

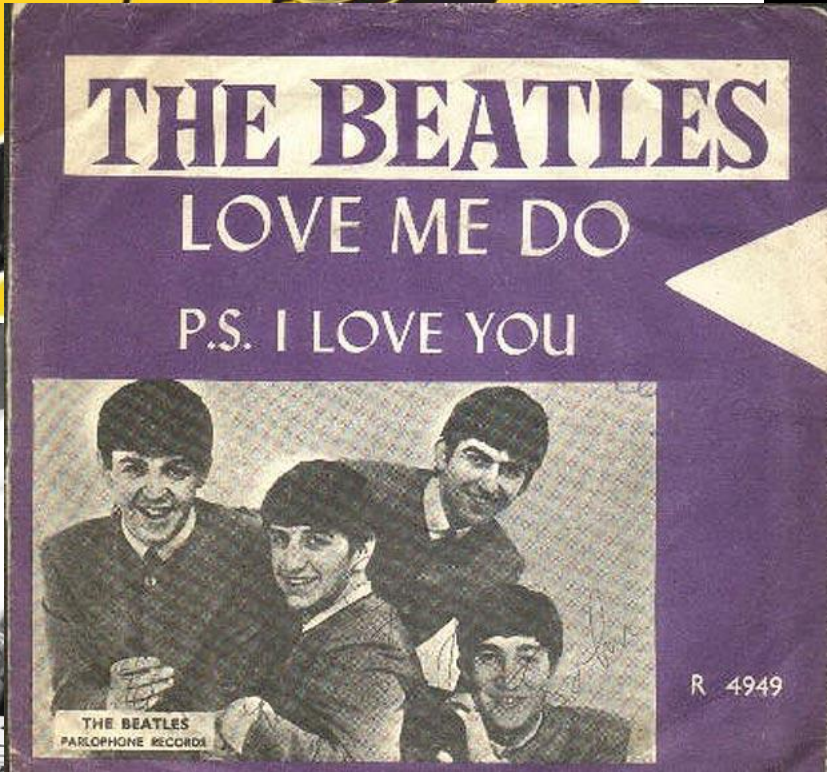
The Struggle Without End

**Lessons from UK experience of
introducing and sustaining an FOI law**

Andrew Ecclestone

andrew@ecclestone.net

10th WCI/OI - Wellington - 15 November 2012



Yes Minister - Open Government



Bernard: *But surely the citizens of a democracy have a right to know.*

Sir Humphrey Appleby: *No. They have a right to be ignorant. Knowledge only means complicity in guilt; ignorance has a certain dignity.*

Sir Arnold: *If people don't know what you're doing, they don't know what you're doing wrong.*

Made up of mysteries

“the people’s enemies
take care to represent
government as a thing
made up of mysteries,
which only themselves
understood”

Thomas Paine

'Rights of Man', 1792



Parliamentary Accountability

“Throughout the period that the Inquiry has to examine...there is to be found, in my opinion, a consistent undervaluing by Government of the public interest that full information should be made available to Parliament. **In circumstances where disclosure might be politically or administratively inconvenient, the balance struck by the Government comes down, time and time again, against full disclosure.**”

The Scott Report, vol. 1, page 211

Hospital Waiting Lists

“Nine NHS trusts inappropriately adjusted their waiting lists, three of them for some three years or more, affecting nearly 6,000 patient records. **For the patients concerned this constituted a major breach of public trust and was inconsistent with the proper conduct of public business.** In five cases the adjustments only came to light following patient, health authority or MP complaints, or adverse publicity; in four cases they were identified by the trusts concerned.”

National Audit Office HC 452, 19 December 2001

Who do you trust to tell the truth?

Doctors	91%
Teachers	85%
Clergy	80%
Judges	77%
Police	59%
Civil Servants	45%
Business leaders	25%
Government ministers	20%
Journalists	13%

Power to the people?

