [changes to the Freedom of Information Act](#), claiming the Act is being exploited by companies who use it as a cheap way of getting research done at taxpayers' expense. It has also criticised journalists for using the Act for 'fishing expeditions', in the hope of finding a story among all the information provided.

It is estimated that the cost to the Council to provide requested information has tripled since the Act came into force in 2005, to an estimated £163,000 this year. A council spokesman said, *"We would like to see the Act changed so it is focussed more clearly on empowering individual members of the community."*

It is estimated that two-thirds of all FOI requests in Britain are made to local government. The Constitution Unit has just begun a systematic study of the objectives, benefits and consequences of FOI and local government. You can read about the project [here](#).

Meanwhile, blogger [Alan in Belfast](#) has documented his experience with obtaining council minutes and local government publication schemes in Northern Ireland.

#### The Impact of WhatDoTheyKnow? on FOI

MySociety, the e-democracy company behind [FixMyStreet](#), and the [Number10 Petitions Website](#), has recently announced that 13 per cent of all FOI requests to central government in the second quarter of 2009 were made through it's site, [WhatDoTheyKnow?](#)

WhatDoTheyKnow allows requesters to lodge requests, and communicate with departments through the site. WhatDoTheyKnow also publishes the responses to requests on its site. [Richard Taylor](#), a volunteer for the site says, *"Hopefully this will reduce the number of duplicate requests being submitted and ensure the information released is made available to the widest possible audience which in-turn should increase the chances it is acted on."*

You can listen to Tom Steinberg from MySociety speak [here](#), at the *Gov 2.0 Summit* in Washington DC, on MySociety's different approaches to democracy and e-governance. Steinberg has [recently confirmed](#) he has accepted an advisory role with the Conservatives on IT policy.

#### ICO publishes its caseload

The Information Commissioner's Office has prepared a list of its [current FOI and EIR cases](#) more than 30 days old. The ICO notes that the 'snapshot'

view provided by this list show cases that take longer than 30 days tend to involve contested information of a more complex nature.

## **Freedom of Information in Parliament**

Peers put [questions to Lord Bach](#) on FOI– what organisations are covered, requester anonymity and timescales – on 15 October. Lord Dubs called for journalists, who use the act to “*have a field day at our expense*”, to be made known to those whom the information they seek is about.

Caroline Spelman (the shadow Secretary of State for Communities and Local Government) asked whether [Local Strategic Partnerships \(LSPs\)](#) are subject to the Freedom of Information Act. Rosie Winterson responded that while Strategic Partnerships are not listed as a public authority in the FOI Act, local authorities and (perhaps) other public sector members of LSPs are, and therefore it may be possible to make a FOI request for information on an LSP to public sector members, though other non-state agencies in the Partnership would remain exempt.

## **Wales**

Public criticism has been levelled at both members of the Welsh Assembly and civil servants over controversial expenses and bonuses. Swansea councillor Ioan Richard, opposed to Environment Minister Jane Davidson policies on wind farms, has used [an FOI request to reveal](#) she has flown 14,000 air miles since taking up the post in 2007. An Assembly Government spokesman says the flights involved essential business and the minister only used air travel when there were no alternatives.

Top civil servants have been criticised for taking bonuses in the midst of the recession. The *Western Mail* put a FOI request to the Welsh Assembly Government asking for [salary and bonus details for each of the top thirty civil servants](#) in the last financial year. Total bonuses of £196,000 were paid for 08-09, £24,000 more than the last financial year. However, four of the top 30 civil servants waived their bonuses, including Permanent Secretary at the Welsh Assembly, Dame Gillian Morgan.

## **FOI abroad**

### **United States**

The case of releasing photos of tortured US detainees – a six year FOI legal fight between the American Civil Liberties Union and the Bush, and now Obama, Administrations – appears to have been resolved. Congress has passed the Department of Homeland Security appropriations bill, which includes an amendment to the FOIA that will [allow the Secretary of Defense to exempt US detainees torture photos from Freedom of Information requests](#).

