

AN OPEN DIALOGUE ON FOIA FEE REFORM

By Professor Alasdair Roberts

Some officials in the UK's central government feel that the Freedom of Information Act, as it is presently constructed, allows too many information requests that have little merit but impose a heavy administrative burden. One way of deterring such requests might be the imposition of higher fees for FOI requests.

Official concern about the cost of FOI should always be regarded with a certain degree of scepticism. In 2005, for example, central government spent £166 million on advertising -- a figure which elicited little concern from Whitehall. Advertising, like FOI, is a form of information dissemination -- but done on the government's terms, not the citizens'.

Having said this, there is nothing inherently objectionable about a review of FOI fees, as long as it is done carefully and openly. Fees must be adjusted carefully because changes that appear inconsequential can have an unexpectedly large impact on citizens' use of the law.

In the Canadian province of Ontario, a Conservative government raised fees for FOI requests in 1995. The changes included a new five dollar application fee; higher fees for processing complex requests; and a new twenty-five dollar fee for making complaints to the province's Information Commissioner. The changes resulted in a thirty-five percent decline in the number of FOI requests. Requests for personal information, especially affected by the new fee formula, dropped by almost half. Requests for sensitive policy and management information appeared to decline by almost seventy percent over three years.

In the province of Nova Scotia, application fees were raised from five to twenty-five dollars in 2002, and a new twenty-five dollar fee was introduced for appeals to the province's independent review officer. The review officer, Darce Fardy, reported in 2003 that the number of requests dropped by almost one-third, while the number of appeals dropped by forty percent.

In Ireland, the introduction of more substantial fees in 2003 had a pronounced effect. The new policy included a fifteen euro fee for making a request, a seventy-five euro fee for internal review, and a 150 euro fee for an appeal to the Information Commissioner. Within a year, FOI requests dropped by over half, according to the Commissioner's statistics. Requests by journalists dropped more precipitously -- by eighty percent. An opposition critic concluded, with some justification, that the changes "rendered the whole concept of Freedom of Information almost useless."

Government officials may claim that these consequences are not necessarily problematic -- that, indeed, many requests that are deterred by higher fees are probably inconsequential. We should be wary about jumping to this conclusion based on anecdotal evidence, or on evidence drawn from the bureaucracy's rather partial view of the FOI process.

Fee reform is a topic that demands a careful and complete look at the evidence about the actual usage of the FOIA in its first year. What sorts of people were making requests? What sort of information were they looking for? Would their requests strike a reasonable person as inconsequential -- or is the problem simply that the officials receiving the requests perceive only the burden which they impose, and not their importance to the citizens who file them?

This approach to fee reform is a kind of "evidence-based policymaking" -- just the sort of process which the Blair government has advocated for policy development in the other sectors. It requires

the collection of relevant data, "analytic rigour" (as Number 10 puts it), and transparency, so that stakeholders can judge whether the government's findings are sound.

This sort of data is easily collected. It would be straightforward, for example, for government to undertake a survey of individuals who have actually used the law. More useful data is contained within databases used by government departments to manage the inflow of FOI requests.

Unfortunately, central departments -- operating at the direction of the Department of Constitutional Affairs -- have stonewalled on FOI requests to obtain such data. In fact, DCA has firmly resisted any effort by academics or public interest groups to learn how FOI has operated within central government over the last year.

This attitude is deeply regrettable. It is a manifestation of the sort of paternalism that FOIA was intended to overturn. It also denies non-governmental stakeholders the opportunity to make an informed contribution to discussion about the evolution of FOI policy. The Blair government should realize that it will get better policy through openness -- and that any proposal for fee reform that emerges from a secretive process will be quickly and thoroughly discredited.

(The views expressed in this article are those of the author and do not necessarily represent the views of the Constitution Unit.)

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