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CENTRAL GOVERNMENT PUBLICATION SCHEMES GOOD PRACTICE

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This paper examines some examples of good practice in the publication schemes produced by central government departments. It is not intended as comprehensive review of those schemes in general or as an attempt to identify the ‘best’ individual schemes but rather as an attempt to identify some of the specific initiatives which might be followed more widely.

Some of the practices identified pre-date the introduction of publication schemes, but are now incorporated into them.

Introduction - “Classes”

Publication schemes must describe the “classes” of the information which the authority publishes or intends to publish. They should represent a continuing commitment to publish all the information falling within the definition of each class.

However, many publication schemes have played it safe in their choice of most classes. These frequently consist of materials which have been routinely published in the past such as annual reports, consultation documents, white papers, speeches, press releases, public leaflets, job advertisements and similar materials - classes of material which provide little scope for innovation.

Moreover, many schemes contain “classes” of information which are not true classes at all, but references to one-off single publications, which are neither part of a regular series nor likely to be updated in future.¹ Sometimes an entire class is made up of nothing other than a single item of information (such as contact details for a particular individual within the department²) not linked to any wider commitment to publish related information.

¹ For example, the DCA’s own scheme lists as a *class* “The Report of the inter-departmental working group on transsexual people” which it defines as “Report of the inter-departmental working group on transsexual people published in July 2000”.

² The Cabinet Office’s scheme includes a class of information described as “Purchasing Opportunities” which turns out to consist solely of the name, address, email and phone number of someone in the department’s procurement policy unit. <http://www.cabinet-office.gov.uk/purchasing/index.asp>

Alternatively a class may be defined not as documents of a particular kind but as *published documents* of that kind.³ The result may be to ensure that any similar *unpublished* documents that may exist or be produced do not fall within the definition.

Almost all central government publication schemes include such "classes". The problem is that they tend to obscure the purpose of the exercise, blurring the distinction between a publication scheme - a description of the authority's *continuing publication obligations* - and a simple publications *list*. The risk is that authorities will feel it legitimate to expand their schemes simply by adding more and more individual publications - not by extending their commitments to publish information.

Encouraging authorities to concentrate in a more disciplined way on *classes* of information in their schemes, with individual publications going on a separate publications list, would help prevent this. Examples of schemes which largely avoid the confusion between classes and individual items include *Postcomm*⁴ and the *Office of the Rail Regulator*.⁵

The related question is the extent to which schemes serve as a means of encouraging authorities to release *new information*. The Information Commissioner has indicated that he will expect this in future:

"Generally speaking the schemes submitted to us have described information already being published by public authorities, and have only included small amounts of new information. We have made it clear, however, that in keeping with the spirit of the way in which publication schemes were described in the course of the passage of the Freedom of Information Bill that those criteria will be revised before existing schemes are due for renewal. The Commissioner's expectation is that future schemes will set out the intention to publish routinely information which was previously not available at all or only made available on request."⁶

It would be sensible for departments to include material in their schemes only where this represented some form of added value to what went before. This might take the form of (a) releasing previously unpublished information (b) making information substantially more accessible - for example by putting on the internet

³ For example, the MOD scheme includes a class entitled 'Depleted Uranium' which is defined as 'Key facts and policy statement on the use of Depleted Uranium as published on the MOD Website.'

⁴ <http://www.postcomm.gov.uk/Index2.html> (Click on "Statutory")

⁵ <http://www.rail-reg.gov.uk/server.php?show=ConWebDoc.5573>

documents that were previously available only in hard copy or which had to be inspected in person (eg on a public register) (c) providing consistent access to information which had previously been published intermittently.

Some authorities have used their schemes to prompt the release of new information. Notable examples include:

- *DEFRA*, whose scheme is said to include as much as 25% of newly published material⁷
- The *National Assembly of Wales* whose publication scheme lists 18 items of information released for the first time under the scheme.⁸

The device of highlighting such newly published information - or its absence - in the publication scheme may in itself contribute to the progressive release of new information.

Internal guidance

The publication of internal guidance used by departments in their dealings with the public has been a long-standing requirement under the Open Government code.⁹ The exercise potentially has significant benefits both to the public and government.

