

From the Director

Independent Commission on Freedom of Information
9.54
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19 November 2015

Dear Lord Burns

Society of Editors Freedom of Information Commission submission

The Society of Editors campaigns for the public's right to know and media freedom and is making this submission because it opposes what is clearly an apparent attempt to weaken the Freedom of Information Act.

The Society has nearly 400 members in national, regional and local newspapers, magazines, broadcasting, digital media, media law and journalism education.

The Act has been a tremendous success and has greatly increased transparency in government. By exposing abuse of power, waste of money and official complacency it has improved governance at national and local levels, saved money and saved lives. There are thousands of examples of how the media, nationally and locally, has used the Act for the benefit of the public and indeed to improve transparency and the work of authorities covered by the Act. A small number of these are included in the attached list.

The Society is deeply disappointed that the Commission's terms of reference concentrate on negative aspects of FOI and no attempt has been made to study its overwhelmingly positive contribution to public life over the past decade. By failing to address that success, it is hugely disappointing that the review appears to have been established with the intention of watering down and restricting the effectiveness of the Act.

The Society has already expressed its concerns about the composition of the Commission, which appears to consist of critics of FOI and does not feature anyone who might have spoken up for the Act.

Comments made by government ministers also appear to have pre-judged the issue.

The Leader of the House of Commons Chris Grayling appeared to wish to keep the public in the dark when he told the House of Commons: "It is, on occasion, misused by those who use it as, effectively, a research tool to generate stories for the media, and that is not acceptable". In fact, providing information for the public is precisely what the media does in playing its vital role in society.

Justice Secretary Michael Gove also demonstrated his animosity to FOI when he said: "Citizens should have access to data and they should know what is done in their name and about the money that is spent in their name, but it is also vital that the conversations between Ministers and civil servants are protected in the interests of good government."

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From the Director

It appears that Mr Gove wishes to allow the release of basic data but never to give the public who elected him an indication of why decisions have been taken in their name.

This pursuit of a "safe space" for decision making is misguided and unnecessary. It is misguided because if applied through the use of a blanket exemption it would pull down the shutters on the transparency that the Government and Parliament has pledged to encourage.

It is unnecessary because sufficient exemptions and protections already exist to safeguard sensitive discussions in the formation of policy.

Maurice Frankel of the Campaign for Freedom of Information made this plain when he said: "The Information Commissioner and Tribunal already take steps to ensure that advice is protected where disclosure would harm the public interest. But it does not adopt a blanket approach.

"Mr Gove should know this: earlier this year the Tribunal ruled that the advice he had received as Education Secretary before cancelling Labour's Building Schools for the Future programme should not be disclosed. Releasing it would expose the working relationship between ministers and officials and undermine the future provision of frank advice, it said. But in other cases it has ordered disclosure, particularly where the advice is anodyne or old or the arguments for confidentiality are implausible."

The Information Commissioner Christopher Graham has also emphasised the respect of his office and the Tribunal for the "safe space", although in many cases the need to preserve it will diminish with the passage of time, which is right because the public should ultimately know why decisions have been taken.

There also appears to be little evidence available of the "chilling effect" on discussions that is said to result from FOI. The Justice Select Committee said in 2012: "We are not able to conclude, with any certainty, that a chilling effect has resulted from the FOI Act."

Similar arguments apply to the alarming claims made against the release of Cabinet minutes and risk registers. Put simply, the evidence shows that they are not released until the time is right to do so. Critics – apparently including Government ministers – who appear to wish they should never be released, are not acting in the spirit of open government, which the Conservative Party declared itself in favour of at the General Election.

The Conservative manifesto said: "Transparency has also been at the heart of our approach to government". Applying that to Freedom of Information now would show good intent on the part of the government.

The Society of Editors' greatest concern is over the loaded questions being asked about the "burden" imposed by FOI. Sadly the Justice Secretary's view was echoed and enhanced by a local council chief who said the media used the FOI Act to "make mischief". That is a disgraceful way of describing the role of local media in particular in exposing waste and malpractice on behalf of the public.

