

Lord Falconer
Selborne House
54 Victoria Street
London
SW1E 6QW

Dear Lord Falconer,

I am writing to convey my concern about the proposed changes to the workings of the Freedom of Information Act.

Although the Government committed to review the fee regime for the Freedom of Information Act after the first 12-18 months of its operation, clearly decisions taken on the basis of the review need to take into account much wider factors than merely economic ones. I am concerned that this is not being done – the Frontier Economics report focuses purely on economic factors.

The costs of the Freedom of Information regime are actually trivial. The Frontier Economics report says the cost of dealing with it across Central Government is £24.4 million and £11.1 million across other public bodies. This sum in the context of total public expenditure barely qualifies as pocket money. Of course as the report acknowledges the net cost of FOIA is actually less than these figures, because the identified FOIA costs need to be offset against the (unquantifiable) costs of the Open Government regime.

But the benefits of Freedom of Information are so fundamental in a free and democratic society that they must outweigh easily the sums of money being discussed. The Labour Party manifesto in 1997 declared “unnecessary secrecy in government leads to arrogance in government and defective policy decisions. The Scott Report on arms to Iraq revealed Conservative abuses of power. We are pledged to a Freedom of Information Act, leading to more open government”. The benefits provided by FOIA are improved public understanding of public decision-making which should lead to a more mature political debate and accountability of public institutions, which should lead to better quality decision-making. Public trust in public institutions has as you know declined dramatically in recent years – FOIA must be a key way of trying to repair the trust between the governors and the governed. I believe therefore that to limit FOIA on cost grounds should be resisted.

All democratic processes, involving as they do checks and balances and a constructive tension between governors and the governed, incur costs. But the benefits are so massive that financial considerations shouldn't enter into it. The Government would hardly advocate circumscribing Parliamentary democracy on the grounds that MPs' expenses are too great, or the cost of maintaining the Palace of Westminster is too high, and likewise they should not be attempting to circumscribe access to

information or accountability of Government, which would be the effect of the DCA's recent proposals on FOIA.

Frontier Economics say that experienced serial requestors (like me) make up a disproportionate amount of the total cost incurred dealing with FOIA. I do not doubt this, but I would point out that it is these requestors who are also contributing most to obtaining information of value from Government which sheds important light on issues of the day, informs political debate, and increases the accountability of public institutions. The idea that the "serial requestors" might be carrying out activities of value rather than being an irritant to officials is something that the authors of the report have completely failed to consider.

The report makes valid points about requests which go against the spirit of the Act. I have much sympathy for the official whose time was wasted trying to work out how many reported incidents of sex with sheep there were in Wales in 2003 and since records began. But these sorts of requests must make up a miniscule of all FOIA requests. Sadly there will always be a small minority who aim to abuse the spirit of any law. This is just a fact of life, but to use it as evidence to support an argument to try and make FOIA much more restrictive is wrong. The overwhelming benefits I have discussed should not be sacrificed because a few people choose to abuse the spirit of the Act.

Lastly, I am very disappointed that the Government has chosen to use the fee regime review to restrict FOIA's operation without looking at itself in the mirror. No serious research has been done, as it should have been, into the massive problems encountered by the users of the Act. In my personal experience, if anything the operation of FOIA has revealed widespread problems of incompetence, poor management and delegation, and an attitude of great superciliousness among many officials in Whitehall dealing with FOIA.

Routinely provisions of FOIA are flouted. Frequently Departments take longer than 20 days to respond to a request without invoking their legal right to do so. Many fail to assist requesters by refusing to answer emails merely asking for progress updates. On one case the ICO is investigating at the moment, the DTI have asked the ICO to clarify with me exactly what information I want – with respect this is just appalling.

The internal review process often takes so long that the only explanation for delays can only be total incompetence or deliberate stalling for political reasons. Frontier Economics state that the most expensive requests take on average 50 hours to deal with. I have internal reviews outstanding with the FCO which have taken so far six months in one case, and nine months in another. The officials concerned fail to respond even to simple requests I make asking when they will complete the process. I fail to believe that there can be a reasonable excuse for this behaviour.

What you really should be reviewing is how poor practice and casual law-breaking by Whitehall officials can be seriously addressed, not using the excuse that people are being too effective at exercising their democratic rights as a way of circumscribing them.

Please do not alter the fee regime but please instead try and do something about the poor practice so widespread, and I fear, entrenched across Whitehall.

Yours sincerely,

Nicholas Gilby