

<b>Title:</b> <b>Extending the coverage of Freedom of Information Act 2000 under Section 5</b>  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Information Commissioner's Office	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> MoJ 073
	<b>Date:</b> 04/03/2011
	<b>Stage:</b> Development/Options
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Catherine Bennion	

## Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> <p>The Freedom of Information Act 2000 (FOIA) gives any person the legal right to ask a public authority covered by the Act for recorded information that they hold. However, coverage is limited to bodies listed in Schedule 1 of the FOIA or those who meet the criteria set out in section 6. Section 5(1)(a) of the FOIA enables the Secretary of State to make an order to extend the coverage of the FOIA to any organisations that appear to him to be exercising functions of a public nature. Government intervention is required in order to extend the scope of the FOIA to include bodies that exercise functions of a public nature. We will broaden the application of the FOIA using the power under section 5 and intend to consult with a number of bodies we consider may meet the criteria for inclusion under this provision.</p>	
<b>What are the policy objectives and the intended effects?</b> <p>The policy objectives underlying the FOIA include:</p> <ul style="list-style-type: none"> <li>• Encouraging greater openness, transparency and accountability</li> <li>• Enabling greater scrutiny over the delivery of public services</li> <li>• Meeting the public demand for greater access to official information about services that affect them</li> </ul> <p>The intended effect is to ensure that bodies who exercise functions of a public nature are subject to the same scrutiny as other public authorities in relation to those functions and as a result become more open, transparent and accountable.</p>	
<b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b>  <p>Option 0 - Do nothing: retain the current coverage of FOIA (base case)</p> <p>Option 1: To extend the scope of the FOIA to a number of bodies or types of bodies that exercise functions of a public nature (listed in paragraph 1.16), subject to the outcome of consultation.</p> <p>Option 1 is the preferred option as it is expected that this would lead to greater openness, transparency and accountability.</p>	
<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	The review will commence in 2011
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	No

**SELECT SIGNATORY Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY:..... Date:.....

# Summary: Analysis and Evidence

# Policy Option 1

Description: Subject to the outcome of consultation, to include the bodies and types of bodies listed in paragraph 1.16 within the scope of the Freedom of Information Act (2000)

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£12.9 m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	£0.05 million	£1.5 million	£12.9 million

### Description and scale of key monetised costs by 'main affected groups'

Transition costs to public bodies brought within scope of the FOIA are expected to be less than £0.1m in total. Based on a series of illustrative assumptions, indicative ongoing annual costs to public bodies newly subject to the FOIA (excluding harbour authorities and awarding bodies) for responding to requests and any internal reviews might be around £1.5m. Within this total, for individual bodies with the highest volume of requests this might be around £0.2m to £0.3m each. These illustrations are subject to some uncertainty.

### Other key non-monetised costs by 'main affected groups'

The transition and ongoing costs to harbour authorities and awarding bodies have not been monetised, due to the wide variety in these bodies. There will be ongoing costs to Information Commissioner's Office ("ICO") from an increased number of appeals and enforcing proper application of the FOIA. There will also be costs to the Information Tribunal and higher courts, and to wider public sector from additional follow-up FOIA requests.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised benefits by 'main affected groups'

### Other key non-monetised benefits by 'main affected groups'

Extending the FOIA is intended to increase the efficiency, accountability and openness of those bodies brought within the scope of the Act, which will benefit society. Increased public access to information could lead to greater scrutiny, increased awareness and greater confidence in those bodies brought within scope. Organisations currently within the scope of the FOIA may receive fewer requests (if these are instead directed to bodies brought within scope), although the net impact is unclear.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

- It has been assumed that all the functions of the bodies considered will be subject to the FOIA.
- It is not possible to predict, with any certainty, the volume of requests that certain bodies would receive. There are significant risks that these could be different and so the costs would differ to those estimated.
- The costs of time taken to respond to FOIA requests are based on figures that include central government departments which are generally higher than other bodies. Therefore, there is a risk that the costs to the bodies outlined could be different than anticipated.
- There is a risk that some of the assumptions outlined in the evidence base, based on the Frontier Economics report, are out of date and no longer valid to the proposals.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB: N/Q	AB savings: 0	Net: N/Q	Policy cost savings: 0	No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England, Wales and Northern Ireland			
From what date will the policy be implemented?		April 2012			
Which organisation(s) will enforce the policy?		Information Commissioner's Office, Tribunals Service, HMCS			
What is the annual change in enforcement cost (£m)?		N/Q			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/Q		Non-traded: N/Q	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: N/A		Benefits: N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	p.17
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	p.17
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	p.17
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	p.17
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	p.17
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	p.17
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	p.17
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	p.18
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	p.18
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	Yes	p.18

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Freedom of Information Act 2000 ( <a href="http://www.legislation.gov.uk/ukpga/2000/36/contents">http://www.legislation.gov.uk/ukpga/2000/36/contents</a> )
2	Freedom of Information Act 2000 – annual statistics on implementation in central government, Ministry of Justice publication, ( <a href="http://www.justice.gov.uk/publications/docs/foi-statistics-report-2009.pdf">http://www.justice.gov.uk/publications/docs/foi-statistics-report-2009.pdf</a> )
3	Independent review of the impact of the Freedom of Information Act, a report prepared for the Department of Constitutional Affairs, Frontier Economics (October 2006), ( <a href="http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf">http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf</a> )
4	Coalition programme for government, ( <a href="http://programmeforgovernment.hmg.gov.uk/files/2010/05/coalition-programme.pdf">http://programmeforgovernment.hmg.gov.uk/files/2010/05/coalition-programme.pdf</a> )

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	£0.05m									
<b>Annual recurring cost</b>	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m
<b>Total annual costs</b>	£1.55m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section

# Evidence Base (for summary sheets)

## 1. Introduction

- 1.1 This Impact Assessment examines the options for extending the scope of the Freedom of Information Act 2000 (“FOIA”) to bodies that are exercising functions of a public nature and the impact of such an extension on those organisations and other affected groups.
- 1.2 The FOIA contains a provision (under section 5) for the Secretary of State to bring within the scope of the FOIA bodies that exercise functions of a public nature or who are providing a service under contract that is a function of a public authority. The Ministry of Justice intends to consult with a number of bodies as to whether they exercise functions of a public nature to consider including them within the scope of the FOIA via a section 5 order.

