
BEN WORTHY*

This article examines the impact of Britain’s Freedom of Information (FOI) Act 2000 on British central government. The article identifies six objectives for FOI in the United Kingdom and then examines to what extent FOI has met them, briefly comparing the United Kingdom with similar legislation in Ireland, New Zealand, Australia, and Canada. It concludes that FOI has achieved the core objectives of increasing transparency and accountability, though the latter only in particular circumstances, but not the four secondary objectives: improved decision-making by government, improved public understanding, increased participation, and trust in government. This is not because the Act has “failed” but because the objectives were overly ambitious and FOI is shaped by the political environment in which it is placed.

Introduction

Between 80 and 90 countries around the world now have some form of Freedom of Information (FOI) legislation with many more considering or developing it (Mendel 2008; Vleugels 2009). At the center of every law is the right to request access to government information, subject to certain restrictions, and often, an external appeal system in the shape of a commissioner, tribunal or the courts system. Many Acts also promote wider pro-active disclosure of information by government.

Although the first piece of access legislation was passed in Sweden (1766), the first modern legislation was the United States FOI Act of 1966. Similar legislation was passed in Australia, Canada and New Zealand in the early 1980s. Countries as diverse as Zimbabwe and China now have some form of access legislation, though not all are operational (Relly and Sabharwal 2009, 154; Darch and Underwood 2010). Nor have FOI regimes stood still, with leading countries such as the United States and Australia embarking upon further reforms to strengthen and enhance their legislation (Executive Office of the President 2009; Department of the Prime Minister and Cabinet 2009).

The U.K. FOI Act was passed in 2000, after a long process of gestation. FOI had been a manifesto commitment of the Labour party since 1974.

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Once in power in 1997 the government quickly issued a radical white paper with innovations designed to make the U.K. Act a world leader. Although some warned the paper was “too good to be true” it received “widespread applause . . . indeed the scale of the proposed legislation came as a surprise to many” (Hazell 1998, 1; Vincent 1998, 321). It then entered into a long period of revision widely seen as a watering down (Worthy 2007). After lengthy debate FOI was passed in 2000 and came into force on January 1, 2005 across 110,000 public bodies.

The Act has a two-stage appeal process, the first stage being the Information Commissioner’s Office (ICO) and the second being the Information Tribunal, with the government holding a veto over the appeal system. Early in 2009 the government used its veto for the first time to prevent the release of Cabinet minutes relating to the invasion of Iraq. In the spring of 2009, after a four-year campaign to obtain them under FOI, the leaking and then release of MPs’ expenses destabilized the government. It led to a wave of resignations by MPs, including the speaker of the House of Commons.

The study of FOI is in its infancy. Studies to date have drawn on high-level indicators or aggregated data to measure openness (see Relly and Sabharwal 2009 and Piotrowski 2009 for details), compared and contrasted features of the laws themselves (see Ackerman and Sandoval-Ballesteros 2006; Mendel 2008; Vleugels 2009), or made use of the law itself to measure openness by making standardised requests (see Lagunes 2009; OSJI 2006). Research has also focused on specific groups’ use of access laws, particularly journalists (see Lidberg 2002; Spence 2010).

Recent studies have begun to analyze the impact of FOI in-depth or within one country and seek to measure the impact of FOI (see Hazell and Worthy Forthcoming). Key works include Alasdair Roberts’ (2006a) study of the trend toward transparency across the world, Nicola White’s (2007) work on the success and failures of the New Zealand Official Information Act, and Suzanne Piotrowski’s (2007) study of the United States. Fung, Graham, and Weil (2007) examined the impact and achievements of targeted transparency policies in the United States and elsewhere. One area of particular interest is that of India, where numerous studies seek to understand if and how the Right to Information Act 2005 is functioning (see Raag and NCPRI 2009; Roberts Forthcoming). Another area of growing interest is that of China and the performance of its recent Openness in Government Affairs Regulation (OGA) (Piotrowski et al. 2009; Weibing 2010).

The supporters of FOI hope that it will contribute to wider democratic development. They argue that FOI is rooted in the Enlightenment idea that information is the “oxygen” of democracy, and Jefferson and Madison are frequently quoted in support of this idea, though the Chinese regulation was supported by quotes from Lenin and Marx (Darch and Underwood 2010, 26,31; Weibing 2010). FOI is now viewed as a solution to the problem that democracy is simply “not democratic enough” (Gidden’s 2000, 61). Transparency could create a virtuous circle of increased legitimacy, democratic participation and trust that could “be the breakthrough
that eventually brings about a dynamic change in the government, politics, and even ‘shape’ of a nation” (Stiglitz 2003). This was particularly the case in Britain where it was accompanied by a range of other constitutional reforms:

Freedom of Information is not some isolated constitutional reform...it is a change that is absolutely fundamental to how we see politics developing over the next few years. It is part of bringing our politics up to date. (Blair 1996)

Moreover, it is seen as a “leverage” right that can be used to obtain or access other socio-democratic rights including education and employment. It is also increasingly viewed as a fundamental human right (Darch and Underwood 2010, 43).