The photos at the centre of ACLU’s FOI request were ordered for release by the federal appeals court earlier this year, and after a change of heart regarding their release, the Obama Administration appealed that decision to the Supreme Court. The Justice Department asked the Court to delay ruling

on the case while the issue was before Congress. With the amendment passed, it is now likely that the Supreme Court will not hear the case.

**Attorney General Eric Holder** has been sharply criticised for a [recent invocation of the 'State Secrets privilege'](#) to quash a lawsuit from four people who claim their overseas phone calls were illegally intercepted in the wake of 9/11. The process whereby the privilege can be applied in cases of national security was recently updated by the Obama Administration. Holder claims the process was redesigned to "*provide greater accountability for the use of the privilege*" and that the procedures "*require a thorough, multi-stage review and rely upon robust judicial and congressional oversight.*" However, Michael Isikoff, [blogging from Newsweek](#), says the use of the privilege in this case "*is among the strongest examples yet of how Obama administration officials are adopting Bush-era secrecy positions in major national-security cases.*"

Meanwhile, the Obama Administration has appointed the [first director of the Office of Government Information Services](#). The Office was created in 2007 through the Open Government Act, and was created to "*offer mediation services to resolve disputes between persons making requests... and administrative agencies as a non-exclusive alternative to litigation and... may issue advisory opinions if mediation has not resolved the dispute.*" The Office has been given \$1.5 million for the fiscal year 2010.

A coalition of musicians, including REM, Rosanne Cash and Pearl Jam, have launched a FOI request over the use of [music as a torture device](#) at Guantanamo Bay. The National Security Archive - a research institute that filed the request on behalf of the musicians - is demanding the US government declassify and make public information which contains explicit references to a list of over 30 artists and songs.

## **Australia**

The FOI Ombudsman and Commissioner of both New South Wales (NSW) and the Northern Territory (NT) respectively have been sharply critical of the approach to FOI by various state organisations in their latest annual reports. The [NT Information Commissioner](#) says requests for information are being refused by NT government agencies because they have simply lost the information.

[Newcastle University](#) in NSW has refused to reveal the bonuses paid out to its executives, while NSW Ombudsman Bruce Barbour insists it has no grounds to do so. *Sydney Morning Herald* reporter [Matthew Moore](#) has catalogued the troubles with FOI in NSW over the case of students accessing raw data on their Higher School certificate exams. He claims it is cases like this that have prompted the passing of the Government Information (Public Access) Act, which will come into force in NSW early 2010.

The state of FOI in Australia – much maligned by FOI campaigners and journalists – the new NSW Act, and reform of FOI elsewhere in Australia, is discussed this excellent [Law Report](#) radio program from the Australian Broadcasting Corporation.

## **The developing world**

Ghana is set to [lose out on \\$150 million in World Bank](#) funds because of its failure pass specific legislation, including a Freedom of Information Act. The Bank's decision has been greeted positively by some Ghanaian civil society groups, but others fear that the Bank will precipitate rushed legislation, passed without adequate public consultation.

The managing director of Iran's semi-official Mehr News Agency has told a media conference in China that [unequal access to technology](#) is the problem behind the lack of FOI in the developing world. Parviz Esmaeili told the summit: *"From a Western point of view, the use of the Internet is a prerequisite for the spread of democracy and freedom of information...but the tools of information have not been distributed equally."* Unless all citizens have access to communications networks they will be denied the *"basic right"* of information, he argued. Only five out of every thousand people in Africa had access to the Internet in 2008, he noted.

## **Data Protection**

### **ICO's calls for tougher penalties prompts MoJ consultation**

The Ministry of Justice has launched [consultation](#) on increasing the penalties available to courts for breaches of section 55 of the Data Protection Act. Included in the proposals up for discussion are 'penalties of up to two years on indictment', and up to twelve months on summary conviction' for individuals who knowingly or recklessly obtain or disclose information without the data controller's consent. The consultation period ends of 7 January 2010.

The consultation follows new Information Commissioner Christopher Graham's comments in September: *"the continuing need for an effective deterrent to serious breaches of the [DPA] is underlined by the fact that the unlawful trade in confidential personal information generally continues to flourish."* A spokesperson for the ICO says the Office has welcomed the consultation, and will submit evidence in support of the case for tougher penalties.