It should allow the public to better understand the criteria and rules which are applied to matters which concern them and satisfy themselves that they are fair. In any application or submission they should be better able to recognise and address the criteria which the authority actually applies. They should have a better

⁶ Information Commissioner, Annual Report 2002-03.

⁷ DEFRA Publication Scheme Approval Questionnaire

⁸ http://www.wales.gov.uk/keypubscheme/content/pub-scheme-e.htm#Annex_A.

"Appendix A Information to be released for the first time under this Publication Scheme"

⁹ The code states: "Subject to the exemptions in Part II, the Code commits departments and public bodies under the jurisdiction of the Parliamentary Commissioner for Administration (the Ombudsman)...to publish or otherwise make available, as soon as practicable after the Code becomes operational, explanatory material on departments' dealings with the public (including such rules, procedures, internal guidance to officials and similar administrative manuals as will assist better understanding of departmental action in dealing with the public)". Code of Practice on Access to Government Information, Part I, paragraph 3(ii).

idea of what to expect in dealing with officials and be able to satisfy themselves that matters of concern to them have been dealt with properly.

Exposing internal guidance to wider scrutiny should also help to improve the quality of these materials, ensuring that they properly reflect statutory requirements, stated policy objectives and the requirements of procedural fairness. It may help to inform staff themselves of the criteria they are expected to apply and ensure consistency with related guidance.

An explicit requirement to publish internal guidance appears in many countries' FOI laws, including those of the USA, Canada, Australia, New Zealand and Ireland.¹⁰ An impressive example, which can be consulted online, is provided by the US Environmental Protection Agency's Interpretive Documents Collection which *"has been developed to provide a central point of access to non-binding general policy, guidance, and interpretive documents that describe how the Agency intends to exercise its discretionary authority and explains what a statute or regulation means."*¹¹

In both Australia¹² and Canada¹³ a comprehensive list of the guidance produced by each government body is available from a single online source.

In Australia these requirements have been widely credited with improving the efficiency of decision-making, by prompting authorities to consolidate and update their guidance and encouraging them to *"examine 'the folklore' upon which they have commonly operated in the past"*.¹⁴ The Australian Department of Social Security reported that the manuals and their indexes were *"widely used by front-line decision-makers as a means of easily identifying which rules are to be*

¹⁰ For example, section 16(1)(a) of Ireland's Freedom of Information Act states: "A public body shall cause to be prepared and published and to be made available in accordance with subsection (5)— (a) the rules, procedures, practices, guidelines and interpretations used by the body, and an index of any precedents kept by the body, for the purposes of decisions, determinations or recommendations, under or for the purposes of any enactment or scheme administered by the body with respect to rights, privileges, benefits, obligations, penalties or other sanctions to which members of the public are or may be entitled or subject under the enactment or scheme, and (b) appropriate information in relation to the manner or intended manner of administration of any such enactment or scheme."

¹¹ <http://www.epa.gov/guidance/>

¹² http://www.naa.gov.au/about_us/organisation_staff/foi_section9.html

¹³ http://infosource.gc.ca/Info_1/index-e.html

¹⁴ Lindsay J. Curtis (Deputy Secretary, Commonwealth Attorney General's Department) 'Freedom of Information in Australia', In: Public Access to Government Information ed. Norman Marsh QC, Stevens, London, 1987, page 180.

applied” leading to “*more consistent decision-making*” and making decisions “*more readily understood by the people affected.*”¹⁵ A similar provision in the New South Wales FOI law is said to have been “*of enormous assistance to staff*”.¹⁶

UK departments

The DCA’s guidance on publication schemes for central government encourages the publication of internal guidance and any specific guidance relating to the FOI Act and other openness measures.¹⁷

Many departments have followed this advice in relation to their FOI and records management guidance but the publication of other internal guidance is patchy.

Some of the more ambitious initiatives are:

- *The Department of Health* publishes three online collections of internal guidance covering business planning, finance and personnel matters. An A-Z index spans the three collections.¹⁸ The department also provides online access to the weekly bulletins it circulates to NHS chief executives, social services directors, medical directors and other health professionals. Certain other guidance is also published, for example on procurement and the department’s relations with its NDPBs.¹⁹
- *The Department of Work and Pensions* provides substantial internal guidance relating to social security materials, including a comprehensive Decision Maker’s Guide, and summaries of Social Security Commissioners’ decisions. But there are also important examples of guidance going beyond the

¹⁵ Attorney-General [Australia] 1983-84 Annual Report on the Freedom of Information Act, pages 137 and 148.