Others are sceptical of its possibilities. The concerns are rooted in the realities of institutions and policy. Political institutions are “usually change resistant” as formal rules combine with attitudes to “lock in” existing arrangements and make reform both “difficult” and “unattractive” (Pierson 2000, 490–491). The power that flows from secrecy, and is lost through openness, makes FOI a particular potent threat. In the United Kingdom, the historic secrecy of Whitehall, symbolized by successive Official Secrets Acts, appear to show that “secrecy is built into the calcium of a British policy-makers’ bones” (Cockerell, Hennessy, Walker 1984, 15). Many felt that this historic culture of secrecy would undermine and negate the Act. The Public Administration Select Committee argued that there will be “little change [as the legislation] perpetuates the paternalistic model of open government with the government deciding what we need to know” (PASC 1999, 1). A former Home Secretary went one step further and argued in the final debate on the bill that it “will make more, not fewer, things secret and will give the government more, not less, power to withhold information” (Hansard 2000). The realities of broad policy reform can also present challenges. The sustaining of reforms can be a “more politically challenging task than winning the measures in the first place” (Patashnik 2003, 226).

This study examines FOI at the “second” stage of reform, the implementation stage, the problematic time when “reform ideas meet the tough realities of democratic politics” (Patashnik 2008, 19). The key issue is whether FOI can deliver upon its promises or be undermined. This study suggests that FOI has made government more open and, in certain situations, more accountable. It has not achieved many of the wider democratic goals its supporters hoped because the goals were not realistic and the political environment presents too many obstacles.

What Are the Objectives of FOI?

Measuring the objectives of any reform faces the problem that “the goals or objectives of a programme are always vague [as] only the lofty goal evades challenge” (Julnes and Holzer 2001, 696). Separating the politically
expedient from the actual, possible, and intended objectives can be extremely difficult.

Toby Mendel’s 2008 study of access to information regimes across the world analyzed the “principles occurring frequently” across FOI legislation worldwide. These commonly include transparency, accountability, public participation and informing citizens (Mendel 2008, 141). Cain, Fabbrini, and Egan’s (2003, 116) study of access legislation in Italy, France and the United States suggested a number of similar objectives including increasing participation, public understanding of government, and democratic accountability. Even the Chinese OGA regulation aims to assist in improving socialist democracy including facilitating orderly participation, access to decision-making, and democratic supervision (Weibing 2010, 87–93).

Simon James discerns 10 possible reasons for FOI in the United Kingdom, though his list is “probably not exhaustive and is certainly open to argument” (James 2006, 19–29). To ascertain the objectives of FOI in the United Kingdom, a selection of key ministerial speeches, Labour’s 1997 White Paper that preceded the legislation, the 1999 Draft Bill, and Parliamentary debates were all examined for mention of possible aims. Although the policy changed the objectives remained roughly similar. Six were most frequently mentioned and given emphasis by key figures. The first two constitute the “core” aims frequently emphasized by supporters, from which the “secondary” four aims flow:

1. Increasing transparency and openness
2. Increasing accountability
3. Improving the quality of government decision-making
4. Improving public understanding of decision-making
5. Increasing public participation
6. Increasing public trust.

Two issues arose in measuring the achievement of the objectives. First, a range of other factors impacted upon each of the objectives. The research methods, particularly the interviews, were careful to separate the causal factor of FOI from others. Second, in the case of the secondary objectives, there were two types of impact: the direct effect upon the requesters and the indirect effect upon the wider public, who do not make requests but who learn about FOI and disclosures through the media. The division is set out where relevant below.

Methods

Analyzing any reform is fraught with methodological difficulties. The study used a range of methods, as different methods were suitable for
measuring different objectives: official literature, interviews with officials and others, an online survey of FOI requesters, and analysis of articles in the national media about or using FOI. Each of the methods offered an insight into the impact of FOI, though they were not without their limitations. The findings below need to be viewed with these qualifications in mind.

**Official Documents**

The analysis drew upon official documents (ministerial speeches, white papers, parliamentary debates) throughout the study. This included statistics on performance and public opinion surveys from the Ministry of Justice, alongside analysis, annual reports and survey data by the Information Commissioner’s Office and other external reviews of FOI. It also included case law developments from the appeals system.

**Interviews**

A total of 102 people were interviewed. Between five and eight officials from across eight different government departments were interviewed from April to November 2008, a total of 56 civil servants both directly and indirectly affected by FOI. The interviews were semi-structured and examined individual experiences and wider impressions of FOI, as well as seeking a more quantitative “grading” of FOI’s performance. Others interviewed included requesters, journalists, members of NGOs, and campaigners involved in FOI.

**Survey of Requesters**

The members of the public directly involved with FOI are the requesters. There are around 30,000 requests a year to central government. The survey used online survey software accessible through links on departments’ websites and on their FOI responses and correspondence, as well as on a number of non-government websites. This is the first time anyone has surveyed FOI requesters but the response rate was low, with 350 completed surveys. While this has provided a unique insight, the survey is not statistically significant or, indeed, representative, given that those who filled it out may be more engaged, knowledgeable, or aggrieved than the average requester. To reflect this, the figures given are rounded up or down and are used to provide some illustration but without any claim that they are final or representative. The survey was supported by selected interviews of around 15–20 minutes with 13 requesters.