### **Police forces challenged over files held on law-abiding protesters**

Chief Constables will be required to justify the legality of recording thousands of law-abiding protesters on databases. This follows a [Guardian](#) report claiming that police have developed a covert apparatus to monitor people they consider are or could be 'domestic extremists'. It emerged that photographs and personal details of thousands of activists who attend demonstrations, rallies and political meetings are being stored on the databases.

David Smith, Deputy Information Commissioner is seeking seek further detail about the personal information police are collecting and why, before considering whether this meets the requirements of the Data Protection Act.

He stated that "*Organisations must only collect people's personal information for a proper purpose.*" Home Secretary Alan Johnson defended the police on the basis of their knowledge and experience in dealing with demonstrations.

### **Data losses 'getting worse'**

A FOI request by Software AG reveals that the number [of self reported data losses](#) by companies and government departments has increased from 190 incidents between October 2007 and November 2008 to 356 between November 2008 and September 2009. The biggest cause of loss was stolen software (usually laptops) followed by erroneous disclosure of data (through misaddressed discs or memory sticks). This news comes as a [poll commissioned by computing company Unisys](#) suggested that three-quarters of Britons do not trust the government to look after their personal information and that 64 per cent do not trust private companies with their personal data either.

## **November 2009**

### **Freedom of Information in the UK**

#### **Awareness of FOI falls in Scotland**

Despite recent high-profile media stories based on FOI, a survey by the Scottish Information Commissioner has found public awareness in Scotland of the FOI Scotland Act has decreased. In 2009, 39 per cent of people said they were aware FOI allowed them legal access to information from public authorities. That is down 10 per cent from 2008's survey. The results have surprised Information Commissioner Kevin Dunion, who noted the MP's expenses scandal may have confused the public into thinking that FOI is for the media and not for them. You can listen to his comments on the BBC about the study [here](#).

#### **Science and FOI**

Data and correspondence between climate scientists based at East Anglia University [has been revealed](#) after what the University has initially called a break-in to its servers. The University says it has been overwhelmed with FOI requests for climate data, and has taken advice from the ICO about how to deal with this. Some have speculated that unsuccessful FOI requests may have prompted the hack (or a leak). Martin Rosenbaum from the BBC discusses the relationship between university research and Freedom of Information requests [here](#). Last year [Jon F. Baldwin from Warwick University](#) questioned whether universities should be covered by the FOI at all, "*When it so obviously undermines the whole idea of universities being independent, self-governing organisations.*"

#### **FOI Friday and FOI podcasts**

Blogger David Higginson has begun compiling a selection of media stories coming from FOI requests every week. Titled [FOI Friday](#), it shows the innovative use of FOI by journalists, especially at the local government level.

Information Law specialist Ibrahim Hasan's latest quarterly FOI podcast is available [here](#). He discusses various cases to come before the ICO and Tribunal, and covers topics like disclosure of disciplinary records, court records, fees and land information.

#### **Scottish ruling on property information**

The Scottish Information Commissioner has been [overruled by the Court of Session](#) in a case over the rights of third parties to property information from local councils. The case was the result of FOI requests made to councils from solicitors acting for a private firm, whose business involves providing land and buildings information for a fee. Scottish councils often charge a fee for information, but the private firm wished to short-circuit the system by obtaining all relevant data held by the councils. In turn, it could

then sell on a package of information to third parties. The court ruled that the Information Commissioner had been wrong not to allow public authorities the chance to provide the information contained in the statutory notices in a form other than a copy. The act is about free access to information, not free access to documents in a specified form.

## **Freedom of Information in Parliament**

### **Parliamentary questions 'strangled' by FOI**

MP [John Redwood](#) has argued that Freedom of Information legislation has "strangled" Parliamentary Questions, as the Act has "effectively removed the privileged access" of MPs to information. Previously, PQs allowed MPs to find out things that others were unable to. "The answer was published in Hansard. The press and media regularly read Hansard answers, often finding good stories from the MPs' detective work." But now, "Anyone can now ask a good question of the government, and have an equal ticket in the lottery for an answer." Furthermore, he argues, it "may suit the government to let them [the public] know rather than the MP, as their answer does not have to be published in Hansard and they may have less access to the media than an MP." The Unit is investigating the relationship between Parliament Questions and FOI requests in our current [Parliament and FOI study](#).

