

## **The Sword and the Shield:** The use of FOI by Parliamentarians and the Impact of FOI on Parliament

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September 2011

The Constitution Unit

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Acknowledgments .....	3
List of tables and boxes.....	4
Introduction.....	5
Methods.....	5
The Shield: The impact of FOI on Parliament.....	6
Why is Parliament covered by the FOI Act? .....	6
Aspects of Parliament’s FOI coverage.....	6
Preparation for FOI by officials .....	16
FOI Requests to Parliament.....	16
The Impact of FOI: Transparency .....	20
The Impact of FOI: Accountability .....	21
The Impact of FOI: Trust.....	23
Explaining the Expenses Scandal.....	30
Elsewhere.....	35
Scotland.....	35
Ireland.....	35
The Sword: How MPs and Peers Have Used FOI.....	37
Who uses FOI?.....	40
How do MPs use FOI ?.....	41
FOI and other tools .....	42
Why More MPs and Peers are not using FOI .....	43
Parliamentarians and FOI Elsewhere .....	43
Conclusion.....	51
The Shield: the impact of FOI on Parliament .....	51
The Sword: the use made by parliamentarians of FOI.....	51
Bibliography.....	53
Endnotes .....	59

## ***Acknowledgments***

We would like to thank the interns who contributed to this project, and to our other work on Freedom of Information, over the last two years:

Adam Cadoo, Alex Jacobson, Anna Colquhoun, Antti Halonen, Estelle Levoyer, Leo Ratledge, Mariya Stamenova, Miranda Simon, Richard Earley, Robert Kraus and Will Hazell.

Many thanks to those who gave up their time to share their expertise with us during interviews, and those who provided valuable feedback and comments. Special thanks to members of the Study of Parliament Group.

This research was made possible by a Leverhulme Trust Research Grant [ref F/07 134/CQ] <http://www.leverhulme.ac.uk/>

## **List of tables and boxes**

<b>Table 1</b> <i>Requests to both Houses of Parliament, by year and result, 2005-2009</i> .....	<b>16</b>
<b>Box 1</b> <i>A Sample of Requests</i> .....	<b>16</b>
<b>Table 2</b> <i>Requests to House of Commons, by year and topic 2005-2009</i> .....	<b>18</b>
<b>Table 3</b> <i>Requests to House of Lords, by year and topic 2005-2009</i> .....	<b>18</b>
<b>Figure 1</b> <i>Topics of requests to both Houses of Parliament 2005-2009</i> .....	<b>18</b>
<b>Box 2</b> <i>The Maclean Bill 2007</i> .....	<b>21</b>
<b>Box 3</b> <i>Officials take the heat</i> .....	<b>22</b>
<b>Box 4</b> <i>Media impact on trust</i> .....	<b>25</b>
<b>Box 5</b> <i>Expenses Quotes</i> .....	<b>31</b>
<b>Box 6</b> <i>FOI and the accountability of parliamentarians</i> .....	<b>35</b>
<b>Table 4</b> <i>Proportion of Party affiliation of MP requesters to five government departments 2005-2010</i> .....	<b>40</b>
<b>Box 7:</b> <i>Sample of Requests to DEFRA from MPs in 2007</i> .....	<b>42</b>

## Introduction

The UK Parliament was made subject to FOI in January 2005, with the Act covering both houses in terms of their administrative work. Parliament is the oldest institution to be covered by the Act, and one that presents significant problems. Parliament's historic protections against outside interference, its strong internal culture and particular governance arrangements make for some unique difficulties for a law allowing access to information.

The UK Parliament was also the centre of a large FOI scandal in May 2009 when FOI requests, combined with a leak, created a scandal about MPs' uses, and abuses, of their parliamentary expenses. This led to the creation of an outside agency regulating members' expenses and caused political reverberations that continue to this day.

FOI's arrival, however, could also be an opportunity for parliamentarians. With FOI, members of Parliament have a potential new weapon to hold the government to account, that has a potentially further and deeper reach than other accountability mechanisms.

This report presents the work of a two-year project into the impact of the FOI Act on the UK Parliament. The research project asked two questions:

1. **How has FOI impacted upon Parliament?**
2. **How have MPs and peers used FOI?**

## Methods

- **FOI requests were made to six selected government departments** to find out the use parliamentarians were making of FOI to elicit information. Information received was coded and analysed to find patterns of use and popular topics.
- **Each FOI request received by the Houses of Parliament between 2005 and 2009 was coded and analysed.** Decisions by the appeal bodies of FOI (the Information Commissioner's Office etc) were also examined. From this we were able to see what information was now becoming available via FOI and how and why Parliament on occasion chose to fight against disclosure.
- **A sample of media articles in national, regional and local press were coded and analysed** to uncover the popular representation of FOI and Parliament's relationship and effects on public trust or understanding. We coded over 600 articles from the 2005-2009 period, a 20 per cent sample.
- Both sides of the project were informed by **coding a sample of Parliamentary debates and of Parliamentary Questions** from *Hansard*, to see how parliamentarians spoke of their use of FOI, and the impact FOI was having on Parliament as an institution.
- We expanded on the quantitative data with **47 interviews**. Interviews were conducted with 15 MPs, 10 peers, 5 researchers, 11 parliamentary officials, and six external observers of Parliament.

## ***The Shield: The impact of FOI on Parliament***

### **Why is Parliament covered by the FOI Act?**

The UK Parliament is one of the few Westminster legislatures that have been made subject to FOI (Canada's, Australia's and New Zealand's are exempt), and so its experience is unique. Consequently, there has been little analysis of the impact of FOI on parliaments, as opposed to governments. Studies thus far looking at the relationship between parliaments and FOI have focused more on the use made by parliamentarians of FOI for government scrutiny.<sup>1</sup>

The UK FOI Act came into force on 1 January 2005 and applies to over 100,000 public bodies. It provides a basic right of access to official information subject to a set of exemptions. Supporters of Freedom of Information laws argue FOI can bring make institutions more transparent and accountable, leading in turn to better public understanding, increased public participation and increased trust.<sup>2</sup>

The government did not originally intend FOI to include Parliament. The Act, according to one of its original architects, minister David Clark, was to 'empower the citizen to challenge the apparatus of the State', and he noted in 2008 that Parliament's original exclusion was to prevent the press in particular 'having a go' at parliamentarians rather than the state.<sup>3</sup>

Parliament was added to the schedule of public bodies covered by the Bill after a recommendation of the Public Administration Select Committee during the pre-legislative stage. The Committee did not take any evidence relating to Parliament's original exclusion, but argued 'there are many administrative functions carried out within Parliament which, it seems to us, do not need to be protected, any more than do those of the police.' PASC too noted the draft bill had many useful protections for parliamentary work. Its closing argument was simple: 'The justification for the exclusion of Parliament has not been made out. The exclusion may well convey the wrong impression to the general public, given the purpose of this legislation' (Public Administration Select Committee 1998b).<sup>4</sup> The government in response stated no objection to including these administrative functions within the scope of the Act and Parliament was inserted before the bill came up for debate. As the bill passed through both Houses of Parliament, no mention was made to inclusion.

### **Aspects of Parliament's FOI coverage**

The FOI Act covers both the House of Commons and House of Lords separately. The passing of FOI also brought both Houses within the ambit of the Data Protection Act 1998. The information that MPs or peers hold as individuals is not covered; only the information held by Parliament as an institution. Further, the Houses cease to exist for the purposes of FOI when Parliament is dissolved, as before an election.