“it is not some isolated constitutional reform that we are proposing with a Freedom of Information Act. It is a change that is absolutely fundamental to how we see politics developing in this country over the next few years...**information is power and any government's attitude about sharing information with the people actually says a great deal about how it views power itself and how it views the relationship between itself and the people who elected it**”

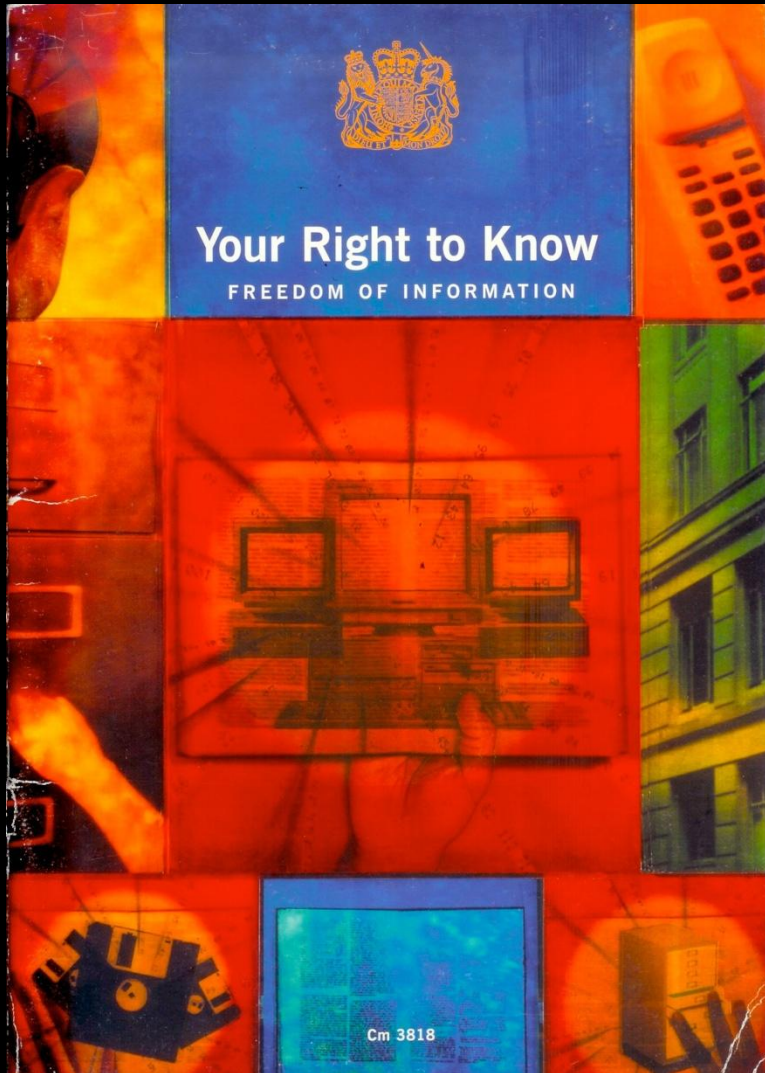
Tony Blair, Fol Awards, March 1996

Raising confidence - enhancing decision making

The Act will “help transform the culture of Government from one of secrecy to one of openness....By doing so, public confidence in the processes of government should be raised, and the quality of decision making by the Government enhanced.”

Home Secretary, Jack Straw, 2nd reading FOI Bill, 7/12/99

White Paper - December 1997



**“left Canada trailing
in the dust”**

John Grace,
Canadian Information Commissioner

Consultation on the White Paper

Have Your Say - UK Freedom of Information Consultation

http://www.foi.democracy.org.uk/

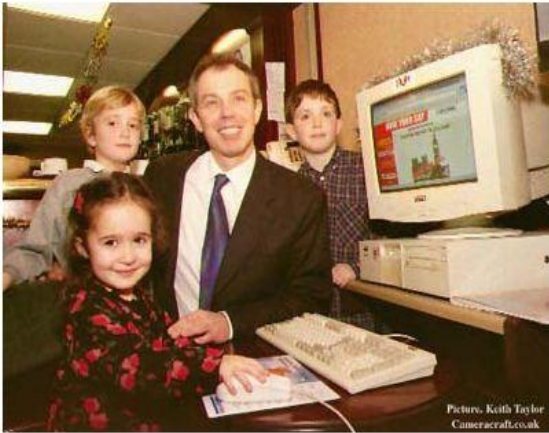
ABOUT HELP

HAVE YOUR SAY

LATEST NEWS

FREEDOM OF INFORMATION

TONY BLAIR HAS HIS SAY



Picture: Keith Taylor
CameraCraft.co.uk

"The 'Have Your Say' website is a historic opportunity for the public to play a meaningful part in the framing of new legislation by using the Internet to lobby and question a Government minister. I support this initiative to help modernise and enhance British democracy and open up Government and I hope similar consultations will be set up in future as part of the legislative process."

