

Book Review

The Impact of the Freedom of Information Act on Central Government in the UK: Does FOI Work? (2010) Robert Hazell, Ben Worthy and Mark Glover, Palgrave Macmillan
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“Does FOI work?” is the question posed and answered in the intriguing book “The Impact of the Freedom of Information Act on Central Government in the UK” by Robert Hazell, Ben Worthy and Mark Glover¹. As an FOI campaigner, I thought the focus would be on analysing what and how new categories of information are proactively published by central government, that were previously deliberately withheld, in addition to the routine flow of general and often boring information filling websites and Newsletters. Instead civil servants and government are allowed to define the objectives of FOI against which performance is measured. We learn that FOI has adapted to the Whitehall model rather than the other way around.

Introducing an enforceable right to access information was just one of a series of legislative initiatives that have changed government in the UK forever: enhancing democracy with the creation of devolved administrations and changing the relationship between the government and the governed by introducing individual rights and public sector obligations such as via The Human Rights Act 1998. The range of woes that was the catalyst for this reform such as low public trust in politicians and the need to deliver more efficient and responsive government could never be fixed quickly. So we need to be cautious about making hasty judgements about the impact of FOI in the UK especially as its introduction was resisted by so many politicians and civil servants.

We need to accept that FOI is a crucial pillar in our modern democracy and move to understanding how government must change further to earn the respect and trust of the electorate. Surprisingly the premise of the book is that central government is misunderstood and does a good job. That is debateable, which is OK to say in a democracy, and it is quite surprising that the book blames the media for the government’s FOI woes: “The press’s negative reporting is why FOI serves to decrease trust. That should not be seen as a failure of FOI: it is a failing of the media.”² Our system of adversarial politics depends on each side highlighting the inadequacies of government and political parties so it is hardly surprising that the media approach public policy stories in a similar vein.

This evidence and analysis in the book revolves around the “. . . four key groups involved in the operation of FOI. . .”³: the government officials, the requestors, the media and the appeal system. However the methodology is problematic as it fails to take account of the new constitutional arrangements, the cultural and legal traditions operating across the country. A significant problem is that the authors draw conclusions from a tiny, self-selecting sample of requestors.

¹“The Impact of the Freedom of Information Act on Central Government in the UK – Does FOI Work?” by Robert Hazell, Ben Worthy and Mark Glover published by Palgrave Macmillan 2010.

²Ibid page 255.

³Ibid page 51.

Whether FOI works is not just a question to be framed and answered by politicians and civil servants. Those involved in campaigning for freedom of information from faith groups to trades unions also deserve a shot at defining success. So it is disappointing that the dominant coverage of FOI's objectives is from the politicians, Parliamentary Committees and the Cabinet Office⁴. Only six of the 102 interviews are from 'progenitors of FOI'⁵.

Conclusions on whether FOI works also come from a review of literature, an analysis of newspaper coverage and the completion of a questionnaire by 350 individuals who knew about the opportunity afforded by the online survey but only 109 were usable⁶. The authors acknowledge "In 2008, there were approximately 30,000 requests to central government and its main agencies so we cannot pretend the data.. is representative of requesters as a whole". Yet the book cover states it "is the first systematic evaluation of FOI anywhere in the world"⁷.

The definition and operation of central Government in the UK is now quite different due to the creation of the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly. The author's chosen list of Whitehall departments⁸ confuses what is devolved with what are central powers: for example Defence is a central government department but health, communities and local government, education, children, schools and families are just some of the functions devolved to Scotland. These subject areas have been the source of numerous FOI requests to the Scottish Information Commissioner. For example the proportion of applications received by the Commissioner in 2009 was 42% for local government, 8% police, 6% NHS and 2% educational institutions⁹. The authors use various terms interchangeably "this study is deliberately confined to the main government departments in Whitehall"¹⁰ and "Central government departments have received around one fifth of all FOI requests"¹¹ so it is impossible to disentangle what relates to a only a part of rather than applying to the entire UK.

The analysis of newspaper articles is informative but the list of titles studied fails to take cognisance of different readership profiles across the UK and the consequent impact of FOI news stories. For example readership of the Guardian is 460,000 in London, 72,000 in 'Wales and the West' and 28,000 in Central Scotland which includes the cities of Glasgow and Edinburgh¹².

The research for this book has been undertaken at an early stage in the life of FOI legislation. Early studies about the enjoyment of enforceable human rights have flagged up similar problems between objectives and impact. For example the IPPR published a report commissioned by the Department of Constitutional Affairs, five years after the Human Rights Act was implemented that concluded that "*The Human Rights Act has not yet been of sufficiently demonstrable value in improving standards in public services as the Government had intended when the Act was passed*"¹³. Other evidence in support of this argument includes "Human Rights Improving Public Service Delivery", by the Audit Commission 2003.

⁴Note 1 Table 2.1 Figure 2.1.

⁵Ibid, Table 4.1 page 53.

⁶Ibid, Appendix 2 page 275.

⁷Ibid.

⁸Ibid Table 3.2 page 41.

⁹'You only have to ask' Freedom of Information Annual Report 2009 published by the Scottish Information Commissioner page 15.

¹⁰Note 1, page 13.

¹¹Ibid.

¹²Readership is defined by ITV region and refers to the number of people reading the Guardian on an average day from Oct 09 – Mar 10: 1,102,000 published by the Guardian website and source is NRS.

