October 28th, 2006

The Lord Chancellor
Department for Constitutional Affairs
Selbourne House
54 Victoria Street
London SW1E 6QW

Dear Lord Chancellor,

We are writing in response to the your proposals to amend the Freedom of Information Act 2000, as outlined in the Government's response to the Constitutional Affairs Committee report "Freedom of Information – one year on".

In its response, the Government states:

> *"Following the conclusions of the [Frontier Economics] review the Government is minded to: i) include reading time, consideration time and consultation time in the calculation of the appropriate limit (£600) above which requests could be refused on cost grounds; and ii) aggregate requests made by any legal person (or persons apparently acting in concert) to each public authority (eg Government department) for the purposes of calculating the appropriate limit …. The Government will take stock of the responses to this position before bringing forward secondary legislation."*

As we cannot see any formal consultation procedure in place, your department's press office advised us to write directly to the Lord Chancellor's Office with our views; we hope this is the correct route.

As news reporters and specialist correspondents on The Sunday Telegraph, some of us are among those described in the Frontier Economics (FE) review as "serial requestors". (We are also, as journalists, lumped in with businesses by FE as "commercial requestors", a comment which we think betrays a quite dismissive attitude towards the importance of a free media in enabling voters to make an informed choice at election time.)

We shall put our arguments against each of the proposals in turn, the reading/consideration/consultation time proposal and the aggregation proposal.

1. Reading/consideration/consultation time

1.1. *The principled argument:* The FE report suggests that this could be imposed through an arbitrary £1-per-page calculation for reading costs. This would mean that any document more than 600 pages in length would automatically exceed the £600

cost limit, so could not be requested through FoI. It cannot be right in principle to have a law which grants public access to Government documents only when they are less than 600 pages in length.

2. Aggregation

2.1. *Principled argument:* Using FE's figures, if an average FoI submission to central government costs £254 to process, and an individual's requests cannot exceed £600 in 60 days, then an individual would be restricted to only two FoI requests to a particular Government department every 60 days; only one per month. If the purpose of the FoI Act is to make Government open, then we cannot see any principled argument for restricting access in this way.

2.2. *Impact on specialist correspondents:* On the face of it, this curb would impact disproportionately on specialist correspondents who scrutinise the activities of particular Whitehall departments. Some individuals among us have submitted dozens of FoI requests since the Act was introduced, predominantly to one single Government department. Some individuals among us have submitted more than two FoI requests to one Government department or public body within a 60-day period. We would argue that our requests have brought important information into the public domain. Using the FoI Act we have revealed the number of crimes committed by offenders while under the supervision of the probation service, and prompted an investigation by the Charity Commission into the Tate Gallery.

2.3. *Impact on a whole newspaper:* More alarmingly, the extension to "those apparently acting in concert" could be taken to mean all of the staff of one newspaper. In this case, any given newspaper would be restricted to putting one FoI request a month to any Government department. This would effectively prevent any newspaper from conducting a sustained campaign on any particular issue aimed at finding out, via FoI, a truth inconvenient to the government of the day.

2.4. *Scale of cost saving:* The FE report identifies the cost saving from the aggregation proposal, even without taking the loophole into account, as a mere £900,000. This is surely so tiny, when set against the £24.4 million wider FoI cost to central government, or wider Whitehall expenditure figures, as to make the measure pointless.

Furthermore, even this figure of £900,000 may be an overestimate. FE acknowledges that its cost estimates "represent the full costs of dealing with requests for information. They do not reflect the additional costs of implementing the FoI Act. Public bodies incurred costs in responding to information requests prior to the introduction of the Act, and these would need to be subtracted in order to arrive at the true additional costs of the FoI Act."

This is particularly true of journalists, who would access some of the same information through departmental press offices before the advent of the FoI Act. For example, before the introduction of FoI Act, the Home Office Press Office was sometimes willing to pull together and provide sets of figures which were not routinely published. Once the Act had been introduced, it told journalists that all requests for non-routine statistical information should be made through the Act. Thus to some extent the same work is being done as was done before, only with the cost centre switched from the Press Office to an FoI team.

2.5. *Loopholes:* In practice, there is a massive loophole because anyone seeking to submit extra FoI requests once they had exceeded their quota could do so in the name of friends, or – as the FE report points out – via a range of anonymous email addresses they had created themselves.

3. Conclusion

3.1. We welcome your decision to reject the other two curbs which FE considered, a flat-rate charge and a reduction in the cost limit to £400.

3.2. We believe that the FoI Act 2000 is one of this Government's greatest achievements and will be seen as such for years to come. But at present its usefulness is held back by delays at every stage. We have experienced Whitehall departments continually extending their original consideration beyond the 20-day deadline, and continually extending their internal reviews. We are not convinced that merely publishing compliance figures will speed things up. Then, when requests have been turned down twice and go to the Information Commissioner, they sit in a six-month queue in Warrington before they are even considered. The Commissioner clearly needs more funding, or to use his funds more efficiently, or both. We feel that the Government's energy should be put into tackling these problems in order to strengthen the public's right to access public information, not into finding ways to restrict that right.

Naturally we would be delighted to elaborate on any of the points we have raised should you wish us to do so.

Yours sincerely,

Ben Leapman
Home Affairs Correspondent

Jasper Copping
News Reporter

Olga Craig
Assistant Editor

Tom Harper
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