## Background

- 1.3 The Government is committed to facilitating greater openness and transparency in the public sector in order to enable the public to hold politicians and public bodies to account.
- 1.4 Since coming into force in 2005, the Freedom of Information Act is now widely used across central and local government<sup>2</sup> and the wider public sector. The Government considers that it is now time to consider extending the scope of the Act to other bodies and organisations not currently covered by the Act to improve the openness, transparency and accountability of those organisations.
- 1.5 The primary objective of the FOIA is to increase the openness, transparency and accountability of those bodies covered by the Act. The Government considers that the right to information:
  - Provides more information about how taxpayers’ money is spent;
  - Enables greater scrutiny of public services and allows the public to gain information about services that affect them;
  - Provides the context for better informed public debate;
  - Holds bodies to account for decisions that affect the public; and
  - Eliminates waste and duplicated effort allowing for more efficient and effective public services.
- 1.6 Section 5 of the FOIA enables the Secretary of State to designate two types of person or organisations as public authorities, those which:
  - appear to the Secretary of State to exercise functions of a public nature, or
  - provide, under a contract made with a public authority, any service whose provision is a function of that authority.
- 1.7 The Secretary of State makes a designation by making what is called a section 5 order. Section 7 of the Act requires that any section 5 order must specify the functions or services provided under contract for which that public body is designated. The Act would not apply to any other information held (which is not specified in a section 5 order) and therefore would not necessarily cover all the work carried out by an organisation. Consequently, all of the functions of some organisations could be subject to FOIA requests whereas in other cases the number of functions subject to FOIA would be more limited.
- 1.8 It is possible in some situations for a section 5 order to designate a class of organisations, such as those contracted to run prisons, rather than listing individual organisations. This would help reduce the number of orders needed and ensure greater consistency of coverage.

## Problem under consideration

- 1.9 The Ministry of Justice intends to consult with a number of bodies about whether they exercise functions of a public nature to consider including them with the scope of the FOIA via a section 5 order. We believe that bodies that exercise functions of a public nature should be subject to the same scrutiny as other bodies covered by the FOIA.

---

<sup>2</sup> Freedom of Information Act 2000 – Annual Statistics on implementation in central government, Ministry of Justice publication

- 1.10 If a body carries out functions of a public nature then the public should have the general right to information provided by the FOIA. The public should have an enforceable right to information about services that affect them and should be able to hold bodies to account for decisions that affect them in respect of those functions exercised that are public in nature. Therefore, the Ministry of Justice intends to consider whether a set of bodies meet the criteria set out in section 5. Where considered appropriate, these bodies would be brought within the FOIA, via a section 5 order,
- 1.11 The bodies being considered have been selected on the basis that they appear to exercise functions of a public nature. The bodies have been drawn from correspondence the department has received, responses to a public consultation in 2007 about whether the Act should be extended and who it should be extended to and the coalition government's pre-election commitments. In considering who we intend to consult we have tried to look as widely as possible and to consider a range of bodies. We intend to keep the bodies covered by the Act under review and may consider the addition of further bodies in the future.
- 1.12 The Secretary of State must consult with each organisation, or with representative organisations, before designation under section 5 can take place. The consultation with those bodies proposed to be brought within the scope of the Act will firstly consider whether they meet the criteria under section 5 in respect of some or all of their functions. It will also consider when, should a decision be made to include any of the bodies within the FOIA, the FOIA should be implemented in their organisation in order to give them enough time to make sure they have the correct processes in place to deal with requests.

### **Economic rationale for intervention**

- 1.13 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.14 The Government considers that there are equity and efficiency arguments for government intervention. It is considered inequitable that a number of bodies are not currently subject to the FOIA while others are. It is considered that organisations that exercise functions of a public nature or use taxpayer's money should also be within the scope of the FOIA. Extending the coverage of the FOIA would give the public greater access to official information about services that affect them, ensuring greater public scrutiny over those bodies that exercise functions of a public nature and potentially greater public confidence in the functions they perform or public services they provide. This may generate direct 'economic welfare' benefits. There may be further 'economic welfare' benefits if as a result, the bodies operate more closely in line with the preferences of society.
- 1.15 The proposal may also generate efficiency benefits if the increased scrutiny provided by the FOIA leads to those bodies being brought into scope operating more efficiently. However, as the proposal is likely to increase the administrative burdens placed on the affected bodies, the proposal will generate some associated efficiency costs. The proposal would be justified if the benefits outlined above outweigh the costs of these administrative burdens

### **Affected Stakeholder Groups, Organisations and Sectors**

- 1.16 Extending the scope of the FOIA would primarily impact on those organisations which would become subject to the FOIA. The following organisations are those we intend to consult regarding including them within the scope of the FOIA:
- **Approved Regulators under the Legal Services Act 2007:** this includes the Association of Chartered Certified Accountants, Association of Costs Lawyers, Chartered Institute of Patent Attorneys, Council for Licensed Conveyancers, Institute of Legal Executives, Institute of Trade Mark Attorneys, Law Society, Master of the Faculties and the General Council of the Bar
  - **Advertising Standards Authority:** is the UK's independent advertising watchdog.

- **Awarding Bodies** (examination boards)(where not already covered)<sup>3</sup>: responsible for setting and awarding secondary education level qualifications, such as GCSEs, Standard Grades, A Levels, Higher and vocational qualifications, to students in the UK.
- **British Standards Institution**: The national standards organisation for the UK.
- **Carbon Trust**: provide specialist support to business and the public sector to help cut carbon emissions, save energy and commercialise low carbon technologies<sup>4</sup>.
- **Energy Saving Trust**: the UK's leading impartial organisation helping people to save energy and reduce carbon emissions<sup>5</sup>.
- **Harbour authorities** (where not already covered)<sup>6</sup>: develop and manage harbours.
- **Independent Complaints Reviewer**: The ICR investigates complaints made by members of the public, businesses, professional advisors and others in relation to several public bodies including the Charity Commission and HM Land Registry<sup>7</sup>.
- **Independent Schools Inspectorate**: a body approved for the purpose of inspection of independent schools under Section 162A of the Education Act 2002<sup>8</sup>.
- **Local Government Association**: represents Local Government across England and Wales<sup>9</sup>.
- **National Register of Public Service Interpreters**: provides Public Service organisations, and agencies that they may work through, with a register of professional, qualified and quality assured interpreters<sup>10</sup>.
- **NHS Confederation**: the independent membership body for the full range of organisations that make up the NHS<sup>11</sup>
- **Quality Assurance Agency**: check how well individual universities and colleges meet their responsibilities for academic standards and quality, identifying good practice and making recommendations for improvement<sup>12</sup>.
- **School Inspection Service**: is an independent body established to carry out school inspections under Section 162A of the Education Act 2002<sup>13</sup>.
- **The Bridge Schools Inspectorate**: inspect schools belonging to the Christian Schools' Trust and the Association of Muslim Schools throughout England<sup>14</sup>.
- **Traffic Penalty Tribunal**: decide appeals against parking penalties issued by Civil Enforcement Authorities in England (outside London) and Wales and against bus-lane penalties issued by Civil Enforcement Authorities in England (outside London)<sup>15</sup>.
- **The Trinity House Lighthouse Service**: the General Lighthouse Authority for England, Wales, the Channel Islands and Gibraltar, responsible for a range of general aids to navigation<sup>16</sup>.
- **The Panel on Takeovers and Mergers**: an independent body whose main functions are to issue and administer the City Code on Takeovers and Mergers and to supervise and regulate takeovers and other matters to which the Code applies<sup>17</sup>.

