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Freedom of Information & the Internet:

An Electronic Window on to Government

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> the people's enemies take care to represent government as a thing made up of mysteries, which only themselves understood; and they hid from the understanding of the nation, the only thing that was beneficial to know, namely, that government is nothing more than a national association acting on the principles of society.
>
> *Thomas Paine, 'Rights of Man', 1792*[2]

Introduction

Tom Paine saw clearly enough that people would only be free if they understood how their government worked, and for this to happen they needed information. The debate on civil liberties and the Internet has revealed that our lack of rights in the concrete world is allowing authorities to breach our civil liberties in the electronic sphere too. When we allow government to hide its inner workings, it behaves in an illiberal manner. We must establish our rights in the real world and then make them work for us electronically; this includes our right to information.

Britain does not yet have a Freedom of Information Act,[3] but it is the policy of the Labour government to introduce one. The government also wishes to use information technology to revolutionise the public's dealings with it. However it needs to solve the problem, if it is to make substantial progress on this front, of persuading the public to trust government not to abuse the powers it will acquire to invade their privacy through such technologies as data-matching. One of the key elements of building and maintaining trust is openness. Easy access by people to government held information, both about themselves and the functioning of government, will be essential if we are to start to rebuild our trust in government and, by extension, the political process.

With the introduction of a Freedom of Information Act (FOIA) the government has the opportunity, if it wishes to take it, to make transparency the foundation of the future electronic delivery of public services, as well as the means by which it is held accountable for the performance of its functions. Most overseas FOI laws predate the electronic age. The long delayed British legislation will at least provide the opportunity to ensure the FOIA will take full account of modern information and communications technologies. If it does not

address these issues, FOI will further complicate the administrative burden of carrying out government in the paper-based world.

Until an FOIA is introduced we have to rely on the Open Government code of practice when seeking information the government has not published.[4] This is a voluntary code introduced in 1994 and supervised by the Parliamentary Ombudsman. It has been used successfully to obtain previously unpublished information, but because it has no legal force the government is ultimately able, if it wishes, to withhold the requested information. The last Conservative government also took a number of positive steps to promote greater public access to information via the Internet and this has been continued by the present Labour government. But without the culture and structures of openness which could be fostered by a Freedom of Information Act, online information has developed in an *ad hoc* manner.

Government on and off the Internet

The Internet has primarily been used by governments to improve access to information which while publicly available may be obscure or difficult to obtain. Only in a few instances has it been used as the main method of publication. A striking example of the latter is the US Department of Energy, which has a website with a searchable database devoted to thousands of previously classified documents relating to American nuclear energy policy, including the deliberate exposure of military and other personnel to radiation, as well as details of enriched uranium unaccounted for after audits.[5] The then US Energy Secretary decided that instead of the previous policy of deliberately concealing these activities, they should be fully ventilated - and the Internet is used as a key tool for this release of information. The Department says that the site is intended to benefit a variety of 'stakeholders':

> Public interest organisations, historians, researchers, and scientists ... The public ... Concerned citizens will be able to investigate topics of interest and gain desired information ... The Department of Energy and the Government in general will benefit from database automation and access and reduced unnecessary repetition of document reviews.[6]

The Internet is now widely used by government departments in the UK, but it is still exceptional to find it being used as the primary publishing medium, although the BSE Inquiry

provides such an example.[7] At most inquiries, the only way to find out what is happening is to rely on sketchy newspaper reports, or turn up in person day after day - something beyond all but the most dedicated observers. Some inquiries do produce a daily transcript but users have to buy these from the reporting company, usually at a cost of between £20 and £35 a day. A full set of transcripts for the Scott Inquiry on arms to Iraq would have cost over £2,000. Within two hours of an evidence session at the BSE Inquiry, a full transcript of every word that has been said can be read free of charge on the Inquiry's website. All written statements are put on-line the week before the witness appears in person, and the Inquiry encourages anyone who thinks they have detected an error to notify the Inquiry - by email if they wish. The website also contains a detailed history of the BSE saga and a glossary of the technical and medical terms. It receives some 7,000 'hits' on hearing days, and has been accessed by Internet users from 64 different countries - particularly scientists. In the six weeks after the Inquiry, opened at the beginning of March 1998, some 7,500 copies of witness statements and 14,000 copies of transcripts were downloaded onto visitors' own computers. The ease with which this information can be obtained contrasts markedly with the secrecy that has surrounded the BSE problem in the past.

Examples of the more conventional 'improvement of access' government websites include:

- The publication of most government department press releases on a centralised website.[8] These are not posted on the net at the time they are published,[9] since the Central Office of Information offers this as a commercially available service, but are put on by 10.30 the next morning. People are able to read notices on subjects which the media judged to be too obscure to merit coverage, and to see what the government had to say unadorned by journalistic embellishment.