**Media Analysis**

The media plays a key role in FOI for two reasons. First, parts of the media use FOI to access information, and more generally the media defends
the Act against what it perceives to be detrimental reform. Second, and more importantly, as less than one in a thousand members of the public makes an FOI request, the media is also the primary means through which the public perceives FOI and information disclosed by it.

The study examined a range of articles that either used information gained through FOI or reported about the operation of FOI in the national press between 2005 and 2008. Each article was coded according to a set range of questions. This included basic data about the article and a range of impressionistic questions about the view and perspective on FOI and government the article offered the reader. The sample of 1,114 articles from an overall total of 5,570 articles, gave an error level of 2.1%.

When coding for impressionistic attributes such as trust, the key concern was that of bias. To mitigate this, a tight set of guidelines were created, coders were asked to give a “gut” instinct and code on “first impression,” and inter-coder reliability of 90% was sought and obtained.

Has FOI Met Its Objectives?

The analysis begins with the two “core” objectives of transparency and accountability and then examines the secondary objectives: improved decision-making, increased public understanding of decision-making, participation, and trust. In each case, before looking at the United Kingdom, the experience of other countries with similar political systems and FOI legislation is outlined: Australia, New Zealand, and Canada, which passed laws in the early 1980s, and Ireland, which passed a law in 1997. The article draws upon what analysis has been done in each country to offer a comparative insight, though there have been no studies of a similar scale conducted.

Increased Transparency

Increasing transparency is one of the two core aims of FOI. As Heald pointed out, the concave glass roof of the Flemish Parliament is an architectural exemplar of the idea that, at its most basic, transparency “allows for individuals to find out what is happening inside of government,” though more detailed definitions are contested (Heald 2006, 25; Piotrowski 2007, 10).

In comparator countries where FOI pre-dated the United Kingdom, legislation has increased government transparency and openness to different degrees. In New Zealand the Official Information Act (OIA) played a “significant role” in making government more open (White 2007, 219–220). In Australia, although government is “undoubtedly” more open, the Act has fallen “a long way short” of achieving its self-proclaimed objective of extending information access as far as possible, in part because the Act is being used mainly to access personal information (Paterson 2005, 493).
In Canada the Access to Information Act (ATIA) has struggled against a “deeply entrenched culture of secrecy and a lack of commitment to the culture of the Act” (AIRTF 2002). Consequently, although “a wide range of information is being released” it has not “rendered” government “transparent” (Gillis 1998, 157). Ireland began with a strong commitment to pro-active disclosure, with the routine disclosure of a range of information but was hampered by “uneven” compliance with FOI across government and the 2003 reforms to FOI that “limited the potential for public access” (Irish Information Commissioner 2008, 13–14; McDonagh 2006).

In the United Kingdom, as relative latecomer to FOI, transparency has not been propelled by FOI legislation alone. The information revolution, leaks, and the gradual move to government openness before FOI all acted as drivers of government openness. The study examined to what extent FOI increased transparency in two ways: first by analyzing the extent of information released pro-actively (as opposed to being requested), and second by asking how open central government is, particularly about its own activities.

The focus of the first aspect was upon pro-active disclosure, as measuring requests before and after FOI was not possible. The majority of officials interviewed took the view that FOI has led to greater pro-active disclosure: “The amount that’s routinely published is now a large volume. Prior to FOI that certainly wasn’t the case” (Interview 10). Information included travel details, expenses, details of gifts, information relating to special advisers, salaries, overseas travel, and hospitality (Interview 63; Interview 35). Many officials pointed out the close links between FOI and information technology, particularly the ease with which information could be disseminated via departmental websites. The launch of the United Kingdom’s http://www.data.gov website in January 2010, a repository for various statistics and figures thought to be of use to the public, is one high-profile example.

Interestingly, this increase in pro-active disclosure has happened in spite of the publication scheme system. Intended to be a record of documents accessible in each public authority to be consulted by those seeking information, the schemes have been adopted by many FOI regimes. In the United Kingdom, it proved unwieldy and fell into a cycle of lack of public use and, consequently, a lack of maintenance. The schemes, a number of interviewees suggested, may also have been superseded by the development of Internet search engines and innovations in pro-active disclosure such as data.gov. The scheme has now been relaunched in a simpler format.

In terms of the second aspect, most officials were of the view that FOI has made government more open and transparent. Officials spoke of how FOI has given them both an increased awareness and increased confidence in being open; “people are more relaxed and that [the] world doesn’t actually fall apart when you release information” (Interview 49). Officials are “aware of their need to be more open” (Interview 57; Interview 66).
Of those requesters who answered the survey, most agreed that FOI had made government generally more transparent. Sixty percent of those who answered agreed that FOI made public authorities more transparent and only 20% felt it did not. They did, however, hold more nuanced views about their own experiences.