<sup>3</sup> Some awarding bodies are already covered by the FOIA by virtue of their ownership. Awarding bodies that are part of a public authority that are within the Act and companies that are owned by a public authority (by virtue of section 6) already fall within the scope of the FOIA. For example, Cambridge Assessment is a department of Cambridge University and is therefore subject to the Act.

<sup>4</sup> <http://www.carbontrust.co.uk/Pages/Default.aspx>

<sup>5</sup> <http://www.energysavingtrust.org.uk/About-us/What-we-do>

<sup>6</sup> Municipal harbour authorities are already covered as they are owned by local authorities who are already covered by the FOIA. Trust ports in Northern Ireland are covered by the FOIA by virtue of being listed in Schedule 1 of the FOIA.

<sup>7</sup> [http://www.icrev.org.uk/lr\\_about.shtml](http://www.icrev.org.uk/lr_about.shtml)

<sup>8</sup> <http://www.isi.net/Static/About.aspx>

<sup>9</sup> <http://www.lga.gov.uk>

<sup>10</sup> <http://www.nrpsi.co.uk>

<sup>11</sup> <http://www.nhsconfed.org/Pages/home.aspx>

<sup>12</sup> <http://www.qaa.ac.uk/aboutus/WhatWeDo.asp>

<sup>13</sup> [http://www.schoolinspectionsservice.co.uk/about\\_us.html](http://www.schoolinspectionsservice.co.uk/about_us.html)

<sup>14</sup> <http://www.bridgeschoolsinspectorate.co.uk/home>

<sup>15</sup> <http://www.trafficpenaltytribunal.gov.uk>

<sup>16</sup> [http://www.trinityhouse.co.uk/about\\_us/what\\_we\\_do/index.html](http://www.trinityhouse.co.uk/about_us/what_we_do/index.html)

- **The Parking and Traffic Appeals Service:** consider appeals against Penalty Charge Notices issued by the London local authorities<sup>18</sup>.

1.17 In addition to the organisations that would be affected by an extension of the FOIA, the following groups would also be affected by the proposals:

- **Private citizens** – would be able to make Freedom of Information (FOI) requests to the bodies brought within scope of the FOIA. They would have a right to be informed in writing by that body whether it holds information of the description specified in the request; and if that is the case, to have that information communicated to them subject to any exemptions that might apply.
- **Journalists** – would be able to make FOI requests to the bodies brought within scope of the FOIA. They would have a right to be informed in writing by that body whether it holds information of the description specified in the request; and if that is the case, to have that information communicated to them subject to any exemptions that might apply.
- **Businesses** - would be able to make FOI requests to the public bodies brought within scope of the FOIA. They would have a right to be informed in writing by that public body whether it holds information of the description specified in the request; and if that is the case, to have that information communicated to them subject to any exemptions that might apply.
- **Other bodies already covered by the FOIA** – those bodies already within the scope of the FOIA could see a reduction in the number of requests they receive if requests are directed towards a body that is brought within scope. However, it is also possible that if more information is available following the inclusion of these bodies then other bodies already covered may receive more requests as follow-up requests could be made about the available information.

## 2. Costs and benefits

2.1 This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of the option are compared to the "do-nothing" option. Impact Assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.

2.2 There is only one piece of independent research that the Government can use to estimate the likely cost implications of extending the FOIA. In 2006 Frontier Economics produced a report on the impact of the FOIA.<sup>19</sup> Inevitably, the public interest in a certain body is likely to vary over time dependent on any high profile issues around at any one time.

2.3 In conducting the cost benefit analysis, we have considered the effects of each policy option over a 10-year period. In order to estimate costs over this period we have used the 3.5% social discount rate (taken from the Treasury's Green Book<sup>20</sup>).

### Option 0: "Do Nothing"/Base Case

2.4 Under the "do-nothing" option the FOIA would not be extended and no additional public bodies would be included within scope of the FOIA.

2.5 In 2009, monitored central government bodies received a total of 40,548 non-routine FOI and Environmental Information Regulation ("EIR") requests<sup>21</sup>. Departments of State received 59% of these requests while other monitored bodies received the remaining 41%<sup>22</sup>.

<sup>17</sup> <http://www.thetakeoverpanel.org.uk>

<sup>18</sup> <http://www.parkingandtrafficappeals.gov.uk/aboutus.htm>

<sup>19</sup> This can be found at <http://webarchive.nationalarchives.gov.uk/http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

<sup>20</sup> HM Treasury's Green Book, Appraisal and Evaluation in Central Government, [http://www.hm-treasury.gov.uk/d/green\\_book\\_complete.pdf](http://www.hm-treasury.gov.uk/d/green_book_complete.pdf)

<sup>21</sup> Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, executive summary, p.4

<sup>22</sup> Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, executive summary, p.4

- 2.6 If no action is taken the bodies listed who exercise functions of a public nature would continue to be exempt from FOI requests. These bodies may attract public criticism for not being open, transparent and accountable. In addition, there is a risk that members of the public would lose confidence in public services if they are unable to obtain information that they are interested in or in services that affect them and that other bodies already covered by the FOIA may receive a higher volume of requests as they will receive requests about those bodies not currently covered.
- 2.7 The “do-nothing” option is compared against itself and therefore its costs and benefits are necessarily zero, as is its net present value (NPV)<sup>23</sup>.

### **Option 1: Make a section 5 order to include the bodies or types of bodies listed in paragraph 1.16 within the scope of the Freedom of Information Act (2000)**

#### Description:

- 2.8 This option is to add some or all of the bodies listed at paragraphs 1.16 within the scope of the FOIA, through a section 5 order, subject to the outcome of consultation. Section 5 of the Freedom of Information Act (2000) enables the Secretary of State to make an order to include persons or offices within scope of the FOIA that he believes are exercising functions of a public nature or who are providing under contract with a public authority a function of that authority. These proposals are in their early stages of development and any combination of the bodies listed may be brought within the scope of the Act. Only once the Ministry of Justice has consulted with the suggested bodies in paragraph 1.16 and gained a better understanding of the costs and impacts of extending the scope of the Act would a final decision be made whether they should be covered.
- 2.9 As mentioned at paragraph 1.7 it is possible to only cover some functions of a body under section 5 and therefore functions that are not of a public nature would not necessarily be part of a section 5 order. However, as we currently do not have sufficient information on the functions of the bodies being considered, for the purposes of this impact assessment we have assumed that all the functions of each body or class of bodies would be covered. Following consultation and a decision about whether all, some or none of the functions of the bodies considered should be brought within the FOIA we will be able to specify which functions will be brought within the FOIA.
- 2.10 This impact assessment assesses the potential impact on a body being brought within the FOI regime. Those bodies and types of bodies listed in paragraphs 1.16 would be required to respond to requests for information from members of the public for official information they hold within 20 days, subject to any permitted extension, or application of any exemptions and also set up a publication scheme.