Parliament presents particular difficulties for FOI, in terms of retaining 'exclusive cognisance', its very unique governance structure, and its long tradition of openness and public engagement. This sets it apart from other public organisations.

Placing FOI atop a Westminster parliamentary system can be seen as undermining important constitutional 'conventions of traditional governance'.<sup>5</sup> There is potential tension with some principles, not least parliamentary sovereignty. The UK sought to manage this tension by creating a special exemption in Section 34 of the FOI Act for

parliamentary privilege, and use of this exemption cannot be adjudicated by the Information Commissioner.<sup>6</sup> Either House can issue a certificate stating the necessity of withholding the information to protect parliamentary privilege, or to avoid 'prejudice to effective conduct of public affairs' (section 36); this is taken as conclusive evidence of that fact.

Officials of both Houses of Parliament noted the unique structural arrangements which make Parliament different from other public institutions. They noted the Speaker of the House, as the most senior 'official', does not fulfil a role like other public sector leaders, as 'it is not the same as those between a Minister and a ministry.'<sup>7</sup> Unlike the civil service, there is no 'structure' to drive through a programme, no single dominant 'corporate identity'.<sup>8</sup> In local government, ultimate FOI responsibility lies with the Chief Executive or the Council Leader. The leadership of the Commons comes from the House of Commons Commission; its governing committee is made up of MPs who delegate to non-elected officials the work of administering the House. The Lords is, in one way, similar, with senior peers comprising a House Committee, but the two have different legal status. Both Houses are ultimately led by members who are subject to a number of influences from parties and elsewhere.<sup>9</sup> The institution of Parliament as a whole can be neglected because of this fragmentation. 'There is no Parliament in collective sense at all...there is no voice of Parliament that can be collectively orchestrated. Parliament is a place where the parties do permanent battle and this fundamental reality trumps attempts to build up Parliament itself.'<sup>10</sup> As one official put it: 'Parliament as an institution has a vacuum at the heart of it'.<sup>11</sup> This means any mechanism of public accountability can face unique structural barriers.

However, more so than many other public organisations, Parliament has been taking steps towards greater transparency over several centuries, and even without FOI, 'it would be hard to find an organisation who provides more information than us,' notes one official.<sup>12</sup> Transparency of decisions made by legislators on behalf of the people are a cornerstone of its functioning. The daily publication of Hansard, committee reports, submissions and library papers bears this out. Aside from FOI, over 40,000 requests were made by the public to the Commons Information Office in 2009.<sup>13</sup>

Previous openness innovations, from the construction of press gallery in 1831 to the first publication of MPs' interests in 1974, have mostly been on Parliament's own terms. FOI presents a departure: a statutory obligation to release information on demand from the public, and further, the regulation of information release by an independent body.

### **Preparation for FOI by officials**

Working groups of officials in both Houses were created shortly after the passage of the FOI legislation in 2000 to discuss and implement an FOI system for the Houses in time for the legislation's enactment on 1 January 2005. They developed publication schemes (whereby public bodies publish specific, basic information), updated records management processes and thought about the practicalities of the FOI system. The Lords and Commons also released expenses and allowances data in aggregated form in October 2004 in anticipation of FOI coming into force. Staff were enthusiastic about FOI, and proud to be part of the work in preparing for FOI. 'Parliament has pride in high standards, we wanted to do things well' said one.<sup>14</sup>

## FOI Requests to Parliament

Table 1 shows the path taken by the Houses when requests were received. Box 1 provides a sample of some of the requests the Commons and Lords received.

**Table 1** Requests to both Houses of Parliament, by year and result, 2005-2009

Year	Information released in full	Information released in part	Information withheld in full	'Everything else'	Total requests
2005	97 (37%)	27 (10%)	71 (27%)	64 (25%)	259
2006	81 (42%)	19 (10%)	45 (24%)	46 (24%)	191
2007	92 (37%)	38 (15%)	59 (24%)	60 (24%)	249
2008	134 (32%)	72 (17%)	133 (32%)	82 (19%)	421
2009	311 (34%)	214 (24%)	191 (21%)	194 (21%)	910
total	715 (35%)	370 (18%)	499 (25%)	446 (22%)	2030

Note: 'Everything else' category includes requests that are transferred or lapsed, where the information is not held, where clarification of the request is not provided by the requester, or where the requester is helped outside the formal FOI process.

### Box 1 A Sample of Requests

#### Commons

- Does Parliament have a formulated policy on how to deal with paedophiles in government?
- How much has a named MP claimed back on his council tax? Where did he declare as his main residence?
- Summary of measure/policies in place to reduce carbon emissions and recycle, or copy of guidance issued if no policy in place.
- Information relating to attendance by MPs and Ministers at welcome home parades for troops.
- Receipts and completed expenses forms for rejected claims which were made by all MPs in 2005 and 2006.

#### Lords

- Appeal Case Papers. Tesco Stores Limited v. Secretary of State for the Environment and others (1995).
- How many criminal offences have been committed on the Parliamentary Estate in the last three calendar years since January 2007?
- A copy of the selected contractor's submission for the refurbishment of 1-2 Millbank.
- Details of private dining room bookings between October 2006 and October 2007.
- A list of all the works of art borrowed from the National Galleries of Scotland by former Lord Chancellor Derry Irvine in 1998-99 to furnish the Lord Chancellor's apartment.

### Volume and outcome of requests

- There was a **dip in interest** in 2006 after the novelty of FOI wore off, then a **sharp increase** in requests in 2008 and 2009. Parliament began to approach requests with more nuance, as more partial answers were given as time went on.
- 80 per cent of requests sent to Parliament were directed at the **Commons**.



- The most common result of requests to Parliament has been **full disclosure**, in contrast to the accusations made about parliament's inherent secretiveness or derision of the Act (see Table 1).<sup>15</sup>
- Almost 40 per cent of requests to the Lords were coded in the 'everything' else category. Misunderstanding of the Lords can be seen clearly in the questions they were asked: questions about government funding of mental health policy was referred to the appropriate department; requests for Commons' select committee files, or details of an MPs' expenses were passed to the other House.

#### Topics of requests

- The majority of requests to the Commons were **not about proceedings in Parliament**, nor about Parliament in its 'legislative' role (see Table 2). This is not surprising, as many of the decisions Parliament makes on behalf of the UK people are already transparent. It is the decisions it makes *about itself* which FOI can really illuminate.
- Requests to the Commons asked for information related to **members** or the corporate material of the House. In contrast, the focus on the Lords was its proceedings, and especially in the early years, the work of the Law Lords (see Table 3). A subset of proceedings, Select Committees, attracted little interest at the start and dropped further as time went by.
- Interest in **parliamentarians** increased dramatically in 2008 and 2009 as media attention (regarding MPs in particular) was drawn towards the outcome of FOI court cases and the expenses scandal (see Figure 1).