The Prime Minister, Rt. Hon. Tony Blair MP.

START HERE

NEED TO KNOW?

- LATEST NEWS
- BACKGROUND
- WHAT'S AT STAKE?
- WHO'S INVOLVED?

WHITE PAPER

- IN BRIEF
- WITH NOTES
- TEXT IN FULL

HAVE YOUR SAY

- YOUR OPINION
- CHAT
- SUBMISSIONS
- MEET THE MINISTER
- YOU, THE JURY

Keep up to date with what's on the site - enter your email address

A few papers' verdicts on the Freedom of Information Bill...



THE EXPRESS



The HERALD



FINANCIAL TIMES



THE INDEPENDENT



Daily Mail



The Mirror



THE Sun



The Daily Telegraph



THE SCOTSMAN

Timetable

- *Publications Schemes phased in first:*
 - **NOVEMBER 2002** - Central Government, Parliament, NAW and & other Code of Practice bodies
 - **FEBRUARY 2003** - Local government
 - **JUNE 2003** - Police, police authorities, CPS, SFO, Armed Forces
 - **OCTOBER 2003** - Health Service
 - **FEBRUARY 2004** - Schools, Universities, other NDPBs
 - **JUNE 2004** - Remainder
- *Individual right of access - JANUARY 2005*



About DFID

[Our Policies
and Priorities](#)

[How DFID works
around the world](#)

[How DFID works
in the UK](#)

[Recruitment](#)

[Contracts](#)

[Funding Schemes
and Scholarships](#)

[News, Speeches
and Consultations](#)

[Contact Us](#)

Freedom of Information Publication Scheme

[Go Back](#) | [Home](#) | [Background](#) | [Introduction](#) | [Procedures for making requests](#) | [Complaints Procedure](#) | [Formats and Fees](#) | [Classes of Information](#) | [Contact Us](#) | [Feedback](#)

[Business Strategy](#)

- **Senior Committee Structure**

Agendas and minutes of Management Board meetings and sub committees

Management Board

[Key issues](#)

[Membership](#)

[Terms of Reference](#)

[Archive of records of meetings](#)

[Archive of papers for each committee meeting](#)

Development Committee

[Membership](#)

[Terms of Reference](#)

[Development Committee papers](#)

[Minutes of DC meetings](#)

Finance and Audit Committee



The Public

Information Commissioner

Minister for Constitutional Affairs

Cabinet

Cabinet Committee on Freedom of Information

National Archives

Advisory Committee on Openness

Chaired by the Minister.

Members from:

- Information Commission
- National Archives
- local government
- police
- health agencies
- universities
- schools
- civil service trade union
- media
- civil society

Department of Constitutional Affairs

Team of officials with responsibility for policy and overall implementation of the FOI law.

- Provide advice to the Minister on implementation and FOI policy issues.
- Provide secretariat to committee of senior officials
- Provide secretariat to committee of 'middle rank' officials
- Responsibility for liaison with the Information Commission
- Responsibility for maintaining links with civil society and local government and other parts of the public sector on FOI issues
- Draft the implementing regulations and the guidance on how to interpret the law

Committee of Senior Officials

One from each ministry, that has responsibility for 'championing' implementation of the law and considering strategic issues for their agency.

Committee of 'Middle Rank' Officials

One or two from each ministry, that have responsibility for the day-to-day practical implementation of the FOI law in their agency.