¹⁶ Premier’s Department, New South Wales, Freedom of Information Annual Report 1989-90

¹⁷ 7.1 Guidance to Staff. It is expected that Publication Schemes will provide access to explanatory material on Departments’ and NDPBs’ dealings with the public and other organisations. This includes such rules, procedures, internal guidance to officials, and similar administrative manuals as will assist better understanding of the organisation’s interaction in dealing with the public. It will also include internal guidance to officials on implementing/operating the Code of Practice on Access to Government Information (before 2005), the Freedom of Information Act (after 2005), the Environmental Information Regulations and the Data Protection Act 1998.

¹⁸ <http://www.info.doh.gov.uk/doh/notice.nsf/frames2?openform>

¹⁹ [http://www.dh.gov.uk/...](http://www.dh.gov.uk/)

administration of the benefits system, and the FOI unit indicates that its intention is to publish all internal guidance.

- *The Inland Revenue's* publication scheme includes a class covering: "*internal technical guidance to staff about the matters for which the Department is responsible, rules, procedures, etc. that provide a better understanding of the Inland Revenue's interaction with the public; also external guidance produced for the Department's customers.*"²⁰ Much of the internal guidance deals, in great detail with taxation matters, but it also includes other matters such as the department's purchasing manual; the redress manual (dealing with claims for compensation); its guidance on risk management²¹ and the departmental security manual.²²
- Several of the *Home Office's agencies or directorates* publish considerable amounts of guidance. The Immigration and Nationality Directorate publishes comprehensive instructions to staff on how to apply immigration, nationality and asylum rules.²³ Circulars to chief police officers and police authorities are published.²⁴ The Prison Service publishes prison orders, which cover an extremely varied range of matters including purely staff matters (such as the rules on subsistence allowance), public relations (the 'message' which should be communicated to the press), the arrangements for investigating allegations of misconduct against staff, identifying potential suicide risks, investigating deaths in custody, respecting religious observances and many other matters.²⁵

While these are some of the highlights, many other schemes contain only occasional examples of internal guidance (apart from that dealing with FOI and open government). Most avoid any general commitment to publish such material. Where there is such a commitment it is significantly qualified:

²⁰ <http://www.inlandrevenue.gov.uk/freedom/foi-05.htm>

²¹ <http://www.inlandrevenue.gov.uk/risks/risks.htm>

²² <http://www.inlandrevenue.gov.uk/manuals/dsmanual/index.htm>

²³ <http://www.ind.homeoffice.gov.uk/default.asp?pageid=798>

²⁴ <http://www.homeoffice.gov.uk/inside/circs/>

²⁵ <http://www.hmprisonservice.gov.uk/resourcecentre/psispsos/>

- *The Foreign and Commonwealth Office's* scheme says that internal guidance will be published "where there is a public interest in its content"²⁶ and a commitment to publish internal circulars to staff is subject to a similar proviso.²⁷ This qualification introduces substantial discretion into the commitment and in fact relatively little guidance is identified as being available.²⁸
- *The Department of Trade and Industry* does undertake to publish internal guidance generally - but only that produced or revised after November 2002. No such guidance is listed on the website at the time of writing, 13 months later.²⁹ Again, individual examples of guidance appear in separate self-contained classes but some of the guidance which the DTI had previously published under the Open Government Code is not acknowledged in its publication scheme.³⁰

The overall impression is that many departments have shied away from any general commitment to publish guidance. The significant progress that has been made is usually in relation to guidance produced in a structured form (such as circulars, orders or handbooks), where departments may feel greater confidence in the quality of the materials and their ability to withstand public scrutiny. The relative lack of progress in other areas may reflect departments' concern that more ad hoc guidance may not be of a publishable quality. However, in the absence of real pressure to publish, there may be no incentive to improve the quality of these materials. It is notable that the benefits from the publication of guidance described in Australia related partly to the improvements to guidance forced on departments in order to comply with a statutory duty to publish their internal manuals.

