



FOI and Local Government (RES-062-23-1748) Preliminary findings October 2010

The Project

Local government in England has been the focus of more than two thirds of all FOI requests. Understanding the impact of FOI on local government is central to a wider understanding of how the Act is working. The Constitution Unit at University College London has been funded by the ESRC to do a two year study of the impact of FOI upon local government.

This is the first systematic study of the objectives, benefits and consequences of FOI and local government. The study evaluates the impact of the legislation by speaking to selected officials across 15 different local authorities and conducting a survey of FOI officers in local authorities across England. The project also surveys requesters who use FOI, interviews local journalists and examines media articles that report FOI.

We seek to measure FOI against the objectives set for it, asking whether FOI has made local government more transparent, more accountable and improved decision-making; as well as evaluating the effect of FOI upon public understanding, participation and trust in local government. All interviews are anonymous.

The study also examines how FOI has interacted with the new structures and ways of working of local government. It will seek to measure how FOI has impacted upon local political leadership, local accountability, partnership working and local service provision.

Project progress

- The project is now at its half way point (14 months of a total 28).
- The findings below are by no means final and complete - some (especially the interviews) are impressionistic.
- Eight authorities have been interviewed. The range of authorities is quite wide in terms of size but also in terms of attitude to FOI.
- We can roughly classify them as (i) Two very well performing/'model' authorities, (ii) Four medium to good and (iii) Two authorities that have had particularly bad experiences.
- The FOI requesters survey is based on **only 40 responses**
- Survey of local journalists is based on 16 responses
- We have done 50 per cent of the national press coding (around 1k out of 1500).
- We have done 30 per cent of the regional coding (have not yet done all the analysis but around 300 out of 1k).

When examining the impact of FOI on local government 3 key contextual points need to be borne in mind

(i) The first point is that local government's patchwork of openness is very variable. Local government as a whole sees itself as very open. However, as with central government levels of openness are variable but this even more so at local level with 354 different local authorities, who can all 'do' FOI differently. This can be down to a range interrelated factors (but difficult to generalise):

1. **Political attitudes.** Does FOI have the support of senior staff or is it seen as a burden or legal straitjacket? Also in terms of best use of resources. This can change over time either positively or negatively.
2. **Experience.** Some authorities may have been 'hit' by particular uses of FOI that shaped perceptions e.g. heavy use by business, high profile exposure of salaries or allowances, long running issues (parking, particular development etc).
3. **Political balance.** A 'one party state' can absorb any FOI revelations far better than a hung or authority with a small majority.

There does not appear to be clear ways to generalise. For example a well performing council appears no less likely to be enthusiastic than a less well performing one and political ideology has little influence.

(ii) The second key contextual point is that FOI requests are increasing

- The Unit's surveys of FOI officials show that use of FOI has increased sharply against the central government trend that FOI use gradually increases:

Year	Estimated requests
2005	60,000
2006	72,000
2007	80,000
2008	118,000
2009	165,000

- No other statistics across all of local government exist. This can be seen as a sensible estimate.
- No single explanation for the rise in requests has been given. A number of explanations have been offered, though all are accorded very different weighting depending on the area:
 1. **Increased general use by the public** (particularly post-MPs' expenses scandal)
 2. **Increased use by the media** (particularly round robins from the national media i.e. requests sent to all local authorities)
 3. **Increased use by business** (also round robins)

(iii) The third point is that we are attempting to measure organisations in constant change

- **In general local government has gone, and is going through, a great deal of change:** For instance: committee system to Cabinet, shift from government and direct service delivery to governance/partnership, a wide range of democratic experiments (more to come with increased financial and political autonomy)
- **In terms of openness** there has been a range of access legislation since 1960s covering open meetings, publication of documents, access to accounts (more to come for publication of spending, contracts and online innovations)

We can now turn to the question of examining if FOI has met each of its objectives.

Survey of FOI officers (2008):

Objective	Agreed
Transparency	95%
Accountability	78%
Improved public understanding of decision-making	49%

Better decision-making	26%
Participation	25%
Trust	25%

Has it increased transparency?