- The publication by the Inland Revenue of the directory of objects written off against inheritance tax.[10] It is a condition of this concession that the public can have access to them. It is possible to search this database by location, type of object and even maker, producing for example a list of where in London Chippendale chairs can be seen.

- Departmental sites such as the Treasury's,[11] which in addition to the usual press releases, publishes speeches by ministers and senior officials, summaries of reports by independent forecasters, the National Asset Register, draft statutory instruments

> the Treasury will be promoting in Parliament, as well as the complete budget documentation. Until the decision to transfer the setting of interest rates to the Bank of England it also published the minutes of the monthly meetings of the Chancellor and the Governor of the Bank of England (The minutes of the Monetary Policy Committee are now available on the Bank's own website.[12]) The publication in paper form alone of this level of policy advice is something which would have been considered unthinkable until relatively recently. The comprehensive nature of the Treasury's site is a big step towards the process of government being available to citizens online.

The government is increasingly using the Internet to publish many of the official forms needed by business.[13] One such example is a single form that can be used by people going into business for themselves to simultaneously notify the Inland Revenue, Customs and Excise and the Contributions Agency of the change in their affairs. At present the form must be printed out, completed and posted back manually, but a pilot scheme will encourage users to fill in and return the form electronically.[14] A more peculiar example of the same genre is a Home Office form for those wishing to import cocaine or opium into the country. The form's guidance notes ask potential importers to state the percentage of pure drug content in the raw drugs and to state the country of origin of the coca leaves or raw opium.[15]

Some departments put elements of their internal guidance on statutory requirements online,[16] but at the moment this is mostly geared towards business regulation. However it is just as important that the public should have access to internal departmental guidance relevant to the ordinary citizen. The Open Government code of practice commits the government to publishing such guidance - yet little attention is drawn by departments to those that appear on the Internet, a disappointing omission. There are two refreshing exceptions of practical use to people. The first is the publication of the guidance for adjudication officers who deal with appeals related to social security benefits.[17] Second is the publication - in an edited form so as not to aid illegal immigrants - of the Home Office Immigration Directorate's internal guidance to staff on the handling of immigration applications. Further guidance on processing of claims for asylum will appear on the Internet in due course.[18]

A number of government consultation papers are now published on the Internet, including some which are also sold by The Stationery Office as priced publications. These include the

white papers on Freedom of Information,[19] the future of government in London,[20] integrated transport policy,[21] development and training for civil servants[22] and on the future of the NHS.[23] The *Government.Direct* green paper on the future use by government of IT is of course online.[24]

These are important developments which make it substantially easier for people to learn about and respond to government proposals. Some departments have been quick to adapt to rising expectations of the quantity and quality of information people expect to find on their website. For example, in March 1997 under the last government the then Deputy Prime Minister announced the publication of the government's review of the Next Steps agencies stating that it, 'makes a significant contribution towards opening up government to Parliament and the public by reporting in detail on the work of some 75 per cent of the Civil Service.'[25] Such was the government's commitment to making this 'significant contribution' available to the public that it sold copies of the Review for £56 and made no reference to it on its web site. A year made quite a difference, with the publication in March 1998 of the review in full on the Internet, in spite of the government charging £45 for paper copies.[26]

This has not been the case across government. The disparities between departments may be a sign that central guidance on publication of information on the Internet is lacking. In some ways this has been beneficial; departments seem to be competing to show off the best utilisation of the technology rather than merely complying with minimum standards. On the other hand without a centrally defined minimum, some departments have lagged far behind the best practice, while others have adopted esoteric methods of enabling access or unnecessarily overload their sites with superfluous gimmickry - the 10 Downing Street website being the shining example of this.[27]

What else might be expected on government Internet sites, and what should the government be bearing in mind as it moves towards finally introducing freedom of information? The public is entitled to information under the Open Government code of practice, itself a little known scheme, so an obvious starting point would be to publicise the Code. Yet although the text of the Code itself can be found on the Cabinet Office's site,[28] other government sites make only cursory reference to it. Those visiting departments' sites in order to seek specific information are therefore largely unaware of the fact that they have rights to information, and can enforce them by complaining to the Parliamentary Ombudsman. Since the Ombudsman

has repeatedly pointed out that he receives few such complaints, and attributes this to the lack of public awareness of the code, this failure to emphasise the opportunities afforded by the Code on the Internet is regrettable.