²⁶ <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391908>

²⁷ <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029392277>

²⁸ The guidance mentioned relates to employment law and equal opportunities and a guide to staff retirement. A link to the Home Office site, for guidance on visas and immigration, is also provided.

²⁹ <http://www.dti.gov.uk/SMD3/internal-administration.htm#Internal%20Guidance>

³⁰ A list of DTI guidance was published in response to a PQ on 10 April 2002, Column: 388W

Facts and analysis behind policy decisions

Under the Open Government code, departments are required to publish “the facts and analysis of the facts which the Government considers relevant and important in framing major policy proposals and decisions”.³¹ The DCA’s guidance for central government says that this commitment should be carried forward under publication schemes.³²

A number of departmental publication schemes include a general class with a title such as “*Explanatory background information to major policy proposals made and decisions taken after 30 November 2002.*” The contents of this class are described in terms such as “*Various documents providing explanatory material on website and in hard copy.*”

The difficulty with this approach is that it provides no guide to the specific kinds of materials that have been, or in future will be, published under this commitment. No lists of published background documents or links to them are provided. There is no ready way of detecting whether any information under this heading has been released at all or of predicting what kind of information is likely to be released in future.

A more positive approach, adopted by the *National Assembly for Wales*, involves the systematic publication of ‘decision reports’ summarising the facts and analysis of facts relating to every formal decision taken by ministers under their legal powers. Together with a separate, unpublished, minute containing advice, these are the final reports put to ministers before each decision is taken. At the time of writing over 700 have been published.³³

Because these reports represent the very final stage of the decision-making process, some may only be summaries of the more detailed materials that will have been considered at earlier stages. Although some are very brief a number provide substantial information.³⁴

³¹ Code of Practice on Access to Government Information, Part I, ‘Information the Government will Release’.

³² Freedom of Information Act 2000 - Publication Schemes. Central Government and Non-Departmental Public Body Guidance. Paragraph 7.2

³³ <http://www.information.wales.gov.uk/content/decisionreports/index-e.asp>

³⁴ See for example:

Important examples of the publication materials used at an earlier stage in the decision-making process can be found on the *Department for Constitutional Affairs'* web site, in connection with the development of the FOI Act. These are:

- the Cabinet Office's decision to publish "*Your Right to Know - Background Material*" in 1998 after the FOI white paper appeared,³⁵ and
- publication by the Home Office of "*Freedom of Information - Preparation of Draft Legislation. Background Material.*"³⁶

The distinctive features of these materials is that despite some editing, they represent the contemporaneous documents in the form in which they were used by officials in developing the policy and provide an added dimension to anyone seeking to understand the objectives, concerns and factors which underpinned those processes.

Minutes

A number of departments have begun publishing minutes of senior level management and other committees. These can be particularly valuable as a symbolic 'lowering of the drawbridge', demonstrating to both staff and the public that past assumptions that such material must inevitably be closed do not necessarily apply.

Some bodies have approached the exercise with great caution, publishing minutes only in heavily abbreviated form often with the names of committee members withheld.

<http://www.information.wales.gov.uk/archive/content/decisionreports/health/changes%20to%20the%20childhood%20immunisation%20programme.rtf>

<http://www.information.wales.gov.uk/archive/content/decisionreports/education/proposal%20from%20cardiff%20county%20council%20to%20close%20viriamu%20jones%20community%20primary%20school.rtf>

<http://www.information.wales.gov.uk/archive/content/decisionreports/localgovt/public%20access%20to%20marked%20electoral%20registers%20and%20other%20documents%20returned%20after%20an%20election.rtf>