Indirectly, the analysis of FOI stories in the media found that only a few articles, 8%, exposed a new area of government activity (though some were high profile, such as MPs’ expenses and visitors to the prime minister’s country residence), and 12% gave greater detail about a current debate or issue. Nevertheless, surveys by the Information Commissioner’s Office and Ministry of Justice indicate that the wider public tends to agree that FOI has led to greater transparency (ICO 2008, 30; Ministry of Justice 2008a, 2008b).

FOI has undoubtedly made government more transparent. However, there were a number of limitations. First, transparency was dependent on the work of the department and requesters told of how they had “very different experiences with different departments.” Departments used to publishing large volumes of information and answering requests noticed little difference with FOI’s arrival, whereas departments with more ingrained secretive habits, or dealing with more sensitive issues, found it harder. Second, levels of transparency can be affected by the FOI process, bad experiences of the result of disclosure, or the nature of the information. Finally, in terms of the wider populace, some officials felt the media “distorted” information released by FOI. They referred to some journalists searching for “negative” stories or emphasising poor behavior or failure. Journalists using FOI felt that, while government had opened up to an extent, opacity persisted, with examples of delay, obfuscation, and departments “playing games” to prevent disclosure.

In the United Kingdom, the experience is closer to New Zealand than Canada. FOI has met the objective of increasing the transparency of government, allowing the public to see through the glass panes and know “what is going on inside.” FOI has led to more pro-active disclosure of information across a range of issues and government is now culturally more “open.” However, the general transparency of government is uneven. Different departments are transparent to different degrees. In certain rare situations FOI may fail to bring about more transparency. A further insight is that FOI exists in a mutually reinforcing relationship with the information revolution.

Increased Accountability

Increasing government accountability was the second of the two “overarching” FOI objectives. FOI is not a direct tool for accountability but a means by which information can be obtained, and used, by accountability mechanisms. Cain, Fabbrini, and Egan (2003, 117) argued that “FOI can be used effectively to hold governments, past and present, to account for their
actions.” Alongside FOI, a great and growing range of forces and pressures now exist across modern government for accountability, including Parliament, judicial review, external audit, and the media.

In its crudest form, accountability is the act of gaining an explanation or admission of responsibility. As Mark Philp (2009, 28) pointed out, “there is a series of difficulties about how, who should hold whom accountable [and] for what.” This includes the prior question of whether FOI increases accountability. Accountability was divided into two broad types: “narrative” (an explanation) and “culpable” (seeking responsibility or blame).

In Canada, Australia, and New Zealand FOI “has led to greater accountability, but . . . on a small scale: greater scrutiny of ministers’ expenses rather than of their management of economic policy” (Hazell 1989, 208). All experienced “high-profile” disclosures through these minutiae, with senior figures being held to account. In 1987 an Australian tourism minister resigned when “disclosures showed that he had misled Parliament about the tendering arrangements for certain federal contracts” (Hazell 1989, 209). In Canada expenses disclosures led to one ministerial resignation and “the personal wounding of the Prime Minister’s reputation” relating to expenses claims for foreign travel (Gillis 1998, 152).

In Ireland, the expenses of members of Parliament and ministers have been the focus of requests and have caused considerable controversy. In October 2009, after a long running battle, former Tourism minister and speaker of the Dail John O’Donoghue resigned over expenses revealed by FOI requests made by the Sunday Tribune (Sunday Tribune, 2009).

To answer the primary question, whether FOI increases accountability in the United Kingdom, the majority of officials felt that FOI did not increase accountability, in either a culpable, narrative, or a general sense. There exists a range of other forces that are simply far stronger, particularly Parliament. A minority of officials did feel it had increased accountability, commenting that “it has made a difference” with “politically embarrassing” material released and with civil servants having to explain more and ministers being held responsible. By the far the most frequently mentioned case was the disclosure of MPs’ expenses, even before the leaks to the Daily Telegraph in May 2009.

The majority of requesters surveyed felt that FOI had generally increased the accountability of government compared to 20% who disagreed. However, at an individual level only a minority of requesters felt FOI had increased their own ability to make government accountable. Only 20% agreed that it had increased, compared to 30% who felt it had no effect, and 40% who felt it had decreased. This discrepancy may be due to requesters observing the high-profile accountability cases in the press but not achieving the same results with their own requests, or being able to use it in the same way, a reversal of the so-called “experience gap” whereby users of service find them improved on day-to-day level but, due to press reporting, feel they are performing poorly overall (O’Neil 2006, 79).
In terms of how and what, the media analysis and interviews pointed toward an answer. It found that 53% of the articles that used FOI sought accountability in some fashion, whether by generally making a demand or question, or attempting to pin responsibility or blame on a minister or official. However, few attempts elicited a response or reaction from the intended target. One journalist explained how FOI is only effective in particular circumstances: “It depends if politicians [or] pressure groups pick up on it and convert the raw information into a tool of accountability. It is a question of how people react” (Interview 83). High-profile FOI stories frequently featured topical issues, apparent smoking guns or evidence of inconsistency, poor behavior, or failure.

This leaves the question of accountability to whom and for what. Those press articles that sought accountability commonly sought an explanation or responsibility for wrongdoing, failure or inconsistency. The two primary users of FOI information in the press were the media and Parliament. Interest groups, such as civil rights group Liberty and the Taxpayers Alliance, also used FOI, as did a range of local or single issue organisations.