**Table 2** Requests to House of Commons, by year and topic 2005-2009

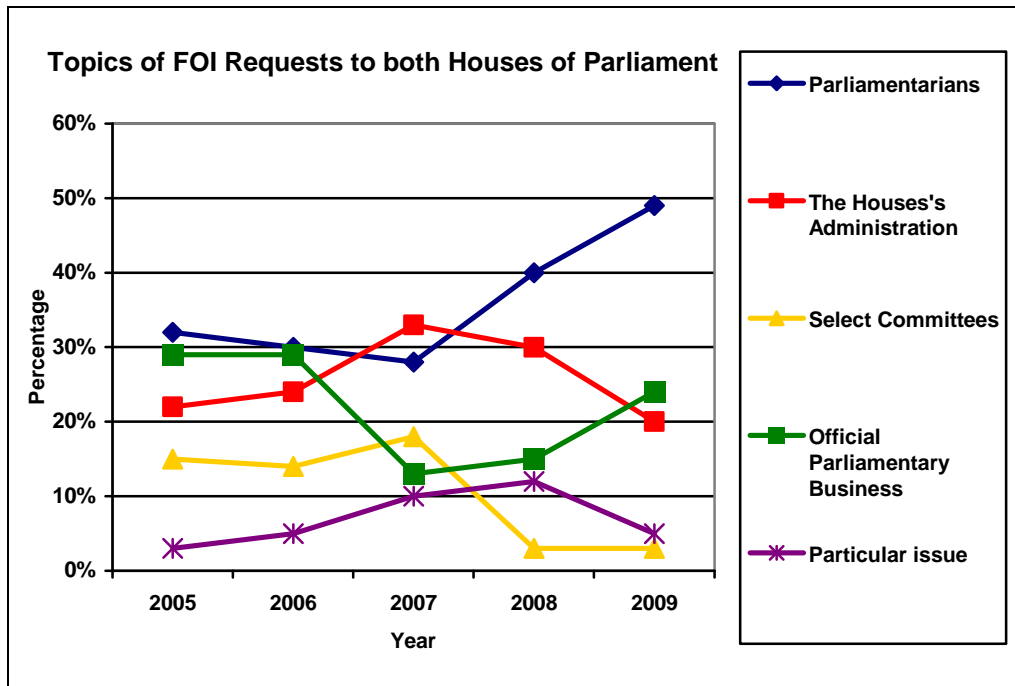
Request topic	2005	2006	2007	2008	2009	Total
Parliamentarians	47%	51%	41%	54%	59%	55%
The House's Administration	27%	28%	29%	30%	19%	24%
Select Committees	13%	11%	15%	5%	3%	6%
Official Parliamentary Business	8%	4%	10%	6%	12%	9%
Particular Issue	5%	6%	6%	5%	7%	6%

**Table 3** Requests to House of Lords, by year and topic 2005-2009

Request topic	2005	2006	2007	2008	2009	Total
Official Parliamentary Business	50%	53%	16%	24%	36%	36%
The House's Administration	17%	20%	36%	30%	20%	24%

Parliamentarians	16%	8%	14%	26%	38%	24%
Select Committees	16%	16%	20%	1%	2%	9%
Particular Issue	1%	4%	14%	18%	2%	7%

Figure 1 Topics of requests to both Houses of Parliament 2005-2009



**Notes on Tables 2 and 3 and Figure 1**

- 'Particular Issue' includes those requests where request was not easily classifiable, and often they did not relate to the House at all. Examples include: Iraq War costs, list of judges who are freemasons, constitutional questions on the EU Parliament and Westminster.
- Requests about 'Parliamentarians' asked for specific details of individuals or groups of individuals. Examples include requests for travel expenses claimed by X MP, or the religious affiliation of all members of the House of Lords.
- Requests about the 'House Administration' include, for example, incidents of criminal behaviour in the Parliamentary Estate, or information about the Commons ICT systems and information security policies.
- An example of 'Select Committee' requests include 'Minutes of the private session between MPs on the Select Defence Committee regarding the building of two aircraft carriers'.
- 'Official Parliamentary Business' requests include: asking for particular Commons Library research, a copy of the Code of Conduct, alterations to Hansard made by members, or information about e-tabling.

**Exemptions and Appeals**

The FOI Act includes a list of exemptions an authority can use to refuse to answer a request, or parts of a request. Some of these are absolute, others subject to a 'public interest test' where the consequences of release and non-release are weighed against each other. Of the exemptions available in the Act, the Commons has relied

on s40 (personal Information) the most, reflecting requests' focus on *people* in Parliament. It is the second most common exemption used by the Lords; their first is Section 21 (information available by other means).

Parties in dispute over FOI requests can take cases to the Information Commissioner's Office (ICO). From 2005 and 2009, 22 cases involving Parliament were adjudicated, all of which related to the Commons. Of those, complaints were upheld in 12 cases. When looking at the subject of information requests, the Commons was least successful in defending withholding information about MPs' spending. This includes requests asking for travel or communications expenses of an MP. Parliament defended withholding information about parliamentary business or procedure the most effectively (this includes disputes over select committee material), but this is not surprising: in both cases, the Commons used section 34 (parliamentary privilege), which cannot be disputed by the ICO.

### The Impact of FOI: Transparency

FOI has led to more information provision. Both Houses have revealed information previously not public through FOI and have had this publicised via the media. Topics include restaurant tabs of MPs,<sup>16</sup> CO<sub>2</sub> emissions of its buildings,<sup>17</sup> policies relating to pest control in the Palace of Westminster,<sup>18</sup> costs of construction of the Visitors Centre,<sup>19</sup> peers with criminal convictions,<sup>20</sup> 'golden parachute' payments to former MPs,<sup>21</sup> and the use of parliamentary facilities by outside organisations.<sup>22</sup>

There has also been some policy change resulting from FOI:

- After a FOI request by the Press Association, the Commons published the names of MPs whose **debts for food and drink** from restaurants in parliament were more than 90 days overdue. The same day as the information was released, the House of Commons Commission announced that debts would no longer be allowed to accrue, with payments instead being deducted from an MPs' credit or debit card each month.<sup>23</sup>
- Gordon Prentice MP's requests about the **tax status of Conservative Party donor** and then deputy chair Lord Ashcroft has led to changes in the membership of the House of Lords. Ashcroft had committed to changing his tax status on receipt of his peerage, but FOI revealed this promise had not been kept. A clause was added to the Constitutional Reform and Governance Bill 2010 requiring members of both Houses to be treated as resident and domiciled in the UK for tax purposes. Five peers chose to leave the Lords, while others, including Ashcroft, changed their tax arrangements in order to remain.<sup>24</sup>
- In July 2007, after making FOI requests, *The Times* published allegations that peers were 'handing out exclusive access to the Houses of Parliament to **lobbyists and pressure groups**, who pay them thousands of pounds a year'.<sup>25</sup> Passes are designed for secretaries and researchers working in peers' offices, allowing them access to the parliamentary estate, the library and potentially, MPs' and ministers' offices. Only one week before the article in *The Times*, a decision had been taken for the creation of a register of interests of peers' researchers and secretaries (22 years after the Commons' first register), following a committee inquiry into complaints about the abuse of passes. Following the Times' allegations, Leader of the House of Lords, Baroness Ashton, promised to investigate and stamp out any abuse. Lord Berkeley appeared on

Radio 4 the same day, defending his obtaining of a pass for the chairman of Rail Freight Group.

