

12 December, 2006

Baroness Ashton of Upholland
Department for Constitutional Affairs
Selborne House
54 Victoria Street
London
SW1E 6QW

Dear Lady Ashton,

We are writing to express our concern regarding the proposed changes to the FOIA fee regime. If implemented, the amendments will significantly reduce the number of requests made under the FOIA, an outcome that is contrary to the very spirit of the Act and which cannot, in our view, be justified.

The two proposed modifications that are most problematic are: (1) the aggregating of non-similar requests from the same person (including legal entity) for the purposes of calculating the cost of requests¹; and (2) including reading time in the time/cost calculation employed by public authorities.

While all users of the Act will be disadvantaged if the proposals are adopted, the effect – in particular the proposal to aggregate non-similar requests – will be especially onerous for the media. In practical terms, the aggregation of non-similar requests would mean that once a journalist within an organisation has made a request that exhausts the prescribed cost ceiling, no other journalist from the same organisation can request information from that public authority for sixty days. With over 450 journalists on staff at the FT and dozens more who work for the FT on a freelance basis, allowing potentially only one request from this group on behalf of the FT every sixty days renders the Act essentially meaningless. The problem will be the same for all media organisations.

If the Government's true intention in adopting the FOIA was to increase the accountability and transparency of public authorities, then adopting changes to the legislation that will disproportionately impact requests from media organisations is counterproductive to these goals. The media make requests on behalf of the public interest and are one of the most important mechanisms for relaying information disclosed under FOIA to the public.

We are also concerned that the second proposed change, namely the inclusion of reading time in the calculation of fees may further consign the FOIA to irrelevance or make the regime inaccessible to most members of the public, including the media. The problems inherent in such an approach to disclosure are too numerous to describe in detail in this letter but perhaps one of the most obvious flaws is that requests involving new and/or complex issues will be those most likely to be refused on the grounds of costs. Using FOIA to disclose only trivial information or information that is close to hand does not sit well with the Government's stated commitment to the introduction of a culture of openness.

The experience of other countries with FOI legislation makes clear that meaningful public access depends on the equal strength of the constituent elements of the disclosure regime. A sound piece of legislation is only one component. Equally important are the allocation of sufficient resources to the

¹ The concept of "non-similar request" is used in the report prepared by the consultancy Frontier Economics to describe FOIA requests that are not for the same information. Thus, two requests from one person for two different pieces of information constitute non-similar requests that could be aggregated.

public authorities for implementation and the existence of a well-funded, independent oversight and appeals mechanism. It is worth noting that no other common law jurisdiction with access legislation aggregates non-similar requests from applicants and most jurisdictions exclude reading time from the calculation of fees (and where it is included, there is no arbitrary right for public authorities to refuse requests that exceed the cost ceilings unless disproportionate efforts would be required by the public authority).

Instead of legislating to reduce the number of requests made under the FOIA, the Government should assess whether it has provided sufficient support to the other essential elements of the FOIA regime. It is our view that the recommendations made by Frontier Economics and currently being considered by the Government start from a flawed premise, one that underestimates or undermines the role that disclosure and plays in building public trust in government.

We urge the Government not to make any changes to the existing Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If amendments are going to be implemented, we further request that the Government to engage in a formal public consultation process prior to taking any action.

Yours sincerely,

Lionel Barber
Editor
The Financial Times