The Code also commits departments to publishing the 'facts and analysis' relating to major policy proposals. Little of this seems to be done, although the Department of Trade and Industry has a specific page on this subject.[29] Indeed, the guidance on the Code actually warns departments that: 'It is not necessary to swamp Parliament and the public by an indiscriminate approach to this requirement.'[30] On the other hand, if this commitment were taken seriously one might expect to see a variety of important documents published, both on the Internet and on paper. These might include the detailed briefing that departments produce on government bills and amendments to bills as well as in depth explanation of major decisions. A notable exception can be found on the Treasury's website, where amongst the 'occasional papers' on various economic topics can be found the last government's thinking on issues relating to the convergence criteria and timing for European Monetary Union. The March 1997 paper has a foreword stating, "The paper below has been made available under the Open Government Code of Practice on Access to Government Information in response to a request to see the 'facts and analysis' behind the Cabinet decision of 23 January."[31] The Treasury has also published explanatory notes on the government's draft proposals for new legislation on regulating the financial services industry.[32]

The government's white paper on freedom of information, 'Your Right to Know'[33] set out the 'Gateway' procedures people would have to pass through to have their access requests considered by public authorities. These are clearly meant to reduce the administrative burden which will fall on departments by filtering out what the departments consider to be frivolous or vexatious requests. However, little consideration is given in the white paper to the question of how IT and more specifically, the Internet, could help to ease this burden. By locating the documents released to requesters - such as the Treasury paper mentioned above - together in one section of the website, people will be able to see what types of information are likely to be released under FOIA requests. By seeing what types of information are commonly withheld under the Act's exemptions people are more likely to understand how these operate. Given the number of documents which will be released under a strong Freedom of Information Act it will quickly become necessary to organise these disclosed records in some form of database. The demands on civil servants' time can be further reduced by the government making its own internal filing indices and catalogues available

online - except where this would in itself reveal information exempt under the scope of the Act. Almost nobody outside government understands the range and complexity of government's information holdings. By making these indices available people will be able to see which department has responsibility for what, what type of information a department is likely to hold on a subject, and therefore be able to target their requests much more accurately. This is not just a matter for Freedom of Information and the Internet but a key part of constructing 'joined up government' for the twenty-first century.

A good example of the beginnings of such a system can be found in the significant numbers of documents being declassified voluntarily by the government under the Open Government initiative, rather than being kept secret for thirty years or more under the Public Records Act. The Public Record Office 'Archives Direct 2001' web site gives online access to a catalogue describing records released by the government since 1916.[34]

Local authorities, who are already subject to legally enforceable public rights to information, are in some instances ahead of central government in using the Internet. The Local Government (Access to Information) Act 1985 obliges local authorities to make available the agenda and policy papers to be considered at public meetings of the authority three days before the event. Several local authorities have started publishing these materials on their web sites, which may be especially useful in rural areas -. For example, Hampshire County Council provide the Director of Social Services' report on the implications of a Law Lords decision on the implementation of community care legislation.[35] Other local authorities are using the Internet to provide more information on the planning process. The London Borough of Wandsworth scans all planning applications and places them on their web site, allowing people to search for applications by address, and also to see officers reports and the decisions of the Council's planning committee.[36] In effect, members of the public are able to read the civil servants' policy advice to councillors, something which we are a long way from being able to do with central government. Councils could however do much more, for example by putting registers of members interests, details of safety and environmental enforcement notices served and council standing orders online. It is apparent that enhancement of public access via the Internet is, in the vast majority of cases, an extra bolted-on function to a preexisting internal IT system. Public authorities will have the opportunity in the next few years when redesigning their systems to build in these 'accountability and transparency' functions from the start.

Other public bodies

Canada has both federal and provincial FOI laws. The Information Commissioner of British Columbia publishes on the Internet the full text of all his judgments relating to Provincial access to information laws.[37] The same is true of the Ombudsman in New Zealand, whose case notes on enforcement decisions are searchable by keyword,[38] and the Information Commissioner of Queensland.[39]

The Information Commissioner due to be appointed under the UK FOI proposals should make determined use of the Internet to fulfil his role of helping applicants and in publicising the Act. In any event the Commissioner's Internet presence will need to be more commanding than the site of the Parliamentary Ombudsman. Having only established a website in 1998, four years after being given responsibility for supervising the Code of Practice on Access to Government Information, there is at present only one report available online summarising access to information cases in which the Ombudsman has been involved.[40]

Perhaps the best recent online development in this country is that *Hansard* is now available in full, the next day.[41] The high cost of *Hansard* has long been criticised as putting it beyond the reach of many. An annual subscription to the daily version, for both Houses of Parliament, costs £1,185. The annual fee for a commercial electronic version of Hansard, on CDs and through an online subscription, comes to £1,997. On the Internet though, all debates, questions, and answers in both Houses of Parliament can now be read free of charge. The site also provides access to the Bills before Parliament and to select committee reports. It is also possible to read statutory instruments, written evidence submitted to select committees and the transcripts of oral evidence. It is planned to include amendments to Bills currently before Parliament. There can be little doubt that the publication of parliamentary papers on the Internet has significantly enhanced public access to this material and has the potential to expand the dialogue between MPs and their constituents.

Missing from the Parliamentary web site (and its commercial counterparts) are the documents that in answers to parliamentary questions a minister will sometimes refer to as having been 'placed in the Library of the House'. For members of the public this is almost as good as not publishing the document, because the Library is inaccessible. To gain access to the

document people have to write and ask the department concerned for a copy to be sent to them. The government should ensure that ministerial answers should in future include an Internet address at which any deposited documents in the Library can be found.