It seems wholly wrong to consider the "burden" without taking into account the "benefits" that have resulted from FOI. If a similar lopsided study was undertaken of other areas of government activity it would be difficult to justify any spending at all, from defence and education to health and policing.

The fact is that the "burden" of FOI is almost vanishingly small when weighed against the budgets of the organisations covered by FOI.

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It is claimed that many FOI requests may be frivolous. This is not the case: the overwhelming majority from media organisations represent responsible journalism in the public interest.

And every editor can cite examples where FOI requests, submitted in pursuit of serious investigations, have exposed matters of public interest. In many cases, the stories have led to official action to reduce waste and protect lives.

The Society can understand why government at all levels may find it potentially embarrassing for these requests to be made but that is no reason why the clock should be turned back to a time when secrecy was the order of the day.

It has to be said that if the Government made good on its promise to increase transparency the “burden” would reduce because information would be released as a matter of course.

To respond to this alleged “burden” by imposing charges for FOI requests would make it much more difficult for media organisations, charities and citizens to submit requests. We know that in Ireland the imposition of charges led to a collapse in requests and it would do serious harm if a similar thing happened here.

Some serious inquiries involving FOI require questions to be submitted to organisations nationwide. Imposing charges – possibly totalling thousands of pounds per request – would prevent many media organisations and others from asking the questions. That might suit the organisations that do not like activities to be exposed to daylight but it would not serve the public interest.

The Commission will no doubt be peppered with responses from local government organisations, the police and others all protesting about the “burden” imposed by FOI. They would say that, wouldn’t they? The fact is that the costs involved are a small price to pay for the huge benefits that have resulted from responsible use of FOI.

Public bodies may squirm when their shortcomings are exposed by FOI but the Commission should be considering how others who spend public money should similarly be held to account.

In 2014 the Public Accounts Committee of the House of Commons underlined the power of the Freedom of Information Act to expose waste and improve governance. Its report called for the extension of FOI to private sector contractors carrying out public services as part of the solution to the scandals of overcharging and incompetence surrounding G4S, ATOS, Serco and Capita.

So it would be wholly wrong to use charges to throw a cloak of secrecy over the bodies currently subject to FOI.

There appear to be conflicting accounts of the actual cost of complying with FOI requests. They all have one thing in common: the numbers are very small in relation to the overall amounts of public money that is being spent. In addition it seems that costs are being incurred in answering FOI requests which should be dealt with by already well-resourced press offices. In many cases those costs would be avoided if authorities routinely released information that the public are entitled to know.

Basing its calculations on Ministry of Justice data on FOI spending in central government, Press Gazette estimated the cost of all departments complying with FOI at £5.6m a year. That is of the same order of magnitude as the reported cost of supplying biscuits to Whitehall ministries – apparently £3m per year.

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Imposing charges would mean that cash-strapped media organisations, particularly those serving local communities, would be priced out of making FOI requests, commercial organisations with deeper pockets would continue to make use of the Act, which would surely run counter to the intentions of Parliament. In effect, FOI would become a useful research tool for corporations pursuing their commercial agendas.

The Society of Editors believes that Freedom of Information has greatly increased transparency in government and greatly benefited society.

Now is not the time to shackle it. Instead, society should be considering how to build on the success of FOI.

As the Information Commissioner stated: "My contention, based on the facts, is that the Act is working effectively. The interesting questions are about how to keep FOIA effective for the future – not how to limit its effect today".

The real issue is that many official organisations remain committed to needless secrecy rather than transparency. Too often they take the easy option of telling the public as little as possible. In fact the easy - and correct - option should be to release as much information as possible unless there is an extremely good reason for it to remain confidential. Such reasons are usually a matter of common sense.

The review should do all it can to turn the default switch for the release of information to 'on' rather than 'off'. That would be a service to the public and indeed authorities which claim it costs too much to tell the public what is done in their name and with their money.

Yours sincerely,



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