### **FOI costs and staff in government departments**

Eleanor Laing has asked various government departments for information about their FOI teams. Ministers for [Transport](#), [Culture, Media and Sport](#), [DEFRA](#) and [Defence](#) were able to answer, but Ministers for the [Cabinet Office](#) and the Scotland Office were unable. Ann McKechin noted in her [answer](#) that the Scotland Office has "seen a year on year increase in the number of freedom of information requests since 2007, with 2009 already showing a 48 per cent increase on requests submitted in 2008."

### **Expenses stories continue**

In the wake of Christopher Kelly's report into MPs' expenses, further stories about parliamentary spending continue. An [FOI request](#) by the *Times* has revealed Speaker John Bercow has spent £45,000 on refurbishing his apartment. The [Daily Mail](#) has reported Labour Peer Baron Brooke has claimed £14,000 for an overnight allowance in a house "three miles from parliament". The *Times* also claims that [scrutiny of peers' expenses has led to a decrease in their claims](#), while the expenses of other high-profile public figures are also being investigated through FOI, like those of [judges](#). We are examining the expenses issue in our [FOI and Parliament](#) project.

## **FOI abroad**

### **Ireland**

Taoiseach Brian Cowen has said FOI requests in Ireland [are wasting the government's resources](#) and the right to ask for information is being misused.

*"It is an expensive and time-consuming aspect of Government work," he told the Dail. "I have no problem whatsoever with the legitimate use of the Freedom of Information Act for individual citizens or, indeed, for others. However, the idea of the department trawling every question that comes in from people who, perhaps, regard the departments of State as a source of generating information was not within the contemplation of the Freedom of Information Act and, to be honest; it is an abuse of the process."* Cowen's comments come after an expenses scandal involving various government ministers, including former Ceann Comhairle (Speaker) [John O'Donoghue](#), who, according to documents obtained under FOI, spent €100,000 in two years on travel.

In related news, the number of FOI requests made in Ireland increased by one-fifth from 2007 to 2008. Of the 12,000 requests, 15 per cent were made by journalists.

## **Jersey**

Jersey politician Roy Le Herissier hopes for [more transparent government in Jersey](#) through the passing of an FOI law. Jersey currently has a voluntary FOI code but a dedicated FOI law is now in the final stages of a long public consultation.

## **United States**

Critics are arguing that living up to the challenge of the introducing an ["unprecedented level of openness"](#) in government is harder for the Obama Administration than originally thought. Tegan Millspaw from Judicial Watch believes that *"Perhaps the best example of transparency under Obama is...when the new FOIA guidelines were issued, DOJ also announced a conference addressing how the guidelines would 'establish a new era of open government.' That conference was closed to the public."* Dana Millbank, writing in the [Washington Post](#), has expressed disappointment at the Administration's attitude to the congressional hearing on the Fort Hood massacre. The [Collaboration on Government Secrecy](#) (based at American University Washington College of Law) has given the Administration a C+ for its first year on secrecy/transparency policy and action. These judgments come after Defense Secretary Robert Gates [signed an order](#) to permanently block from release photos of tortured detainees, following the passing of a Homeland Security Appropriations law which gave him the power to remove information from the remit of FOI (as discussed in last month's FOI update). However, the White House has, in an *"historic"* move, released [visitor records](#) in response to 300 requests for such information last month.

The Michigan-based [Mackinac Center for Public Policy](#) believes the Michigan Department of State Police may have set a [new record for FOI requests](#). The Centre requested homeland security grant information from 2002 to 2009. The Police say this one request will generate 2 million documents, and cost the Centre \$US7 million to obtain.