³⁵ http://www.dca.gov.uk/foi/bg_cont.htm

³⁶ <http://www.dca.gov.uk/foi/foibg.htm>

- Others publish more detailed summaries (eg *DTI*³⁷ and *DEFRA*³⁸) which identify those present and those making presentations.
- The *Health and Safety Commission* and *Executive* publish full minutes of their meetings. Others, such the *Coal Authority*,³⁹ and the *Food Standards Agency*⁴⁰ hold public board meetings (though parts of the former's are held in private, following the local government model) and publish both minutes and papers.
- A number of departments publish detailed minutes of advisory committees, particularly those which include independent members or serve to liaise with external bodies. The *Inland Revenue* publishes detailed minutes of committees through which it liaises with external professional and representative bodies.⁴¹ *DEFRA* publishes full minutes of its scientific advisory committees⁴² as does the *Food Standards Agency*.⁴³ The *National Archives* publishes the minutes of its advisory panels on which user groups are represented.⁴⁴ The *DCA* publishes the minutes and papers of the Lord Chancellor's Advisory Group of the Implementation of the FOI Act.⁴⁵
- Probably the most significant examples, however, are the *National Assembly for Wales* which publish their cabinet minutes⁴⁶ and the *Department for International Development* which publishes full minutes and papers in the form in which they are circulated to staff. These have now been published retrospectively back to 2000.⁴⁷

Contracts

The question of what information about contracts can safely be disclosed perplexes many authorities. Government departments sometimes consider that

³⁷ <http://www.dti.gov.uk/SMD3/internal-administration.htm#Senior%20Committee%20Meetings>

³⁸ <http://www.defra.gov.uk/corporate/manboard/meetings.htm>

³⁹ <http://www.coal.gov.uk/resources/boardmeetings/>

⁴⁰ <http://www.food.gov.uk/aboutus/ourboard/boardmeetings/>

⁴¹ <http://www.inlandrevenue.gov.uk/freedom/foi-09.htm>

⁴² <http://www.defra.gov.uk/science/>

⁴³ <http://www.foodstandards.gov.uk/science/ouradvisors/>

⁴⁴ http://www.pro.gov.uk/about/foi/pubscheme.asp?l1_cat_id=1&l2_cat_id=16&l1_name=PRO+as+an+organisation&l2_name=Agreed+Committee+papers

⁴⁵ <http://www.dca.gov.uk/foi/publications/scheme.htm>

⁴⁶ <http://www.wales.gov.uk/organicabinet/content/CabMeetings/index.htm>

⁴⁷ <http://www.dfid.gov.uk/>

the values of contracts are commercially confidential - while others see no obstacle to their release. The response to this PQ illustrates the confusion:

Mr. Watson: To ask the Secretary of State for Defence what contracts his Department has with KPMG; and what the value is of each one.

Dr. Moonie: There are currently 29 extant contracts with KPMG. The values of individual contracts are withheld under Exemption 13 (third party's commercial confidences) of the Code of Practice on Access to Government Information; however, the total value of all of the extant contracts is around £59 million.⁴⁸

Mr. Watson: To ask the Secretary of State for Trade and Industry what contracts her department has with KPMG; and what the value is of each one.

Ms Hewitt: DTI has two contracts with KPMG: one for Security Standards accreditation at £19,000 and another for a secondee to assist on Company Law issues at £77,000.⁴⁹

The value of a contract which has been signed is typically disclosable under overseas FOI laws, and there is considerable case law to this effect in Ireland, Canada, Australia, New Zealand and the USA. Under the UK Open Government Code, the Parliamentary Ombudsman has held that:

"It should be normal practice for departments and agencies to disclose the price that they have paid contractors for providing a service."⁵⁰

The Lord Chancellor's Code of Practice under section 45 of the FOI Act advises authorities 'wherever possible' to reject confidentiality clauses applying to the terms of a contract, its value and performance.⁵¹ The DCA's guidance on publication schemes encourages central government departments and NDPBs to consider publishing a considerable range of information about contracts and the way in which they are awarded.

Publication schemes themselves vary in the degree of information provided about individual contracts. The most positive examples are:

- *The Department for International Development* whose publication scheme includes an online list of all contracts let month by month, including the project title, contractor and value of each.⁵²

⁴⁸ 31.1.02. Col 505W

⁴⁹ 1.2.02, Col. 616W

⁵⁰ Case A28/02

⁵¹ Paragraph 42

⁵² <http://www.dfid.gov.uk/>

- *The Department for Trade and Industry* whose scheme undertakes to provide on request a hard copy showing details of all contracts worth more than £500, including their value.⁵³
- *The Department for Constitutional Affairs* provides valuable information about PFI schemes relating to the Court Service. This includes details (including the values) of let contracts and those being planned.⁵⁴

The Treasury Solicitor's Department, one of the few others to publish details of contract values, does so but only for those valued above £30,000.

