

Leadership and FOI

Paul Gibbons aka FOIMan, consultant and blogger, discusses how FOI Officers can demonstrate leadership within their organisations

Tony Blair once said: “You idiot. You naive, foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it...it’s like saying to someone who is hitting you over the head with a stick, ‘Hey, try this instead’, and handing them a mallet”.

No, Mr Blair wasn’t talking about dodgy dossiers or invading Iraq. He wasn’t expressing regret for offering assistance to *News International* red-tops. Or even accepting that invitation to Silvio Berlusconi’s villa. He was, of course, talking about FOI.

He’s not alone. Our current Prime Minister complained to the MPs’ Liaison Committee about what he described as ‘this endless discovery process that furs up the whole of government... Publication of information is better than the discovery process which I think does fur up the arteries on occasions.’

It’s not just Prime Ministers either. In 2010, Ken Thornber, the leader of Hampshire County Council wrote in *the Guardian* blog (20th January 2010) that he no longer believed his ‘staff should be spending their precious time on...spurious requests’, and if requesters ‘persist, we should have the courage of our convictions and refuse to answer the inquiry.’

Aside from the entertainment that such statements provide to the media and commentators, such public antipathy to FOI has had a significant impact. Inevitably, it makes the job of FOI Officers more challenging. In 2011, UCL’s Constitution Unit conducted a research project looking at the impact of FOI and transparency on local government. One of the findings was that leadership is crucial to FOI compliance. A councillor or chief executive talking positively about FOI and providing support to their FOI Officer(s) makes a ‘tremendous difference’. Conversely, hostility can ‘percolate an organisation and embolden resistance and create nervousness.’

As FOI Officers, we know the truth of this. If management support the messages we give, if we have a director prepared to repeat them in board meetings, or to have reminders sent

out in their name to the tardy, then colleagues will recognise the importance of providing information requested within a reasonable time-scale. However, if a director has been voluble in their scepticism of FOI — its cost or a fear that disclosure will damage their work — then it is going to be hard to convince their staff to co-operate on future occasions.

The Information Commissioner and Tribunals have little sympathy with public officials — especially those in senior positions — who make exaggerated claims as to the negative impact of FOI. The Tribunal in *The Department for Education and Skills v Information Commissioner and The Evening Standard OGC v Information Commissioner* [2008] EWHC 737 commented on their expectation of senior civil servants:

“In judging the likely consequences of disclosure on officials’ future conduct, we are entitled to expect of them the courage and independence that has been the hallmark of our civil servants since the Northcote-Trevelyan reforms. These are highly educated and politically sophisticated public servants who well understand the importance of their impartial role as counsellors to ministers of conflicting convictions.”

FOI Officers as leaders

Leadership, of course, is an attribute not exclusive to those who run an organisation. It is just as important for FOI Officers themselves to demonstrate it.

Arguably this is a duty that comes from the legislation itself. In considering exceptions under the Environmental Information Regulations (‘EIRs’), there is an explicit presumption in favour of disclosure. With FOI, it has been argued that there is an implicit assumption of the same — see paragraph 71 of *OGC v Information Commissioner*. It is rare that colleagues in our organisations will do this when raising concerns with releasing information. It is therefore up to the FOI practitioner to apply it.

There is no better illustration of this than when it comes to considering the

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public interest in disclosure of information. Colleagues will be full of arguments against releasing information, but much less effusive in articulating reasons for providing it. It is our job as FOI practitioners to set out the alternative view, however difficult that may make our position.

Cynicism is a strong force, easier to fall in with than to challenge. But we must resist its call. If we agree with those who question the very basis of our job, even if only for a quiet life, slowly the perception grows that even those who are responsible for FOI do so reluctantly. That message will spread outwards and upwards.

We must ensure that care is taken in respect of the messages that our colleagues take away from training. Like others, I have often stressed the fact that anything that is written down may be disclosed. How many of us have warned of 'smoking guns'? My advice to senior officials has been that there are no guarantees — the Commissioner may force us to disclose information. I have tried to focus minds with the worst possible scenario. So perhaps I should not have been surprised when colleagues were afraid of FOI. I helped create the monster. I had to do this, but could I have tempered that message with something more positive?

Changing the message

So how do we turn that round? It begins with us. Our message to our authority is crucial in changing attitudes, which in turn is essential if as FOI Officers we are not going to spend our working lives in a constant war of attrition with colleagues and superiors. It is necessary to warn them of the implications of transparency. But we can also tell them why FOI exists. We can spell out the benefits of a more open culture.

Context is all. The first access to information law came into force in 1766 in Sweden. Around a hundred other countries now have this kind of legislation. The UK was late to the party and would be seen as backward if it had not addressed this

deficiency in a world where even China has such a law. FOI is part of the framework of rights that limit the misuse of power. As the Justice Select Committee said two years ago, 'Freedom of Information has been a significant enhancement of our democracy.'

We can point to organisations that do not have such an open culture. At the moment we do not have to look too far. The World Cup shone a spotlight on its organising body, FIFA, and the shadows cast were unpleasant, with allegations of corruption and back-room deals. Meanwhile, the long-running phone hacking trial uncovered a 'conspiracy...at every level of the *News of the World's* hierarchy', according to the BBC's Dominic Casciani. Whilst those organisations subject to FOI are not immune to scandal (as MPs know well), the fact that all of us are able to ask questions at any time must act as an important brake on those tempted to abuse their position, and increases the likelihood that, sooner rather than later, any wrong-doing will come to light. FOI acts as a pressure valve for unhealthy secrets.

FOI doesn't just open a window on public bodies for the outside world to look through — it enhances transparency within. In retrieving information to respond to requests, problems that might have gone undiscovered for years can be brought to the surface. On one occasion, an FOI request to one of my former employers resulted in the identification of expenditure which could be claimed back from a third party. Money can be saved.

The fact that a particular department struggles to locate information, or is peculiarly reluctant to disclose it, may reveal underlying issues. In its evidence to the Justice Select Committee's post-legislative scrutiny in 2012, even an unenthusiastic Association of Chief Police Officers acknowledged that the right of access had helped to identify weaknesses in police forces, and in one case had even led to the identification of a witness to a murder. FOI is a form of audit, made more effective by its unpredictability.

Leadership and trust

Practitioners must ensure that they keep on top of the Commissioner's guidance and the latest decisions. That is obvious. But as well as that, we need to demonstrate awareness of the sensitivities within our own authority. If we can show that we understand colleagues' concerns and have the tools at our disposal to reassure them, then trust in us will grow. Over time, our word will come to have authority.

The cost of answering requests is a regular concern. We should use the full range of tools at our disposal to manage the flow. We should not hesitate to seek clarification if a request is too broad, help our colleagues to identify those enquiries that will exceed the appropriate limit as early as possible, and consider whether the burden makes a request vexatious.

Public authority employees and politicians have legitimate concerns much of the time, and being able to propose the use of exemptions with confidence will reassure them. It will not always be appropriate to apply an exemption, of course. However, if we win their confidence in difficult circumstances, they will be readier to trust our word at other times.

Follow the leader

Often FOI Officers are appointed at relatively junior grades within public authorities. It is seen as an administrative role by many. Fellow practitioners will recognise this to be the misconception that it is. Our job is varied and complex. It requires knowledge of an often complicated law, management of a heavy workload, and communication — or people — skills that are more often found at more senior levels. FOI Officers don't follow. They lead.

Paul Gibbons
FOIMan
paul@foiman.com