People ought to have online access to statistics and particulars of MPs attendance and voting records in addition to an electronic Register of Members Interests. By subscribing to an online mailing list it ought to be possible to notify people of new entries in the Register. This would prevent MPs from entering an interest on the temporary Register for a couple of weeks and then withdrawing it before it became incorporated in the annual version. This practice has been used in the past as a means of allowing an MP to say that they had registered an interest while at the same time ensuring that to all intents and purposes it was unknown to most people.

The rulings of the Law Lords are also on the Parliamentary site; judgments delivered since 14 November 1996 appear online free within 2 hours of delivery at the House of Lords, while paper copies cost £5 each.[42]

Perhaps more useful to people in their ordinary lives is the publication of information on the state of public services in their area. The NHS in Wales publishes details of waiting times for hospital operations on the Internet. They say that their research shows that, 'most people put a reduction in waiting times as their top priority...Central to this is providing real choice to GPs and patients whom they are referring to hospital for diagnosis and treatment. Regular Information and advice on waiting times by procedure and speciality is therefore essential.'[43] In addition, parents can obtain OFSTED school inspection reports, indexed by type of school and education authority.[44]

New laws enacted since the beginning of 1996 are available online, being added by The Stationery Office as they are passed,[45] but statutes passed before then are not available on this site.[46] It is possible to have electronic access to these if you have the money, through a subscription to LEXIS-NEXIS. However for this you have to pay US$270 per hour of online time plus three cents for every line of text printed out. Older laws should be available for free on the Internet particularly as the government acknowledged in 1995 that only a third of legislation is available on paper in its current amended form.[47] Every time an Act is amended a new version of the Act should in theory be produced, but in practice is not. The delay in producing these on paper is because not all the amendments to an Act will come into force at

the same time and it would be misleading to produce a version which included sections which were not yet in effect. The Lord Chancellor's Department is developing a computer system to make all statutes accessible to the public in their current amended form and in the form in which they existed on any given date from 1 February 1991 onwards. The system has been designed to enable access using web browsers, so it will technically be possible to allow Internet access. However, it will not be available until the end of 2000, and the decision as to whether to make it available free of charge or through a commercial service has not yet been taken. It would be highly regrettable if the government decided not to follow the precedent of the US House of Representatives, whose web site already contains the US Federal Code - the current public laws enacted by Congress.[48] Visitors to the site can search for a subject through the entire Code (and subsidiary Regulations). If instead they wanted to buy the Code on CD-ROM the price is $45 to those outside the US. The state government of Victoria in Australia has also introduced such a database, although only from July 1997 onwards.[49]

Public ability to influence Government

The Internet is not a 'one way street' publishing medium. The government has already started to use the Internet as an additional location for publishing consultation papers, and the *Government.Direct* green paper proposes a far greater degree of electronic availability of government information:

> The strategy should rest on a clear commitment to make information of all kinds available electronically. This should cover the whole range of government information, barring that which needs to be withheld to protect personal or commercial confidentiality or in the public interest. Government should organise its information holding systematically so that publicly available data is readily accessible electronically, in forms which will assist the improvement of UK competitiveness and open government.[50]

The effect of such a strategy, were it to be implemented, would be to give instant electronic access to all information whose release would be incontestable under a Freedom of Information Act. Where a document contains information which may be exempt, delays would still occur - even under an electronic access regime - while departments consider whether or not it can be disclosed. The green paper also proposes e-mail responses to

consultation documents should be encouraged.[51] The Cabinet Office has lead the way in this area by co-operating with a non-governmental organisation to run a website to debate its proposals for a Freedom of Information Act and to collate online all the publishable responses to the white paper.[52] How successful it was in terms of allowing participants in the debate to access each others responses in time to submit follow up contributions is open to question. But there is little doubt it stimulated some members of the public to respond to the government's proposals that otherwise would not have done.

But electronic communication between government and the public and business is unlikely to be limited to responding to consultation papers. First, the government is proposing that within the next few years people will be able to conduct 25 per cent of their transactions with public bodies online. They will be performing searches of government databases and other electronic information, and be able to do so far faster and more easily than if they had to search disparate specialist libraries for a range of journals and official publications. In the United States it is already possible to submit an online query to the Social Security Administration to find out what retirement or disability benefits one is entitled to on the basis of the amount of contributions so far paid.[53] The equivalent UK Department for Social Security scheme so far only provides access to a form which users must print out, complete and post back to the government. In this country a database on air quality is available from the Department of the Environment[54] and one of the *Government.Direct* pilot projects proposes to give access on a commercial basis to geographical and geological data supplied by Ordnance Survey, the British Geological Survey and the Land Registry.[55] The government suggests that this information will be of commercial use to the planning and construction industry.

