

Select Committee Evidence

Clerk to the Select Committee on Constitutional
Affairs
House of Commons
London SW1A 0AA

DATE: 16 February 2007

TO: The Clerk to the Constitutional
Affairs Select Committee

Submitted by:
Mark McLaren
Which? Public Affairs
Campaigns & Communications Division

RE: FREEDOM OF INFORMATION FOLLOW UP

Which? welcomes the opportunity to submit written evidence for the Committee's one-off evidence session on Freedom of Information on 6th March 2007.

1. We are **opposed** to the draft regulations published by the Department of Constitutional Affairs; our submission to the formal consultation is not yet finalised but as soon as it is submitted, I will send a copy to the Committee.

2. About Which?

Which? is an independent, not for profit consumer organisation with around 700,000 members and is the largest consumer organisation in Europe. Which? is independent of government and industry and is funded through the sale of Which? magazines and books. For fifty years we have been campaigning to get a fairer deal for all consumers.

3. Summary

3.1 Which? believes that the proposed changes will hinder our ability to be an effective campaigning organisation as we use Freedom of Information Act (FOIA) requests to forge positive change for consumers through our campaigning work.

3.2 Furthermore, we believe that the FOIA has not been in force long enough for the proposed changes to be either justified or necessary.

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Which? is the business name of Consumers' Association, registered in England and Wales No. 580128, a registered charity No. 296072. Registered Office 2 Marylebone Road, London NW1 4DF.



3.3 A core activity of Which? is to monitor the effectiveness and efficiency of public bodies and relevant legislation. We are recognised and relied upon by our members, the media and the general public for this work. We believe the draft regulations would limit our ability to continue to achieve this.

4. The proposed changes to the FOIA of most concern to us are:

4.1 that the cost of the time it takes to read, consider and consult on FOIA requests will be added to the cost limit (currently between £450-£600).

4.2 that unrelated requests from one organisation or individual over a three month period will be treated as one aggregated request.

5. Complex FOIA requests that Which? has made in the past, which might have been refused under the DCA's proposals, includes our work on:

5.1 Restaurant inspection reports - "scores on doors"

5.2 EU subsidies paid to individual farmers

5.3 Enforcement policies of the Financial Services Authority

5.4 Details of ministerial meetings with outside bodies

6. The impact of the proposed changes for Which? could be that:

6.1 Due to the limit of one request per quarter, for our health campaigns work, one request about waiting lists for one medical procedure could prevent us from asking about other waiting lists for 60 days and bar us from enquiring about hospital cleanliness, food, surgical success rates, access to new treatments, medical negligence, ambulance services, facilities for the disabled, interpreting services, clinical trials, investment plans, staffing levels, service cuts and other aspects of patient care.

6.2 Any FOIA request that raises a new and complex issue for the first time is at risk of being refused without consideration of its merits. Such requests are by their nature time consuming at first because they challenge long held practices.

7. We have found that some public bodies, including some central government bodies, are more confident and willing to be open. Those that are less open are more likely to incur higher costs (and use more time) which will, in turn, act to curb FOIA requests.



8. We therefore believe that:

8.1 The aggregation of FOIA requests may well in fact act as a disincentive to those public bodies that are only now beginning to deal effectively with the impact of the FOIA.

8.2 Public bodies should invest in records management systems to make the processing of FOI requests more efficient rather than seek to limit the number of requests.

8.3 Public bodies should seek to pro-actively publish information so that FOIA requests are not necessary.

8.4 Interpretive guidance published by the Office of the Information Commissioner (OIC) is helpful to both requesters such as Which? as well as the public bodies responding. By implementing the proposed changes, such OIC guidance may diminish.

8.5 It may be sensible to require a proportion of FOIA fees to be invested in information technology and records management systems so as to meet current and projected FOIA demands, including adjusting staffing levels particularly in high volume areas, rather than seeking to limit the number of FOIA requests as a management tool.

8.6 The level of complexity in the FOIA could be reduced by amending the list of exemptions.

9. In December 2006, as part of a health related campaign we are currently working on, we submitted a FOIA request to 100 Primary Care Trusts (PCT). We are currently conducting an analysis of the PCTs' responses. Our preliminary finding is that there is a huge variation in both their response and their knowledge of the operation of the FOIA. There is a lack of consistency in both.

10. Conclusion

10.1 Which? has found the FOIA to be an extremely important tool in providing reliable information and equipping campaigners with more focussed outcomes. We therefore believe that the damage done by these proposals would be out of all proportion to the relatively modest financial savings.

10.2 Which? hopes that the Constitutional Affairs Select Committee will recommend that Parliament should reject the draft regulations if they are ever presented to Parliament.