

Information Rights Division,  
Department for Constitutional Affairs,  
6.16 Selborne House,  
54-60 Victoria Street,  
London.  
SW1E 6QW

February 5, 2007.

Dear Sir.

**Draft Freedom of Information and Data Protection (Appropriate Limit and Fees)  
Regulations 2007**

1. The Government's proposals to amend the fees regulations for requests under the Freedom of Information Act 2000 are a matter of considerable concern to the Press Association, the national news agency for Great Britain and the Republic of Ireland.
2. The Press Association is concerned about two issues. The first is the need for the proposed changes, and the second is the effect they would have, were they to be introduced, on freedom of information generally, and the public's right to know what Government Ministers, Government departments, and other public bodies are doing.
3. The Press Association takes the view that the proposals are unnecessary, and are simply intended to make it easier for Government departments and other public authorities to refuse requests for information on cost grounds. The proposals are based on an "independent review" produced for the Department of Constitutional Affairs. The research is no doubt independent – but the terms of reference were so closely drawn as to preclude a proper review of the workings of the Act and the benefits of freedom of information.

4. The Partial Regulatory Impact Assessment which forms an annex to the Consultation Paper on the proposed regulations points out that the review's terms of reference were to examine only two issues in detail:
  - the cost of delivering FoI across central government and the wider public sector, alongside an assessment of the key cost drivers of FoI; and
  - an examination of options for changes to the current fee regime for FoI.
5. In other words, the only issue was one of costs. No consideration has been given to the benefits which the Freedom of Information Act has brought, and to the ways in which it has helped the press and media expose waste and inefficiency in government, for example through the debacle of the NHS computerisation scheme.
6. In fact, one might come to suspect that the proposals which have now been put out for consultation result not merely from the results of the review, but also from a desire by the Government to place a limit on freedom of information, particularly by restricting its use by those who make the greatest use of it.
7. The independent review pointed out that the proposals for changes to the fees regime would have a disproportionate impact on a number of people or groups – journalists, MPs, campaign groups, and researchers. These are the very groups one might have expected to be the heaviest users of the rights to information granted by the Act, so it seems surprising that the Government would now want to enable authorities and public bodies to refuse requests from such people purely on the grounds of cost.
8. The independent review suggests that the proposed changes will not affect the majority of requests made under the Freedom of Information Act, but would affect the following:
  - People submitting one of the 4% of requests which result in reading, consideration and consultation time imposing what the DCA describes as “disproportionate burdens”, and
  - the few people or groups who use the Act regularly, and, according to the DCA's Partial Regulatory Impact Assessment “impose disproportionate burdens by doing so”.

This is, in effect, an argument that people who regularly use the Act to obtain information are somehow making “disproportionate” use of the legislation, and of the rights they were given by a Government which has consistently declared its commitment to the public's right to know, and consistently claimed that the workings of the Freedom of Information Act have ushered in a new era of openness in Whitehall and throughout local government.

9. In addition, as the DCA's own research shows, savings which would result from the proposals would be minimal – for central Government the review suggests that the reduction in the cost of officials' time in dealing with requests would amount to £3.9 million, while for local government it would amount to a saving of £6 million across all the local authorities in England and Wales. This pales into insignificance when compared to a report published by the National Audit Office in December last year which said that the Government could save £660 million a year simply by getting better deals on its stationery and office equipment.
10. The proposals for changes to the fees regime also seem intended to prevent or reduce the use of the rights granted by the Act by the very people who might have been expected to be the heaviest users.
11. Allowing the time spent by officials – and, one suspects, ministers - in considering whether information should be disclosed to count towards the cost limit will undoubtedly mean a sharp increase in the number of requests which will be rejected simply on cost grounds.
12. The Campaign for Freedom of Information has already made submissions to the DCA and its ministers on the proposals being suggested by the Government. It points out that the new regime would probably mean that complex requests which raised new or complicated issues for the first time would probably be rejected out of hand on cost grounds alone, without actually being considered in any depth. It has also given examples of information which has emerged through the use of the legislation which, in all likelihood, would remain secret under the new fees regime.
13. The Press Association wishes to associate itself with, and to adopt, the detailed submissions made by the Campaign to the DCA and its ministers on the issue of consideration and consultation time.
14. The Press Association also wishes to associate itself with, and to adopt, the points which have been made to the DCA and its ministers by the Campaign for Freedom of Information on the question of aggregating requests made by a person or persons “apparently acting in concert” in calculating the appropriate cost limit. This leaves it in the hands of an authority to reject requests made by an organisation, such as the Press Association, over a 60-day period. In effect, it would mean that the Press Association would be restricted to making no more than one request in any two-month period to a Government department – a restriction which is not included in the primary legislation, and which has not been considered by Parliament.

15. Again, it is difficult to reach any conclusion other than that the proposals are not intended to reduce the costs of Freedom of Information, but are rather intended to cut the number of requests made under the Act by journalists, among others, with the intention of ensuring that material the Government does not wish to emerge can be kept secret by the use of a costs regime intended to ensure that only the simplest requests for information are met.
16. The Press Association also takes issue with the form of the consultation. As has already been said, it seems odd that the consultation period should end just a week before the proposed regulations are due to be laid before Parliament, which strongly suggests that the “consultation” is a consultation in name only.
17. In addition, the questions in the consultation do not concern the issue of whether the changes are necessary or desirable, but are posited on acceptance of the fact that what is being consulted on is a *fait accompli* and that all the DCA seeks is confirmation of that fact. This runs counter to pledges given in Parliament by DCA ministers and also to the assurance given by the Prime Minister himself on November 27, 2006, when he told a Newspaper Conference lunch that the Government would “consult very widely” on plans to change the fees regime for freedom of information requests. Mr Blair also said, in answer to a question: “We will listen carefully to what you say.” All the indications are, however, that the DCA is determined to introduce its proposed regulations despite opposition from the media, MPs, and the Commons Constitutional Affairs Committee, the chairman of which has clearly stated that there is no necessity to change the fees regime.
18. The Press Association’s answer to each and every one of the questions in the Consultation document is therefore as follows: “There is no need for the introduction of these proposed Regulations, each of which is clearly intended to undermine the functioning of the Act and to ensure that the Government is able to keep information from the public.”

Yours sincerely,

Mike Dodd,  
Legal Editor.