- The most concrete change as a result of FOI and the 2009 Commons' expenses scandal is the creation of the **Independent Parliamentary Standards Authority (IPSA)**, which now sets the rules on MPs allowances, pays their salaries and publishes details of all their expenses. IPSA is a significant erosion of exclusive cognisance, and like other erosions, has not been universally welcomed. MPs continue to criticise IPSA for excessive, heavy-handed regulation and bureaucracy. They have attempted to amend the organisation through Member's Bills and debates.<sup>26</sup> The expenses scandal also prompted a new system of Lords' allowances, which was devised and is administered in-house and remains in peers' administration.
- There has been a concerted effort to **proactively disclose** more decision-making material by the House of Commons Commission and Management Board since late 2009. The Commission's 2011-15 Strategy states, 'We will work at every level to earn respect for the House of Commons by: having an open and transparent way of doing business...[and] encouraging public participation in parliamentary business'.<sup>27</sup> Following this, the Management Board agreed to (and the Commission later endorsed) its papers and agendas to be routinely published on the days of Board meetings, and to follow the government's transparency agenda of publishing expenditure over £25,000 and certain salary band information.<sup>28</sup> Answers to previous FOI requests are now also published on the Commons' website.<sup>29</sup>

Yet while more information is released, officials felt a culture change had not followed. 'The impression is not one of transparency' as some members had to be 'dragged' into being open. There is a lack of political will to become 'culturally' more transparent.<sup>30</sup> One journalist spoke of how 'Parliament sees itself as above the law'.<sup>31</sup> One interviewee describes this kind of transformation as 'mechanistic', as opposed to cultural.<sup>32</sup> FOI has had an impact on 'house-keeping' arrangements, but culturally the Commons and Lords has changed less.

#### **Box 2** *The Maclean Bill 2007*

Parliamentary resistance to openness was exemplified by David MacLean's Private Members' Bill in 2007, designed to remove both Houses from Schedule 1 of the Freedom of Information Act. Many MPs and peers opposed the Bill vehemently, but supporters maintained that FOI posed a threat to the ability of MPs to work on their constituents' behalf.<sup>33</sup> Newspapers would later print the names of MPs who had voted for the MacLean Bill when the expenses scandal broke two years later.

The Bill failed to find a sponsor in the Lords and did not become law. But it passed through all its Commons stages, progressing much further than is common for Member's Bill. This was partly through a quirk of parliamentary timing, and partly through a lack of obstruction from either the government or Conservative members.<sup>34</sup> David MacLean was a Conservative member of the House of Commons Commission, so may have had some tacit support. Officials contend that the MacLean Bill was driven by personal considerations, as did some MPs.<sup>35</sup> Peers too labelled it a 'cynical' move over a complete 'non-issue',<sup>36</sup> and noted within the House 'there was a very strong feeling that Parliament should be treated equally...not be privileged over other institutions'.<sup>37</sup>

## The Impact of FOI: Accountability

Accountability concerns ‘the duty of an individual or organisation to answer in some way about how they have conducted their affairs’. It can be separated into two concepts: ‘giving an account’ by explaining and ‘being held to account’ by justifying.<sup>38</sup>

FOI exists alongside many other accountability mechanisms for Parliament, from the media and the electorate to Parliament’s own members and rules. Both Houses’ Codes of Conduct emphasise submission to appropriate accountability. Direct contact between voters and parliament through ICTs has enhanced accountability, with email, Twitter and blogs being used to directly question MPs.<sup>39</sup>

For peers and Lords’ officials, FOI offers an opportunity for a body ‘always under pressure to justify why we exist,<sup>40</sup> and keen to dispel the idea it is a closed gentleman’s club. It was also hoped that FOI requests, through the media, could help the Lords be held accountable and be responsive to the public.

MPs saw FOI as a new tool for the public and media to ask for information as a straightforward accountability mechanism, especially in matters of capital expenditure for instance. In our media sample, MPs were the most common individuals to be held to account, especially during the expenses scandal.

## Obstacles to accountability

### *Lack of coverage*

Media attention given to the Lords is dwarfed by that given to the Commons, and only three press articles in our media coding used FOI material to hold the Lords to account, all about the issuing of parliamentary passes to lobbyists.<sup>41</sup>

### *Media culture*

Many media articles in our sample presented the information without accompanying comments from actors involved or without explanation of the process of a decision, making accountability hard to pin on anyone.

Some MPs worried that FOI requests often focused on minutiae,<sup>42</sup> such as office costs or restaurant bills, and it would be this, rather than their speeches or voting records, that they would have to explain to voters. Accountably through FOI was thus ‘patchy’ and driven by topical media interests.<sup>43</sup> The House of Commons, through elections at least every five years, is ultimately accountable to the electorate, but what they are judged upon can be arbitrary and not related to actual behaviour.<sup>44</sup> They thought FOI contributed to this trend.

### *Structural problems*

Commons officials noted how structural aspects of the Commons presented a barrier to accountability that FOI – or any other mechanism - would struggle against. The lack of a centre of leadership makes ‘pinning’ a decision or course of action on one person difficult.<sup>45</sup> *The Daily Telegraph* claimed the motivation of the leakers of expenses information was that they felt MPs were abusing the system and ‘no one could hold them to account’<sup>46</sup> The complicated structures of the Commons are also visible in the media coding, with officials giving an account or being held to account in 11 articles, six of which stemmed from requests about MPs.

*The motivation of requesters*

As the House already releases so much information that is ignored by a great majority of the population, officials were sceptical that information gleaned through FOI would be any different. 'Just because the information is out there, doesn't mean that anyone is called to account automatically. It depends on the requesters' agenda'.<sup>47</sup>

**Box 3** *Officials take the heat*

There are few examples in the media of parliamentary officials explaining or taking responsibility for a decision. This is partly because some operational decisions are made by MPs in an official House capacity. Here are some examples of Parliament officials being held accountable from FOI, represented in the press:

- Catering Director Sue Harrison defended the hygiene of the House of Commons kitchen after a health inspection from Westminster Council report was released under FOI in March 2007. 'There are inevitably some issues. I don't think any caterer would expect everything to be perfect all the time,' she said.<sup>48</sup>
- Andrew Walker, Director of Resources of the House of Commons, defended the Commons during the Information Tribunal hearing into Heather Brooke's, the Sunday Telegraph and the Sunday Times' FOI requests regarding MPs expenses. 'His cross-questioning exposed the full laxity of the system, and left the tribunal aghast. Mr Walker described a regime in which an MP can write "armchair -£249, plumber - £249" on a form, and walk away with £498 without showing any evidence', reported the *Daily Mail*.<sup>49</sup>

Responsibility for some governance matters – which in other organisations would probably be with officials – often rests with members of Parliament. For instance, Baroness Aston, as Leader of the House of Lords, responded to allegations of abuse of the parliamentary passes system.<sup>50</sup> Nick Harvey MP, speaking for the Commons Commission, explained the delays of the completion of the Commons Visitors' Centre.<sup>51</sup>

**The Impact of FOI: Trust**

The issue of openness and trust is problematic. Supporters of FOI, in particular politicians, hope that increased openness, by reducing secrecy and promoting understanding, will increase public trust.<sup>52</sup> Others are less convinced. Media focus on 'negative' stories and low levels of trust means FOI may actually undermine trust.<sup>53</sup>

The case of parliament illustrates the difficulties. While the recent expenses scandal led to a decrease in public trust according to contemporary polls, other research points to very little decline because levels of public trust were already at so low a level and even the 'high point' in the 1970s still contained a majority who distrusted politicians.<sup>54</sup> This is made more complex by the notion that a local, and locally active, MP is trusted but 'Parliament' as a whole is not.<sup>55</sup>

The issue of FOI trust is dominated by the 2009 expenses scandal, although FOI was only partially responsible for it.

**Box 4** *Media impact on trust*

Secrecy often exacerbates scandal. Of the articles in our media sample using FOI material from Parliament, or discussing Parliament's attitude towards FOI, 117 stories (from 154) were felt to decrease trust. However, media coverage of FOI and Parliament is dominated by the story of the expenses scandal of 2009.

