

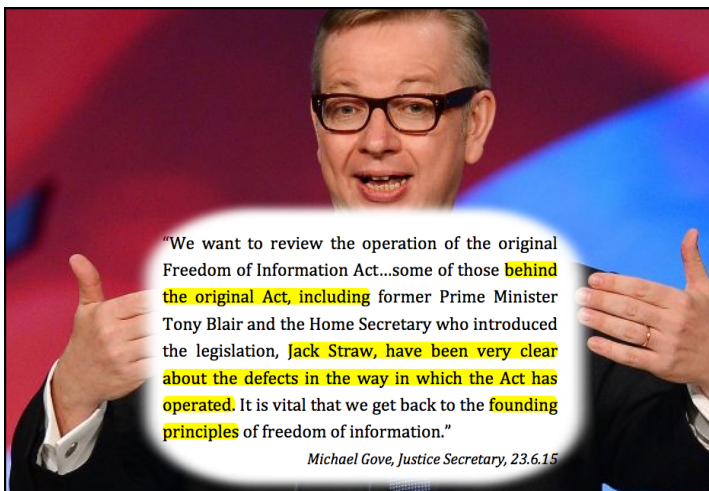
**Briefing on
FOI Commission consultation**

21 October 2015



Campaign for Freedom of Information





Dear Prime Minister,

"...An independent Commission is **expected to reach its views based on the evidence** presented to it **rather than the pre-existing views of its members**. Indeed, in appointing members to such a body **we would expect the government to expressly avoid those who appear to have already reached and expressed firm views**. It has done the opposite. The government does not appear to intend the Commission to carry out an independent and open minded inquiry...."

Letter signed by over 140 press, campaign and other organisations, 21.9.15

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Deadline: midnight 20 November

Independent Commission on Freedom of Information
Call for Evidence

9 October 2015

<http://tinyurl.com/FOI-Commission-consultation>

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Internal deliberations

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Public interest test applies to:



Freedom of Information Act
2000

2000 CHAPTER 36

Act to make provision for the disclosure of information held by public authorities or by persons providing services for them and to amend the Data Protection Act 1998 and the Public Records Act 1958, and for connected purposes. [30th November 2000]

- Section 35 & 36
 - ▶ Policy formulation
 - ▶ Ministerial communications
 - ▶ Collective responsibility
 - ▶ Frankness of advice / views
- Result (says Ministers)
 - ▶ “uncertainty”
- Possible answer:
 - ▶ Remove PI test from these areas

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Safe space & chilling effect

- Request made before decision taken
 - ▶ ‘Safe space’ needed
 - ▶ Rarely in public interest to disclose
- Request made after decision taken
 - ▶ ‘Chilling effect’?
 - ▶ Would disclosure of similar information, after that length of time
 - ▶ Inhibit frank recording in future?

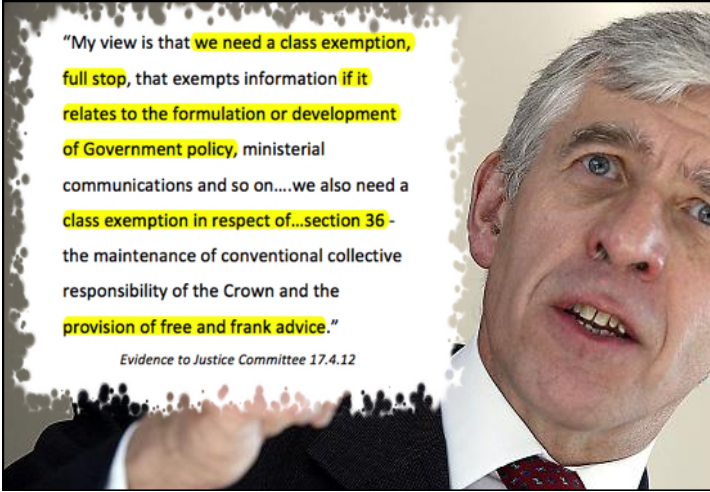
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Range of options

“Because the Information Commissioner, tribunals and courts may reach a different view of the public interest [to the authority’s] it has been argued that this creates uncertainty for both public authorities and requestors about what information will, or will not, be disclosed. Some have argued that this uncertainty can then lead to officials and Ministers moving decision-making from formal to informal systems, and the weakening of the quality of official records.”

FOI Commission

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Sections 35 & 36 apply to...

- Any material used in drawing up policy including:
 - Factual material
 - Research reports
 - Opinion polls
 - Statistics relating to decision not yet taken
 - Scientific or technical advice
 - Contacts with lobbyists
 - Consultation responses
 - Assessments of existing situation
 - Summary of arguments for or against
 - Assumptions
 - How policy will be implemented


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Q 1. Internal deliberations

What protection should there be for information relating to the **internal deliberations** of public bodies?