#### **Costs of Option 1**

##### **Transitional costs**

###### *Costs to organisations exercising functions of a public nature*

- 2.11 Under this option those bodies and classes of bodies outlined in paragraphs 1.16 above would be brought within the scope of the Act in respect of functions that they exercise that are of a public nature, subject to the outcome of consultation.
- 2.12 The organisations brought within the scope of the FOIA would be required to ensure they have in place suitable processes to log, allocate and respond to requests for information. These organisations would also have to ensure that all staff responsible for dealing with requests receive appropriate training. These organisations would also need to ensure that they have the appropriate appeals processes in place if requesters are not content with the responses they receive.
- 2.13 In addition, organisations covered by the legislation would need to comply with section 19 of the FOIA and adopt and maintain a publication scheme. Section 19(2) of the Act lists the requirements of a publication scheme, which must:
- a. specify classes of information which the public authority publishes or intends to publish;
  - b. specify the manner in which information of each class is, or is intended to be, published;
- and

---

<sup>23</sup> The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

- c. specify whether the material is, or is intended to be, available to the public free of charge or on payment.

- 2.14 There are approximately 500 harbour authorities in England, Wales and Northern Ireland. Due to the varying sizes of these organisations, it is not anticipated that each organisation would spend a similar amount of time setting up a publication scheme as the other listed organisations, training staff and establishing a system to respond to requests. It is not possible to estimate the size of these organisations, as there is limited data and a great variety of sizes. Therefore individual harbour authorities would incur transition costs but these costs have not been monetised. Similarly, there are a number of awarding bodies (examination boards) which vary in size and costs for these have not been monetised.
- 2.15 In order to estimate the average transition cost each organisation may incur, the following indicative scenario, based on departmental experience of the FOIA, is presented. Assuming it takes one member of staff around two weeks on average to set up a publication scheme, around one week to train staff to respond to requests, and around two days to establish a system to respond to requests, then based on average earnings figures<sup>24</sup>, it is estimated that each organisation brought in-scope might incur transition costs of approximately £2,000. This may vary on a case by case basis, depending on the approach of each organisation.
- 2.16 Total transition costs are expected to be approximately £50,000, in 2010 prices<sup>25 26</sup>. These costs exclude the costs to harbour authorities and awarding bodies. It is assumed that these would be incurred in 2012/13.

### **Ongoing costs**

- 2.17 It is assumed that all ongoing costs would be incurred from 2012/13 onwards because the policy is expected to be implemented in April 2012. .

#### *Costs to organisations exercising functions of a public nature*

- 2.18 In addition to one-off transition costs, organisations brought into the scope of the FOIA will also incur ongoing costs relating to receiving and responding to requests. The Ministry of Justice currently publishes FOI statistics on a range of monitored public bodies. These bodies have been classified according to the volume of requests received<sup>27</sup>. Outlined below is a table that indicates the volume of requests that each body might possibly receive. The volume of requests is classified into three categories based on the potential level of public interest and the size of each organisation. The basis of this classification is a judgement formed by MoJ officials bearing in mind the potential level of public interest in and nature of each body concerned.
- 2.19 Those bodies that we consider in this illustration that may receive greater than 1,000 FOI requests each year have been classified as 'high' volume; those bodies that we consider in this illustration that may receive between 100 and less than 1,000 FOI requests each year have been classified as 'medium' volume; and those bodies that we consider in this illustration that may receive less than 100 FOI requests each year have been classified as 'low' volume. These illustrations should be viewed as indicative only.

---

<sup>24</sup> ONS data, 'Annual Survey of Hours and Earnings 2010' gross hourly and monthly earnings (April 2010 data) uplifted by 21.2% to account for national and insurance and superannuation costs,

<sup>25</sup> Based on a unit cost of £2,100 and the number of proposed organisations being 25, at 2010 prices

<sup>26</sup> Total costs do not include the set-up costs to awarding bodies or harbour authorities.

<sup>27</sup> These figures have been calculated by taking the average number of FOIA requests for other monitored bodies in the Freedom of Information Act (2000) 2009 annual statistics on implementation in central government statistics, other than Departments of State and the Health and Safety Executive. Figures used did not include those for Departments of State or the Health and Safety Executive as these are not considered to be representative of the bodies that would be brought within the FOIA under section 5.

**Table 1: Organisations proposed to be included in the FOIA and volume of requests expected**

<b>Body proposed for inclusion</b>	<b>Volume of requests expected (category)</b>
Association of Chartered Certified Accountants	Medium
Association of Costs Lawyers	Medium
Advertising Standards Authority	Medium
Awarding Bodies (Examination Boards)	Medium
British Standards Institute	Medium
Carbon Trust	Medium
Chartered Institute of Patent Attorneys	Medium
Council for Licensed Conveyancers	Medium
Energy Saving Trust	Medium
Harbour authorities	Low
Independent Complaints Reviewer	Medium
Independent Schools Inspectorate	Low
Institute of Legal Executives	Medium
Institute of Trade Mark Attorneys	Medium
Law Society	High
Local Government Association	High
Master of the Faculties	Medium
National Register of Public Service Interpreters	Low
NHS Confederation	High
Quality Assurance Agency	Medium
School Inspection Service	Low
The Bridge Schools Inspectorate	Low
The General Council of the Bar	High
The Panel on Takeovers and Mergers	Medium
The Parking and Traffic Appeals Service	Low
The Trinity House Lighthouse Service	Low
Traffic Penalty Tribunal	Low

2.20 Frontier Economics estimate that an FOI request takes 7.5 hours on average to process and internal reviews takes 30.6 hours on average to process.<sup>28</sup> Multiplying this average processing time by the volume of requests received, and then by average earnings<sup>29</sup> produces an indicative estimate of annual cost per organisation we are considering bringing into scope. Estimates have been produced for bodies that we estimate may receive ‘high’ ‘medium’ and ‘low’ volumes, as shown in Table 2 below. The costs to each organisation would be dependent largely on the number of requests made, as outlined above. This will be dependent on the extent of public interest, the nature of the organisation and which functions, if any, are subject to the Act following a section 5 order.

**Table 2: Indicative volume of requests and average annual cost of processing FOI requests and internal reviews**

<b>Volume of requests expected (category)</b>	<b>Approximate average cost to organisation of FOI requests and IR's (in 2010 prices)</b>
Low	£4,000
Medium	£31,000
High	£258,000

2.21 These estimates should be viewed as indicative only and as purely illustrative of the possible order of magnitude. They should not be treated as expected costs. The actual costs faced are likely to vary on a case by case basis, and over time, depending on the approach of each organisation.