In most cases other departments avoided disclosing any information about the values of their contracts, except to acknowledge that details of those subject to the EU procurement directive (i.e. those worth more than £100,410) have to be made publicly available.

It seems likely that many wrongly assume that such specific details cannot be disclosed. Indeed, the publication scheme of the London Fire Brigade, though it lists the titles of contracts, withholds details of their value and the contractors' identities on the grounds of "commercial sensitivity".⁵⁵

Contract performance

The DCA's guidance on publication schemes encourages departments to publish other information about contracts, including contract performance standards, performance reviews and results achieved.⁵⁶ There was little evidence of such material in departmental publication schemes, though such information is likely to be disclosable under the FOI Act and to be of particular interest.

A further possibility - not yet in evidence in publication schemes - might be to

⁵³ In fact this material was not available at the time of writing, but the DTI told us that it expected the software necessary to permit such reports to be generated to be operational "within a few weeks".

See: <http://www.dti.gov.uk/SMD3/finance-and-procurement.htm#Contracts%20awarded>

⁵⁴ <http://www.dca.gov.uk/courtbuild/projlistfr.htm>

⁵⁵ http://www.london-fire.gov.uk/about_us/foi/cat4/4-14.asp

⁵⁶ Paragraph 7.10.2

publish details of any confidentiality clauses in contracts. This might encourage compliance with those provisions of the s 45 Code of Practice which discourage authorities from accepting such restrictions. Such a provision is now required in Australia as a result of a Senate Order.⁵⁷

Regulatory decisions

A number of bodies with regulatory functions publish details of their regulatory or enforcement decisions. Notable examples include:

- The *Health and Safety Executive*, which provides access to an online database listing convictions for health and safety offences and the penalties imposed. The database allows users to call up the enforcement record of a particular business, or to compare those of all firms within a particular industry or region. A similar database provides access to enforcement notices served.⁵⁸ These pre-date the HSE's publication scheme.
- The *Charity Commission* which publishes details of its formal decisions on whether to grant charitable status to an organisation.⁵⁹

Information Asset Register

By definition, publication schemes deal with the *published* information which departments hold. But many users' needs may only be met by access to *unpublished* records. Discovering what kind of unpublished information exists may be a serious obstacle to a requester who has little insight into the way an authority's records are organised. This is an issue which the Information Asset Register - which provides details of departments' unpublished records holdings - addresses directly.

HMSO, which is responsible for the Register, recognises its relevance to FOI. Its guidance states:

⁵⁷ See for example: <http://www.health.gov.au/contracts/>

⁵⁸ <http://www.hse.gov.uk/enforce/index.htm>

⁵⁹ <http://www.charity-commission.gov.uk/spr/pubscheme.asp#718>

16. By highlighting the IAR and inforoute within a departmental Publication Scheme, users will be able to further their enquiry beyond information that is published. By doing so, it should be possible for users to identify the department that holds the information they require. This will eliminate the need for users to make trawling enquiries of a number of departments and reduce the burden on staff.

17. Moreover, detailing unpublished information holdings within an IAR allows and encourages users to make a request for a specific information resource and will spare departmental effort. The department will also be able to identify which other department might hold the information requested and the response to the enquirer can be more helpful and provided much more quickly. In this way, comprehensive IARs may contribute considerably to the management of information requests.⁶⁰

Many departments refer to the Information Asset Register in their schemes, and refer readers to the IAR search engine on the HMSO site.

However, some schemes, such as those of *Tradepartners*⁶¹ and the *Department of Health*⁶² provide direct access via their own web sites to their departmental entries in the register. This helps to draw attention to these materials and underlines the department's ownership and responsibility for them. It also makes these materials more easily retrievable - avoiding some of the search problems found than the HMSO site.⁶³

Some departments have large numbers of IAR entries. The Department of Health has 224 entries, the DCA 196, the DWP 110 and the DTI 77. However, others barely register: the Home Office and Customs and Excise have only 1 entry each.

Numbers of entries alone are not necessarily a guide to quality. For example, although the IAR is meant to concentrate on 'unpublished resources' some departments' figures appear to include many published items, some of which also appear in their publication schemes.⁶⁴ However, it is clear that some departments are not contributing to the IAR in any meaningful way.