- Majority of officials seem to feel that FOI may have made a slight improvement but that authorities are very open in general due to (i) earlier legislation (ii) general shift towards openness with other reforms (consultation and other initiatives).
- It has encouraged more pro-active disclosure.
- A few feel FOI has created a 'legalistic straitjacket' and inhibited previously informal openness.
- Requesters seem to feel that local government is now more transparent.

Has it increased accountability?

- As with transparency some officials felt that local government was always very accountable and open and cite the range of external mechanisms, performance targets and other instruments such as the Audit regulations (though not clear what the abolition of central monitoring will do here).
- Others felt it had done so especially over smaller activities such as allowance use or decisions made on a low level (e.g. licensing decisions)
- Requesters felt it has made local authorities more accountable.

Has it led to better decision-making?

- Few officials felt it had any impact
- Had been changed by wider reforms particularly the shift from Committee to Cabinet system
- This reform was viewed as a mixed blessing bringing increased efficiency and speed but at the expense of democracy and full deliberation.

Has it increased public understanding of local decision-making?

- The difficulty is that local government is, and has been, accessible by many other means: local government openness legislation since the 1970s; minutes online; public access to meetings.
- Few officials felt it has had any impact - when there has been interest it has been irregular and around a particular issue of personal interest or controversial.
- However, the largest group of requesters felt it had increased their understanding.

Has it increased participation?

- Very difficult because local government has always been very experimental and constantly changing in terms of participation
- Many cited range of participation mechanisms - such as council meetings, questions at Cabinet/council meetings, juries, surveys, community groups, LSPs - that have helped improve participation rates (though many point out it is still low)
- However FOI is used by groups around local issues and there exists examples of long running campaigns over particular issues (e.g. planning, parking).
- Proxy use by national groups

Has it increased trust?

- Local government is always more trusted than central government. However, officials had a range of views on this topic.
- Majority feel that trust has not been improved because of (i) MPs' expenses fallout (ii) high profile stories about 'wasting money' and salaries.
- Many feel that trust has little to do with openness and more to do with being (i) responsive (ii) visible and less a faceless bureaucracy (iii) efficient/improving performance
- National media coverage has reduced trust with focus of stories being on councils wasting public money, salaries of Chief Executives or CCTV/RIPA

But

- Both local news and requester survey point to very ambiguous findings - split evenly between articles and requesters who feel FOI increases trust, stays the same and decreases.
- There exists a complexity of views towards the local council, as officials and journalists give a whole range of reasons for how FOI, and other changes, impact upon trust:
 - 'Some public say 'I don't use council services' or 'think that teachers, carers, social workers do a good job but when asked about "the Council" have very poor perceptions' (Official)
 - 'Stories are "exposing" with an assumption that councils are incompetent and/or corrupt'(Journalist)
 - 'Change from the committee system to the Cabinet system has narrowed accountability' (Journalist)
 - 'It makes the public more aware of how their money is being spent but this could go either way on trust' (Journalist)

We can now look at whether FOI has impacted upon how Local Government works

Has it impacted upon leadership?

- No impact upon how the leadership of an authority works and operates (though leadership may be influential in levels of openness)

Has it impacted upon service delivery?

- A few felt it may have caused services to change as FOI created a feedback loop
- Majority felt it had no impact

Has it impacted upon partnership work?

- Most felt it had no impact
- A few mentioned how it had (i) made private companies nervous (ii) given an extra edge to the tendering process

A separate issue but related to impact upon how local government works is the chilling effect. Has FOI led to this?

- Few officials felt it had an effect
- FOI had the positive effect of 'cleaning up' emails and correspondence
- It also may have created more of an audit trail for minutiae (e.g. some now record in detail all expenses).

But

- One authority had a clear example regarding cabinet member discussion about drafts. Following an FOI that revealed a draft comment all members now discuss draft in caucus and simply present a memo; no notes are taken (where they were before).
- Interestingly this in a hung authority where the ruling party existed on a knife edge.
- In another hard hit council a few staff on frontline services were recording less on case notes.