For **how long** after a decision does such information **remain sensitive**?

Should **different protections** apply to **different kinds of information** that are currently protected by sections 35 and 36?



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Cabinet papers



Cabinet papers

- Current exemptions all subject to PI test
- Disclosed:
 - ▶ Westland & Rowntree takeover cabinet minutes
 - ▶ nearly 20 years old
- Vetoed:
 - ▶ Iraq cabinet minutes
 - ▶ Devolution subcommittee minutes

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Cabinet papers

- New exemption?
 - ▶ Unlikely to be limited to 'minutes'
 - ▶ Cover all papers on issues requiring interdepartmental agreement
 - ▶ Exempt 20 years regardless of public interest

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Q 2. Cabinet discussion

What protection should there be for information which relates to the process of collective Cabinet discussion and agreement?

Is this information entitled to the same or greater protection than that afforded to other internal deliberative information?

For how long should such material be protected?



Risk assessment



- NHS reforms risk register - vetoed
- HS2 review – vetoed - overturned
- Badger cull – disclosed

Q 3. Risk assessments

What **protection** should there be for information which involves **candid assessment of risks**?

For **how long** does such information **remain sensitive**?





History of veto

- Public interest test **intended to be voluntary**
- IC could **not enforce**
- **Made mandatory** during FOI Bill's progress
- **Ministerial veto** introduced same time

- Iraq cabinet
- Devolution cabinet committee
- NHS reform transitional risk register
- HS2 report
- Prince Charles correspondence

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Anyway I do hope
Smith is looking after
you well and taking care
of your needs and that

Charles

"This judgement raised serious questions about the constitutional implications of the veto, the rule of law, and the will of Parliament."
FOI Commission consultation

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Q. 4 The veto

Should the executive have a veto (subject to judicial review) over the release of information?

If so, **how should this operate** and **what safeguards** are required?

If not, what implications does this have for the rest of the Act, and **how** could government **protect sensitive information** from disclosure **instead**?







Requests to central gov bodies

Year	Initial requests	Internal reviews requested	Appeals to the ICO
2005	38,108	1267	127
2006	33,688	1085	384
2007	32,978	857	222
2008	34,950	959	153
2009	40,548	1502	206
2010	43,921	1729	228
2011	47,141	2114	350
2012	49,464	2724	351
2013	51,696	2832	408
2014	46,806	2615	395

Source: MoJ FoI national statistics: <https://www.gov.uk/government/collections/government-foi-statistics>
These figures cover all requests and not just those where sections 35 and 36 of the Act are engaged

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Research for MOJ

- **Requests to govt departments**
 - ▶ 6 hours and 10 minutes on average
 - ▶ Average **£184** in staff time
 - ▶ Total (all central gov not just depts) **£8.5m (2012)**
 - ▶ (2014 volume lower, cost would be **£8m**)
- **Requests to other authorities**
 - ▶ 5 hours and 21 minutes
 - ▶ Average **£164**

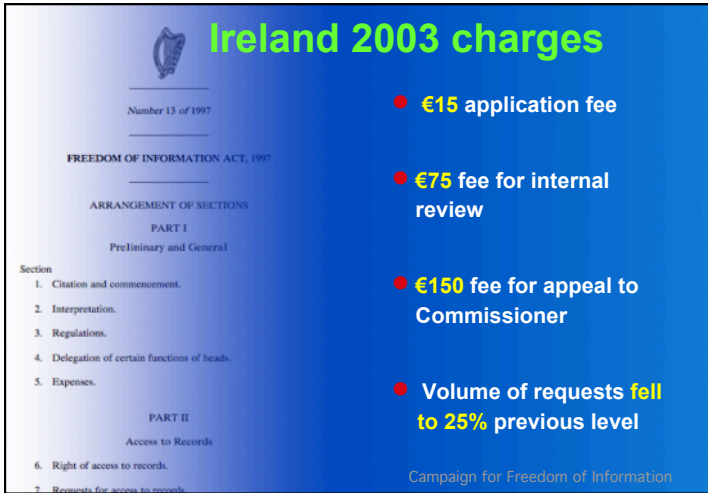
Research by IPSOs-MORI for MOJ, Consultation document p.19

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Cost limits

- **Requests can be refused if estimated cost exceeds**
 - ▶ **£600** for central govt (**24 hours**)
 - ▶ **£450** for others (**18 hours**)
 - ▶ Related requests can be **aggregated**
 - ▶ Based on cost of **locating, retrieving, extracting**
- **Pressure to**
 - ▶ include **consideration & redaction time**
 - ▶ Introduce **application fees**

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Ireland 2003 charges

Number 13 of 1997

FREEDOM OF INFORMATION ACT, 1997

ARRANGEMENT OF SECTIONS

PART I
Preliminary and General

Section

1. Citation and commencement.
2. Interpretation.
3. Regulations.
4. Delegation of certain functions of heads.
5. Expenses.