The Data Protection Register is also available on the Internet, allowing people to see details of the types of personal information about individuals held by organisations.[56] The site provides access to the full register and is updated weekly.

The newsgroup part of the Internet ('Usenet') and the newly emerging 'push media' technologies are likely to be another way in which communication between government and the public is increased. In 1995 the G7 countries started work on the GovNews project to investigate how governments could use newsgroups to disseminate information:

> From the point of view of the government, Usenet news offers the possibility to dramatically cut current costs of information dissemination, while at the same time reaching orders of magnitude more people. From the point of view of the public, including schools, libraries, businesses, and local governments, huge quantities of information can be made available at very low cost.
>
> In addition to the ability to broadcast information inexpensively, Usenet provides a forum for discussions, which could be used to collect feedback from the public on policy issues, or to allow people within federal agencies, state, and local governments to discuss cross-agency issues.[57]

The use of such newsgroups will allow policy announcements to appear directly in open discussion groups not necessarily run by the government. In some ways the British government tentatively attempted to move in this direction with the creation of 'Collaborative Open Groups' (COGs) which discuss ideas and policy on various aspects of the Internet ranging from disability issues to ethics.[58] Unfortunately the COGs were hampered by the lack of use made of them by the government itself; they were not used for the purpose their name implied, the collaborative and open discussion between civil servants and public of the issues arising from new technologies. Civil servants seemed nervous about floating new ideas in public or publishing the results of research which may underpin the policies that are brought forward.

However 'push media' may supersede newsgroups in informing the public of government proposals. Whereas until now the world wide web - the most widely used part of the Internet - has been a medium where the user sought out the information she or he wanted, this new technology proposes to make it much more of a broadcasting mechanism, albeit one where users choose precisely what information is broadcast to them. The publication of information in this manner may be progress in some ways, but whether it will further enhance consultation and public involvement is open to question. As long as people are able to 'push' back their views to the information providers it should prove to be useful. This is an area where political will and a change of culture in policy making may well be more important than technological progress.

Statutory restrictions

There are of course obstacles to be overcome if we are to gain free Internet access to official information. The most fundamental is the lack of a Freedom of Information Act. This lacuna in our civil rights means that the current presumption in law is that official information is unavailable to the public unless there is a statutory obligation or government decision to publish it. Under FOI laws this presumption is reversed. All information is available to the public on request, unless the government can show that it should not be disclosed because it falls into one of the categories of exemption under the Act. The 1993 Right to Know Bill[59] contained exemptions for information whose disclosure would cause significant harm to defence, national security, international relations, law enforcement, the authority's economic and commercial affairs, the competitive position of a third party or the authority's ability to obtain information. In addition the Bill contained exemptions for legal professional privilege, personal privacy and some policy advice. The factual element of this advice, the analysis, interpretation or projections based on them would not be exempt and nor would expert advice on a scientific, technical, medical, financial, statistical or legal matter.

Crucially, under FOI regimes around the world, the final decision as to whether the information would actually cause harm if disclosed does not rest with the government, but with an independent third party. In the US and Australia the courts decide, while in New Zealand it is the Ombudsman and in Canada an Information Commissioner or, on appeal, to the courts.

In Britain, the Labour government has published its proposals for a Freedom of Information Act, but has not given any firm timetable for introducing the legislation itself. In the meantime we continue with the Code of Practice on Access to Government Information which also presumes that information is disclosable unless it falls into a category of exemption, but although it has in some ways been a significant development - it is supervised by the Parliamentary Ombudsman - it is flawed in a number of serious aspects, many of which cannot be rectified without legislation. First, the Ombudsman's judgments are not legally binding. Government departments are free to ignore judgments if they choose, though this rarely happens. Second, the Ombudsman is statutorily prohibited from seeing some categories of information and from investigating complaints against bodies not explicitly listed as coming within his remit; this too would take legislation to correct. Third, some of the exemptions are either superfluous or unnecessarily broad; this could be corrected easily

since it is an administrative document, but the former government amended the Code in February 1997 leaving some of the more objectionable exemptions in place. Finally, as an administrative code it is unable to override the 250 or so preexisting statutory restrictions on the disclosure of official information.[60]

The main consequence of having a Code instead of a Freedom of Information Act is that Britain has no overarching framework of legal rights to information. A variety of laws give people rights to see some categories of information held on them by public bodies, while others grant access to some environmental, safety and local authority information. However there is no general right to the mass of information held by public bodies. In the case of central government this leaves ministers free to disclose this information if and when they choose. As elected politicians they are unlikely to be willing to disclose information which is capable of causing embarrassment to themselves. Those in public office have shown time and again that they are unwilling to trust people with information in these circumstances. A somewhat old but telling opinion poll finding showed that in 1993 only 14 per cent of people rated Conservative politicians as positively trustworthy, compared with 19 per cent for Liberal Democrats and 23 per cent for Labour politicians. In the same poll 43 per cent of people said they trusted no politicians of any party at all.[61]

This lack of trust by public bodies in people's ability to cope with 'difficult' information is demonstrated in a statutory restriction on disclosure from the Medicines Act 1968, the statute which governs the licensing of medicines. Pharmaceutical products must be evaluated by the Medicines Control Agency before they can be prescribed. However, the Medicines Act prohibits officials from disclosing:

> any information with respect to any manufacturing process or trade secret ... or
> ... any information obtained by or furnished to him in pursuance of this Act.[62]

The penalty for disclosing safety information in contravention of this section is up to two years imprisonment.

