

<p>Institution: University College London</p>
<p>Unit of Assessment: 21 – Politics and International Studies</p>
<p>Title of case study: Evaluating Freedom of Information</p>
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>The 2000 Freedom of Information Act was the subject of post-legislative scrutiny by the Ministry of Justice and the Commons Justice Committee in 2011 and 2012. Both the Ministry and the Justice Committee drew heavily on work by Professor Robert Hazell and colleagues in the Constitution Unit at UCL. The Unit developed the conceptual approach to evaluate the impact of FOI, and provided much of the evidence base. The evidence contributed to the decision that, despite pressure from senior political and Whitehall figures, the Act would not be significantly amended.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Between 2007 and 2011 Professor Robert Hazell (Director of the UCL Constitution Unit) led two ESRC research projects studying the impact of the Freedom of Information Act 2000:</p> <ul style="list-style-type: none"> • FOI and Whitehall (2007–2009), with Dr Ben Worthy (Research Associate) and Mark Glover (Research Assistant) • FOI and Local Government (2009–2011), with Dr Worthy (Research Associate) and Gabrielle Bourke (Research Assistant). <p>Mark Glover left UCL in July 2009, and Dr Worthy and Gabrielle Bourke left in June 2012, at the end of two further projects studying FOI and Parliament, and FOI and universities. In addition, Jim Amos was Honorary Senior Research Associate at the Constitution Unit (2000–2013).</p> <p>FOI is generally supposed to be a ‘good thing’. But why – what is it good for? The key conceptual contribution of the research was to analyse its objectives, and to develop a framework for evaluating its impact. Through analysis of White Papers, ministerial speeches and parliamentary debates, FOI was seen to have two primary aims: to increase transparency, and to strengthen accountability. It also had four secondary aims: to improve the quality of government decision-making; increase public understanding of government; and increase public participation, and trust in government.</p> <p>In examining the extent to which FOI had met its objectives, the research included 175 interviews: mainly with officials, but also with MPs, peers, journalists, FOI requesters and campaigners; an online survey of FOI requesters; analysis of press articles using FOI; analysis of case law; and analysis of public authorities’ FOI disclosure logs.</p> <p>In both projects FOI was found to have delivered the first two objectives (transparency and accountability), but has not delivered the remaining four (references [a] and [b] in section 3). The amount of information released has significantly increased since the Act, and government is more open. FOI has been used by the media, MPs and campaigners to make government more accountable.</p> <p>But interviews with officials suggested FOI had not improved the quality of government decision-making. Nor had it increased public understanding, because few requesters use the Act to access policy papers, and the media rarely report policy disclosures. Public participation has not increased as a result of FOI, because less than 1% of the population make FOI requests. As for trust, newspaper reporting helps explain why FOI has not increased trust, because two thirds of the FOI press stories which we analysed were found likely to decrease trust.</p> <p>The research found no evidence that FOI had adversely affected the working of Whitehall, nor local government. Despite serious investigation there was no evidence of a ‘chilling effect’, which might have taken three forms: reduction in the frankness of official advice; in the quality of the official record; and in the supply of information to government. The research concluded that when</p>

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information is not properly recorded or shared, it is generally due to factors other than FOI, such as fear of leaks. The belief that FOI has a chilling effect is widespread, but there is little hard evidence of this effect ([a,] [c], [d] and [e] in Section 3). The research findings thus challenged several powerful myths about FOI: some advanced by FOI advocates (that FOI increases public understanding and trust in government); some advanced by FOI critics (that FOI has had a chilling effect on policy advice and deliberation within government).

In 2008–09 the Constitution Unit did a separate study for the Information Commissioner on policy advice which also covered the chilling effect. In 2010 we did some limited work on the costs of FOI. And from 2006 to 2011 we conducted an annual survey of FOI in local government, to assess the volume of requests and their cost. All this information helped to inform the Ministry of Justice, and the Commons Justice Committee when they embarked on their Post-Legislative Scrutiny of FOI in 2012.

3. References to the research (indicative maximum of six references)

[a] R. Hazell, B. Worthy and M. Glover, *Does FOI Work? The Impact of the Freedom of Information Act on Central Government in the UK*. ISBN 978 0 230 25034 5. Palgrave Macmillan, 2010. 325 pp. Available on request.

