

Raising the curtain: how FOI really works

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Spoiler alert. In *The Wizard of Oz*, it eventually transpires that the 'wizard' is an old man hidden behind a curtain pulling a few levers. A little mystery can create the illusion of power, and reality is almost always less impressive.

The concept of freedom of information is based on the belief that secrecy is damaging, and that conversely, more openness is a good thing for society. As practitioners we have sought (or ought to be seeking) to embed that principle in our public authorities. Yet often our own work is hidden from view. There has been very little discussion in the public domain about how FOI Officers do their jobs.

This causes several problems. Firstly, people misunderstand the role of FOI Officers — if they don't receive the information that they ask for, applicants' first inclination is to shoot the messenger. They wrongly assume that we are there to block their access to the truth. Secondly, practitioners have often had to work in isolation, developing their own methods to manage the obligations of freedom of information legislation. In a relatively new discipline, there has been little to guide us in the practicalities of our work. Thirdly, it means that there is little to inform senior managers and elected officials about the challenges involved in handling FOI requests. How can they fully assess their authority's performance in the absence of any knowledge of how other public bodies are managing their responsibilities? How do they judge whether additional resources are needed?

The good news is that Toto has been tugging at the curtain. Recent research is casting light on how FOI is managed, particularly in local government (to which most FOI requests in the UK are made — a UCL Constitution Unit study in 2010 suggested almost 80%). In March this year, the Campaign for Freedom of Information ('CFOI') published a report on how London's boroughs were handling FOI requests (copy at: www.pdpjournals.com/docs/887994) This was followed in short order by civil society group MySociety's study examining FOI in councils across the UK.

These two reports are particularly interesting to me. I have written previously about the inquiries that I carried out as

part of preparing *The Freedom of Information Officer's Handbook* (available from www.pdpinternational.com/books). In Volume 15 Issue 2 of this journal ('FOI: how did English councils perform in 2016?', pages 4-7), I wrote about the limitations of my research. At the time though, conducting my own limited study was the only way to gain insight into how FOI was being managed across the country. Now we have much bigger, and better resourced, studies, it is possible to validate and build upon the picture that emerged of how FOI works in practice.

So what can all of this research tell us about the way that FOI is managed across the UK? Even more importantly from a practitioner's perspective, what can we learn about how processes can be improved?

Methodology

It will come as no surprise that both these studies use FOI itself as a core research tool. Not only do FOI requests result in the disclosure of the requested information about FOI practices, but researchers can also learn much from their own experience of making the requests (see for instance 'From the other side — a practitioner's perspective on making FOI requests', pages 4-7, Volume 14, Issue 6 of *Freedom of Information*).

In addition, both the recent studies utilised information pro-actively published by public authorities. The MySociety researchers discovered early on that Scottish authorities' performance statistics were collated and made available by the Scottish Information Commissioner, so did not ask those authorities for this information. CFOI checked London councils' websites before making its requests, and only requested information that was not already available.

MySociety's approach was to make FOI requests to all 418 local authorities across the UK. All councils were asked questions about their administration of FOI, and outside Scotland they were also asked for statistical information about their FOI performance in 2017. This was followed up by a questionnaire sent to practitioners at each of the councils. CFOI also made FOI requests to the London authorities it was interested in (as well as the 32 London boroughs, the City of London Corporation and the

Greater London Authority were included in their study). It asked for similar information but for the financial years 2016/17 and 2017/18.

The response rate for both studies was generally good (although perhaps not when reflecting that answering FOI requests is a statutory duty) with 89% of the 388 councils outside Scotland providing answers to MySociety's request for statistics. CFOI reported that 25 out of the 34 authorities involved answered their initial FOI request within 20 working days, although in the worst cases it took almost a year, and intervention from the Information Commissioner, to obtain a full response.

Performance

This leads us onto the statistical data that was collected by the studies. MySociety reported problems with the format of the provided information, just as I experienced when I

made similar requests in 2017 (see 'How did English councils perform in 2016?' in Volume 15 Issue 2 of *Freedom of Information*). Some authorities provided figures for the calendar year of 2017, whilst others did so for the financial year of 2017-18. The MySociety researchers came up with a model that adjusted for this variation in reporting and for those that failed to respond at all, allowing them to calculate an estimated total number of requests sent to local authorities across the UK in 2017. The figure they calculated is 468,780.