The Internet can sometimes help find a way round such blocks. The American Food and Drug Administration shows how much deeper rights of access go in the US, electronically as well as on paper. Its website gives access to - amongst many other items - the transcripts of its expert drug advisory committee meetings. These include the presentations of

pharmaceutical companies seeking approval for their products and the FDA's assessment of their claims.[63]

However, while it is possible to get information from American web sites on many British drugs - and on the results of hygiene inspections of British cruise liners[64] and on pesticides[65] used in both countries - the ability to do so is susceptible to government action of a different type.

Overseas governments have legislated to control Internet access. While it is unlikely that they would seek to block access to medicines or pesticides information, politically sensitive information is more likely to attract the beady eye of government censors. Access to the Internet in Singapore is filtered through government controlled computers which block access to websites and newsgroups the government disapproves of. It would probably not be feasible for a government in this country to attempt something similar, given the large number of Internet service providers, universities and companies with their own links to the Internet. However, the government has shown in the past that it is prepared to go to great lengths in attempting to suppress publication of information which it finds embarrassing, the most commonly known examples being the government's prosecution of *Spycatcher* and a television documentary about the Zircon satellite. The difficulties faced by the government in trying to suppress the overseas publication of *Spycatcher* in manual form would now be greatly magnified in any similar case by the ease of republication in other countries that the Internet offers.

Charging for information

The cost of obtaining information can be just as much of a block on access in practical terms as a statute. The Internet provides not only access to great volume of sometimes obscure information, but also *free* access to information that may otherwise be charged for. This has so far been perhaps its most significant contribution to the process of opening up government. The ability to read white papers, press releases, *Hansard*, statutes and other publications implies that public bodies have been willing to forego some sales income in the interests of making such materials more widely available, or alternatively that they assume that - at least at present - Internet access will not affect sales. For example, the white paper on the future of

London government was published in its entirety on the Internet although paper copies remain on sale from the Stationery Office at £11.60. The fact that it is freely available over the Internet is promising both because more people will take the opportunity to read the document and because it improves public access to the policy making process. Some departments are now putting their annual reports on the Internet thereby removing the cost barrier to information about departmental budgets and plans. The cost in 1994 of obtaining copies of the 18 central government departmental reports was over £250, so the more that do this the better.

However, there is a long way to go before all government information becomes freely available. The emphasis in recent years on government departments emulating private sector business practices has led to policies such as the Department of Trade and Industry's tradeable information initiative, whose 1990 guidelines state:

> Information is a particularly valuable commodity: almost uniquely it can be sold and retained at the same time ... As with most properties, information properties, whatever their inherent values, are only "tradeable" if someone else wants them.

So if no-one asks for a document, it may be available for free; but as soon as there is a demand, it has a value. *Government.Direct* appears to be a move in this direction as it envisages government 'encouraging the development of new, commercial, information products based on government information.'[66] There may be no objection to commercial products based on government information so long as this does not mean that information which the public presently receives, or would expect to receive, free of charge becomes available only at a price in future. Information used to hold public sector bodies accountable, or which gives details of rights, benefits and entitlements, should not be subject to charges. Regrettably the Labour government's FOI white paper proposes to exclude tradeable information from the FOI Act.[67]

Privacy/Data Protection

Until the problems of protection of personal data have been solved, public acceptance of the Internet for widespread online purchasing of good and services - and transactions with the

government - will not really take off. Privacy concerns relate not only to interception and subsequent misuse of credit card or other personal data on the Internet but also extend to government use of information held on computers about individuals, such as health, tax and social security records, and to monitoring of what is downloaded from government sites and by whom.

If someone goes into a library the staff can record which books they are borrowing, but no-one monitors their browsing, or the topics they look up in reference books. But on the Internet, the computers holding the web pages log all comings and goings. The organisation running the site - in the case of official information, the government - has a complete record of everything they look at, their interests and concerns. Some parts of government at least warn users of this possibility. Thus CCTA, the Government Centre for Telecommunications, which runs the government's site gives FTP users the following warning:

> Hello and welcome to CCTA's anonymous FTP server. You should be aware that all access to this server is logged. If you do not like this policy, then please log off now.[68]

However, the government's web pages provide no such warning. We know that CCTA monitors who is accessing government pages because they publish details of the most regular visitors, all of which are large institutions rather than identifiable individuals.[69] However it is clear that CCTA also retains the email addresses of individuals who access their sites and the pages they have visited; CCTA have confirmed that such information is held and permanently stored for statistical and security purposes. It seems likely that the recording and retention of this information is a breach of the privacy people are entitled to under the Data Protection Act. The Act is based on the 'data protection principles', one of which is that people must be made aware that information which might personally identify them is being collected. If they are not told this at the time the information is collected, the Act's requirement that information be obtained 'fairly' is contravened,[70] and this appears to be happening at the government's site, as at many others.