⁶⁰ http://www.hmso.gov.uk/copyright/guidance/gn_18.htm

⁶¹ http://www.tradepartners.gov.uk/asset_register/asset_register/asset/part1.shtml

⁶² <http://www.info.doh.gov.uk/doh/iar.nsf/MainCategory?OpenView&count=500>

⁶³ For example, although the HMSO site allows searches to be made by government department, the list of departments offered for selection is incomplete. There is no obvious way of checking what if any entries the omitted departments have made.

⁶⁴ For example, the 14 Ministry of Defence items listed in the IAR include "The Ministry of Defence Official Web Site" - hardly an unpublished item. The list also includes the department's equal opportunities policy and guidance on low flying, both of which are found either on the MOD's publication scheme or web site.

One of the problems in this area is that most departments appear to add information when they first 'join' the IAR, but make little progress thereafter. The possibility of the register becoming a reliable guide to unpublished records holdings presently seems a distant prospect. A more concerted effort to promote this resource could be of significant value.

Other guides to records

The IAR is not the only way in which departments could help the public to identify what unpublished materials they hold.

- departments could describe the *classes* of records they hold, as required under several overseas FOI laws, including Canada's.⁶⁵ The resulting material is now available online.⁶⁶
- departments could publish the *titles* of newly created files, as occurs in Australia, where a Senate Order requires the web publication of all new file titles created during the previous six months.⁶⁷

Such examples under publication schemes are presently rare but include:

- The *National Archives*' guide to its own files series⁶⁸ and to the series of files held by the Advisory Council on National Records and Archives⁶⁹
- The *Medicines and Healthcare Products Regulatory Agency* publishes a guide to the 'Classes of Information held which are subject to a request under the Freedom of Information Act' for each of its divisions.⁷⁰

⁶⁵ Section 5 of Canada's Access to Information Act states: "(1) The designated Minister shall cause to be published, on a periodic basis not less frequently than once each year, a publication containing (a) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each division or branch of each government institution; (b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Act; (c) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and (d) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Act should be sent."

⁶⁶ <http://infosource.gc.ca/index-e.html>

⁶⁷ See for example: <http://www.deh.gov.au/about/files/>

⁶⁸ <http://www.pro.gov.uk/about/ourfiles/>

⁶⁹ <http://www.pro.gov.uk/advisorycouncil/files.htm>

Disclosure/request logs

Some departments have undertaken to publish lists of the documents requested and/or released in response to requests under existing access regimes and later under the FOI Act.

This exercise may be of particular value in:

- (a) encouraging informed use of the Act by illustrating the kinds of information that can be obtained
- (b) helping requesters understand the likely operation of exemptions, so that they are better able to judge the reasonableness of any decision to withhold similar information from them. This may reduce unnecessary appeals against refusals
- (c) ensuring that the information released to one applicant becomes more widely available and benefits the public generally. This may be particularly important where the original applicant has not been able, or has chosen not, to make use of released information
- (d) publicising precedents, so that significant decisions are more widely recognised and acted upon
- (e) helping departments retain some corporate memory about previous decisions which they have made, reducing unnecessary duplication of effort of dealing with future requests.

A number of positive examples of such disclosures can be found in publication schemes:

- The *Department for Constitutional Affairs* publishes a register of information which it has disclosed under the Open Government code.⁷¹

⁷⁰ <http://www.mca.gov.uk/>. From the MHRA publication scheme select 'Operational breakdown of the MHRA and information held'. This leads to a page linking to each of the agency's 7 divisions each of which lists the classes of information held by that division.

⁷¹ <http://www.dca.gov.uk/foi/publications/scheme.htm>

- The *Welsh Assembly* has undertaken to publish lists of the information it releases under its Code and the Environmental Information Regulations.⁷²
- The *National Archives* goes further and has decided to publish a description of *requests received* under the Code as well as their outcomes.⁷³
- The *British Council* has added a new dimension by publishing, in anonymised form, the full text of requests for information it receives and its responses to them.⁷⁴
- On a related theme, the Foreign and Commonwealth Office publishes updated lists of previously withheld historical records.⁷⁵

Openness rulings

Some departments have undertaken to publish decisions relating to them taken by the Parliamentary Ombudsman under the Open Government code and by the Information Commissioner under the FOI and DP Acts and EIRs. This is a valuable initiative which not only helps to publicise any precedents in those decisions but also suggests a commitment to addressing any shortcomings which they may identify.

