

# Does FOI work? The impact of FOI upon British central government

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## Freedom of Information Act 2000

# Based on a two-year research project

Interviews in 8 departments



Survey of 300 FOI requesters



Analysis of 1000 articles in national media



Commissioner and Tribunal case law



# Which objectives have been achieved?

| Objective                               | Has the objective been met? |
|-----------------------------------------|-----------------------------|
| Transparency                            | ✓                           |
| Accountability                          | ✓                           |
| Better decision making process          | X                           |
| Public understanding of decision making | X                           |
| Participation                           | X                           |
| Trust                                   | X                           |

# Why?

**Not because FOI has ‘failed’. It has achieved its central aims of increased openness and accountability**

## (1) FOI was oversold

‘Some Freedom of Information releases will bring with them disobliging headlines for the government. But each and every release will contribute day by day towards our long term vision of a more transparent government in which people feel greater confidence’ (Falconer 2004).

## Why?

### **(2) FOI is shaped by its political context**

- FOI seeks to create ‘a legal framework based on reasonableness [...] operating in an unreasonable environment’.
- FOI is not powerful enough a tool to tackle these complex, probably deep rooted, issues.
- Media-government relations, spin, pre-existing public attitudes shape how FOI is used.

## To discuss

- **Chilling effect:** is there a chilling effect? Is FOI to blame? How can it be measured?
- **FOI and trust:** can FOI improve trust? Why does it appear not to do so? Could it be a long term issue?
- **Iron laws of FOI**

# What is the chilling effect?

- A reduction in the candour and frankness of official advice. This might be exacerbated if senior officials are identified with specific policies
- An erosion of a ‘safe space’ for ministers to deliberate, argue and disagree with each other in private
- Deterioration in the quality of the official record
- A reduction in the willingness of third parties to supply information to government if it is liable to be disclosed.

# Is the chilling effect caused by FOI?

- In the UK as elsewhere there is a widespread belief that FOI potentially has a chilling effect.
- A small number of officials also acknowledged a deterioration in the quality of the official record
- And there was strong evidence that ministers were particularly concerned about the damaging effects of disclosing Cabinet records
- **Is the chilling effect caused by FOI?**

# Why does FOI not increase trust?

## Indirect

- Media emphasise the negative (exacerbated by resistance)
- Trapped within a wider conflict between parts of the media and government

## Direct

- Requesters very distrustful
- Using FOI to pursue a campaign/grievance/disagreement

## Iron laws of FOI

- There is no going back
- Government holds all the cards
- Both sides will game the system
- Government will always be seen as secretive FOI never settles down

## Iron laws of FOI

- A few FOI requests cause most of the trouble
- FOI does not increase public trust
- Officials have nothing to fear from FOI, save for the burden on resources
- Leaks continue unabated by FOI