Here are examples of headlines from the sample, where Parliament had provided information through FOI:

- "Peers 'give paying friends' a ticket to Parliament" (*Guardian*, 11 Dec 2007)
- "Outrage at MPs unpaid food bill" (*Daily Mail*, 18 July 2007)
- "A dishwasher, Sky TV, groceries ... how MPs spend taxpayers' cash" (*Guardian* 4 May 2008)
- "Commons needs mass clearout" (*Newcastle Journal*, 19 May 2009)

Withholding information also leads to stories about secrecy, which have a negative impact on trust. Headline examples include:

- "Where does all the money go?" (*Western Morning News*, 10 Feb 2009)
- "M15 discovers a dark secret about Cameron, but it's going to stay a secret" (*Mirror*, 21 Feb 2005)
- "If you cover it up, we assume the worst" (*The Times*, 21 Jun 2009)
- "House of Shame" (*Observer*, 10 May 2009)

Trust building headlines in our sample include:

- "Wind turbine and tidal power in £20m green plan for Westminster: Heritage concern as MPs look at scheme to cut their carbon footprint" (*Guardian*, 11 Dec 2007)
- "West MPs lead fight over perks" (*Western Morning News*, 22 Jan 2009)

Interviewees' attitudes to FOI and trust can be broadly placed into one of four categories; pessimists, optimists, fatalists and those who felt the issue was more complex.

- The first set of views were **pessimistic**. FOI had reduced trust in parliament because either politicians had got their 'just desserts', having created, or at least failed to stop, a system of expenses open to abuse or the media's negative coverage of this issue, part of a wider issue around trust, media reporting and political communication whereby 'to a large extent politicians are not 'corrupt' or 'venal' but the idea they are 'venal' has a central place in the discourse'.<sup>56</sup>
- The second set of views took a more long term and **optimistic perspective**. FOI would act to 'purge' the political system of poison, painful in the short-term but beneficial in the long term. As one interviewee put it 'bad comes before good, you need to see and remove all the bad stuff and then the good things happen'.<sup>57</sup>

- Other felt **trust was, and always would be, low** towards politicians. It was part of the nature of politics and very little could be done to alter it. It may also be inherent in FOI itself: 'I don't think any system of anyone checking up on anything leads to trust'.<sup>58</sup>
- The final view was that **FOI was inadequate or inappropriate** to deal with such a complex issue as trust. As one interviewee put it,: Trust is very complex and is often discussed in a 'context free' way which is artificial and with rather grand statements. Trust has to be earned-it is not automatic. Politicians are 'ahistorical' and 15-20 years is very far away.<sup>59</sup>

Given the diversity of views, and the long term nature of any shift in trust, any conclusions must be provisional. FOI and trust have been profoundly shaped by one single event, itself a demonstration of the difficulties around this issue. FOI has certainly not led to an increase in trust and in the short term has probably contributed to a decline.

### Explaining the Expenses Scandal

The issue of MPs' expenses has been by the far the biggest issue relating to FOI. It has shaped both politicians' and the public's perceptions of parliament to a far greater degree than any recent event. It invited comparisons with all embracing scandals elsewhere such as *tangentopoli* in Italy,<sup>60</sup> and has been characterised as an 'incendiary device thrown directly at the political establishment'.<sup>61</sup> It has had a significant impact leading to the resignation of the Commons' Speaker, a number of MPs stepping down and with four MPs imprisoned. A Fees Office official was also later imprisoned for fraud after the *Daily Telegraph's* investigation found he created fake invoices. It has also, some argue, led to a further erosion of public trust in politics as well as an end to parliament's complete right to govern its own affairs.

The parliamentary authorities had foreseen that expenses would be an issue and began publishing limited details in October 2004, before the Act was implemented. In January of 2005 a number of journalists and one MP submitted similar requests for details of expenses use. During the course of the next four years, amid resistance from the Commons authorities, including the MacLean Bill, the cases went through the appeal system, gathering controversy and media attention as they went. Several MPs began publishing details of their expenses on their own websites. Although the ICO ruled only some details should be released, the Information Tribunal and then the High Court took a far stronger line. It was the Tribunal case which highlighted the existence of the so-called 'John Lewis list' available for Fees Office staff to use as a basis for acceptable expenses payments. Following the High Court ruling in May 2008, the Commons committed to publishing details of Additional Costs Allowance claims. However, while the expenses were being redacted to remove personal details, the complete details were leaked to a national newspaper, *The Daily Telegraph*, which began publishing them in May 2009 (see Kelso 2009 for a detailed overview).

The MPs' expenses scandal story has been mapped out in detail elsewhere and has been studied from a variety of angles: in regards to ethical standards, its impact on journalism, parliamentary communication and it has also been documented by those directly involved.<sup>62</sup>



**Box 5 Expenses Quotes**

- In 2002 **Robin Cook MP**, then leader of the House of Commons, warned that 'few members have rumbled to the juggernaut heading their way'.<sup>63</sup>
- **Martin Bell MP** explained back in 2002, 'you are almost invited to sign a cheque to yourself each month...no one ever asks for a receipt'. A Fees Office official was also quoted as saying 'many of us are worried about the way it is administered, but when we raise queries we are told it's all above-board'.<sup>64</sup>
- **The Standards and Privileges Committee** investigating ACA irregularities of Michael Trend MP in 2003 note their concern that 'the system allowed a substantial sum of public money to be incorrectly claimed and that this matter only came to light outside the normal system of scrutiny ... at the end of the day, the House must be able to show that the requirements for auditing which it imposes on itself are no less effective than those it would expect of others responsible for the expenditure of public money'.<sup>65</sup>
- In 2008 the **Senior Salaries Review Body** stated that 'although there is much comment about MPs' allowances in the press, we have received no substantive evidence to suggest that MPs are abusing the system'.<sup>66</sup>
- **Nick Clegg MP, 2009**: 'Do I think this was a train crash waiting to happen? Yes, clearly it was. What we are seeing now is the unravelling of a system that thrived in the shadows'.<sup>67</sup>

The experience of MSPs in 2006 in Scotland, and the exposure of Chief Executive salaries at local government level were all signals as to how well directed FOI requests could uncover otherwise-hidden spending. Yet the expenses crisis at Westminster appeared to be both severe and unexpected. To answer how and why requires examination of four areas: the system itself, the reaction and resistance, the nature of how the Commons is governed and the gap between mechanisms of culture and openness.

