

Impact case study (REF3b)

Institution:	University of Northumbria at Newcastle
Unit of Assessment:	20 - Law
Title of case study: Information Rights: Applying Research To Help Public Organisations To Navigate Freedom of Information, Data Protection and Environmental Information Requirements	
<p>1. Summary of the impact</p> <p>The Information Rights Research Interest Group (IRRIG) has worked with a national non-departmental public body, the Marine Management Organisation (MMO), and Durham County Council to define best practice in data handling and sharing of information. Training and consultancy based on legal regulatory doctrinal and theoretical research has led to the MMO altering its policy and procedure in relation to freedom of information legislation and data sharing practice. Durham County Council has consolidated its Environmental Information Regulation work within the Information Management Team to improve the delivery of a consistent, joined up service to all stakeholders and has prepared a revised FOIA Procedures Packet which is widely used in the local authority.</p>	
<p>2. Underpinning research</p> <p>Investigation of information rights law and practice has been a key part of the research agenda of Northumbria Law School throughout the review period. Information Rights is a fast developing area and includes Freedom of Information, Data Protection and Environmental Information. Our remit has extended to embrace research into privacy, breach of confidence and issuance of injunctions. The Unit has developed a research group dedicated to the research, publication and dissemination of information rights scholarship. The Unit has been at the forefront of research into the practical and substantive application of this new legal framework and development of new methodologies for investigating information rights and the use of FOIs as a research tool. Initial research by Kerrigan (2002), Bessant (2009) and Wolf (2011), all researchers at Northumbria 2002-13, highlighted knowledge gaps amongst both practitioner and academic groups working in this developing field and the group has subsequently identified and mapped a new methodology to change working methods.</p> <p>The central research question addressed by this group is:</p> <p>How do public authorities who have a regulatory function and accordingly hold personal, confidential and commercial information, fulfil their statutory obligations to disclose information in the public interest without compromising private information?</p> <ul style="list-style-type: none"> • The research was undertaken in a variety of ways using methodologies appropriate to specific aims; Doctrinal and theoretical research, aimed at establishing the requirements and scope of the legislation (Bessant, Wolf, Moosavian, Savage and Hyde). • Research aimed at establishing the challenges for users of the legislation (data subjects, application for information and those responsible for the management of the information) and examining the implementation of the different requirements governing information (Savage and Hyde). • Critique of the current approach and suggestions for reform (Moosavian, Savage and Hyde). <p>The research conducted by Moosavian (Senior Lecturer from 2008-13) has established a new conception of confidence and privacy. The research was conducted in 2011 and published in April 2012. Moosavian charted the emergence of a new action termed 'misuse of private information' (MPI), from traditional common law breach of confidence. The new action has been employed to resolve privacy disputes and encompasses Articles 8 and 10 of the European Convention on Human Rights and the Human Rights Act 1998. The research engages a detailed examination of case law to demonstrate precisely how elements within traditional breach of confidence have been used to shape and inform the new two-stage MPI test. For example, notions of confidential relationship and public domain are relevant to the first-stage question of whether a claimant has a</p>	

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reasonable expectation of privacy: and public interest issues play a vital role in the second-stage balancing exercise.

Research by **Savage** (2011-13 Senior Lecturer) and **Hyde** (2011-13, Lecturer at Northumbria) has created a new methodology for using freedom of information requests to conduct large scale empirical research. This research was conducted and published in 2012. The research produced the first article, since FOIA came into force, proposing FOIA requests as a research methodology. The second article by **Savage** and **Hyde** (2013) reports on findings from a research project using a facilitative method. The research was conducted in 2011-12 and key findings published in June 2013. The data study involved Freedom of Information requests to 48 local authorities to facilitate evaluations and draw conclusions about the manner in which Freedom of Information requests were being handled by local authorities and to make recommendations about the handling of such requests. Critical review of best practice was achieved by integrated research with a significant group of local authorities. The research focus has broadened to map the use of whistleblowing disclosures within a complex regulatory landscape, involving both local authorities and national regulators.

3. References to the research

Kerrigan K. and Plowden P. (2002) 'Corporate Interests and the Privacy Bandwagon', *Information and Communication Technology Law*, 11(3), pp177-192. DOI: 10.1080/1360083022000031894

Savage A. and Hyde R. (2012) 'Using Freedom of Information Requests to Facilitate Research', *International Journal of Social Research Methodology* (Early-view online publication, November 2012). DOI: 10.1080/13645579.2012.742280

Moosavian R. (2012) 'Charting the Journey from Confidence to the New Methodology', *European Intellectual Property Review*, 34(5), pp324-335. Available from Northumbria University on request.

Savage A. and Hyde R. (2013) 'Local Authority Handling of Freedom of Information Requests: Lessons from a Research Project', *Web Journal of Current Legal Issues*, (19)2. Available at: <http://ojs.qub.ac.uk/index.php/webjcli/article/view/240/315>

Hyde R. (2013) 'Why separate the regulatory regimes applicable to food safety and product safety?', *Legal Studies*. 33(4), December, pp509-531. (Early-view online publication, November 2012).