In common with other countries, FOI works as a tool for accountability in the United Kingdom when circumstances, information and opportunity converge. When it does so, it can have a powerful effect. FOI feeds into existing accountability mechanisms, often the traditional mechanisms of Parliament and the media. However, it is not always a useful tool and does not automatically bring accountability.

**Better Decision Making**

The first of the secondary aims was that FOI would improve the quality of decision-making. Increased openness would mean that arguments are based upon evidence (as opposed to through political considerations) and are better shaped and argued due to the possibility that they may be exposed to public view via FOI. However, the minister charged with implementing FOI, Lord Falconer, warned that too much openness could make “good government . . . impossible” (Falconer 2004b).

In other Westminster-style systems abroad, focus has been upon the dangers of FOI, namely, the persistent problem FOI has been alleged to cause, the so-called “chilling effect” whereby information is either sanitized or meetings are conducted in ways to avoid creating a record, such as by telephone or face-to-face to avoid responsibility or blame (Hood 2007).

Hazell’s study found that fears about the content of written submissions to ministers continued to be expressed after the Act’s implementation, but “it is impossible to find any evidence to substantiate them” (1989, 204). A later, albeit narrow, study in Canada by the Access to Information Review Task Force (2001) found no evidence of an effect for good or ill. However, the Irish government amended its Act to protect “ongoing
deliberations” and extend the time delay on access to Cabinet records. The concerns were primarily based upon a high level review of civil servants, though it is also notable that the evidence was evidence of concerns rather than evidence of the concerns being justified (High Level Review Group 2002, Section 3). White’s study of New Zealand does accept anecdotal evidence of the existence of a chilling effect, though it is not clear to what extent it is described in the abstract rather than with concrete examples, nor whether it is FOI or other factors.

In the United Kingdom, interviews with officials found little evidence of FOI having positively impacted upon the quality of advice given to ministers, the quality of records made, the evidence base, or relations with third parties. Other forces proved far stronger: “A much bigger driver [than FOI], has actually been the presumption that policies should be consulted on and that there is a good evidence base behind them,” as driven, for example, by the Better Regulations Initiative and the general move toward more evidence-based policy-making (Interview 42). The dominant view was that nothing has changed, with a minority describing a slight positive alteration where, for example, “inappropriate” comments were removed from minutes or notes.

Nor is there evidence for a “chilling effect” in the United Kingdom. As with other countries, anecdote abounds but hard evidence is difficult to find. Although isolated instances were found where FOI may have affected this, they were rare. In the main, changes in recording were due to other factors, notably the use of electronic communications, fewer resources to keep “full” records, and the changed pace of decision-making. Moreover, many officials pointed out that the dangers of not having a decision outweighed the dangers of having one and it being released. As one official explained, civil servants need a record “to protect themselves, to record things, to communicate with people and if they are going to hand over the file,” concluding that “on the whole, life proceeds as before” (Interview 44).

Increased Public Understanding of Decision-Making

As well as improving decision-making, it was hoped that FOI would “show citizens how government works—and...how decisions are taken” (Falconer 2004a).

Other countries experience is somewhat ambiguous. In Australia FOI has “increased community awareness about governmental actions and made the community more demanding of explanations,” though it is not driven by the public (Paterson 2005, 493). In Canada, disclosure “frequently reveals only the minutiae of government...not the big policy issues” (Gillis 1998, 157). By contrast, White found that a range of papers are now released routinely in New Zealand, including Cabinet papers, though it was not clear if this had then fed through to public understand-
ing (White 2007, 160). In Ireland, access to decision-making may have been affected by the 2003 reforms described above.

In the United Kingdom, FOI is one part of a wider drive by government to disseminate more, and higher quality, information about decision-making. This is primarily through the media, though the Internet has been trumpeted as a new instrument to inform the public with some evidence that it may be doing so (Boulianne 2009, 205). The study examined whether FOI had led to greater public understanding of two aspects of decision-making: how (process) and why (reasoning).

In both cases FOI had little effect. The media rarely reported FOI disclosures about either the how or why of decision-making. Only 13% of articles that used FOI gave a better insight into how a decision was made and the process that it went through. Similarly, the requesters who answered our survey rarely asked for such information. Although 30% of those who answered felt that their use of FOI had increased their understanding of how government works, 40% felt there had been no effect and 10% felt it had decreased their understanding (Survey of Requesters). Twenty percent of respondents felt FOI had increased their understanding of the reasoning behind a decision, with 40% claiming no effect and 30% feeling their FOI request had decreased it.

A number of explanations can be given. First, FOI is not powerful enough to shift upward the persistently low levels of interest in or understanding of government. In the words of one official, “if people don’t care, you’re not going to make them care” (Interview 17).

Second is the number of relevant FOI disclosures. Very few people use FOI, so only a few people’s understanding of government can be directly affected. Requests are rarely for information that would disclose the reasoning behind a decision or process through which it goes: One official described FOI requests as being used in to obtain facts rather than learn about processes (Interview 71). Moreover, even when asked for, it does not necessarily illuminate; a requester found that “a lot of the background reinforces but does not enlighten” (Interview with Requester 7).