## **FOI and China**

Meanwhile, President Obama spoke of the need for [greater internet freedom and the 'universal right' to access information](#) in China during a speech to students in Shanghai. He took questions from the floor in the 'town-hall' style meeting, and questions were also submitted via the internet. However, delegates at the [meeting were chosen by officials](#), and not all of his comments – including those about freedom of information - were reproduced by the official Xinhua news.

China's Open Government Information regulations came into force in May 2008. Research conducted by Ben Wei found during the first five months the regulations were in force, most requests in China were by individual's seeking information about their immediate interests.

## **Australia**

Like New South Wales Queensland and Tasmania, the Australian federal FOI regime is set for an overhaul, making good on Prime Minister Kevin Rudd's 2007 election campaign promise. Special Minister of State Joe Ludwig describes the recently introduced Bill as a "[cultural shift" in transparency of government.](#)"

If passed, the Bill will end application fees (currently set at \$AUS30), establish an Office of the Information Commissioner, make personal information free and encourage the proactive release of information. Significantly, the scope of the Act will also be extended to contracted service providers and subcontractors doing work for the federal government. However, the federal Government has not gone as far as the Tasmanian Government, which is [bringing the state parliament under its FOI regime](#) – the first Australian jurisdiction to do so.

## **FOI and the media**

A [new study](#) by the Austria-based International Press Institute into the responsiveness of twelve governments to FOI requests has recently been published. The authors recruited local media organisations to send standardised requests to the head of government and the Justice Ministry in each country. Australia was ranked first and Singapore – which has no dedicated FOI law - was ranked second, ahead of the UK and the US, placed sixth and seventh.

## **Data Protection**

Identity cards have been [launched in Manchester](#). Residents who already have a passport can register for a card at the cost of £30. The cards can be used to travel without a passport across the EU. The scheme is set to go nationwide by 2011.

The National Identify register which lies behind the cards, [currently contains details of 538 people according to Sir Joseph Pilling](#), the government's new independent Identity Commissioner. He said he would be reporting directly to Home Secretary Alan Johnson, rather than MPs, and his role was to provide public information about the ID card scheme - not to judge whether the scheme itself was a good or bad idea. Civil libertarians [pledged to protest in Manchester](#) against the database.

Google's Street View will be challenged in a Swiss Court after Google refused to take further measures to conceal the identities of individuals and numbers on licence plates. Prior to the launch of the application in Switzerland, Google and the Swiss Federal Data Protection and Information Commissioner (FDPIC) agreed that blurring technology would be used for sensitive images. However the FDPIC now believes that this is not enough to conceal identities, due to the fact that the zoom function allows users to isolate and enlarge images.

Following the release of emails and data from East Anglia's Climatic Research Unit, Johna Till Johnson from Nemertes Research has produced a [list of tips for networkers](#) to better protect their data, and understand how Freedom of Information needs to be considered when storing and organising data.

## December 2009

### Freedom of Information in the UK

#### FOI Acts five years on

The UK and Scottish Freedom of Information Acts came into force five years ago. During this time, the UK central government has received over 140,000 requests, the Information Commissioner's Office has received over 11,000 FOI cases and the UK government has exercised its veto twice (the second only this month, see below).

Michael Wills, justice minister responsible for FOI, told [Martin Rosenbaum](#) that the UK Act has induced *"massive cultural change... I've always believed it will be seen in retrospect as a huge shift in the way government does business."*

The [Guardian's](#) editorial notes that while the Act has provided *"a measure of daylight [that] has had a profound effect on the way Britain is governed,"* it warns the Act could be further eroded and *"the battle for openness is one that will never be won."*

Freelance journalist [Ben Dowell's](#) assessment in the Guardian of the five years of the Act looks at the impact of the ICO's caseload backlog and the supposed 'redaction mania' of the civil service. He also looks at the [Constitution Unit's research into the objectives of FOI](#), and how most of those objectives haven't been met. He quotes Robert Hazell: *"This is not a failure of FOI, it's actually a story about the media's editorial values."*

The [Scotsman](#) is cautious about the future of the Act in Scotland, with a recent decision by the Court of Session, which some commentators say restricts FOI rights by allowing access [only to the information contained within documents and not the documents themselves](#). Information Commissioner Kevin Dunion is more optimistic however, noting his support for Scottish Government plans to extend FOI coverage to private firms spending public money.