[b] B. Worthy, J. Amos, R. Hazell and G. Bourke, *Town Hall Transparency? The Impact of Freedom of Information on Local Government in England*. 50 pp. ISBN: 978-1-903903-62-9 London: Constitution Unit, December 2011. Available at: <http://www.ucl.ac.uk/constitution-unit/research/foi/foi-and-local-government/town-hall-transparency.pdf>.

[c] R. Hazell and D. Busfield-Burch, 'Freedom of Information and Policy Advice' *Public Law* April 2011, pp. 260–283. Available on request.

[d] P. Waller, R. M. Morris, D. Simpson and R. Hazell, *Understanding the Formulation and Development of Government Policy in the context of FOI*, June 2009 at <http://www.ucl.ac.uk/constitution-unit/research/consultancy/ICO - FOI and Policy.pdf>

[e] R. Hazell and M. Glover, 'Impact of Freedom of Information on Whitehall' *Public Administration* Vol. 89, No. 4, 2011 (1664–1681). DOI: 10.1111/j.1467-9299.2011.01930.x URL: <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9299.2011.01930.x/full>

The key research grants were peer reviewed, both from the ESRC:
Impact of FOI on UK central government, ESRC RES 062 23 0164, grant holder Professor Robert Hazell, Jan 2007 to March 2009, £158k plus £40k from Department for Constitutional Affairs. ESRC Grading: Excellent
Impact of FOI on local government, ESRC RES 062-23-1748, grant holder Professor Robert Hazell, July 2009 to Oct 2011, £235k. ESRC Grading Good.

4. Details of the impact (indicative maximum 750 words)

The underpinning research strongly influenced the 2012 report of the Commons Justice Committee reviewing the operation of the FOI Act [see 1 in section 5], and the Ministry of Justice memorandum submitted to that review [2].

House of Commons Justice Committee

At its first evidence session on 21 February 2012 the Justice Committee invited Hazell, Worthy and Amos (all of UCL) to give evidence [3]. The research team also made three written submissions to the Commons Justice Committee, which were published by the Committee (Ev 126, 169, 194 [4]). They also gave private briefings for government ministers; senior officials responsible for FOI; and for the Information Commissioner and his staff.

The Committee's report on the Freedom of Information Act, *Post Legislative Scrutiny of the*

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Freedom of Information Act 2000 (HC 96-1, July 2012), makes over 40 references to the Constitution Unit's work [1]. Typical references include: 'The question whether the Act had actually had an effect on public understanding of Government decision making was explored by the Constitution Unit in its major piece of research on whether the Act had achieved its objectives.' (para. 40); 'The Constitution Unit ... found that public participation in decision-making had not been greatly improved in central Government because ...' (para. 41).

UCL research underpinned the Committee's *conceptual approach*. The Committee adopted the same analytical approach as the Constitution Unit's research, identifying the same two primary objectives and four secondary objectives for FOI – to increase transparency strengthen accountability for the former and to improve the quality of government decision making, increase public understanding of government, increase public participation and increase trust in government for the latter – (ch. 2 of [1], especially para. 11). Citing the Constitution Unit's evidence 13 times, the Committee came to the conclusions established by the research: the two primary objectives of greater transparency and accountability had been met, but the four secondary objectives had not (ch 2). On the secondary objectives of improving the quality of government decision-making, and increasing public understanding and public trust, the government cited the Constitution Unit research and agreed with the findings (paras. 206–215).

The Committee found that *the objective of increasing public trust and confidence in Government, Parliament and other public authorities* may have been unrealistic because, as found following research by the Constitution Unit, the vast majority of people experience freedom of information through news stories and these are more likely to be negative in tone than otherwise. The Committee noted the Constitution Unit research as showing that the Act had had "no generalisable impact on trust" (para. 35), as well as the media analysis which had shown that the press tends to use FOI stories to portray government in a negative light (paras. 35–37).

The Justice Committee devoted a separate chapter of their report to *the 'chilling effect'*, the fear that FOI has damaged the quality of policy advice and of the public record. They adopted the Constitution Unit's definition of the chilling effect, and cited the research 15 times. In the core section of the chapter the research was reported in nine consecutive paragraphs, concluding:

"The Constitution Unit's research on FOI is the first major piece of research of its kind and is a valuable contribution to the debate around FOI. In its consideration of the chilling effect, the Unit broadly concluded that the effect of FOI appeared negligible to marginal. We note this finding and have taken it into account in our deliberations" (para. 190).

The next two paragraphs cited contrary evidence from Sir Gus O'Donnell, but the report concluded that no legislative change was required.