- The first factor was **the expenses system itself**. MPs were the 'architects of the system as well as the principal beneficiaries'.<sup>69</sup> The Additional Costs Allowance system began in 1971, and while salaries remained relatively static over the following decades, the overall totals for the amount able to be claimed under the ACA increased. The ACA's longevity and lack of definition meant some MPs failed to understand how it may look if exposed to the outside world, even if the rules were 'being obeyed'.<sup>70</sup> Over time, many MPs got the message that claiming the maximum was the norm,<sup>71</sup> an example of the 'socialisation' process MPs experience, which was stronger than codified rules.<sup>72</sup>
- The second factor was **the reaction of the authorities** once FOI requests were submitted, and their determination to fight the release of the information. 'At each stage the political pressure to resist became stronger... "it's a brave general who surrenders."<sup>73</sup> Undoubtedly any release would be damaging but the four year battle attracted attention and the added accusation of secrecy and resistance.<sup>74</sup> This could be compared with the FOI scandal in Scotland where MSPs experienced a 'short, sharp shock' that did little permanent damage (see below).
- The third factor was the **structure of the Commons**. As described above the Commons is not the same as any other institution. It is governed by its members (with senior officials also appointed by them) and its governance is also

influenced by a range of complex influences including party competition and hierarchy. In the case of a local authority or central government department, a similar FOI request would be dealt with by senior officials, and rarely by politicians. The Commons does not work this way. A number of interviews spoke of a 'sense of drift' as members hoped someone would find a solution but were unsure who would or could do so.<sup>75</sup> It also led to intense internal discussions over what needed to be done and a reliance, or indeed an over reliance, on legal advice. All this contributed to a lack of decision and sense of inactivity. This may have been reinforced by the Commons sense of its own uniqueness, a political equivalent of the 'too big to fail' thesis.<sup>76</sup> John Bercow spoke of how the expenses scandal was due to the Commons' failure 'to make the transition from private club to public institution.'<sup>77</sup>

- Finally, the **Commons culture created a blind spot**. Many members believed mechanisms for openness were being met by the publication of aggregated figures from October 2004.<sup>78</sup> There existed a blind spot both over how open or secret the Commons was and, as later investigation showed, the scale of expenses abuse. Here the notion that parliament was 'transparent' led to failure to appreciate the consequences of FOI exposing those areas that were not.

These four factors combined to create the expenses crisis that dominated the headlines, the effects of which continue to be felt. That such a revelation would always cause damage is certain. Yet certain cultural and structural factors, within the rather unique environment of a parliament, led to paralysis despite the oncoming political crisis.

## ***Elsewhere***

### **Scotland**

In February 2005, it was revealed via FOI that Scottish Conservative leader David McLetchie's travel expenses were far greater than for any other MSP. The spending was not all for essential parliamentary travel. McLetchie stepped down in October 2005, one of the first major political scalps of FOI.<sup>79</sup> Following his resignation, the Scottish Parliament quickly acted to pre-empt the flow of expense claim revelations. It created a searchable 'on-line' database, to replace the Westminster-style annual figures of spending previously published.

### **Ireland**

Ireland has suffered a drawn-out expenses scandal. FOI requests and revelations about parliamentary expenses from 1999 onwards followed rulings from the Information Commissioner. In 2009, the Ceann Comhairle (equivalent to the Commons' Speaker) of the Dáil resigned after FOI requests from the media found he ran up a travel bill of €90,000 over a period of two years.<sup>80</sup> Several other ministers and TDs were implicated for similar offences via FOI material. Interest in the subject continues, even after reform of the expenses system.

Here Ireland's experience shows some similarities to the UK. A strong parliamentary culture sought to resist disclosure to an increasingly interested media, despite successive rulings from the Commissioner. In the case of Ireland, the revelations

were more muted as they formed part of a wider ongoing exposé of clientelism and corruption across public institutions.<sup>81</sup>

**Box 6** *FOI and the accountability of parliamentarians*

Four years after the legislation had been passed, study of Australia, New Zealand and Canada found that FOI 'has led to greater accountability, but [...] on a small scale: greater scrutiny of ministers' expenses rather than of their management of economic policy'.<sup>82</sup> Each of the three governments experienced 'high profile' disclosures through these minutiae that led to senior figures being held to account.<sup>83</sup>

- The **Australian government** was damaged when in 1987 a tourism minister resigned when 'disclosures showed that he had misled Parliament about the tendering arrangements for certain federal contracts'. Interestingly, the chain of accountability in this case originated with a leaked document, the allegations of which were then 'confirmed a week later in documents released under FOI'.
- In **Canada** difficulties emerged early into the FOI regime regarding costs and expenses with one ministerial resignation but, as Gillis puts it 'all this paled into comparison with the personal wounding of the Prime Minister's reputation' relating to expenses claims for foreign travel.<sup>84</sup> This led the Prime Minister to describe the Act as a 'tough fact of life for a government - witness the repetitious play on the spending on every trip I take.'
- Judicial Watch, a anti-corruption NGO in the **United States**, used the FOI Act to uncover travel spending of then Speaker of the House of Representatives, Nancy Pelosi. While the House is not covered by FOI, the US military is, and Pelosi's status as Speaker allowed her to travel via the US Air Force. Judicial Watch obtained over 2,000 documents, showing the her military travel cost over \$2 million over two years. Of this, \$100,000 was for in-flight expenses like food and alcohol.<sup>85</sup>
- At devolved level, in **Northern Ireland**, Ian Paisley Jnr stepped down from his position at Stormont after requests by the *Belfast Telegraph* revealed apparently inappropriate lobbying on behalf of a property developer.<sup>86</sup>

## ***The Sword: How MPs and Peers Have Used FOI***

The second part of the study examines what opportunities FOI could provide for MPs and peers to hold the government more effectively to account. FOI cannot be viewed in isolation, either as an accountability mechanism or information source for parliamentarians:

- Parliament ‘devotes a substantial amount of time to questioning the government’ and has a range of resources available to hold government to account, through PQs, interventions in debates, through All-Party Groups as well as on an individual level via letters to ministers.<sup>87</sup> One key recent innovation is the select committee.<sup>88</sup> Parliament does not and cannot ‘subject government to continuous and comprehensive scrutiny’ and across all tools, attention is ‘frequently sporadic and fleeting, affected by partisan considerations, time pressure and lack of knowledge’.<sup>89</sup>
- FOI is also one of a whole variety of ways of accessing information. Parliamentarians have a constant, and rising, need for information. A recent study concluded that MPs ‘used a wide range of information sources...on a relatively infrequent basis’ from formal routes such as parliamentary library services to informal networks, such as colleagues or NGOs. The ‘triggers’ are ‘unpredictable’ and MPs have ‘little control over the subject areas in which s/he may have to become involved and quickly expert’.<sup>90</sup>

### **Who uses FOI?**

In the UK only a small minority of MPs and peers use FOI. Named MPs identified as using FOI do not number more than 20 out of 650 MPs, and Peers 5 out of 700-800 members. Given that some may use FOI via staff researchers it is estimated that no more than 20-30 MPs and 5-10 peers regularly use FOI with a few more using it less regularly. Table 4 shows the change in FOI usage by political parties as their respective roles in Parliament change – Labour MPs’ use increased dramatically after the 2010 election as they became the official opposition party in Parliament.

**Table 4** *Proportion of Party affiliation of MP requesters to five government departments 2005-2010*

<b>Party affiliation</b>	<b>2005-2010</b>	<b>2005-2009</b>	<b>2010</b>
Conservative	33%	42%	11%
Labour	21%	16%	64%
Liberal democrat	31%	35%	4%
SNP	2%	0%	0%
Ulster Unionist	0.6%	0%	0%

It may be, as one interviewee suggested, that most MPs are not ‘curious, cynical or suspicious’ and so do not use FOI above what tools are available (Interview). Parliamentarians who use FOI include the ‘classic loner’ MPs with ‘a strong streak of independence...pursuing their own activities, pursuing their own causes’. However, it is also the loyalists who ‘want their party to do well and opposing parties to do badly’ and perhaps a tool for localists using it to ask about constituency issues.<sup>91</sup>

A look at some of the MPs who are regular users is illustrative. Both Norman Lamb and Norman Baker were opposition spokespersons. Similarly Conservative Justine Greening is also a 'rising star' of the Conservative party and far away from the 'outsider' stereotype. Gordon Prentice may be closer to type as a less 'mainstream' MP who voted against his party on major issues.