For the Constitution Unit's own assessment of the Act in regards to Whitehall, you can read the project summaries [here](#). Our latest [survey of FOI officials working in local government](#) has just been published, and shows a further rise in the number of requests to local authorities and the pressures this brings on resources.

#### Chris Graham gives first newspaper interview

Information Commissioner Chris Graham has given his first [newspaper interview to the Sunday Telegraph](#), pledging to crack down on those organisations still dragging their heels on FOI, five years after its commencement. Chris Graham was the speaker for our last Government Information Policy Seminar in the 2009 series. The 2010 series will begin in February in the year; details on the programme will be released soon.

## **'Smarter Government' has transparency focus**

Gordon Brown launched the government's latest information policy, as part of a wider initiative called Smarter Government. Brown pledged to [release valuable public datasets and make them free for reuse](#), a move welcomed by the [Open Knowledge Foundation](#).

## **Government uses veto a second time**

Justice Minister Jack Straw has exercised the government's veto over FOI for only the second time, blocking the release of 1997 cabinet minutes relating to Scottish devolution. The Information Commissioner had [ruled in June 2009](#) the minutes be released, and the government had originally planned to appeal the case to the Information Tribunal. The veto was first used in February 2009 to block release of cabinet minutes relating to the 2003 invasion of Iraq.

[Straw said his decision](#) sought to preserve cabinet collective responsibility: *"Whilst the convention of collective Cabinet responsibility is only one part of the public interest test, in my view disclosure of the information in this case would put the convention at serious risk of harm. The decision to exercise the veto in this case was not taken lightly."*

Information Commissioner Chris Graham has [spoken of his concern](#) that the veto is going to be used by the government for any cabinet minutes, *"irrespective of the subject matter or age of the information."*

Straw and the Commissioner disagree over facts of the case, including whether the views of individuals are attributed to them in the minutes, and the significance of the presence of 1997 cabinet members. You can read more about the case on the [Campaign for Freedom of Information's blog](#).

The UK's use of the veto is relatively restrained in comparison with other Westminster-style democracies. New Zealand governments used the veto fourteen times in the Act's first four years; In Australia, the veto was used 20 times in one year alone (1983-84), mostly in relation to 'internal working documents'.

## **ICO finds fault with publication schemes**

The ICO has expressed "serious concern" that its [monitoring of central government publication schemes](#) has found eight government departments in breach of Section 19 of the Act, including the House of Commons, the Home Office and the Cabinet Office (though a postscript to the report finds these three departments having made great strides since the monitoring was undertaken). The ICO's 2009 monitoring also found *"the greatest area of non-compliance with the requirements of the model scheme across the central government sector, with a limited number of exceptions, is in relation to the proactive release of financial information."*

## **Media outlets win ICO cases**

Three ICO decisions went in favour of media organisations this month, all of whom had battled to get the information they wanted for years.

The [Independent](#) has won a case against the Department for Media, Culture and Sport, after initially being denied access to memos and letters from ministers and aides regarding the subsidies paid to the Queen for the upkeep of palaces. The Commissioner ruled in favour of the paper after deciding publication was in the public interest. The Government and Palace had argued that publication would inhibit free and frank advice. This decision is one of several FOI requests recently concerning royal papers – [correspondence between the Prince of Wales and a local authority](#); and [Treasury documents concerning Princes William and Harry](#).

The Information Commissioner has also this month ordered [cabinet minutes be released](#) after ruling on request from the BBC dating from February 2005. The minutes concerned are from the January 1986 cabinet meeting from which defence secretary Michael Heseltine walked out over differences with Prime Minister Margaret Thatcher over Westland helicopters.

[The Times](#) asked for documents relating to President Bush's claim that information from detainees held in secret CIA prisons foiled a plot to fly planes in Canary Wharf and Heathrow. Scotland Yard refused to release the documents, and after 27 months, the ICO ruled in favour of the paper.