<sup>28</sup> <http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

<sup>29</sup> ONS data, ‘Annual Survey of Hours and Earnings 2010’ gross hourly and monthly earnings (April 2010 data) uplifted by 21.2% to account for national and insurance and superannuation costs,

- 2.22 The total ongoing costs to all organisations of responding to FOIA requests and any IRs is expected to be £1.5 million annually, in 2010 prices. There are approximately 500 harbour authorities in England, Wales and Northern Ireland. Due to the varying sizes of harbour authorities we estimate some of these organisations would receive very low volumes of FOI requests. It is not possible to estimate the size of any of these organisations, as there is limited data available and a large number of bodies that vary greatly in size. Therefore we would expect individual harbour authorities to incur ongoing costs but these costs have not been quantified. Similarly, there are a number of awarding bodies (examination boards) which vary in size and ongoing costs for these have not been monetised.
- 2.23 In addition to the cost of dealing directly with requests, organisations brought within the scope of the FOIA may face other associated costs. One result may be increased public scrutiny and pressure for organisations brought within the scope of the FOIA to practise better data management. This may include costs from reviewing and/or updating IT and administrative systems. Furthermore, organisations may incur costs through changing their behaviour as a result of coming within the scope of the FOIA by proactively publishing information, publishing a log of requests and responses or by adopting behaviour and undertaking actions that would be more defensible in public, including possibly being more risk averse. These costs have not been quantified. Again, these are likely to differ according to the adopted approach of each individual organisation.
- 2.24 Bodies brought within the FOIA will also have to respond to complaints made to the Information Commissioners Office (ICO) and any further appeals. Only a limited number of cases reach these stages however costs can be relatively high as these processes require additional resources and often legal advice and / or legal representation. These costs have not been quantified and will vary depending on the stage reached and complexity of the case.
- 2.25 Bodies brought within the scope of the Act may also incur costs as they may have additional obligations under the Data Protection Act 1998 (DPA) in relation to subject access requests. Bodies that are subject to the FOIA may incur costs as they may have to search wider to look for information pursuant to subject access request than they would under the DPA alone. The DPA covers electronic data and manual (non-electronic data) in certain filing and record keeping systems. Bodies covered by the FOIA would search wider than under the DPA as the FOIA covers non-electronic data regardless of how the filing or record keeping system containing the data is organised. These costs have not been quantified.

#### *Costs to other bodies who are already within the scope of the FOIA*

- 2.26 It is not certain whether bodies already within scope of the FOIA would receive a higher volume or reduced volume of FOIA requests (see paragraph 2.38). If information received from bodies brought within the scope of the Act leads to follow up requests directed at bodies currently within scope, these bodies could incur the costs of responding to an increased number of requests. It is unclear whether these bodies would receive additional requests and what the magnitude of these requests would be.

#### *Costs to Information Commissioner's Office ("ICO")*

- 2.27 The Information Commissioner would continue to enforce the proper application of the FOIA and ensure that the bodies that come within it comply. The Information Commissioner is the independent regulator of the FOIA and may make decision notices about an organisation that they would need to comply with. Since the Information Commissioner would be required to ensure that more bodies are complying with the FOIA if more bodies are brought within the scope of the Act, it would incur additional costs.
- 2.28 In 2009, there were 206 appeals made to the ICO relating to the refusal of information requests by monitored bodies<sup>30</sup>. Since the volume of information requests is expected to rise, there would be increased costs to the Information Commissioner's Office (ICO) in assessing any additional appeals made. Of the requests received by central government departments and other monitored bodies in 2009 only 0.5%<sup>31</sup> were appealed to the ICO<sup>32</sup>. For this reason, the additional costs to the ICO as a result of the proposal are expected to be minimal.

---

<sup>30</sup> Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, table 8, p.28

<sup>31</sup> Figures taken from the 2009 Annual Statistics on implementation in central government report on the Freedom of Information Act 2000 available at <http://www.justice.gov.uk/publications/freedomofinformationquarterly.htm>.

2.29 There are currently over 100,000 bodies covered by the FOIA and in comparison relatively few bodies will be brought within the FOIA as a result of a section 5 order. This also suggests any impact would be minimal.

*Costs to HM Courts and Tribunals Service*

2.30 If a person wanted to appeal a decision of the ICO, that person would have to make an appeal to the First-Tier Tribunal (information rights). There may be additional costs if a higher volume of appeals go to the Information Tribunal.

2.31 However, there are currently over 100,000 bodies covered by the FOIA and in comparison relatively few bodies will be brought within the FOIA as a result of a section 5 order. This suggests any impact would be minimal.

2.32 Further, following appeals to the Information Tribunal further appeals can be made to the Upper Tribunal (Administrative Appeals Chamber) and then subsequently, to the Court of Appeal and then to the Supreme Court. There may be additional costs to HMCS and the Tribunals Service if a higher volume of appeals go to the courts or tribunals although very few cases reach this stage. It is anticipated that this would affect only a small volume of cases and any associated costs are expected to be minimal.

2.33 The First-Tier Tribunal (information rights) and Upper Tribunal (Administrative Appeals Chamber) do not currently charge fees hence any increase in costs would not be met by an increase in fees.

*Costs to those that use the services provided by the bodies being considered*

2.34 Users of the services provided by the bodies brought within scope of the FOIA may also incur costs. It may be the case that the additional costs of complying with and implementing the FOIA may be passed on by some of the proposed bodies to those individuals and organisations that fund them (e.g. the Advertising Standards Authority may increase its levy on advertising space, to cover the cost of responding to FOI requests). Due to the varying nature of how these organisations are funded and the uncertainty of whether they would pass on any cost increases, it is not possible to estimate who would incur additional costs and the magnitude of these costs. It is anticipated that more information on this would be gathered during the consultation process. Below is a table that outlines the source of funding for the organisations to be subject to the FOIA. These costs are expected to be minimal but have not been quantified.