Without the transparency afforded by building freedom of information and data protection principles into the systems which will deliver online government services, it is hard to see why people should trust government not to abuse the powers it will need to tie together the data from disparate sources. If the same 'smart' electronic card will in future be used for

financial transactions, to hold medical records, criminal records, driving licence details and to authenticate my dealings with government departments, how can I be sure the government will not abuse the technology to track my movements, lifestyle, reading matter and so on? This gap in public trust is going to be one of the biggest problems facing the wiring up of public service delivery, and strong FOI and data protection laws are the absolute minimum requirements to bridge the divide.

The Changing Face of Government - Commercial Confidentiality

The changing make up of government itself presents problems of access to information. Parts of government that were previously divisions of Whitehall departments are being hived off into the private sector, as the contracting out of Inland Revenue functions to the American firm EDS demonstrates. Where previously issues of accountability to the public were clearly defined, now functions of public administration are carried out by bodies which do not see themselves as accountable to the public, but to the government as customer. This process has led to significant amounts of information that would previously have been disclosed - for example on the cost or methodology of carrying out a specific administrative function - being withheld from the public on the grounds of commercial confidentiality since it is now sensitive information when the contract comes to be tendered. The same is true for local government where the process of compulsory competitive tendering means that authorities' departments must bid against outside companies to win the contract to do the job, whether it be refuse collection or management of the authority's housing stock. Such 'commercial confidentiality' has become a major obstacle to public accountability.

Conclusion - rights enhance culture of openness

While a great deal of government and other public sector information is available online in Britain it seems that the main reason why more use has been made of the Internet overseas than in the UK as a means of holding government to account is because most 'wired' democracies have a Freedom of Information Act. An Act does not create better use of the Internet in itself - although in the US recognition of the importance of the Internet in enhancing access to information has been acknowledged with the introduction in 1996 of the Electronic Freedom of Information Improvement Act. Countries with statutory FOI regimes

tend to make greater use of the Internet for accountability reasons because experience has taught them the benefits of openness and transparency. More than that, it is accepted in these countries that their governments hold information in trust for the people and do not own it themselves.

The Labour government's policy is to introduce a Freedom of Information Act. Although its original proposals were widely welcomed,[71] subsequent reports suggest that the government is proposing to water down some key elements and that the legislation itself may be delayed.[72] It remains to be seen how far the mysteries of government so eloquently described by Tom Paine will be revealed to us.