¹³'*Improving Public Services: Using a Human Rights Approach: Strategies for Wider Implementation of the Human Rights Act Within Public Authorities*' pub by Institute for Public Policy Research, 2005.

When freedom of information laws became effective across the UK on 1st January 2005, the key change was the right to enforce access by appealing to either the Information Commissioner on UK issues or to the Scottish Information Commissioner. However this book clearly illustrates the range of challenges that remain to make this right effective in the UK. Previously, there was no law barring general information disclosure, rather a culture and rules operated within government, the civil service and the public services that presumed against disclosure. In some cases the law specifically prohibited disclosure such as under the Official Secrets Act. To assume that the culture and traditions of UK central government would change within four years, which is the research timeframe for this book, is to expect too much.

The authors understand the Whitehall model of Government and they open up our understanding of how FOI is working in practice. We are introduced to such concepts as ‘gold standard’ requests and learn about the complicated, even tortuous, route civil servants and government choose to follow when dealing with certain information requests. The publication scheme, “a record of documents accessible in each public authority” was supposed to ensure proactive disclosure and take the heat off requesters but the authors confirm “The scheme appeared to be caught within a vicious cycle of internal neglect and lack of use. . . ¹⁴”.

We are treated to anonymised interviews with 56 serving and 4 former civil servants who treasure the importance of parliamentary democracy and there are some who recognise challenge of being “brought up in a culture of confidentiality and privilege so FOI has always been a philosophical challenge”¹⁵. Unfortunately there is hardly any discussion about the impact on the Whitehall model of Government and on civil servants of the public being given a legally enforceable right. FOI is not merely a policy, rather it was designed to shift the balance of power away from government/civil servants to the public who can determine what is disclosed and when.

Rather than being in the vanguard of the modern FOI movement, the UK was slow to legislate and there is a useful historical and contextual analysis in Chapter 3 of ‘The Whitehall Model’. Other governmental systems, built on the Westminster/Whitehall model, acted far quicker: Australia (1982), New Zealand (1982), Canada (1983) and Ireland (1997)” so judging FOI’s performance in this context allows the reader to reflect on the impact of deep seated traditions and cultural attitudes within the UK civil service.

Comparatively little attention is given to the hurdles faced by people making an information request. The process can be complicated if you cannot access the internet, know the law, be specific about what you are looking for, have some sense of which body holds the information and are not worn down by the legalistic letters and the volume of information that actually fails to provide the precise information you seek. As the authors acknowledge, “. . . the FOI request process is potentially complicated and long-drawn out. . . ”¹⁶. The onus on requesters, who do not have the same access as the public sector to the range of staff and skills to navigate the process, means people are at an immediate disadvantage. Added to that many people have a dislike of being involved in legal/official processes so it is unsurprising that information requests are comparatively low in the UK.

The authors seem to be preparing the ground for the introduction of a new fee structure¹⁷ as somehow inevitable even although the evidence cited from countries such as Ireland, where an up front fee for requests, internal reviews and appeals led to a 50% fall in requests¹⁸. The effect is the right becomes less

¹⁴Ibid page 95.

¹⁵Ibid page 93.

¹⁶Note 1, Pg 85

¹⁷Ibid page 264.

¹⁸Ibid page 67.

accessible to members of the public but can still be exercised by the ‘usual suspects’ such as business and campaigning groups. Yet the authors cite this same group as people as evidence of the failure of FOI to launch more generally amongst the public. The authors suggest that an increase in the take up of FOI will inevitably result in increased fees yet the proactive disclosure of new categories of central government information would avoid people having to make an FOI request in the first place.

With these caveats, the book is a ‘good read’. Questions that remain for me include why the UK Parliament and UK Government failed to take early action on MPs expenses when the ruling from the Scottish Information Commissioner in 2005 meant that all MSPs expenses had to be disclosed¹⁹. As the author’s reveal civil servant and politicians learning curve from the implementation of FOI²⁰ you realise that the learning is selective and the resultant bad publicity and reduced trust caused by MPs expense claims was their own fault.

A further question is why technology is regarded as so important “. . . the fate of FOI is closely tied to the information revolution. . .”²¹ given that Sweden has managed the delivery of FOI since 1766. Cultural attitude and the political environment are practically much more important. As the authors point out “. . . high level misgivings from senior ministers may infuse the entire system, sending signals to officials that FOI is to be treated with caution or worse”²².

As a freedom of information campaigner, FOI is operating in the UK as expected. I know that much more information is available but I am not persuaded that equates with increased transparency as the volume and detail are still moderated by Government. I believe that FOI does increase openness and accountability if UK Central Government wants to disclose or you have a resilient requestor who has the time and expertise to argue for disclosure right through the appeals process.

Given people’s experience of Government from MPs expenses to the failure of the Regulators to prevent the banking crisis and consequent recession, is it any wonder that “The UK population can be characterised as politically distrustful, non-participative and relatively uninterested in the operation of government, and this presents significant barriers to FOI”²³. When government is ‘opened up’, selectively, perhaps that is a logical consequence.

¹⁹ Scottish Information Commissioner Decision 033/2005 – Paul Hutcheon, The Sunday Herald and the Scottish Parliamentary Corporate Body *David McLetchie MSP’s travelling claims since 1999 – taxi journey destinations* <http://www.itspublicknowledge.info/UploadedFiles/Decision033-2005.pdf>

²⁰ Ibid page 93.

²¹ Note 1 page 248.

²² Ibid page 250.

²³ Ibid page 247