## **Scotland to extend FOI to private companies?**

The Scottish government is to formally consult on [extending its FOI Act](#) to cover private firms providing public services, as well as the Association of Chief Police Officers in Scotland, Glasgow Housing Association, trusts set up by local councils to provide leisure, sport or cultural services and the firms which operate and maintain trunk roads. The government will begin its consultation in Spring 2010.

Parliamentary Business Minister Bruce Crawford said: *"It is important that organisations who deliver key public services for the people of Scotland operate transparently so the public can be reassured we are getting high-quality services and value for money."* He said he understood the criticism from some private firms against extending FOI. They have argued that extending FOI could raise the costs of services and deter companies from tendering for government contracts.

## **Freedom of Information in Parliament**

### **British MPs use American FOI**

The [all-party parliamentary group on extraordinary rendition](#), led by Conservative MP Andrew Tyrie, has begun using the US FOI Act in an

attempt to gain access to information thus far denied to it through UK-based FOI requests.

The MPs have made requests to the CIA, FBI and the Department of Homeland Security [seeking more information about Britain's role in extraordinary rendition](#) – specifically, about the use of British airports and airspace, about agreements between the US and the UK on rendition, the use of British territory Diego Garcia, and about the transfer of detainees from British to American hands.

The MPs have previously submitted requests to UK government departments, but most are now awaiting appeal to the ICO.

### **Delays with the ICO**

Labour MP Gordon Prentice has again raised the matter of delays with the ICO's processing on complaints, after raising it in the adjournment debate back in July 2009. You can read his description of his own request's 20 month stay with the ICO [here](#). In reply, Justice Minister Michael Wills noted the further £500,000 given to the ICO in this financial year to help address the backlog.

### **Freedom of Information elsewhere**

#### **United States – Open Government Directive**

On 8 December, the latest stage of the Obama Administration's transparency plan was revealed: the [Open Government Directive](#) which gives departments concrete 45, 60, 90 and 120 day deadlines for openness initiatives.

Initiatives include:

- Within 120 days each agency will create an open government plan outlining how it will make its organisation more transparent;

- Each department is to create a special online portal for FOI with a feedback mechanism for the public to comment, with regular responses to public feedback;

- The portal will also contain details about how requests are processed, who processes them and how and, in the event of a backlog, details as to how the backlog will be addressed (any agency with a backlog needs to reduce it by 10 per cent, per year).

Interestingly, the Obama Administration's objectives for FOI are transparency, accountability, participation and collaboration - not too dissimilar for the objectives [identified by the Unit](#) for the UK's FOI regime.

Beth Noveck, director of the Obama Administration's open-government efforts, has noted in [an interview with cnet news](#) the opportunity for openness that the information communication revolution has brought about: *"There have been efforts in every generation to bring about government*

*reform, to create government that works better and more efficiently. But what's really a sea change today is that technology is making available this kind of open collaboration that we've never had before."*

The [Columbia Journalism Review](#) has described the Directive as "another milestone on the path towards a new era of transparency." However, [IT consultancy company Gartner](#) is disappointed the Directive only allows for "agencies to address participation and collaboration on their turf and on their terms", and asks, "How will real participation be possible unless agencies recognize that data is being created and collected by citizens, communities, private companies, which has the same dignity of government data to support participation?"

### **Supreme Court rules on torture photos**

Following the decision last month of Defense Secretary Robert Gates to block the release of photos of tortures American detainees (a power given to him by the passing of a Bill two weeks earlier), the Supreme Court has now ruled on the matter.

As discussed in previous monthly updates, the American Civil Liberties Union has battled to get access to these photos since 2003. The Court of Appeal ruled in favour of ACLU, and the Obama Administration then appealed to the Supreme Court. Before the court sat, Congress passed the Protected National Security Documents Act of 2009, an addition to a Homeland Security Appropriation Bill. Now the Supreme Court has ruled, and it's judgement effectively blocks the release of the photos, though this judgment is not a ruling on the merits, according to [Michael Dorf, from Cornell University](#): "Instead, in their *unsigned one-paragraph order*, the Justices instructed the appeals court to reconsider its original decision 'in light of Section 565 of the [Department of Homeland Security Appropriations Act, 2010](#), and the certification by the Secretary of Defense pursuant to that provision."