The Justice Committee also used the research *when assessing the costs of FOI*, at paras. 87 and 138. They drew upon the Unit's annual surveys of the costs to local authorities (para. 87); its surveys of requesters and their motivations (para. 41); and its finding that publication schemes do not work (paras. 20, 24–5).

The Committee recognised *the rigour of the research*, relying as it did on over 150 interviews and five different research methods. Their report stated: "The largest body of research on the impact of FOI is the work carried out by the Constitution Unit between 2007 and 2009, looking at its effect on central Government, local government and Parliament. As the most important research-based source of evidence on FOI, it is worth considering in some detail. The Unit's research methods included: interviews with 56 officials in eight central Government departments, 90 officials and others across 16 local authorities, 30 MPs, peers and officials at Westminster, as well as journalists, requesters and campaigners; an online survey of FOI requesters; analysis of press articles using FOI; analysis of FOI case law; and analysis of disclosure logs" (para. 182).

Ministry of Justice Memorandum

The Ministry of Justice Memorandum to the Commons Justice Committee (Dec 2011) makes

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frequent references to the Constitution Unit's research, which is cited 12 times in the Memorandum itself, and 21 times in the Appendices [2] In the Memorandum's literature review the Unit's research is cited in half of all the footnotes (26 out of 56). The review opens by saying: "Much of the fieldwork in this topic area has been conducted by members of the Constitution Unit at University College London's Department of Political Science. Their research is methodologically robust, encompassing multiple methodologies including quantitative surveys of FOI requesters, officials and stakeholders; interviews with parliamentarians, civil servants and Information Tribunal members; analysis of media coverage; and analysis of Information Tribunal cases" (p. 82).

Like the Justice Committee, the Memorandum adopted the UCL *conceptual approach* identifying the same objectives (transparency and accountability as primary and improving the quality of government decision making, increasing public understanding of government, increasing public participation and increasing trust in government as secondary (paras. 195–218 and pp. 84–87, [2]). The Memorandum came to similar conclusions as the UCL research as to the extent to which these objectives had been achieved.

On the question of *trust*, the Memorandum cites and endorses the following conclusion from UCL research: "FOI was oversold, by its advocates and by ministers, and labours under the burden of unrealistic objectives. To policy audiences we stress the need to lower expectations of what FOI can deliver; and explain that FOI is unlikely ever to increase trust, because the government's battle with the press over bad FOI stories is one that can never be won" (p. 87, [2]).

Reach of the impact

In advance of the 2012 review a number of senior politicians expressed strong concerns about the FOI Act, with Tony Blair and Jack Straw claiming that the Act had been a terrible mistake. They claimed it had stifled frank advice and open discussion within government. The research findings challenged this: there is very little evidence to substantiate the claim that FOI had a chilling effect. Much stronger causal factors were the fear of leaks, and changing administrative practices leading to poorer record keeping. The Committee balanced the Unit's evidence against the critics and concluded:

"We are not able to conclude, with any certainty, that a chilling effect has resulted from the FOI Act ... the Constitution Unit's research, the most in-depth available, suggests it has only a marginal effect. ... Given the uncertainty of the evidence we do not recommend any major diminution of the openness created by the FOI Act" (paras. 200–201, [1]).

Reach has been further extended by: a monthly series of Government Information Policy seminars, supported by government departments as subscribers, which ran from 1999 to 2010; an annual conference for FOI practitioners, FOI Live, which regularly attracted over 300 FOI practitioners; monthly FOI updates on the FOI pages of the Unit website; articles for local government and Whitehall journals; and frequent media appearances.

5. Sources to corroborate the impact (indicative maximum of 10 references)

[1] House of Commons Justice Committee, *First Report, Post-Legislative Scrutiny of the Freedom of Information Act 2000*, available at:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/9602.htm>

[2] Ministry of Justice, *Memorandum to the Justice Select Committee, Post-Legislative Assessment of the Freedom of Information Act 2000*, December 2011.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217339/post-legislative-assessment-of-the-foi-act.pdf

[3] See Justice Committee, Minutes of Evidence HC 96-ii, 21 Feb 2012

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120221.htm>

[4] The three written submissions to the Commons Justice Committee, are referenced at the Committee in Post-Legislative Scrutiny of the Freedom of Information Act 2000 (26 July 2012) HC 96-2 at Ev 126, 169, 194.

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/9616.htm>