Other government departments



The Public

Information Commissioner

Minister for Constitutional Affairs

Cabinet

Cabinet Committee on Freedom of Information

National Archives

Advisory Committee on Openness

Department of Constitutional Affairs

Committee of Senior Officials

Chaired by the Minister.

Members from:

- Information Commission
- National Archives
- local government
- police
- health agencies
- universities
- schools
- civil service trade union
- media
- civil society

Team of officials with responsibility for policy and overall implementation of the FOI law.

- Provide advice to the Minister on implementation and FOI policy issues.
- Provide secretariat to committee of senior officials
- Provide secretariat to committee of 'middle rank' officials
- Responsibility for liaison with the Information Commission
- Responsibility for maintaining links with civil society and local government and other parts of the public sector on FOI issues
- Draft the implementing regulations and the guidance on how to interpret the law

One from each ministry, that has responsibility for 'championing' implementation of the law and considering strategic issues for their agency.

Committee of 'Middle Rank' Officials
One or two from each ministry, that have responsibility for the day-to-day practical implementation of the FOI law in their agency.

Other government departments

Lead Department's Plan

Leadership, monitoring and chasing progress

Secondary Legislation

**Fees regulations, amendment or repeal of statutory bars,
commencement orders**

Systems for processing requests

Policy Advice and Development

guidance, statistics, disclosure logs

Build Networks and coordinate departments

FOIPG, Clearing House


Train the trainers


Qualification in Information Rights

Public awareness (some)

Online discussion forum for officials

Discussion headings

 **dca** Freedom of Information
E-Discussion Forum



[» Articles](#) [» Meetings](#) [» FOI Networks](#) [» FAQs](#) [» Summary of Recently Asked Questions](#)

Home
Latest News
Training and Awareness
Records Management
Fees and Charging Scheme
Access Regime
Exemptions
Other Important Issues
Implementation Tools
FOI Checklist

© Crown Copyright & Disclaimer

Our Top Questions

- ◆ [Contingency & capacity testing](#)
- ◆ [Requests from students](#)
- ◆ [Handling FOI requests to semi current records](#)
- ◆ [Versions - Handling earlier versions of documents](#)

Welcome to the FOI E-Discussion Forum

Poll: Model Action Plan*

Have you used the Model Action Plan* produced by the DCA in preparing your organisation for FOI ?

Yes

No

What is the Model Action Plan?

*The Model Action Plan can be found in the [Implementation Tools](#) section of this website

FOI Key Facts

For key facts on the Freedom of Information Act please [click here](#).

Disclaimer

Search the FOI Forum:

[» Begin Search](#)

[» Register](#)
[» Log-in](#)
[» Log-out](#)
[» Terms & Conditions](#)

[Click here](#) for useful links:

www.foi.gov.uk
www.dca.gov.uk

[FOI related vacancies](#)
[FOIPG Sub-groups](#)

- Articles
- Meetings
- FOI Networks

**“It is sometimes
difficult to explain to
Ministers that open
government can
sometimes mean
informing their Cabinet
colleagues as well as
their friends in Fleet
Street.”**

**Yes Minister –
Open Government
25 February 1980**

What is 'right' in the UK FOIA

- **No citizenship requirement for making a request**
- **Broad coverage >100,000 public authorities**
- **s. 2 Public Interest test - burden on agency**
- **Explicit link to records management - s. 46 code**
- **Publication schemes**
- **Commissioner and tribunal model**
- **No/low fees (...but downside to charging regime too)**

What is 'right' beyond the Act

- Public interest test has been robustly interpreted by appeal bodies, enabling post-decisional access to policy material
- LLM at Northumbria University
- Collection of statistics on usage in central government (even though this was resisted during the passage of the Act)
- Creation of disclosure logs (even though this was resisted during the passage of the Act)
- Significant moves to increase access to government-held datasets
- Creation of the 'open government licence' to facilitate re-use of information disclosed
- Reduction in '30 year rule' to '20 year rule'

Benefits of FOI

Percentage of the public that agree FOI...	2004	2005	2006	2007
Increases confidence in public authorities	51%	55%	72%	81%
Increases trust in public authorities	51%	57%	69%	72%

UK Information Commissioner's Office Annual Track Survey 2007

UK Prime Minister - 2007

“FOI can be inconvenient, at times frustrating and indeed embarrassing for governments. But Freedom of Information is the right course because government belongs to the people, not the politicians.”

