

The Sword and the Shield: how MPs and Peers have used the Freedom of Information Act and how it has impacted on Parliament

Ben Worthy and Gabrielle Bourke

Constitution Unit

University College London

Methods

- Interviews: MPs, peers, officials and others
- Analysis of PQs and debates
- Media analysis
- Disclosure log analysis
- FOI requests for use by MPs and peers

Qualifications

- Our expertise is FOI and approached it from this angle
- Not yet finished
- Parliament is a special case
- Divergent views and competing explanations –we have tried to explain ‘what’ and ‘why’

MPs and peers are creatures of habit and will be slow to use FOI

1. Obtain background information
2. Research policy and draw out a 'political angle'
3. Highlight an issue
4. Useful as a 'proving mechanism' i.e. to follow up a hunch

MPs and peers are creatures of habit and will be slow to use FOI

However

- Few MPs and almost no peers use FOI
- Small group of regulars or slightly larger group of 'irregular' users
- No impact upon PQs-confusion resolved 2009

FOI vs. PQs

PQs

- Basic information
- Quick, short reply
- ‘Ready made press release’
- Others can use information provided

FOI

- Long term-can take months
- Larger data sets or information
- Appeal system
- Coverage includes BBC and local authorities

Examples of FOI use

- **Particular person or issue:** Lord Ashcroft's tax status, Nick Clegg and Forgemaster, lists of guests to Chequers
- **Develop policy:** Costs of single rooms for patients
- **Expose:** All party group on extraordinary rendition sent to both UK and US
- To say 'we are watching you'
- **Not just government:** universities link to non-democratic regimes or constituency issues?

MPs and peers will use FOI in combination with other parliamentary tools to access information, not in isolation

FOI, PQs and debates

- 2005-2008 only 0.02 % of PQs referred to FOI
- 92 % 'about' and 4 % 'used'
- 2008 FOI mentioned 778 times in debates
- 74 % 'about' 24 % 'used'

Only a small minority of MPs and peers will make systematic use of FOI

- Very few MPs or researchers
- Estimate 20-30 MPs
- Conservative and Lib-Dem 'Round Robins' for NHS and local government
- MP generally opposition, 'crusading' type in long term investigations be they political (Prentice) or personal (Baker) **but not always**
- Why so few? time, resources, MPs are creatures of habit, context of information-FOI useful for some things not others
- Indirect by constituents?

MPs' use of FOI by party 2005-2009

Labour	13 %
Lib-dem	38%
Conservative	39%
SNP/PC	3%

Only a small minority of MPs and peers will make systematic use of FOI

Why no peers?

- Lords different role of revising
- Use fewer accountability mechanisms generally
- No political pressure/competition
- But examples of crusaders (Lord Avebury)
- Considered ‘ungentlemanly’?

‘Special measures’?

- Are requests slowed down?
- Divided some feel slowed vs. some actually speeded up
- Some nervousness esp. from opposition
- Officials: depends on the topic. Sometimes confusion between FOI and correspondence

Parliamentarians and FOI elsewhere

- Very low levels of use in other Westminster systems: Australia, Canada and Ireland for a variety of reasons: lack of power, tradition/habits, lack of champion
- Few standout users e.g. in Ireland senator
- **Exception is New Zealand** where introduction of MMP led to more MPs and competition, systematic use of OIA.

Conclusions

- Small group of MPs use FOI, almost no peers
- FOI is used in different way than PQs
- FOI can and is used to do a variety of things from nuisance to policy
- Majority prefer established accountability mechanisms
- Some overlap in debates and PQs
- No 'special measures'? As likely to be speeded up as not but users are suspicious

The shield: what do people use FOI for?

- **Far more requests** to the Commons than the Lords
- **Focus in the Lords** originally on bills, legislation, 2008 interest shifted. Commons focus always MPs
- **Administration** most popular issues being facilities and security.
- **Select Committees** few requests to both Houses have concerned Select Committees
- **Refusals** in the Lords. Very small initially and related to s.32 (legal exemption).
- **Refusals in the Commons.** Initially a high use of section 40. However, this has shifted towards (i) increased use of partial disclosure (ii) increased use of s.22.

Who is using FOI?

- Press around 20% of requests
- Range of stories from expenses to bar bills
- Also 'knock on' at local level (constituency parking costs, constituency office heating)
- Public and NGOs around 70%
- 10% from what do they know

Transparency

- Parliament is very open with only few areas secret (though these are the areas FOI always attracts)
- Improved by information service, use of ICTs
- FOI has led to the release of more information e.g. emissions, visitors centre, pests
- Has it changed the culture? Dissonance between rules and culture. Officials say some members had to be 'dragged'
- Little impact on day to day work

Accountability

- Very accountable body but officials saw ‘gap’
- Peers feel made more accountable
- Commons paid ultimate price for accountability
- No general accountability but do feel ‘piecemeal’ effect
- Idea that election is accountability mechanism?
- Special case of Parliament

Public understanding and participation

- Few felt it had any impact on either
- Some felt other mechanisms had an impact (e.g. outreach etc)
- Other felt public simply didn't care/understand except for over certain 'narrow issues'
- Perhaps by constituents 'passing on' FOI requests?

Trust

- Issue (and media coverage) is dominated by expenses
 - Was it a 'revelation' (polls) or a 'confirmation' (Hansard)?
1. **Pessimists:** parl distrusted because of poor behaviour (just desserts) or media reporting (trial by media) supported by media analysis
 2. **Optimists:** short term remove poison but long term improve. Difficult to tell?
 3. **Fatalists:** nothing can change lack of trust. Some academics agree
 4. **Complex:** actually issue is not one of 'passing a law and improving trust'

Parliamentary privilege

- Very nebulous idea
- Widespread concern before Act
- Many interviewees struggled to think of how it could impact
- Courts and other appear to have drawn a very clear line on the issue
- Certificates have worked well (roughly X per year?)

Why/how did expenses happen?

- **System:** opaque system since 1980s. Led to gap for some MPs between 'what do' and 'perceptions' (continues with IPSA)
- **Reaction:** highlighted issue
- **Accountability:** Parliament lacks a centre of accountability to have an overview and take charge (unlike local authority or government department). Sense of drift 'someone else will sort it out'. Reinforced by 'uniqueness' of Parliament
- **Culture:** dissonance between openness rules and 'closed culture'
- Yet this had already happened elsewhere (Scotland, Ireland) and warnings (PASC)

FOI and legislatures elsewhere

- Ireland underwent ‘slow burn’ expenses from 1999-present. Led to resignation of Speaker of the Dail.
- Post UK wave of openness from New Zealand to Italy and sub-level e.g. Stormont
- Not all covered but can get around e.g. US FOI and Nancy Pelosi

Conclusion

Parliaments present particular problems for FOI

1. Very open but few secretive areas (that attract attention)
2. Lack of centre of accountability
3. 'Law vs. culture' as culture lags behind legal change
4. Sense of uniqueness
 - FOI has made parliament more open and transparent but has not impacted elsewhere
 - No impact on Parliamentary Privilege
 - Most significant impact is exclusive cognizance and IPSA

Questions

- How does Parliamentary culture/structure influence how FOI has impacted?
- How does this match with your experience? Is there anything we have missed?
- Who else should we speak with/what else should we look into?