**Table 3: sources of funding for the organisations proposed to be included in the FOIA**

<b>Body</b>	<b>Funding</b>
Approved regulators under the Legal Services Act 2007 (includes those bodies set out in paragraph 1.16)	Various including practicing fees.
Advertising Standards Authority	Levy on advertising space
British Standards Institute	Primarily funded through the sale of the standards and certification against standards. £5m Government funding for the National Standards Body function.
Carbon Trust	Partly funded by the climate change levy
Energy Saving Trust	UK government, devolved governments and the private sector
Examination Boards (where not already covered)	Many are commercial entities
Harbour authorities (where not already covered)	Depends on status
Independent Complaints Reviewer	Contributions by each organisation for which the service is provided
Independent Schools Inspectorate	Charges schools for the cost of inspections
Local Government Association	Membership fees
National Register of Public Service Interpreters	Fees from interpreters, subscriptions from public services, Established using funding from HO and Nuffield Foundation.
NHS Confederation	From DH for services to members, member subscriptions
Quality Assurance Agency	Subscriptions from universities and colleges & through

<sup>32</sup> Statistics are only available for ICO appeals against central government departments. This figure is indicative only and is unlikely to be representative of the potential volume of ICO appeals against the bodies being considered for inclusion (listed in paragraph 1.16) in this impact assessment.

	contracts with higher education funding bodies.
School Inspection Service	Charges schools for the cost of inspections
The Bridge Schools Inspectorate	Charges schools for the cost of inspections
The Panel on Takeovers and Mergers	Levy and fees
The Parking and Traffic Appeals Service	London Councils
The Trinity House Lighthouse Service	'Light Dues' levy on commercial vessels calling at ports in the British Isles
Traffic Penalty Tribunal	Levy on penalties issued

### *Costs to requestors*

2.35 There are no charges for making an FOI request but those making a request may incur costs such as the costs of time taken to make the request and costs of communicating the request (e.g. postage). In specific circumstances a public authority can request a fee to answer a request where the fee exceeds the cost limit for replying to a request<sup>33</sup> but this is unusual and therefore this impact is expected to be minimal.

## **Benefits of Option 1**

### **Transitional benefits**

2.36 No transitional benefits have been identified.

### **Ongoing Benefits**

#### *Benefits to society*

2.37 Extending the coverage of the FOIA will give the public greater access to official information about services that affect them, ensuring greater public scrutiny (including from private individuals, journalists and businesses) over those bodies that exercise functions of public nature who are brought within scope. As a result, the public may gain greater confidence in the functions these bodies exercise or public services they provide and public debate may be better informed. This may generate direct economic welfare benefits for society. There may be further economic welfare benefits if, as a result of being brought within the Act, an organisation operates in ways which are more defensible to public scrutiny and which accord more closely to the preferences of society.

#### *Benefits to bodies brought within scope*

2.38 The proposal may also generate efficiency benefits if the increased scrutiny provided by the FOIA leads to those organisations who are brought into scope operating more efficiently. It is expected that as a result of increased public scrutiny the bodies brought within the scope of the Act will themselves become more efficient and effective, for example by reducing duplication, and realise consequential cost savings.

#### *Benefits to bodies already within the scope of the FOIA*

2.39 It is not certain whether bodies already within scope of the FOIA may receive a higher volume or reduced volume of FOIA requests (see paragraph 2.25). Bringing any combination of the bodies outlined above within the scope of the FOIA could reduce the number of requests that bodies already covered by the FOIA receive. This might be the case if FOI requests are directed towards a body brought within scope of the FOIA rather than towards other organisations who are already within scope (e.g. it might be the case that with the introduction of Local Government Association, requests to the Department for Communities and Local Government and individual councils fall). It is unclear whether these bodies would receive additional requests and what the magnitude of these requests would be.

### **Key assumptions and risks:**

2.40 A key assumption is that all the functions of each body would be brought within scope of the FOIA. Section 7 of the Act requires that any section 5 order must specify the functions or services provided under contract for which that public body is designated. The Act would not apply to any other information held (which is not specified in a section 5 order) and therefore would not necessarily cover all the work carried out by an organisation. Consequently, all of the functions of

<sup>33</sup> As set out in section 12 of the Freedom of Information Act 2000. The provisions regarding the charging of fees are set out in section 13.

some organisations could be subject to FOIA requests whereas in other cases the number of functions subject to FOIA would be more limited. However, as we currently do not have sufficient information on the functions of the bodies being considered, for the purposes of this impact assessment we have assumed that all the functions of each body or class of bodies would be covered. Following consultation and a decision about whether all, some or none of the functions of the bodies considered should be brought within the FOIA we will be able to specify which functions will be brought within the FOIA.

- 2.41 The estimates of costs that we have provided are based on implementation in April 2012. This date is subject to uncertainty since the exact date of implementation depends on the time required for the bodies to prepare for inclusion and parliamentary handling. If the planned implementation date were October 2012, the 10 year net present value would be -£12.2 million.
- 2.42 Based on the 2006 Frontier Economics report 'Independent Review of the impact of the Freedom of Information Act'<sup>34</sup> it is assumed that the time taken to process an FOI request is 7.5 hours. This figure is based on central government departments and includes Ministerial consideration. It is therefore considered that this may be an over-estimate of the time that the proposed bodies would take to process an FOI request. Therefore, it is possible that the average costs developed may be overestimates.
- 2.43 Ministry of Justice statistics for other monitored bodies (monitored bodies that are not Departments of State) show that approximately 1.8% of initial requests go to internal review<sup>35</sup>. Based on the Frontier Economics report it is assumed that the time taken to process an internal review is 30.6 hours. Again, a margin of uncertainty applies to these figures which has not been calculated but which might not be insignificant.
- 2.44 The following assumptions, based on information from departmental experts on the FOIA and MoJ and ONS statistics, have also been made. As above, a margin of uncertainty applies to these figures, which has not been calculated but which might not be insignificant:
- Time taken to set up a publication scheme (2 FTE weeks);
  - Time taken to train staff to respond to requests (1 FTE week);
  - Time taken to establish a system to respond to requests (2 FTE days);
  - We have used gross weekly and gross hourly earnings data from the Office of National Statistics<sup>36</sup> and adjusted for superannuation and National Insurance contributions by 21.2% in order to estimate the cost of this time;
  - The number of requests expected at each institution has been estimated by using data from similar monitored bodies, taken from the Ministry of Justice's annual reports on the FOIA<sup>37</sup>.
- 2.45 There is a risk that some of the assumptions obtained from the Frontier Economics report may no longer be valid as this report dates from 2006.
- 2.46 Since we are unable to predict with any certainty the number of FOI requests that any organisation would receive, there is a significant risk that the categories assigned to certain organisations (i.e. high volume, medium volume and low volume) may not be appropriate. This would significantly affect the costs to the bodies newly subject to the FOIA. The actual costs to bodies outlined above may differ from the estimates that have been provided. It is anticipated that further information about the number of potential FOI requests per organisation would be considered during the consultation process, after which the estimates of costs for the bodies proposed for inclusion would be refined.
- 2.47 The volume of requests per category (high, medium and low) is based on figures from bodies monitored for Freedom of Information statistics but does not include Departments of State. However, these bodies may not be representative of the number of requests received by the

---

<sup>34</sup> Independent Review of the impact of the Freedom of Information Act, October 2006 by Frontier Economics. Available at <http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

<sup>35</sup> Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, table 6, figures for other monitored bodies, p.24

<sup>36</sup> [www.statistics.gov.uk](http://www.statistics.gov.uk), Annual Survey of Hours and Earnings (ASHE) – 2010 Results

<sup>37</sup> Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, table 1, p.15

bodies proposed for inclusion as several are high profile and receive an extremely high volume of requests<sup>38</sup>. These figures may therefore inflate the estimates of number of requests

### **Net Impact of Option 1**

2.48 In terms of monetised costs and benefits there would be an estimated net present value of approximately -£12.9 million over a 10 year period starting in 2012/13<sup>39</sup>. However, we expect there would be non-monetised benefits from increased transparency, accountability and openness, leading to greater public confidence, greater scrutiny over the delivery of public services and better informed public debate.