### **How do MPs use FOI ?**

The use of FOI can be crudely separated into different levels of impact.

**High profile:** A few uses of FOI have had a high profile impact either raising or adding to a high profile controversy. The All Parliamentary Group [APPG] on Extraordinary Rendition used FOI to investigate the legally dubious movement of individuals across international boundaries, linked to torture. Following 'the reticence of governments on both sides of the Atlantic to disclose information about the rendition programme' requests under the US and UK FOI Acts exposed significant gaps and evasions in the original government answers given by PQs.<sup>92</sup> The work contributed to a growing call for an inquiry into rendition, now ongoing. It has also been used to expose apparent collusion over the proposed expansion of Heathrow Airport, leading to front page news in the Times and contributing to the cancellation of what was fast becoming a controversial project.<sup>93</sup>

**Second order uses:** these are often of lesser significance, or focused on less immediate issues, but nonetheless influential.

- Norman Lamb MP used FOI to obtain details of guests to the Prime Minister's country residence after a parliamentary Question in 2003 was refused. The full lists were released in the summer of 2007 and are now regularly released.<sup>94</sup>
- FOI was used by a Labour MP during the 2005 General Election to draw attention to past Conservative economic mismanagement, in a row that involved former Prime Minister John Major.<sup>95</sup>
- In 2010 it was used by Labour MP Gordon Prentice, following an appeal, to prove that Conservative donor and deputy party chairman Lord Ashcroft broke a promise to become domiciled if ennobled.<sup>96</sup>
- Labour MP Angela Smith used FOI to highlight Deputy Prime Minister Nick Clegg's apparent shift over the closure of a large employer in his Sheffield constituency and Tom Watson MP used it to reveal the cost of David Cameron's kitchen refurbishment at 10 Downing Street.<sup>97</sup>
- Communities Secretary Eric Pickles used FOI against a local authority that refused to adopt his policy of publishing all spending over £500.<sup>98</sup>

Here FOI is being used less systematically and more 'experimentally' to see what can be found out. The effects are more difficult to measure, though all the requests caused information to be released and explanations, or justifications, to be given.

**Lower level/constituency uses** of FOI, used against other institutions that then reflect upon government policy. Here FOI can 'add fuel' to an ongoing debate or issue, such as over council tax revaluation or local authorities' use of surveillance powers under the already controversial RIPA legislation.<sup>99</sup> There were also uses for constituency issues with

requests made for flooding risks in a particular area, safety inspections, and correspondence relating to a particular road and, in one case, information held on a particular trawler company. A number of interviewees felt that FOI was often used for such issues rather than more high profile or national topics.

Added to this are **indirect uses of FOI**. These can come in a number of forms. Some parliamentarians had FOI information passed to them and others encouraged constituents to use it. There were also a few examples of parliamentarians working with journalists or NGOs to use the Act. Earlier work reveals that MPs will also pick up other's FOI requests and use them as the basis for questions.<sup>100</sup>

**Box 7: Sample of Requests to DEFRA from MPs in 2007**

- A list of all the reasons given for staff absence in the each of the last two years for which figures are available, broken down by the number of staff giving that reason.
- Provide the total amount claimed in expenses by special advisers working in the Department for the Environment, Food and Rural Affairs in (i) the financial year 2006-7 and (ii) since 27 June 2007?
- Correspondence, and records of conversations, between Defra officials and/or Ministers with counterparts at the Treasury prior to Chancellor Darlings' letter of May 2008 on the future of Common Agriculture Policy.
- Details of the inspections referred to on page 122 of the Defra Departmental Annual Report 2008.
- Environmental information relating to the plans for pilots for new waste incentive schemes / charges for the collection of household waste.

## FOI and other tools

FOI is sometimes used as the basis for PQs. One MP, for example, used diary details published under FOI to ask a series of questions about Lord Levy, Tony Blair's personal envoy, asking 'how many meetings in 2004 have been attended by Lord Levy on official premises; what subjects were discussed; and which countries have been visited'.<sup>101</sup> The media analysis picked up only a few direct examples, including drawing on FOI to question the effectiveness of the criminal DNA database and to ask about funding for the Queen's civil list.<sup>102</sup>

There is also evidence of overlap and dual use of FOI and PQs. FOI is often used when a PQ had either failed, as in the case of rendition or visitors to Chequers, or when information from a PQ had become a 'jumping off' point for a more detailed question. There were also examples of them being used in combination. Gordon Prentice's FOI requests worked alongside PQs, as did those over rendition.

MPs who use FOI felt PQs were quicker than FOI and a more 'basic' means of obtaining information that can serve as 'a ready made press release'.<sup>103</sup> PQs offer a way to get information 'quickly and in a non-bureaucratic way'. PQs seek an answer, and generally receive a brief one. The House of Commons is beginning to realise

they may be a victim of their own success as the system creaks under the increasing volume.<sup>104</sup>

By contrast, FOI requests are useful for 'long term' issues, often 'driven by more personal agendas' and involve 'deeper issues'.<sup>105</sup> FOI can obtain very large amounts of data or a broader set of leads.<sup>106</sup>

FOI has two advantages over PQs. The refusal of a PQ is discretionary and there is some concern that government is 'economic' with its answers.<sup>107</sup> FOI has an in-built appeal system to the Information Commissioner, Information Tribunal and can be used to 'push the boundaries' of what information can be accessed, as happened in the case of Gordon Prentice's requests about Lord Ashcroft. FOI also has a wider reach than PQs, which only cover central government's responsibilities, extending to organisations like the BBC and local councils.

The decision to use one or the other may be political. Unlike PQs, FOI requests cannot be picked up or used by another member. 'FOIs are used where there is political sensitivity' or, indeed, as shown below, when a PQ is refused or an answer is seen to be evasive.<sup>108</sup>

### Why More MPs and Peers are not using FOI

- **Using FOI requires time and attention** and can be a frustrating experience for busy parliamentarians, working to tight deadlines, who may find it not a good use of their finite resources. If 'everyday is election day' FOI's 20 day deadline may be too slow for many parliamentarians information needs.<sup>109</sup>
- **MPs and peers are 'creatures of habit' and will habitually use the traditional methods such as PQs.** The same will also apply to constituency business, where the MP will be able to ask for most information needed from other bodies in his area without a problem.<sup>110</sup> As one interviewee argued, there are 'many established ways of accessing information. Why do they need FOI?'<sup>111</sup> This is also a cultural issue about how members are socialised. Many may not be aware of it as a channel for them, learning to obtain information from more experienced members in the 'same old way'.<sup>112</sup> One MP who regularly used FOI spoke of his colleague's amazement at his sources.<sup>113</sup>
- **What FOI can be used for may influence its usefulness.** Parliamentarians in general use a wide variety of sources 'infrequently'.<sup>114</sup> Some subjects, as with all other accountability tools, 'lend themselves to FOI'. Others, which require a brief quick fact to add to a question, would be better served by a PQ.
- **Members of the House of Lords appear to be making even less use of FOI than MPs.** A few have, with one example being Lord Avebury's long running campaign to obtain records of telephone conversations between Rupert Murdoch and Tony Blair in the run up to the Iraq war.<sup>115</sup> There are a number of reasons as to why use is low. First, the Lords is a revising chamber and does not carry the same role of representation, holding the government to account or scrutiny that drives accountability mechanisms in the Commons. As a consequence, Peers use all accountability mechanisms more rarely. They are responsible, for example, for only 6,537 of the 73,356 written questions between 2006 and 2007.<sup>116</sup> Second, the Lords is less of an arena for political conflict or party competition so peers are not driven by the need for competitive advantage 'Lords are not combative or fervent like 'professional' politicians'.<sup>117</sup> Finally, there may also be a cultural issue.