Moreover, information relating to decision-making has strong protections under the Act and is one of the main sources of conflict and tension across regimes, as seen in the United Kingdom with the use of the veto. One journalist described this as the main reason for the lower than expected impact on public understanding (Interview 83).

The fourth reason concerns the context into which the information is released. If the information revealed fits commonly held assumptions it can become part of the “common narrative [and] media account of what happened.” For example, the revelations about the dossier on Iraq’s weapons of mass destruction pursued by journalist Chris Ames supported the idea that the case for war had been manipulated. However, if information fails to fit it can be “forgotten” (Interview 81).
Increased Participation

FOI was also intended to widen public participation in government, stimulating involvement by those not previously involved through the release of information. Lord Falconer argued simply that “without openness we cannot hope to encourage greater participation in our democratic life” (Falconer 2004a).

Five years into the Australian Act it “has not achieved the ambitious aim of ... increasing public participation in the political process” due to a combination of lack of interest and strong exemptions (Hazell 1987, 3–4). Despite this, in March 2009 the Rudd government suggested that increasing participation be reinserted in as an objective of FOI (Department of the Prime Minister and Cabinet 2009, 10).

There is no corresponding examination of FOI in Canada, but recent figures indicate that the public are not heavy users of the Act: In the years 2000–2001, 40% of requests came from business with only 30% coming from the public (AIRTF 2002, 9). In Ireland, between 1998 and 2007, the public (combined with NGOs and others) made up around 50% of requesters with the media accounting for 15% and business around 7% (Ministry of Finance 2008, 14).

FOI has arrived in the United Kingdom after a long series of attempts to engage the public in decision-making. This has included the increased use of consultations, referenda, citizens’ juries, and online petitions (Ministry of Justice 2008c). The Internet has also been cited as a tool for stimulating wider public participation but its effects are disputed (Xenos and Moy 2007, 708: Boulianne 2009, 205).

The survey of requesters used a range of measures for participation adapted from the Hansard Society, mixed with nonpolitical activities undertaken by FOI requesters elsewhere, to ask requesters what they did with the information they received (Hansard Society 2009). Some requesters surveyed did use information to participate in political activity, with 10% using information gained to voice a disagreement with policy, 7% passing the information to a campaign, and 5% writing to their MP. High-profile examples of FOI provoking participation include the long-running controversy over the expansion of Heathrow airport, where disclosure highlighted apparent collusion and cover-up, which led to a demonstration on the roof of Parliament with documents obtained through FOI thrown down as paper airplanes (Interview 87).

The level of “political” participation evidenced in our survey was limited by a number of factors. First, requests are as often used for nonpolitical activity as for political activity. FOI was often used for “research,” which covered a broad range of subjects but often personal, such as academia or hobbies, rather than political. Other common follow-up activities included submitting another FOI request and doing nothing with the information (Survey of Requesters).
Second, the top five types of requester from our survey were private individual (40%), academic or student (10%), campaign worker (10%), journalist (10%), and commercial business (7%). Of these, the academic, journalist and commercial business are using FOI professionally, nonpolitically, rather than for political participation, though the journalist could generate interest for others. The campaign worker, presumably in most cases, is already involved in some way in the political process. This left only a “rump” of around 40% who were members of the public (Survey of Requesters).

Third, among the members of the public not all were newly engaged in the political process by FOI. Some appeared to be long-time campaigners. The requesters interviewed, though describing themselves as private individuals, were often running a de facto campaign or pursuing an issue. This finding may not be representative and needs to be qualified by the low response numbers and the fact that the more engaged may be over-represented in our survey. Nevertheless, the possibility that FOI encouraged those already engaged was supported by officials who claimed that “those who are asking for information under FOI would have already been the people who are participating in the political process” (Interview 71; Interview 64).

Finally, officials pointed out that FOI could not overcome the barriers that excluded all but the small group from engaging. FOI would not overcome distrust, apathy, lack of interest: “If people aren’t interested and don’t want to participate, then they won’t” (Interview 17). Officials were also asked to place their department on the level of participation on a specially adapted ladder of participation based upon Arnstein’s (1969) ladder. Many officials took the view that FOI was not the cause of participation and, moreover, levels of participation were dependent on the type of work done by the department.

In the United Kingdom, while FOI has provided a new avenue for those already engaged, its ability to widen participation is limited by the fact that it is used for nonpolitical purposes, professionally rather than politically, and the same barriers that prevent other methods from increasing participation prevent FOI from doing the same.

### Increased Trust in Government

The final issue was whether FOI has increased public trust in government. One measure of FOI success was whether the public feel government is “more trustworthy” (Falconer 2004a). Not all academics agree that FOI can or will increase trust. Alasdair Roberts posited two reasons as to why FOI is unlikely to increase trust. First, “one obvious reason is the steady supply of news stories about mismanagement or abuse that will be produced by FOI.” Second, “the law creates a process that guarantees high profile ongoing conflict over access” that will then “work to reinforce perceptions of secretiveness” (Roberts 2005, 10). In terms of the indirect effect on the
wider public, Cain, Fabbrini, and Egan (2003, 139) pointed out that the media will “seize FOI opportunities to get important information that exposes government incompetence, inconsistency.”