### **Summary**

2.49 The coalition government has committed to “extend the scope of the Freedom of Information Act to provide greater transparency”<sup>40</sup>. The rights provided by the Freedom of Information Act provide benefits including allowing the public to request access to information about how taxpayer’s money is spent, enabling the public to scrutinise the bodies that provide them with services and hold bodies to account for decisions that affect them.

2.50 Accordingly, Option 1 is the preferred option to enable the Ministry of Justice to consult with the bodies and classes of bodies listed at paragraph 1.16 with a view to including them within the scope of the Act. It is possible that following consultation some of the bodies would not be brought within the scope of the Act. The benefits of Option 1 are considered to outweigh the costs.

2.51 All costs and impacts will be revised throughout the consultation process once we have more information on likely impacts and on the functions that each body exercises.

## **3. Enforcement and Implementation**

3.1 We will ensure that any bodies that are eventually brought within the scope of the Act have sufficient time to prepare for their responsibilities under the FOIA and any section 5 order will not commence immediately.

3.2 As mentioned above the Information Commissioner would enforce the proper application of the FOIA and ensure that the bodies that come within it comply. The Information Commissioner is the independent regulator of FOI and may issue Decision Notices about an organisation that they would need to comply with.

3.3 If a person wanted to appeal a decision of the ICO, that person would have to make an appeal to the First-Tier Tribunal (information rights). Following appeals to the Information Tribunal further appeals can be made on a point of law only to the Upper Tribunal (Administrative Appeals Chamber) and then subsequently the Court of Appeal and the Supreme Court.

---

<sup>38</sup> For example, the Health and Safety Executive received 6,531 requests in 2009 which is significantly higher than any Department of State.

<sup>39</sup> Total costs do not include the costs to awarding bodies or harbour authorities

<sup>40</sup> The Coalition: our programme for government

## **Specific Impact Tests**

### **Equality Impact Assessment**

- 4.1 An Equalities Impact Assessment initial screening has been completed and is attached in Annex 2. No adverse equality impact is anticipated and we expect a general positive equality impact as a result of a section 5 order for the bodies being considered.

### **Competition Assessment**

- 4.2 The majority of bodies who we propose to consult regarding inclusion within the scope of the Act are not in competition with any other bodies.
- 4.3 In some instances extending the Act would enhance competition. For example, some awarding bodies (examination boards) are wholly owned by a public authority and as such are already subject to FOI requests. These bodies may suffer a competitive disadvantage compared to those that are not covered and these proposals would ensure that all similar bodies should be subject to the equal degree of public scrutiny.
- 4.4 There is a potential impact on competition where information is released by regulatory bodies about the bodies that they regulate. For example, if the Law Society releases more information then this could have implications upon competition between firms and solicitors. If the Advertising Standards Authority releases information this could have some implications in the market for advertising. However, in both these cases, consumers and higher education applicants already have large amounts of information on which to base decisions and commercial data is protected under the FOIA. Therefore, it is unlikely that there would be a significant effect on competition.
- 4.5 There may be indirect effects on businesses as some of the bodies proposed for inclusion are funded by business either through levies or membership subscriptions. These charges may be increased as a result of the costs of complying with the FOIA. However, if costs are increased this would affect all bodies and therefore we do not anticipate any impact on competition with increased costs.

### **Small Firms Impact Test**

- 4.6 It is not envisaged that any small firms would be directly impacted by any extension of the Act. This issue would be fully explored during the Ministry of Justice's consultation process with those bodies proposed for inclusion.
- 4.7 Some of the bodies listed may have less than 50 employees such as some harbour authorities. The impact of being subject to the FOIA is likely to be relatively minor as smaller organisations are likely to receive fewer requests than large organisations. It is therefore considered that these proposals would affect small firms although any impact is expected to be minimal.
- 4.8 Some small businesses may also be affected as those bodies funded by levies or membership subscriptions, as detailed in table 2, may pass on the additional costs of complying with the FOIA to the bodies that pay the levy. The Ministry of Justice plans to consider these impacts during consultation with those bodies.

### **Carbon Assessment**

- 4.9 It is not considered that these proposals would lead to a significant change in carbon emissions. It may be the case that there is greater public scrutiny and transparency which leads to greater green efficiency within organisations.

### **Environmental Assessment**

- 4.10 It is not considered that these proposals would have any other environmental impacts.

### **Health Impact Assessment**

- 4.11 It is not considered that these proposals would have a significant impact on health.

### **Human Rights**

- 4.12 It is not considered that extending the scope of the FOIA will have any Human Rights implications.

## **Justice Impact Test**

4.13 The impact on the Justice System has been assessed in the main body of this impact assessment. The ICO would probably receive more appeals as a result of more bodies being brought within the Act. However, only a very small percentage of cases are appealed to the ICO so we do not expect the impact to be significant. The First-Tier Tribunal (information rights), Upper Tribunal (Administrative Appeals Chamber), Court of Appeal and Supreme Court may also see an increased workload when appeals are taken beyond the ICO but again we would expect this to be minimal due to the limited number of cases that reach these stages.

## **Rural proofing**

4.14 It is not considered that there would be any specifically rural impacts from the proposals.

## **Sustainable Development**

4.15 Extending the FOIA would increase the openness, transparency and accountability of those organisations who exercise functions of a public nature. This should promote good governance due to increased public scrutiny and awareness of the decisions of these organisations, would make organisations more efficient, allows the public to have access to the information about services that affect them and enables better informed public debate.

## **Privacy Impact Test (an MoJ Specific Impact Test)**

4.16 Having considered the privacy impact assessment screening questions we believe there will be no significant adverse impacts on privacy.

4.17 It is likely that requests for personal information will be received by bodies brought within scope of the FOIA either directly or indirectly. However, it is not expected that there will be any privacy impact as a result of additional bodies coming within scope. This is because the Act provides an exemption against release for personal information (Section 40 FOIA). Accordingly, information such as information that is personal data of which the applicant is the data subject and personal data within the definition of data in the Data Protection Act 1998 (paragraphs (a) to (d), section 1(1)) where release would contravene the data protection principles is exempt from release<sup>41</sup>.