Use of FOI, especially in the wake of the MPs' expense scandal, is viewed as 'uncouth, an underhand tactic' (Interview). As one put it 'the Lords operate with courtesy and FOI breaks this 'clubby' bond'.<sup>118</sup>

## **Parliamentarians and FOI Elsewhere**

Hazell's 1987 study of FOI in Canada, Australia and New Zealand outlined the potential of FOI for Parliamentarians explaining how FOI potentially gave 'access to great attack material [and] publicity'. However, he concluded that 'strangely, FOI has been used relatively little by the parliamentary opposition in all three countries'. He also noted that the number of PQs had not diminished with the advent of the legislation in any of the three countries, where similar concerns were expressed about FOI eroding traditional accountability mechanisms.<sup>119</sup>

Hazell's finding in 1987 appears not to have changed over the past twenty years. The pattern across all but one of the countries is low level use of FOI by Parliamentarians, with requests comprising between 2 and 5 per cent of total FOI requests made. These levels have remained stable over the course of the Act's operation. However, one country, New Zealand, offers an exceptional trajectory.

### *Australia*

Australian statistics find Parliamentarians' FOI use was around 5 per cent of overall requesters in its early years.<sup>120</sup> A 2007 study noted that this has continued and 'as a general rule, the use by [Australian] parliamentarians of FOI... has been comparatively minor'.<sup>121</sup> Use is often sporadic, or used for 'point scoring' which then makes it easy for the government to characterize its use by MPs as 'misuse' or even 'abuse' of the FOI system.<sup>122</sup> These tactics meant that the "spirit" of freedom of information laws had been 'abused by oppositions seeking to make political mileage by a range of tactics'.<sup>123</sup> Snell and Upcher argue the very nature of Westminster systems undermines FOI as a tool for parliamentarians:

When FOI operates in an adversarial climate, the conflictive nature of party politics typically gives rise to non-compliance and evasion, a tendency to adopt a broad interpretation of exemptions, time, delays, and more emphasis on 'spin' and controlled dissemination of information.<sup>124</sup>

### *Canada*

Canada, with an Access to Information Act since 1983, has found similarly low levels of use by Parliamentarians as Australia. The Information Commissioner of Canada noted in 1994 'Parliamentarians as a group has made surprisingly little use of the Act,' and puts this down to a lack of role models:

While it was widely expected that Opposition Members of Parliament would champion the disclosure of tightly-clasped government records, the legislation has received remarkably little attention in the Commons or Senate. The Act awaits a new Parliamentary 'champion'.<sup>125</sup>

Alastair Roberts argues Canadian MPs' requests are caught in the wider context of government information management and a strengthened executive branch. MPs are one part of the group whose requests were subject to special measures to neutralize



controversy or fallout, such as by alerting media officials with lines to take.<sup>126</sup> However, Canada's experience needs to be seen within the context of an Act that has attracted very low levels of use generally and encountered substantial hostility and resistance from politicians and officials.

### *Ireland*

Ireland has had FOI legislation since 1997. As with Australia and Canada, TDs have been a very small group of users, comprising around 1 to 2 per cent of total requests.<sup>127</sup> Moreover, since 2003 the Act has been subject to a standard application fee which means that request numbers overall have fallen sharply. Ireland has also experienced hostility, particularly from government.<sup>128</sup>

A search of the Irish press reveals a few high profile uses of FOI by opposition members, using the Act to reveal links between the Tourism Minister and contractors, over uncertainties over Irish banks before they collapsed.<sup>129</sup> Moreover, since 2008-09 the Act has received publicity as it was used, in combination with parliamentary questions, to gradually open up the issue of ministerial expenses in a slow motion version of the UK's expenses scandal. This led to the resignation of the Speaker of the Dail in October 2009.<sup>130</sup> Nevertheless use remains low as in the above countries.

### *New Zealand*

New Zealand is seen as the world's most progressive FOI regime, within a context of an open and multi-party political system. It is also the only country from among Westminster comparators in which the trend seems to have shifted and use by MPs has increased.

The reason for the increased use seems to have been the introduction of the Mixed Member Proportional (MMP) voting system in 1996, which increased the number of parties represented in Parliament and, consequently, the competition for stories and publicity. As White explains:

As the political scene became more complex and more strongly contested, there was an immediate effect on the OIA [Official Information Act]. It became a core tool for parliamentary researchers and opposition members of Parliament who were seeking information. That search for information on the one hand supports their constitutional task of holding government to account. On the other, it feeds a political need to uncover scandal and create headlines.<sup>131</sup>

This has also led to increased use of requests with other tools. In 2001 the New Zealand Ombudsman made the first mention in an Annual Report of the OIA and 'the development of an interplay with the use of parliamentary questions and select committee processes as opposition parliamentarians made use of the full range of tools to obtain information.'<sup>132</sup> In a further innovation, it is also alleged that some opposition members have used a combination of OIA and PQs to bombard and overwhelm particular departments.<sup>133</sup>

Consequently, White notes how the use of OIA by the opposition has led to unwillingness to assist researchers or opposition members.<sup>134</sup> In 2005 new guidance issued by the government made it explicit that parliamentarians may be charged for information, though its impact is not clear.<sup>135</sup>

## **Conclusion**

### **The Shield: the impact of FOI on Parliament**

- FOI requests to Parliament on the whole have focused on the Commons and on the individual behaviour of MPs.
- Although Parliament was already a transparent institution, FOI has made it more open and transparent about a range of issues. It has not, however, yet changed the culture.
- It has made Parliament more accountable albeit for matters that some consider minor or narrow.
- The dominant issue of expenses means that trust has not increased in the short term.
- The protections in the Act for Parliament have functioned well and preserved the areas of privilege some feared FOI could undermine.
- FOI has helped changed policy not only on expenses but also on range of minor issues from parliamentary passes to restaurant bills.
- Parliament presents particular difficulties for FOI due to its unique governance arrangements and strong culture. These two features contributed to the MPs' expenses scandal of 2009.
- The case of Parliament helps increase our understanding of how FOI effects public organisations. It is not a useful tool to obtain an overview of how institutions operate, but it can expose areas of weakness not always noticed by officials or politicians.

### **The Sword: the use made by parliamentarians of FOI**

- FOI is a useful tool of accountability for parliamentarians, as for all other users, when 'circumstances, information and opportunity converge'.
- Only a very small number of MPs, and even fewer peers, use it.
- Requests are certainly slower and less immediate than PQs. They require time, resources and persistence. Habit and convenience partly determine the lack of use from all but a few.
- Reasons for parliamentarians using FOI requests are vary from: 'point-scoring', to policy critique, or constituency advocacy. FOI can, in the correct circumstances, delve deeper into issues than Parliamentary Questions, and its independent appeal system is an added strength.
- MPs' and Peers' use of FOI is small and likely to remain so. This might change with an increase in resources for MPs and peers, or the introduction of use of FOI

as a measure of performance by websites like TheyWorkForYou.com. It may also change as a result of major institutional change, like an elected Lords, or increased competition in the Commons through PR.

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