We can now take a look at some other areas of importance. The two big issues for officials is use of FOI by (i) the media and (ii) business. We can look at each in turn.

For the media we need to discriminate between the **national press** (who appear to pursue a narrow set of issues) and **local press**.

Media (national)

- **Rarely reports local stories**
- Use of 'round robins'
- Particularly *Mail*, *Telegraph* and *Times*
- By far the biggest issue is 'wasting public money' (CE salaries, non-jobs etc) and within this 'fat cat' officials
- Others are mainly round robin: include issue relating to schools (e.g. incidences of drugs or knives), benefits/welfare, waste/refuse (Attacks on bin men)

Media (regional/local)

- Dependent on individual relations between press office and newspaper
- Also it may depend on the type of newspaper e.g. is it a 'community' newspaper or more 'abrasive'
- Driven by decline of local press
- Most popular stories appear to be council spending
- Some are local equivalent of national stories (allowances, staff days out etc)
- Some are pursuance of local stories
- Also used information from council is used to run stories on other public bodies e.g. schools but also private such as bus companies, restaurants or mobile phone companies.

Business

- Also cited as an increasing user - viewed, unsurprisingly, as against the 'spirit' of the Act
- Often submits complex requests and is a key cause of frustration
- Business use FOI in normal way to find information on tendering, contacts, ICT use
- Also some innovations e.g. deceased without easily traceable heirs, details of council tax rebates, asking for address/information to build a database (then sold back)

The final issue that interviewees mentioned and we asked about is that of the future. FOI is presented with opportunities by the new commitment to transparency but also by a possible threat from cuts to budgets.

Future: opportunities

- FOI is presented with opportunities by the new commitment to transparency
- Publication of all spending over £500: many support principle but feel figure is too low to be of much use, the information will be de-contextualised and the reform itself will be difficult and costly to do (see recent WhatDoTheyKnow/Openly Local collaboration)
- Rise of online transparency with sites such as Openly Local, Spotlight on spend
- Other wider reform may assist e.g. greater financial/political autonomy

Future: concerns

- Many feel they are already working at capacity or over-capacity.
- How FOI can be dealt with within 26 % cuts?
- Others question usefulness and say in future may not be able to answer all requests

Given these opportunities and concerns, and the rising requests described above, are there any solutions from their viewpoint?

- Some officials are keen to 'filter' requests from difficult requesters such as national 'fishing' round robins and business without excluding others.
- Some mention application fees but highlight political difficulties of introducing it (runs against spirit of the law) and operating it (officials may not be happy).
- Will authorities take unilateral action? Bexley threatened to 'name and shame' three problem requesters; Chester and Chester West issued notice about fees and aggregating requests that appeared to be part of a 'campaign'.

Here is a set of preliminary thoughts/conclusions we can offer for discussion

- FOI is bound up in the wider changes to local government
- Authorities do FOI in different ways with differing degrees of enthusiasm and support depending on experience and attitudes
- FOI has made local authorities more open though the level of openness (and pre-existing level) varies
- It has contributed to increased accountability and understanding of decision-making. It may have influenced participation.

- The impact upon trust is not clear. Directly (for the requester) and at regional/local press level it seems evenly split between having increased, no effect and decreased. National level appears to have not done so.
- The key issue appears to be the continuing rise in requests and a sense that FOI is being 'abused'.
- It has had little impact on the functions of local authorities.
- Little chilling effect except in particular places.
- FOI is being heavily used by business and the press. Pressure groups have also used it.
- In terms of what for FOI is being used at local level for a whole, it not only being used to access local government activities but also central government policy (e.g. on ASBOs), other public bodies (schools, libraries) and private bodies (bus companies, restaurants).

Themes for further analysis

- **Trust:** how and why is local government different? Can local authorities be more visible? More responsive?
- **Online transparency:** where do new sites such as 'Spotlight on Spend' and 'Openly Local' fit in?
- **Requests:** are there fixed patterns in request topics? Or are they niche?

Questions/issues

- Need to speak with requesters/and or 'proxy' requesters e.g. WhatDoTheyKnow.com
- Need to speak with local journalists
- Analysis of sample of requests?