---

<sup>41</sup> These two examples are exemptions that are not subject to the public interest test whereby a balancing exercise is carried out in favour of and against disclosure in the public interest. However, some of the exemptions listed under section 40 are subject to the public interest test.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:**

We plan to undertake post-legislative scrutiny of the Freedom of Information Act (FOI Act) as a whole, to see how well the Act is working in practice and whether there are further changes to be made. We do not have a timetable for this review but we plan to commence the review in 2011. The outcome of the review will be used to assess the success of the policy.

**Review objective:**

A review into the FOI Act will consider the costs and benefits of Freedom of information to see how that Act is operating since coming into force in 2005.

**Review approach and rationale:**

Post-legislative scrutiny is a process for examining how the FOI Act has worked in practice, relative to the benchmarks and objectives identified during the passage of the Bill. A Memorandum will be prepared which will be considered by the relevant Select Committee who will, in turn decide whether it wishes to conduct more detailed inquiries into the Act. The content of the initial Memorandum has not yet been determined, however we are keen to cover the benefits brought by the legislation, how it is working in practice and an assessment of the costs of the operation of the Act.

**Baseline:**

The review will consider the impact of the FOI Act since its implementation in 2005.

**Success criteria:**

Increased transparency, accountability and efficiency. Post-legislative scrutiny is a process for examining how the FOI Act has worked in practice, relative to the benchmarks and objectives identified during the passage of the Bill.

**Monitoring information arrangements:**

Freedom of Information statistics are collected quarterly by the Ministry of Justice in relation to central government bodies. The review will also consider other evidence depending on its scope.

**Reasons for not planning a PIR:**

n/a

## Annex 2: Equality Impact Assessment

### Equality Impact Assessment Initial Screening – Relevance to Equality Duties

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

The Freedom of Information Act 2000 (FOIA) gives any person the legal right to ask a public authority covered by the Act for recorded information that they hold. However, coverage is limited to bodies listed in Schedule 1 of the FOIA or those who meet the criteria set out in section 6. Government intervention is required in order to extend the scope of the FOIA. Section 5(1)(a) of the FOIA enables the Secretary of State to make an order to extend the coverage of the FOIA to any organisations that appear to him to be exercising functions of a public nature. We will broaden the application of the FOIA using this power and intend to consult a number of bodies we consider may meet the criteria for inclusion under this provision.

2. Individual officer(s) & Unit responsible for completing the Equality Impact Assessment:

Catherine Bennion, FOI Policy and Strategy

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
<p>To consult certain bodies who may exercise functions of a public nature about their possible inclusion within the FOIA under section 5.</p> <p>To help ensure the continual relevance and effectiveness of FOIA and to meet the public's demands for and government commitment to openness, transparency and accountability.</p>	<p>Extending the coverage of the FOIA will give the public greater access to official information about services that affect them. It will also lead to greater scrutiny over the delivery of public services and hold bodies that exercise functions of a public nature to account for the decisions they make. Organisations that exercise functions of a public nature should be subject to the same scrutiny as other public authorities.</p>

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

There is limited information available about how the Freedom of Information Act affects different groups. However, the biannual Tracker Survey carried out by MoJ to assess public awareness of and views about information rights indicates high levels of public awareness about the legal right to get hold of information about the work of a public authority. The MoJ publishes annual statistics on Freedom of Information requests for certain monitored bodies which shows that relatively high volumes of requests are received by a large variety of bodies. Current data shows a general increase in the volume of requests being received.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

The Freedom of Information Act (FOIA) gives any person the legal right to ask a public authority covered by the Act for recorded information that they hold. When, how and whether members of the public choose to exercise this right is up to the individual. In addition, the Act is requester blind so information about requesters that might allow fuller consideration of equality impacts is not available. It is therefore difficult to assess how this proposal could affect different groups of people because it simply seeks to increase the number of bodies that information may be requested from; the extension to additional bodies would not create any new equality impacts. It is worth noting that the Tracker Surveys to assess public awareness of information rights indicates a high level of awareness. In the January 2010 survey showed 81% of people were aware that they had the "legal right to get hold of information about the work

of a public authority". Such a high level of awareness is not suggestive that large sections of the population are unaware of their right to request information under the FOIA, although we could aim to find out more about why the 19% who were unaware of their rights were in that position.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

The Freedom of Information Act allows any person to request official information from a public authority covered by the Act. If members of the public choose to exercise their rights and request information it would seem reasonable to assume that the disclosure of information would have a positive impact on them. Indeed the aims of freedom of information and transparency in general are to provide taxpayers with information about how their money is spent and to provide information about the services that affect the public. If extended by bringing additional bodies within the scope of the FOIA, this in turn would promote better informed public debate and scrutiny of the decisions of organisations that exercise functions of a public nature, so creating an even more positive impact. Even if people chose not to exercise their rights under Freedom of Information, they may still benefit from others doing so, for example, journalists who then report on their findings or from efficiency savings in public authorities as a result of information obtained from requests. This would seem to be a general positive impact rather than delivering benefits for a specific group.

It is also possible that due to the increased public scrutiny as a result of additional bodies being included within the Act, that equality of opportunity will increase because people may become more aware of the Act and who it applies to. Further, the bodies included would be scrutinised to a greater degree than at present and so there will be greater pressure on their part to resolve any inequalities that might be exposed.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

No, there is no evidence that additional work would achieve this, although we would expect some increase in equality by extending the Act.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

There is no evidence to suggest that extending the Freedom of Information Act to organisations that exercise functions of a public nature, subject to consultation, will have an adverse equality impact on any groups of people. The right to request access to information held by public authorities provided by the Freedom of Information Act is available to anyone and we simply propose to extend this right to additional bodies.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

Yes, it is possible that the proposed changes will have no equality impact as the right to information is available to everyone.

10. Is a full Equality Impact Assessment Required? **No**

The Freedom of Information Act can be used by any member of the public. When a request for information is received, it is the information requested that is assessed in line with the legislation and not the requester; the FOIA itself is requester blind. There is no requirement to complete a full Equality Impact Assessment here because the proposal is simply to include additional bodies within the scope of the FOIA.

11. If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

The Tracker Survey carried out by MoJ to assess public awareness of and views about information rights could be used to assess any equality impact. MoJ also plans to conduct post-legislative scrutiny of the Freedom of Information Act as a whole which will include consideration of the benefits or otherwise of the legislation, including potential equality impacts.

12. Name of Senior Manager and date approved

The Ministry of Justice intends to consult a number of bodies we consider may meet the criteria for inclusion under section 5(1)(a) of the Freedom of Information Act. Section 5(1)(a) of the FOIA enables the Secretary of State to make an order to extend the coverage of the FOIA to any organisations that appear to him to be exercising functions of a public nature. We do not anticipate any adverse equality impacts as a result of additional organisations coming within the scope of the Act but it is likely that there will be a general positive equality impact as a result of increased efficiency, transparency and accountability.

Name (must be grade 5 or above): Belinda Lewis, Head of Information Policy Division

Department: Ministry of Justice

Date: 28/01/2011