Gordon Brown 25.10.07

UK Prime Minister - 2012

“real freedom of information is the money that goes in and the results that come out. Making government more transparent is the best thing. We spend an age - fortunately not me, but the system seems to - on dealing with FOI requests that are all about processes, but what the public, the country and Parliament need to know is how much money are you spending, is it being spent well and what are the results...

I think that publication of information is better than the discovery process, which I think furs up the arteries [of government].”

David Cameron 6.03.12

What's 'wrong' with the Act

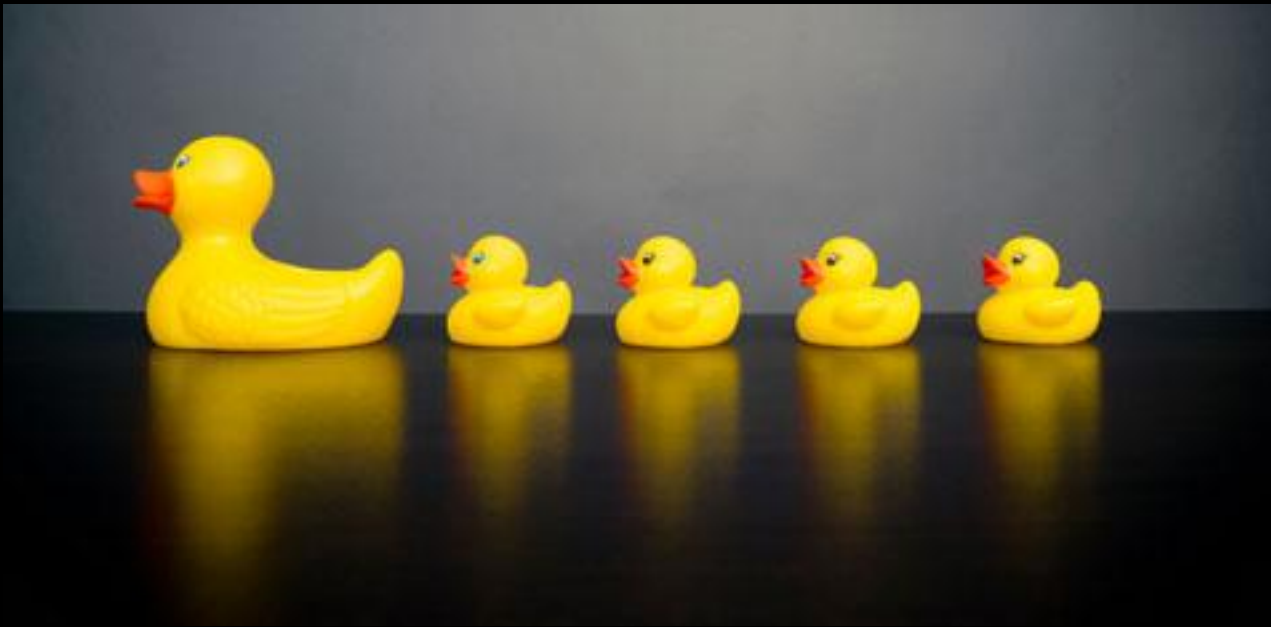
- **No purposes clause**
- **Ministerial veto**
- **No requirement for disclosure logs**
- **No requirement to collect statistics**
- **Too short a period for s. 77 offence to be brought to prosecution (6 months)**
- **Not creating unit within government to provide leadership, guidance, training and policy work**
- **Copyright**
- **Not to mention class exemptions, some with no P.I. test...**
- **Should have phased-in retrospection. Access to policy papers created before the FOI law passed should have come in stages following the law coming into effect. But only as a quid pro quo for less protection for policy advice created after the Act passed.**

Policy mistakes

- **Lack of thinking about desired outcomes for government – not planning to achieve benefits themselves**
- **Not understanding or accepting that existing business processes would need to change – and could benefit from change if done correctly e.g. policy formulation, changing structure of documents to facilitate release**
- **Too long a period for implementation**
- **Not funding departments, public sector, for the preparation**
- **Not funding the Information Commissioner sufficiently**
- **Not mandating investment in records/information management**
- **Not creating e-government tools for requests and affirmative disclosure**
- **Not training Ministers and their political advisers**
- **Lack of political leadership - civil servants have sensitive hearing!**

Desired Outcomes?