Roberts (2006b, 119) pointed out that trust has not increased in both Canada and the United States despite the adoption of FOI laws. Gillis (1998, 152) referred to the damage inflicted on the Conservative government over expenses disclosures, which contributed to the “declining popularity and credibility” of the Conservative government and the growth of a “poisonous environment” around Canada’s Act (Gillis 1998, 153). White’s (2007, 209, 38) detailed study in New Zealand found “a lack of trust permeating through many large and small OIA issues” with trust shaping the Act rather than vice versa, as the political environment in which OIA existed became increasingly hostile. In common with the United Kingdom, perceptions of the operation of the Act itself are also shaped by a small percentage of difficult and controversial requests:

Although it might only be a small group of people who experience the OIA in this way, they are the agenda setters...so even if this group of people is relatively small, their perception has disproportionate prominence. (White 2007, 9)

The debate around FOI and trust is important because conventional political discourse holds that trust in government has been declining across Western Europe and other advanced democracies since the late 1960s and early 1970s with various events or societal shifts attributed as causal (see Dalton 2005; Hetherington 2005; Levi and Stoker 2000; Nye, Zelikow, and King 1997). However, the view that there existed a “Golden Age” in which government was trusted by large parts of the populace has been challenged, not least because the data are sparse and inconclusive (see Van De Walle, Van Roosbroek, and Bouckaert 2008). Nevertheless, politicians appear to believe so, or at least feel that trust levels need to be increased. FOI was seen as a solution, based upon the logical idea that the more open and honest you are the more you will be trusted.

In the United Kingdom, one official succinctly echoed Roberts’ views, speaking about the potential “paradox” of FOI and trust on the wider population:

Paradoxically, at least to start with, trust might well go down in the government as...public coverage produced tends to be about government failure and there will always be issues in which the government appears to be resisting disclosure. (Interview 21)

Many officials spoke of how the media highlight FOI information in a negative way. The media analysis strongly supported this point. Only 3% of stories increased the reader’s trust in government; more than half of the articles, 58%, reduced trust in government. More than a third, 39%, had no effect, being “business as usual” or historical FOI requests. However, officials did not discriminate between types of journalists, and few officials saw how information released may actually be legitimate
evidence of questionable behavior as, for example, in the MPs’ expenses case. By contrast, journalists felt resistance was the issue. In the minority of high-profile cases covered by the national press resistance, attempts to “spin,” delay, deny, or manipulate disclosure exacerbated the problem and made the government appear secretive.

All these results show that FOI is subsumed within the wider conflict between government and parts of the media. The respective complaints that the media distorts or reports only negative behavior and the government spins is not peculiar to FOI. FOI disclosure and reporting is caught between the growing conflict with the government’s increasingly sophisticated media strategies and aggressive and negative political journalism from parts of the media (Kuhn 2007, 265).

The classic case, though extreme in terms of its scope and partly a result of a leak, is the MPs’ expenses controversy that took place in the United Kingdom in 2009. Following a four-year campaign using FOI and resistance from the Parliamentary authorities, the details of MPs’ expenses, due to be released in July 2009, were leaked in unredacted form to a national newspaper. The ensuing controversy led to the resignations and wholesale reform of both houses’ expenses systems. Abuse and mismanagement combined with four years of resistance to create a story that led to a sharp decline in public trust (Times 2009a, 2009b). On interesting point is that while it led to a drop in trust (from a low level), it appears to have acted to reinforce what many people already thought about MPs rather than being a revelatory event (Hansard Society 2010, 6).

A more unexpected finding was the direct effect of FOI. Requesters who responded to our survey were also distrustful as a result of FOI. Very few (3%) felt FOI increased trust in government with 40% feeling it had decreased their trust. Requesters indicated a lack of trust and confidence in central government, with one typical comment being “FOI has eroded it completely . . . the culture of secrecy is an absolute disgrace” (Interview with Requester 5).

In the United Kingdom, FOI has not increased public trust in government. The reasons are similar to those given by Roberts, less about FOI than the context in which FOI exists. First, public perceptions are influenced by the minority of FOI stories that achieve prominence. These frequently involve controversy, “negative” aspects of performance and, often, cases of resistance or apparently secretive behavior. Thus FOI, in political reality, means that governments are not more open about what they do but more open about their mistakes and failures. FOI is subsumed within the wider conflict between parts of the press and government, with government seeing information as being distorted and journalists seeing it as being withheld, manipulated or “spun.” Although a minority, these are the high-profile cases that influence wider public perceptions. Second, it is not simply an issue of media and government relations, as FOI is shaped by pre-existing low levels of trust, as the MPs’ case appears to show. The media reports stories that conform to
poor expectations of politicians. Requesters’ lack of trust may be reinforced by their use of FOI to disagree with the government or pursue a particular issue.

Conclusion

In the United Kingdom, FOI has met its core objective of transparency and, in the correct circumstances, accountability. Yet it has not achieved the secondary objectives, the “wider transformative” aims, that flow from them.