In a previous article ('How did English councils perform in 2016?', pages 4-7, Volume 15 Issue 2 of *Freedom of Information*), I estimated that English councils received 417,367 requests in 2016. MySociety's estimate for English councils in 2017 is 388,736. The amount of data it col-

lected means that that figure is likely to be more accurate, and suggests that the figure I estimated for 2016 overstated the numbers of requests received. It is unlikely that the volume reduced between 2016 and 2017. The MySociety report comments that comparisons with the Constitution Unit's research between 2005 and 2010 and their findings suggest that there is an average rise year on year of 10%. The CFI report on London found a more modest average rise in request volumes between 2016/17 and 2017/18 of 4.2%.

All this being said, it is striking that both my own research and MySociety's more comprehensive study point to request volumes to councils across the UK of over 400,000 since 2016.

In terms of performance against the 20 working day deadline, the MySociety study found that the overall average was somewhere in the mid-80s — similar to

my own findings for 2016. According to the CFI study, London's councils in 2017 or 2017/18 were meeting their obligations in 81% of cases, which is exactly the same as I estimated for 2016. Only a quarter were meeting the target of 90% set by the Information Commissioner.

The revised Section 45 Code of Practice ('the Code') now requires public authorities to publish FOI statistics. The two studies featured here suggest that many will struggle to do this, at least in the detail that the Code requires. In London, the CFI found that most councils published a performance figure, but very few published the number of requests received, with only a handful publicly reporting on internal reviews and complaints to the Information Commissioner. MySociety reported that 98% of local authorities were able to say how many requests

had been received, but the proportion able to provide other statistical information ranged from 86% (able to say how many internal reviews had been requested) to 65% (able to say how often requests had been partially refused). It seems odd that less than 70% of councils are able to say how many requests they refuse on the grounds that they are vexatious. If councils are to comply with the Code, they will need to keep more comprehensive records of FOI requests than they apparently do at present.

FOI Officers and resourcing

The MySociety report noted an intriguing pattern. The researchers had asked councils for details of their FOI budgets. This was difficult as not many councils separate out FOI from other activities (as we will see). Based on the small sample of councils that did venture a figure (35), there appeared to be a relationship between volume of requests and resources. MySociety calculated that every request appeared to increase the budget for FOI activities by £57. The researchers noted that the sample was not statistically significant, but observed from a larger sample of 266 councils that every extra thousand requests correlated to a 0.75 increase in staffing. This illustrates why it is so desirable for practitioners to maintain statistics on FOI performance — it can help make the case for increased resources.

In Chapter 10 of *The Freedom of Information Officer's Handbook*, I argued that it is normal to have some form of central resource for coordinating FOI requests. MySociety found that FOI is typically one of several responsibilities of a central team, often the information governance or customer relations team. It is rare for there to be a resource entirely dedicated to FOI. MySociety's findings confirm my own research, reporting an average of 1.9 persons per council with core FOI responsibilities, but that the median — the most common number — is one person.

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These individuals are commonly supported by what MySociety describe as 'FOI Champions', and what I prefer to term 'FOI Liaison Officers' — a network of contacts across the authority who act as intermediaries between the FOI Officer and their colleagues in other departments. 62.5% of councils reported that they operated this model.

Given the complexity of handling FOI requests, it is important that FOI Officers are properly developed and know how to keep up-to-date with the latest case law and best practice in the area. Worryingly then, only 27.2% of FOI Officers responding to MySociety's researchers held a professional qualification in FOI.

Case management

Most authorities reported to MySociety that they used a system to manage FOI requests. 34% claimed that they didn't, though as the researchers point out, these authorities are probably using standard office software such as Microsoft Excel to log their requests. 11% of councils reported developing a bespoke system in-house. The most commonly used specialist software is iCasework which is in use by 7% of councils. Beyond this, MySociety echoed my own findings that there is a long list of specialist software in use in UK councils.

One of the conclusions from my research was that there was no obvious relationship between an authority's compliance with deadlines and its use of case management software. The MySociety researchers reported the same — "there was no statistically significant effect of CRMs [customer relationship management systems] on the response rate".

Disclosure logs

Despite the fact that the Information Commissioner has encouraged public authorities to adopt disclosure logs for some time, both studies found that the majority of local au-

thorities are not publishing details of the FOI requests that they received. 64% told MySociety that they did not have such a log. A similar proportion of London councils (20 out of 34) were in the same position.