[The New York Times](#) has described the decision as "sad but unsurprising", and says the Obama Administration has lost an opportunity to show a clean break from the previous Bush Administration. Instead, Obama has created a "large retroactive hole in the Freedom of Information Act."

### **FOI meeting on openness closed to the public**

[Washington Post columnist Ed O'Keefe](#) notes the irony of the Department of Justice holding a closed-workshop on handling FOI requests for government employees. The workshop was also to introduce the new [Office of Government Information Services](#), a body created to review FOI policy and procedures. [Sharon Theimer from the Associated Press](#) sees the episode as another reason to be sceptical of the Obama Administration's commitment to openness. However, the DOJ claims barring the public and the media was essential to allow employees to speak honestly about their experiences. The DOJ have publicly released its [PowerPoint presentation](#) to the workshop.

## **Australian improvements to FOI foiled**

Developments to further strengthen New South Wales' FOI regime have come unstuck, after the advertisement for the new position of [Information Commissioner failed to attract any suitable applicants](#). This is likely to push back the enactment of the enhanced FOI regime by at least three months.

On the federal level, the opposition MP George Brandis notes despite the high rhetoric of the Rudd Administration, [FOI requests are now more likely to be refused outright compared to the previous Howard Government](#). He too notes the timing of the report which contains these statistics – while dated 31 October, it was released on 22 December.

## **FOI in the developing world**

Brazil is about to pass its first FOI law, carrying out the provision of the 1988 Constitution that guaranteed FOI rights and called for an FOI law. The Bill is currently up for public consultation, and Brazilians are being encouraged to make submissions to further improve provisions within the bill. London-based Brazilian blogger [Paula Góes](#), writing on *Global Voices*, looks at the work of civil society to pass the Bill [here](#).

The [Philippines is to extend its FOI regime](#) with the passing of the Freedom of Information Bill, which broadens disclosure requirements for state transactions involving public interest, and places more responsibility on departments for proactive publication. Sen. Alan Peter Cayetano says the law will include 'knowledge' among the information that must be disclosed to the public. This means that even without a document, officials and employees of a government office or department are required to discuss what they know about certain transactions, Cayetano said.

However, media outlets and NGOs are [worried that the Bill may not pass](#) by the time Congress adjourns on 5 February. Stakeholders have issued a declaration, urging lawmakers give "*top priority to enacting this law so we may finally enforce the Constitution's age-old promise of upholding the people's right to know.*" They see the bill's passing as critical to the holding of clean and credible elections in May this year.

## **Data Protection**

A FOI request has shown [Scottish Executive data has been lost or stolen](#) from courier deliveries, laptops left on trains and from conference venues. Spokespeople have insisted the digital data lost or stolen was encrypted, and would have related to policy, rather than personal information. In August 2009 alone, papers marked secret were left in a carpark, documents were lost by the Royal Mail, a memory stick went missing and a folder containing personal data was lost by an Executive staffer.

Dan Raywood from SCMagazine has reported security professional's [dire predictions for data protection in 2010](#). Botnets, phishing scams and spam

will become more sophisticated, though it is hoped while the recession eases companies will be more willing and able to allocate resources to fight data loss and theft.

NGO Big Brother Watch has used FOI to [obtain data on CCTV cameras](#). They say the information released shows there are now 59,753 cameras operated by 418 councils - up from 21,000 cameras 10 years ago. It is thought that Britain is one of the most-watched countries in the world with an estimated four million security cameras. A study by the Metropolitan Police estimates the one million cameras in London helped to solve 1,000 crimes last year.

Facebook has [updated its privacy settings](#), prompting harsh criticism from privacy and media commentators. Electronic Frontier Foundation say the changes "are clearly intended to push [the 350 million] Facebook users to publicly share even more information than before," a charge Facebook has denied. However, Facebook inventor Mark Zuckerberg has told a San Francisco conference audience [that privacy is a social norm of the past](#), and that there has been a privacy revolution of sorts in the last six years: *"People have really gotten comfortable not only sharing more information and different kinds, but more openly and with more people."*