DOI: 10.1111/j.1748-121X.2012.00261.x.

Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1748-121X.2012.00261.x/abstract>

Hyde R. and Savage A. (2013) 'Cross-Border Concerns: Perils and Possibilities', *E-Journal of International and Comparative Labour Studies*.

Available at: http://adapt.it/EJCLS/index.php/ejcls_adapt/article/view/132

4. Details of the impact

The Unit's progressive research into information rights law has resulted in our researchers writing two definitive practitioner texts on the subject (2009 and 2011) and has directly benefited two public bodies, providing them with the tools and training required to bridge the gap between legislation and operational requirements. The research, specially commissioned by the Law Society of England and Wales and derived from IRRIG's initial engagement with the Department of Constitutional Affairs, provides comprehensive coverage of best practice in information sharing and disclosure of environment information in the context of key regulations and related legislative provisions (source 4).

Engagement with Durham County Council has prompted a change in policy in the handling and sharing of information and significant re-organisation of the way in which the authority deals with information requests. The authority receives 95 requests per month and obligations apply within the statutory code of practice relating to training, compliance and accessible policies and procedures on disclosure. Durham County Council is a large unitary authority. It has 126

Counsellors who are accountable to over 513,000 people in County Durham. In 2011, the council commissioned Wolf to deliver bespoke training to key officers within the organisation on the Environmental Information Regulations 2004 (EIR) and its relationship to the Freedom of Information Act 2000 (FOIA). In April 2011, 30 senior officers across a range of service departments within Durham County Council received training on the EIR and in particular how service departments are required to recognise requests for environmental information so as to ensure compliance with the statutory provisions. The training provided knowledge and expertise that allowed the Principal Information Officer at Durham County Council to develop his own training sessions as well as frequently asked questions and answers for use by officers in the service departments. The Officer produced a revised FOIA procedures packet clearly establishing processes and policies to deal with requests which is widely in use by the local authority. Our research into best practice procedures facilitated a change in public authority process:

“As a result of the research training I prepared a revised FOIA Procedures Packet which is now widely used within the authority. The training also helped to raise organisational awareness of the EIR and as a result, the Council consolidated the EIR work within the Information Management Team so that a consistent and joined up service could be delivered.” (Evidence Sources 1 and 2).

Engagement with the MMO has, firstly, enabled staff to develop a clear understanding of its operational practices and obligations with regard to the legislation concerning information rights. Second, it has prompted the MMO to set up a senior level working group to review and develop new departmental procedures regarding information sharing. The MMO is a non-departmental government body. It has approximately 321 members of staff. The MMO is responsible for the sustainable development of the marine area. It has statutory responsibilities for fisheries management, licensing, planning and regulatory enforcement. The MMO is a relatively new organisation, established in 2010, and it therefore required training in information rights law and information sharing, specifically tailored to its needs, in order to fulfil statutory and regulatory functions. Our group met with MMO officers shortly after it was established to discuss their issues regarding information sharing and disclosure. This led to research projects between 2010-13 reviewing its FOIA compliance and providing research expertise relating to data sharing processes derived from IRRIG's research into public organisation best practice. In 2011, over 80 officers of MMO from throughout the UK received training over seven days in Bristol and Newcastle (12 training courses were delivered and a new methodological approach to sharing of information was addressed).

The MMO commissioned the IRRIG to undertake further research projects in 2012. The first was to provide a review of the MMO's handling of requests for information using freedom of information legislation. The second was to provide an evaluation of the MMO data handling procedure. In this regard the MMO's Litigation Lawyer comments:

“The result of the combined projects was twofold. In the first instance the MMO gained a very clear insight into the close relationship between its operational practices and its obligations under information sharing legislation. Second, and more importantly, the process has resulted in the establishment of a senior level working group to review MMO policy and procedure. This work is on-going and it is anticipated that the relationship with the University will continue to inform and direct policy and practice.” (Source 3).

In 2013 the MMO has created a new information management team, derived from IRRIG project work initiatives, to increase the quality of their customer service as well as to reduce business risk by ensuring consistency of decision-making on FOIA requests. The review changes have recently been mandated for DEFRA approval.

5. Sources to corroborate the impact

1. Statement from Principal Information Officer, Durham County Council, and selections for the evaluation of training given to staff members (change in policy and working practices).
2. FOIA Procedures Packet (change in official policy). Available on request from Northumbria

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3. Statement from Litigation Lawyer, MMO (establishment of senior level working group).
4. IRRIG webpages: <http://lawresearch.northumbria.ac.uk/cirl/>
5. Information Sharing Handbook (Law Society Publishing, 2009). See http://bookshop.lawsociety.org.uk/ecom_lawsoc/public/saleproduct.jsf?catalogueCode=9781853288548. Available from Northumbria University on request.
6. Environmental Information Regulations: A Practical Guide (Law Society Publishing, 2011). Available on request from Northumbria University.
7. The Commissioning Editor at the Law Society of England and Wales can be contacted to provide evidence