

Freedom of information being difficult, inconvenient or expensive is not a reason to seek to limit its role

Ed Hammond argues that changes to the existing Freedom of Information regime could fatally flaw the openness and transparency of public authorities in the UK.



The House of Commons Justice Select Committee's post-legislative scrutiny of the Freedom of Information Act has seen a number of witnesses and members of the Committee positing some possibilities for the future of Freedom of Information (FOI) that many will find troubling. This includes the risk that charges for requests might be introduced, or that requests from different kinds of requesters could be dealt with in different ways. There are also suggestions arising from the contention that a "chilling effect" might exist whereby civil servants might be unwilling to provide ministers with full and frank advice if they know that this advice might be subject to a successful FOI request at some point in the future.

These three suggestions in particular have caused some substantial worry amongst many campaigners, and when the Centre for Public Scrutiny gave oral evidence to the Justice Committee on 14 May we tried to tackle two of them. In this post I'll explain why all three suggestions lack basis in fact – and why accepting any of them would fatally flaw both the FOI regime, and the future cause of openness and transparency in this country.

Charging is an emotive issue. Proponents claim that FOI requests cost money – that they constitute a burden on resources in public authorities, and that because they are free, journalists in particular embark on speculative "fishing expedition" (particularly to local authorities) to try to get hold of information that might prove to be useful or interesting to their work. It is true that requests cost money to process. However, putting in place a nugatory charge would fatally flaw one of the most fundamental principles of the Act: the enshrinement of the public's right to know, the right to access information about decisions made in their name, and money spent on their behalf. Furthermore we, and other witnesses – those involved in servicing FOI requests in local authorities – felt that a charging regime would cost a substantial amount to administer, rendering such an approach of minimal positive financial impact.

Motive and requester blindness is another fundamental principle sitting behind the FOI regime. Public authorities must treat all requesters the same, and must not ask the reason why they are seeking the information. The motive of an individual should, we consider, be irrelevant to whether the information should be public or not. The focus of any disagreement on release should be on the data itself, not a subjective view of the mindset of the person asking for it.

This seems an obvious point, difficult to counter, but it has raised its head in the context of public authorities (again, including many local authorities) receiving requests from commercial providers for commercially sensitive information. This may include the content of rival bids, where the requester has been unsuccessful in gaining a contract. The feeling could be that it would harm the level playing field of procurement processes.

This is a valid concern, but it would be difficult to see how getting rid of requester and motive blindness would resolve it. Employees of companies could well get hold of this information as private citizens. Journalists could also circumvent any attempts to treat them differently through similar means. Removing the blindness principle was also seen as a way of dealing with "vexatious requesters". But for us, the idea of moving the test of vexatiousness from the substance of the request to the personality of the requester is a dangerous one that takes no account of the need to look at individual cases separately and on their own merits.

Finally, the charge of the "chilling effect" is arguably one of the more pernicious that has been laid at the

door of the Freedom of Information Act in recent years. Sir Gus O'Donnell and Jack Straw gave robust evidence to the committee that civil servants, in particular, would be less inclined to provide accurate advice to ministers if they felt that this advice could be published and presumably cause embarrassment to ministers. It was suggested that this could drive such advice-giving into more informal settings. Firstly, this suggests that civil servants consider short-term political embarrassment for ministers as being an overriding factor, more important than their duty to provide accurate and impartial advice.

Secondly, it suggests that, rather than tackle the mindset of secrecy that this suggests exists, we should design our democratic systems to be complicit with the idea that there is a wide swathe of official information that the public should not see purely because it might provide political capital to the opponents of governing parties. There is already a more than adequate and robust means to make these judgments in individual cases through the public interest test in the Act, and in extremis the government has the right to use the ministerial veto which is a step that should be subject to public debate and scrutiny.

Freedom of information being difficult, or inconvenient, expensive, or all three, is not a reason to seek to limit or curtail its role. It speaks of a culture where FOI is seen as a compliance issue, rather than as an issue about the fundamental principles both of democracy and good governance. We are sure campaigners will eagerly await the findings of the Committee in the hope that they will not provide cover for the government to roll back the progress on transparency that has been made in the seven years since the Act came into force.

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