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[1] I am grateful for the guidance, assistance and patience of Maurice Frankel in producing this chapter.
[2] *The Rights of Man*, Thomas Paine, Part Two Chapter 1, 1792 reproduced in the *Thomas Paine Reader*, eds M. Foot & I. Kramnick, Penguin 1987
[3] This is legislation entitling people to access government held information on demand, subject to certain exemptions such as information whose release would cause harm to defence, national security, the effective management of the economy, prevention of crime or invade personal privacy. The crux of a freedom of information act is that it takes the power to decide whether information is released away from government ministers and gives it to an independent appeals body.
[4] *Code of Practice on Access to Government Information*, Cabinet Office, 1997, http://www.open.gov.uk/m-of-g/codete.htm
[5] *Declassification of today's and historical inventory differences for highly enriched uranium at the Y-12 plant in Oak Ridge, Tennessee;* http://www.doe.gov/waisgate/opennet.new.html
[6] http://www.doe.gov/html/osti/opennet/document/press/pc8.html
[7] http://www.bse.org.uk
[8] http://www.coi.gov.uk/coi/depts/today.html
[9] There are plans to do so, including publication by E-mail, but it is not clear yet whether this will be a free or charged service, or when it will be introduced.
[10] *The Register of Conditionally Exempt Works of Art*; http://www.cto.eds.co.uk/intro.htm
[11] http://www.hm-treasury.gov.uk
[12] http://www.bankofengland.co.uk/mpcmtg.htm
[13] *Direct Access Government*; http://tap.ccta.gov.uk/dagii/welcome.nsf
[14] http://www.open.gov.uk/dssca/pdfs/formcwf1.pdf *and* http://www.self-employment.direct.gov.uk/
[15] http://www.open.gov.uk/home_off/drugsfor/md7.pdf
[16] Department of Health, Guidance on *The Food Safety (Temperature Control) Regulations 1995* and others can be found at http://www.open.gov.uk/doh/busguide.htm
[17] http://www.cas.gov.uk/aogconts.htm
[18] http://www.home-office.gov.uk/ind/idi/idiintro.htm
[19] http://www.national-publishing.co.uk/document/caboff/foi/contents.htm
[20] http://www.london-decides.detr.gov.uk/page14.htm
[21] http://www.detr.gov.uk/itwp/index.htm
[22] Cabinet Office, Cm 3321 1996 http://www.official-documents.co.uk/document/caboff/dtcs/develtra.htm
[23] Department of Health, Cm no.3807, 1997 http://www.official-documents.co.uk/document/doh/newnhs/newnhs.htm
[24] Cabinet Office, Cm 3438 1996 http://www.open.gov.uk/citu/gdirect/greenpaper/index.htm
[25] Cabinet Office press release OPS 24/97, 12/3/97; http://www.coi.gov.uk/coi/depts/GCO/coi7751c.ok
[26] http://www.official-documents.co.uk/document/cm38/3889/contents.htm
[27] http://www.number-10.gov.uk/index.html
[28] http://www.open.gov.uk/m-of-g/codete.htm
[29] http://www.dti.gov.uk/SMD3/OPEN/facts.html
[30] *Code of Practice on Access to Government Information, Guidance on Interpretation*, Cabinet Office, 1997, para. 21
[31] http://www.hm-treasury.gov.uk/pub/html/top/emu/main.html
[32] http://www.hm-treasury.gov.uk/pub/html/reg/fsmb3.pdf
[33] http://www.national-publishing.co.uk/document/caboff/foi/contents.htm
[34] http://www.pro.gov.uk/finding/coreexec.htm
[35] http://www.hants.gov.uk/scrmxn/c22220.html
[36] http://www.wandsworth.gov.uk/tech/wandpl.htm
[37] http://www.oipcbc.org/orders/
[38] http://www.liinz.org.nz/liinz/other/ombudsmen/casenotes/
[39] http://www.slq.qld.gov.au/infocomm
[40] http://www.parliament.ombudsman.org.uk/pca/contents.htm
[41] http://www.parliament.the-stationery-office.co.uk/pa/cm/cmhansrd.htm
[42] http://www.parliament.the-stationery-office.co.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm
[43] http://www.open.gov.uk/hmis/intro.htm
[44] http://www.open.gov.uk/ofsted/repdb3.htm
[45] Acts can be found at http://www.hmso.gov.uk/acts.htm. Statutory Instruments can be found at http://www.hmso.gov.uk/stat.htm
[46] With the exception of the Data Protection Act 1984 and the Disability Discrimination Act 1995
[47] *Hansard*, 15 June 1995, col. 606 WA
[48] http://law.house.gov:80/usc.htm
[49] http://www.dms.dpc.vic.gov.au/l2d/lthome.html
[50] *Government Direct*, Cm 3438 1996 para 5.7; http://www.open.gov.uk/citu/gdirect/greenpaper/chap5.htm
[51] *ibid* para 9.4; http://www.open.gov.uk/citu/gdirect/greenpaper/chap9.htm
[52] http://foi.democracy.org.uk

[53] http://s3abaca.ssa.gov/pro/batch-pebes/bp-7004home.shtml
[54] http://www.aeat.co.uk/netcen/airqual/welcome.html
[55] http://www.coi.gov.uk/coi/depts/GCO/coi7435c.ok Cabinet Office Press Release OPS 22/97, 5 March 1997
[56] http://www.dpr.gov.uk/
[57] http://www.govnews.org/govnews/
[58] http://tap.ccta.gov.uk/cogs/cogdisc.nsf
[59] Drafted by the Campaign for Freedom of Information and promoted as a private members bill by Mark Fisher MP the Bill received its second reading on 19 February 1993 and was talked out at Report Stage on 2 July 1993.
[60] *Open Government*, Cabinet Office, Cm 2290 1993, Appendix B, page 80
[61] ICM/*Observer* opinion poll 19 December 1993.
[62] *Medicines Act 1968*, section 118(1)
[63] http://www.fda.gov/ohrms/dockets/ac/cder98t.htm
[64] ftp://ftp.cdc.gov/pub/ship_inspections/shipscor.txt
[65] http://www.epa.gov/pesticides/
[66] *Government.Direct* para 6.16; http://www.open.gov.uk/citu/gdirect/greenpaper/chap6.htm
[67] *Your Right to Know* paras 2.35 - 2.38, Cabinet Office, Cm 3818 1997
[68] ftp://ftp.open.gov.uk/
[69] http://www.open.gov.uk/cctagis/usage.htm
[70] *Data Protection Act 1984*, Schedule 1, Data Protection Principle No.1
[71] http://www.cfoi.org.uk/wpbriefings.html
[72] http://www.cfoi.org.uk/july98debate.html