PART II
Access to Records

6. Right of access to records.
7. Remedies for access to records.

- €15 application fee
- €75 fee for internal review
- €150 fee for appeal to Commissioner
- Volume of requests fell to 25% previous level

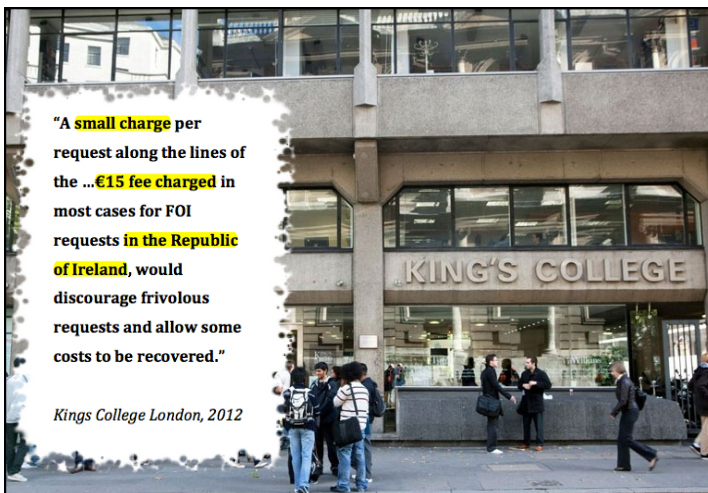
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"a significant proportion [of FOI requests] are simply bizarre or obsessive in nature and do little to advance public knowledge or satisfy a wider public interest."

ACPO, 2012

"There has been an overwhelming response from forces in seeking support for the introduction of charges in respect of FOI requests."



"A small charge per request along the lines of the ...€15 fee charged in most cases for FOI requests in the Republic of Ireland, would discourage frivolous requests and allow some costs to be recovered."

Kings College London, 2012



“One possibility would be to adopt the charging regime for subject access requests, ie levying a flat rate initial fee of **eg £25 per request**”

*Birmingham City Council
2012*

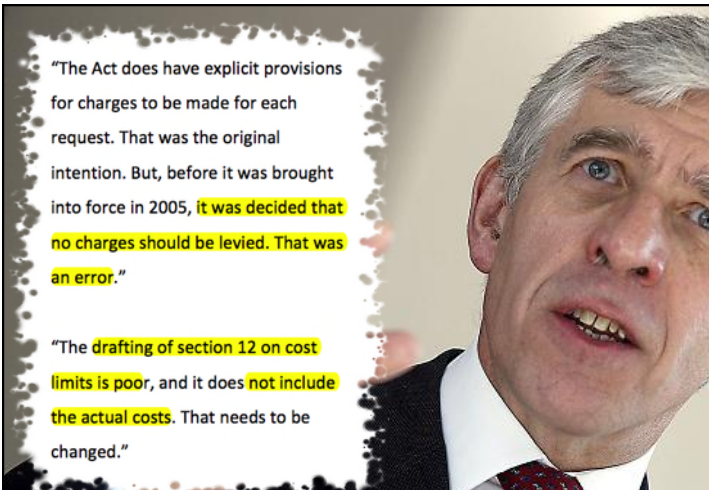


Councils quizzed on dragon attacks, asteroid crashes and possessed pets in wacky FOI requests

LGA press release 16 August 2014

Councils quizzed on Santa, Napoleon and aliens in 2011's most wacky FOIs

LGA media release 23 December 2011



“The Act does have explicit provisions for charges to be made for each request. That was the original intention. But, before it was brought into force in 2005, **it was decided that no charges should be levied. That was an error.**”

“The drafting of section 12 on cost **limits is poor**, and it does **not include the actual costs**. That needs to be changed.”

Patient safety alerts

- Issued after repeated **loss of life** or **damage**
- Request: which trusts not acted on each of **53 alerts**

2010

- ▶ **75%** of trusts **failed** to comply with at least **1**
- ▶ **80** trusts **failed** to comply with **10** or more
- ▶ **1** trust **failed** to comply with **37 (70%)** of alerts

2011

- ▶ **50%** of trusts **failed** to comply with at least **1**
- ▶ **5** trusts **failed** to comply with **10** or more
- ▶ **1** trust **failed** to comply with **14 alerts**

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**Porsche for
Pembrokeshire
Council Boss cost
£2,368 a month**

BBC 11.2.15

Now need...

- **Submissions** to Commission by 20.11.15
 - ▶ Provide examples of own use & **benefits**
 - ▶ **Copies to CFI** appreciated
 - ▶ Write up successes for <http://savefoi.uk/>
- **Write to MPs** - & ask members to

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www.cfoi.org.uk



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