

The Impact of the Freedom of Information Act on Central Government

Presentation to FOI Live

Ben Worthy, Constitution Unit



Freedom of Information Act
2000

The objectives of FOI

1. Transparency
2. Accountability
3. Better decision making
4. Public understanding of decision-making
5. Public participation
6. Trust in government

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



Transparency

more information is released

- Visits to Prime Minister's country residence
- Official advice that the 'war on drugs' has failed
- Payments to Afghan civilians
- Also day-to-day flow of a wide variety of information
- This despite relative lack of use of publication schemes

Transparency

a more open culture

Interviews

- Found that officials more prepared to release information
- Requesters felt the government is now more transparent
- Used websites to pro-actively release information

Transparency

limitations of openness?

- Information is embarrassing
- Resistance, particularly with journalists- delay, muddy the waters, manipulate
- Depends on the particular departments-some less open than others

Transparency

FOI has made government more transparent

- Government gives out more information
- Government is more 'open' though not uniformly
- Transparency is closely tied to the information revolution

FOI and decision making

A negative impact?

Is there a “chilling effect”?

1. Decisions or advice are not recorded (meetings in the corridor, post- it- notes)
2. Decisions or advice are recorded in a less informative way/‘sanitised’ (bullet pointed meeting agendas, unintelligible documents)

FOI and decision making

A negative impact?

- In some cases where fingers had been burnt
- But there is a degree of ‘word association’ – “a very public wives’ tale”
- Many other factors in play
 - email,
 - resources,
 - working practices

‘if you aren’t prepared for it to appear on the front page of the *Sun*, then you shouldn’t be writing it down or you shouldn’t be saying it ‘

A negative impact?

‘You need to have stuff on files because they need (a) to protect themselves, to record things (b) to communicate with people because they can't perchance bump into people in the corridor and (c) if they are going to hand over the file they need to have sufficient in the file...on the whole, life proceeds as before’.

Conclusion

FOI has only a slight impact on decision making

- The chilling effect is found to only occur at the margins and caused by other factors, despite being talked about extensively
- **BUT it is a very persistent myth and a proxy for other factors**

FOI and trust in government?

Officials

‘Paradoxically, at least to start with, trust might well go down in the government as a result of FOI for two reasons. One, public coverage produced tends to be about government failure and, secondly, there will always be issues in which the government appears to be resisting disclosure’

Does FOI increase trust in government?

Media headlines based on FOI

- “120 Children mugged a day”
- “ MOD explored physic powers”
- “ PM uses ‘soviet style tactics’”
- “ Inmates drunk in prison at weekend”
- “ Which of these guests was Blair embarrassed about?”

Does FOI increase trust in government?

Journalists

- ‘fighting hard to keep [information] secret public authorities throw away the small benefit of being open’
- Resistance: delay, using contextual information to ‘muddy the waters’, releasing information simultaneously to other journalists.

Why does FOI not increase trust?

Alasdair Roberts -no country with FOI has seen trust increase for 2 reasons

- ‘one obvious reason is the steady supply of news stories about mismanagement or abuse that will be produced by FOI’
- ‘the law creates a process that guarantees high profile ongoing conflict over access [which will then] work to reinforce perceptions of secretiveness’

Why does FOI not increase trust?

- Media reporting emphasises the negative
- Resistance makes government appear secretive
- Too early to tell?
- UK population has always had very low levels of trust (e.g. MPs' expenses not an expose but confirmation)

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’-FOI has achieved its main objectives

(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 environment

- 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.

Paradoxes Of FOI

- **FOI only works if almost nobody uses it**
- **Requesters and officials both support the principle of FOI, but deplore the practice.**
 - officials tend to see business and media requests as a misuse of FOI
 - Requesters tend to believe the government is hiding information, delaying and playing games with them

Myths of FOI

- **FOI is for the ordinary citizen**
- **FOI requests would be easy for the government to process** if the government was not so secretive
- **There would be no need for FOI requests** if government published more information proactively.
- **FOI has a chilling effect on the quality of advice and the public record.**

Laws of FOI

- **The media has a key influence on the impact of FOI**
- **Officials have nothing to fear from FOI**
- **FOI never settles down**
- **Both sides will game the system**
- **A few FOI requests cause most of the trouble a few high profile cases cause disproportionate effort, media attention, public controversy and political pain.**

Questions

- Will it always be this way?
- Does FOI strengthen or weaken over time?
- How does central government compare with other public bodies or authorities such as local government?

THANK YOU

- Current projects
 - FOI and Local Government: Aug 2009 – July 2012
 - FOI and Parliament: Nov 2009 – Oct 2011

- FOI monthly updates

Contact us

- b.worthy@ucl.ac.uk
- g.bourke@ucl.ac.uk

-Project sites

- <http://www.ucl.ac.uk/constitution-unit>