The CFOI report lists five benefits of disclosure logs:

- they ensure that the general public benefits from disclosures to individuals;
- they can reduce workload on the authority, since requesters may not request information that has already been disclosed;
- they can encourage informed use of FOI as it is obvious what will be refused and what will be disclosed;
- they can demonstrate openness and help build trust; and
- they promote consistency by making it more difficult for authorities to withhold information that they have previously released.

However, the MySociety research appears to challenge the second of these arguments. It found that disclosure logs had no effect (either positive or negative) on request volumes.

Improving FOI performance

Aside from academic curiosity, the main value of research for practitioners is that it can assist in identifying ways to improve performance and resolve problems in the administration of FOI. CFOI's report in particular identifies some practical lessons that can be taken from its research.

It highlights the experience of the London Borough of Barnet. Barnet was one of the authorities that the Information Commissioner 'monitored' in 2010 when it was answering only 71% of its requests on time. Its performance in 2017-18 was 96%, a figure it had maintained for 4 years. To achieve this, it recruited additional staff, procured a case management system, published a disclosure log, moved to proactive publication of datasets, and intro-

duced weekly and monthly monitoring reports. Perhaps against the trend elsewhere, Barnet reported a decrease in requests in 2017/18 which it ascribed to its disclosure log and increased pro-active publication of data. CFOI reports that a third of all Barnet's requests were dealt with by referring applicants to information that had already been published.

The CFOI report highlights a number of similar case studies. It summarises the main ways in which London councils have successfully improved FOI performance and suggests that they are easily replicated:

- better tracking of requests;
- reminders to staff of approaching deadlines;
- closer monitoring;
- disclosure logs;
- more pro-active publication of information known to attract frequent requests;
- retention of experienced FOI staff;
- build up of knowledge and experience across the authority;
- training; and
- use of case management systems.

The report also identifies situations that have negatively affected performance which include:

- outsourcing FOI coordination;
- losing knowledgeable FOI Officers;
- failing to monitor performance;
- outdated tracking systems; and
- lack of sufficient staff to coordinate requests or to collate responses.

Other issues

The Information Commissioner's Model Publication Scheme, which all public authorities are expected to follow, includes a class of information called 'Our policies and procedures'.

FOI Officers may struggle to persuade colleagues to pro-actively publish internal guidance, but their own FOI policies and procedures ought to provide a quick win. Yet the CFOI found that very few London councils published their internal FOI guidance.

Where this guidance was not immediately available, the Campaign made an FOI request for it. Its analysis of the disclosed procedures found them 'detailed and knowledgeable showing considerable awareness of the IC's guidance and FOI case law'. However it noted some concerning inaccuracies, particularly relating to circumstances in which requests could be refused or charged for. The CFOI recommended that authorities regularly review their procedures and ensure that they are updated in line with the Commissioner's latest guidance and current case law.

Many of the procedures obtained by CFOI required press offices to be notified when a request was received from a journalist (or sometimes even from bloggers or campaign groups). Few went as far as the London Borough of Lambeth, which explicitly encouraged staff to google applicants to establish their status. (One of Lambeth's Press Officers has informed me that since the publication of the CFOI report, this has been removed from their procedures.)

It is common practice in London boroughs for responses to the most sensitive requests to be approved by a senior officer. The CFOI report expresses concern that this might lead to delays, citing its experience with one council which explained their considerably late response by saying that they were 'waiting for clearance from a manager'. My own research in 2017 similarly suggested a relationship between senior level approval and poor performance against FOI deadlines.

Conclusion

Increasingly we are learning more about how FOI obligations are managed. This is important as public authorities are only likely to improve their performance in this area if they are able to learn from best practice else-

where. In addition, practitioners cannot encourage their colleagues to be more open, if their own practices are opaque. Openness begins at home. All this new research is valuable. It demonstrates the link between FOI performance and resources, helping practitioners to make the case to their managers for more support. It highlights the practices which are likely to improve efficiency. It helps to make the case that the processing of FOI requests is a complex activity requiring skill, knowledge and professionalism.

On another note, please do get in touch if you have any FOI questions — practical or legal — which you would like me to answer in a future issue. Drop a line to feedback@pdpjournals.com with 'FOIMan's FOI Inbox' in the subject line.

Paul Gibbons leads the training course 'Role of the FOI Officer'. For details of the course and information on upcoming dates, see www.pdptraining.com

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