

Outsourcing companies are taxpayer funded but are only rarely submitted to the scrutiny of Freedom of Information

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*The Freedom of Information Act was introduced in 2000 has made certain Government information available to those members of the public who ask for it. Due to the increased drive towards outsourcing government services to private companies, there is a concern that huge swathes of Government work are now beyond the reach of FOI. While there are ways to obtain some information from outsourcing companies, it is dependent on the way contracts are drawn up and the good will of the company an the other end, explains **Bilal Ghafoor**.*



The Freedom of Information (FOI) Act (2000) has been in force for nearly a decade. Since its introduction, it has been used hundreds of thousands of times to obtain information about how our public services are run. If you want to shine a disinfecting light into an organisation, you can refer to Schedule 1 of the Act and see if it is listed. Government, down to parish councils, universities, museums, NHS bodies, police, fire services and even the British Wool Marketing Board are public authorities (PAs) and are referred to in Schedule 1.

[Virgin Care](#), which currently holds a five year £500 million contract for NHS healthcare provision in Surrey, is not amongst the organisations listed. The Chartered Institute of Purchasing and Supply [tells us](#) that the UK is the now the world's second biggest outsourcing market. Whether the continued use of outsourcing is wise is a different debate, but I shall restrict myself for the purposes of this article to discussing the issue of organisations that should be listed in Schedule 1.

The current Government has at least closed one loophole. It used to be the case that a company wholly owned by a Public Authority was subject to FOI, but that companies which were jointly owned by, say, two councils (some

councils started pooling their IT services into a stand-alone company), were exempt. The Protection of Freedoms Act 2012 included a provision to ensure that these companies were no longer exempt. This is a good, but quite limited thing.

A more pressing concern is the kind of situation we can see with Virgin Care, which is becoming more and more common (Hinchingbrooke Hospital, for example, is run by Circle – the hospital is subject to FOI but not Circle, so it is not clear what plans for the hospital are extant and not held by the hospital itself) and what might be done to improve matters.

The Virgin Care contract was, after a great of examination by lawyers, published on the website of NHS Surrey. Much like NHS Surrey itself, which was abolished under the provisions of the Health and Social Care Act, it can no longer be found. North West Surrey Clinical Commissioning Group (NWSCCG), its successor organisation, says almost nothing on its website about one of the largest [outsourcing contracts](#) in UK history.

But the standard NHS contract, on which the Virgin Care contract was based, contains [little-read clauses](#) that state that although Virgin Care is not subject FOI, it must nonetheless transfer information requests to the commissioning body, NWSCCG to answer and that it must transfer relevant information to the Clinical Commissioning Group for the purposes of the request. This seems to offer a way around the obvious problem inherent in Virgin Care having half a billion pounds of taxpayer money and not being obliged to answer questions unless it feels so inclined.

But there are significant downsides – although the Department of Health recommends the use of the standard contract in these cases, there is no obligation to use it. Contracts change if both parties agree; most people are not aware of what clause 60.5 of the contract states, so are unlikely to send FOI requests; and it is far from clear that private sector providers will have the same ethos as in the public sector in passing over all relevant records for the Public Authority to decide on what should and shouldn't be released.

We must be aware that this is just one particular kind of contract in one sector. Which begs the question; what about everything else? It is obvious that the government will at some point have to widen the FOI Act to ensure the transparency of taxpayer funded services. But is the government doing this?

The Liberal Democrat MP Simon Hughes has recently taken up the post at the Ministry of Justice which has FOI in its portfolio. On 18 March in the House of Commons, [he said](#) that 'he 'hoped' that there would be a revised code of practice to ensure that private companies that carry out public functions contain FOI requirements within their contracts. However, there are further problems with this. A code of practice is not mandatory, and in addition to the specific disadvantages that we see in the case of the NHS contract with Virgin Care, the private provider could disagree with the Public Authority about whether the information it holds is for the purposes of carrying out the contract. So, if a manager at Virgin Care also works on matters that are not relevant to the NHS contract, we will never know if he or she is overpaid as the salary band may not be released. 'FOI requirements' is not the same as FOI. We can only speculate as to the size of the gap.

The Campaign for Freedom of Information recently referred on its [website](#) that the government was allaying concerns about any [extension](#) of FOI to charities. Some might think that the Charity Commission was doing a good job (although, a recent case has shown that it is not as [transparent](#) as some would like) and that Oxfam should not be subject to FOI. But how about Marie Stopes? It does a lot of indispensable work in the field of sexual health, but as its own website says, it has worked with the NHS [for 20 years](#) – yet, we cannot examine how it works, whether it provides good value for money, or even basic information such as how many data breaches it has had (it need hardly be stated how important this is in such a sensitive policy area), as it will be in a position to argue that this information is not held for the purposes of tax payer funded work.

Close readers of Simon Hughes' statement will note that the only specific organisation he mentioned was Network Rail. This has been a long-running sore since the outset of the FOI era – Network Rail is responsible for a budget of millions of pounds and maintaining the rail infrastructure for millions of peoples' journeys. Despite a steady number

of newspaper articles and much speculation, it has never been brought under the remit of the Freedom of Information Act. Even now, Hughes is waiting for the Department for Transport to share its view on whether it should be subject to FOI. Network Rail is run like a private company, complete with sizeable staff bonuses. This may all be above board, but without FOI we are without a key tool in finding out for sure.

If the consecutive governments have had such a difficult time making Network Rail subject to FOI, how effective do we believe it will be with Capita, Serco, G4S and the rest?

Note: this post represents the views of the author and not those of Democratic Audit or the LSE. Please read our [comments policy](#) before posting. The shortened URL for this post is: <http://bit.ly/1ILnplv>

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