- **Better record keeping and information management**
- **Reduction in wasted spending and inefficiency**
- **Higher quality public administration**
- **Government welcomes citizen participation in developing policy and plans**
- **Better services for the public**
- **Increased public and international confidence in government**





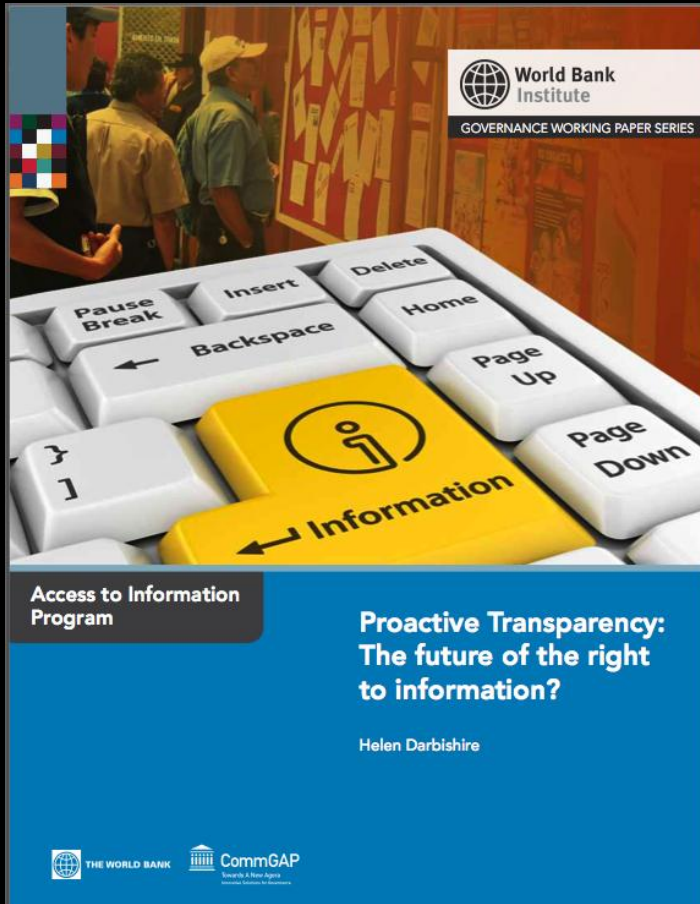
Problems with reviews of FOI Laws

- Supply side reforms often given far less consideration during reviews of FOI laws: often focus on ‘burden’ and costs for government bodies. See current Australian and UK reviews, for example.
- Also while government provides cost estimates (often with broad untested assumptions) for FOI, it does not juxtapose this with costs of government press advertising costs.
- Difficulty of measuring cost savings due to FOI.

Tips for long term sustainability

- **A systems/ecosystem approach**
- **Central unit in government for leadership, policy, training, guidance**
- **Professionalisation of FOI/Information Rights officials**
- **Probably locating these officials with the information management team, not legal or communications staff**
- **Robust oversight/enforcement mechanism with its own policy functions as a counterweight to government**
- **Continuing external scrutiny**
 - **Parliament**
 - **Expert civil society organisation**
- **Funding for research and evaluation to inform reviews, scrutiny and policy**

Further Reading



<http://tinyurl.com/HD-WBI-Proactive>

*What happens when
transparency meets
blame-avoidance?*

Christopher Hood

Public Management Review
Volume 9, Issue 2, 2007

<http://tinyurl.com/CH-Trans-Blame>

Useful websites

ico.gov.uk

itspublicknowledge.info

www.cfoi.org.uk

panopticonblog.com

foiman.com

2040infolawblog.com

informationrightsandwrongs.wordpress.com

freedominfo.org