Departments with such commitments include the *Department for Constitutional Affairs*,⁷⁶ the *Department for Transport*⁷⁷ and the *Department of Trade & Industry*.⁷⁸ The DTI has already published two such decisions.

⁷² <http://www.wales.gov.uk/keypubscheme/content/pub-scheme-e.htm#c89>

⁷³ Although at the time of writing it contains only a single entry.

http://www.pro.gov.uk/about/foi_requests.htm

⁷⁴ <http://foi.britishcouncil.org/Publication.asp?id=16>

⁷⁵ <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391917>

⁷⁶ <http://www.dca.gov.uk/foi/publications/scheme.htm>

⁷⁷ http://www.dft.gov.uk/stellent/groups/dft_about/documents/page/dft_about_507544-04.hcsp#P85_10505

⁷⁸ <http://www.dti.gov.uk/SMD3/enforcement-and-compliance.htm>

Parliamentary and statutory materials

Many schemes contain classes relating to legislation, Parliamentary questions, command papers, treaties, and papers deposited in the libraries of the Houses of Parliament.

Most departments make no effort to identify or gather together materials within these categories that affect them and instead direct users to some existing site (such as the Parliament site) and invite them to search for relevant materials themselves.

A conspicuous example are those departments which list as a "class" information about "international treaties", without identifying any treaty which actually affects their work. Instead a link is provided to the home page of the Foreign and Commonwealth Office web site, a page which in fact makes no reference to treaties whatsoever.⁷⁹

There are exceptions, however:

- *DWP* lists the key Acts relating to its work and provides direct links to each Act's specific location on the HMSO web site.⁸⁰
- *DTI* publishes summaries of compliance rulings affecting it on its own web site rather than directing users to search the Parliamentary Ombudsman or Information Commissioner web sites.⁸¹
- *DTI* also indicates that papers deposited by its ministers in the libraries of the Houses of Parliament can also be obtained from the department itself, a move which makes access to these materials easier than is otherwise the case.⁸²

⁷⁹ See for example, http://www.hm-treasury.gov.uk/About/Publication_Scheme/about_pub_clleg.cfm

⁸⁰ http://www.dwp.gov.uk/pub_scheme/classes/legislat.asp

⁸² <http://www.dti.gov.uk/SMD3/dealing-with-the-public.htm#Parliamentary%20Questions>

About the publication scheme

Many departments provide a link from their home page to their publication scheme or to information about freedom of information, a useful device which publicises these rights.⁸³ (In fact *DEFRA* has an "Access to Information" link as a banner above *every* page on its web site.) However, the practice is not universal and there are several notable exceptions (including the DCA itself).

A number of departments⁸⁴ make clear that their schemes represent an enforceable commitment, and that complaints about any failure to meet the commitment can be made not just to the official responsible for the scheme but ultimately to the Information Commissioner.

Not all publication schemes clearly acknowledge the difference between providing information featured in the scheme (which should be a rapid process) and the possibly slower and less certain process of responding to FOI requests. The DCA's site provides the clearest and most helpful statement on this point, which could usefully be adopted in all schemes, stating:

"The purpose of the Publication Scheme is to ensure that a large amount of information is readily available to members of the public, i.e. without the need for specific consideration under the Freedom of Information Act, and to inform the public of the extent of material that is available.

By "readily available" we mean that the information is available:

- on the Lord Chancellor's Department's website
- another website
- may be purchased from The Stationery Office
- may be obtained from a public library, or
- will be supplied immediately on receipt of a letter or telephone call to this Department."⁸⁵

Maurice Frankel & Katherine Gundersen
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⁸³ These include the Cabinet Office, Home Office, Ministry of Defence, Department for Environment, Food and Rural Affairs, Department of Trade and Industry, Department of Health, Foreign & Commonwealth Office, Department for Work and Pensions.

⁸⁴ See for example the National Archives. <http://www.pro.gov.uk/about/foi/pubscheme.asp>

⁸⁵ <http://www.dca.gov.uk/foi/publications/scheme.htm>