The fears of those who felt that political institutions and their “culture of secrecy” would undermine FOI have proved, on the whole, groundless. The dense network of secretive rules and attitudes appeared to present a significant barrier. There has been resistance, obstruction, and uneven levels of openness. However, FOI does bring increased transparency by information release, and accountability, in the correct circumstances by questioning and receiving an answer based upon that information. This is because both rules and attitudes toward openness had already been shifting prior to FOI as access reform, ICTs and growing concern for consultation steadily eroded the obstacles and prepared the ground for FOI. This meant that FOI was not as “difficult” or “unattractive” a policy to Whitehall as many feared.

Yet FOI does not appear to have achieved some of the wider “transformative” democratic aims of trust or participation. The democratic objectives are “overstated as well as vague” and the outcomes do not “logically result” from FOI (Darch and Underwood 2010, 46). To take the claim of overstatement, politicians in the United Kingdom oversold what FOI could do. The comment by Lord Falconer, often a realist in regard to the impact of the legislation, is typical:

Some Freedom of Information releases will bring with them disobliging headlines for the government. But each and every release will contribute day by day towards our long term vision of a more transparent government in which people feel greater confidence. (Falconer 2004b)

The comment raises two questions. First, given the power of the media and the fact that so few people use FOI, how will the requests “day by day” outweigh the “disobliging headlines”? Second, is it certain that the daily releases themselves will be so positive as to increase confidence in government?

Nor do the outcomes hoped for “logically result from FOI.” The outcomes rely upon the requester or the public reacting in a certain way. The way in which they would react, moreover, would run counter to patterns of public understanding, participation and trust before FOI.

The political environment is a decisive, if difficult to measure, factor in FOI. The impact of FOI is “highly idiographic” and the “social and political contexts and specific histories of different countries” need to be taken
into account (Darch and Underwood 2010, 7). FOI is not powerful enough a tool to tackle the complex, deep-rooted issues that prevent increased participation, understanding, or trust in the United Kingdom. Although FOI was intended to shape the political environment, the environment also shapes the Act.

The effect of wider political culture can also be seen in small studies elsewhere. In Italy and Switzerland, access laws are very little used but the reasons for their lack of use are very different. Italy’s 1990 access law is little used due to a deep distrust in the bureaucracy and reliance on personal contacts, whereas in Switzerland the new law is little used in part because the government is so open that such legislation may be superfluous (Cain, Fabbrini, and Egan 2003; Holsen and Pasquier 2009).

This is not to say FOI has failed. “Many policy reforms fail to achieve their goals” and FOI was given a particularly high set of goals within an environment not conducive to some of them (Patashnik 2003, 226). Problems attendant on FOI stem from the inherent contradiction whereby FOI seeks to create “a legal framework based on reasonableness . . . in an unreasonable environment” (White 2007, 295).

This is not to say FOI will never bring about the secondary objectives in the future or elsewhere. Nor does it mean what FOI currently achieves will remain stable. Policy reform is often a “dynamic process” and the success of any policy reform hinges upon the “behavioural changes that a reform brings over time” (Patashnik 2008, 25–26).

Transparency systems do have a tendency change over time. However, they appear to grow weaker rather than stronger. Fung, Graham, and Weil’s (2007) study of so-called targeted transparency found that without champions in government or external political coalitions willing to apply pressure, transparency policies “tend to remain in [a] political dead end.” If these conditions “remain unchanged, policies will be underutilized, implemented weakly and subject to gradual erosion” (Fung, Graham, and Weil 2007, 112).

The government’s view is a crucial arbiter, as with all reforms (Moynihan and Pandey 2004, 26). Fung, Graham, and Weil (2007, 112) argued that transparency policies typically lead to “concentrated costs and dispersed benefits.” The resources consumed by FOI, as well as political difficulties, mean that governments frequently become lukewarm toward FOI. The resulting resistance or lack of support that percolates from government to bureaucracy can fatally weaken FOI, as in Ireland, where the introduction fees had a substantial impact upon use. The Taoiseach Brian Cowen also expressed scepticism about how FOI is working in Ireland, describing FOI as “an expensive and time-consuming aspect of government work,” and while supporting individuals use of it, claiming that “trawling” for information constituted an “abuse of the process” (Independent 2009).

Britain’s coalition government is committed to extending transparency in order to restore trust in government and promote public participation
and make economic savings (Cameron 2010; Maude 2010). Inspired by experiments in the United States, it has begun publishing online detail of salaries and central and local government expenditures. It has also committed to extending the FOI to a range of new bodies that may include railways and utility companies. Yet, as Gordon Brown once admitted, FOI “can be inconvenient, at times frustrating and indeed embarrassing for governments” (Brown 2007). The honeymoon between new administrations and transparency can be short as the political costs are felt. More importantly, the looming public spending cuts could have a severe impact upon the size of FOI budgets. It remains to be seen what impact this will have on FOI.

Note
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References


———. Forthcoming. “A Great and Revolutionary Law? The First Four Years of India’s Right to Information Act.” Public Administration Review.


