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The Freedom of Information Officer's Handbook

Chapter 10

The FOI Officer

Introduction

It seems obvious that FOI laws cannot work without administrative support, or in other words that:

‘the practical functioning of an FOI regime underpins and constrains its ability to achieve its objectives.’¹

The quote that opens the introduction to this book highlights the important role that public employees play in ensuring that FOI laws work in practice. In particular, there are those who oversee the day-to-day management of FOI obligations – the FOI Officers. Their job is crucial, since however an organisation chooses to manage its compliance, someone has to establish policies and procedures, provide advice to colleagues, and monitor progress with the handling of requests. FOI cannot function without some sort of central resource to maintain it.

Yet despite their central importance to the delivery of FOI laws, not much has been written about FOI Officers. This limits our understanding of how FOI works in practice, and leaves these important individuals without the support that they need to do the job well. This chapter seeks to address this, looking in detail at what an FOI Officer is, and indeed what they should be.

What does the UK's FOIA say about FOI Officers?

As chapter 1 demonstrated, the journey to the adoption of FOIA in the UK was a long one. This was legislation that received significant scrutiny. Following its passage, the government allowed over four years for full implementation. As a relatively late adopter of FOIA, the UK was also able to benefit from others' experience. It would be reasonable to expect in these circumstances that thought would have been given to how the legislation would work in practice, and more to the point for present purposes, who would be responsible for delivering it. Yet FOIA is silent on its own resource implications. There is no requirement to identify an officer with lead responsibility for FOIA implementation, or who applicants should contact to make their requests.

Only the preface of the s.45 code of practice makes reference to the necessity of appointing staff to support FOIA compliance, and even then it is fleeting and of limited application:

'Larger authorities should ensure that they have a central core of staff with particular expertise in Freedom of Information who can provide expert advice to other members of staff as needed.'²

Even subsequent government or parliamentary inquiries have stayed curiously silent on the human resources dimension of FOIA. The post-legislative scrutiny of FOIA, undertaken by the House of Commons' Select Committee on Justice in 2012,³ devoted a significant portion of its time to considering the cost of FOIA, as did the Independent Commission on FOIA in 2016.⁴ Yet neither devoted any attention to the resources provided to support compliance. The post-legislative scrutiny report's only reference to FOI Officers appears in their eighth recommendation, which explains why they are not recommending the inclusion of reading and consideration time in estimating the cost of answering requests:

'Such activities are overly dependent on the individual FOI officer's abilities, introducing an element of inconsistency into the process that undermines the fundamental objective of the Act, that everyone has an equal right to access information.'⁵

Officially there is very little recognition in the UK of the fact that the success of FOIA depends on FOI Officers and other staff. This is concerning as '[resource] allocation is central to the success or failure of a policy regime'.⁶ Of course, the fact that legislation is silent on the need for supporting staff does not mean that they won't be appointed. However, it makes it harder to make the case for appropriate resources, and is likely to lead to inconsistency across the public sector.

How widespread are FOI Officers?

Despite the lack of official recognition, it is clearly necessary to have at least one member of staff in a public authority with lead responsibility for FOIA compliance. Someone has to receive, log and allocate requests (even if they don't answer them), someone has to maintain publication schemes, and someone has to provide advice to colleagues. Whether the people who carry out these activities see themselves as FOI Officers is perhaps irrelevant – the outside world does.

One of the problems is that again, there are very few sources available to assist in understanding the role of FOI Officers. A few studies have looked at the resources made available to support FOIA compliance, but not many, and very often they are difficult to interpret.

In preparation for this book, an FOI request was sent to 69 English local authorities asking them a series of questions about their management of FOIA obligations. A description of the methodology can be found at Appendix 1. This and the following chapters in this book draw on this research, supplemented by other sources, to examine how FOI works in practice in the UK.

Amongst other things, the councils were asked:

‘Do you have an individual member of staff and/or team with lead responsibility for FOI (e.g. FOI Officer or Information Governance team)?’

Of the 63 councils that responded, 56 indicated that they had an individual or team with lead responsibility for FOI. This is in line with research in Scotland a decade ago, which suggested that the vast majority of authorities had made some organisational adjustment to accommodate FOIA.⁷ It is also consistent with data collected from UK higher education institutions, which suggests that most universities have some sort of central resource to support information compliance including FOIA.⁸ UK government departments have central FOI Units that allocate, monitor and advise on the handling of requests.⁹ It is common practice to identify a central resource to manage FOIA obligations, and it is hard to see how it would be possible to manage without one. Having an FOI Officer or team, whatever it is called in practice, is essential.

Which begs the obvious question - why did 7 councils deny having such a resource? Previous studies have noted the difficulty in understanding the use of resources in relation to FOI compliance, in particular because:

- staff involved in FOI compliance activities are commonly involved in other activities as well, and
- it is rare for staff to record how long they spend on FOI activities.¹⁰

Very few of the individuals or teams with responsibility for FOI were solely responsible for compliance with its obligations. In most councils the teams leading on FOI were also responsible for managing a range of other matters from data protection and records management through to monitoring performance and providing legal advice (see below). This may explain why some of the

councils responded that they did not have a central FOI resource, since FOI work is seen as simply incidental to other work.

Where do FOI Officers fit in?

In an attempt to understand where FOI responsibilities are commonly allocated, the councils were asked:

‘What other responsibilities do staff in this team have? (e.g. data protection, records management, etc.)’

The responses suggest that FOI Officers or teams can end up almost anywhere in a local authority. Unsurprisingly, information governance or records management units were common hosts for FOIA responsibilities. This was the case with nearly two-thirds of the responses received. Beyond that, FOIA found its home alongside performance and risk management in nine councils. Seven councils gave FOIA to their legal teams, and it is not hard to see the reasons why this might be thought appropriate. The same proportion decided that FOIA sat most comfortably within customer services. Three councils felt that FOIA was a ‘democratic service’, sitting alongside support for councillors.

The councils involved in this study were at the top tier of English local government (county, borough, metropolitan and district councils). Very small authorities, such as parish councils, have to add FOIA to the duties of their very few clerical staff, often with predictable consequences.¹¹

An interesting phenomenon picked up in the local government research is the emergence of shared services. Eight separate authorities (i.e. over 10% of those that responded) reported that FOIA requests were coordinated by a service that they shared with one or more other authority. Six of these arrangements were between district councils. Given that such councils are in the lowest tier of English principal local authorities, it is not surprising to see them working together to seek efficiencies. However, two of the eight London Boroughs that responded had chosen this approach (so in other words, at least four out of the – often sizeable - 32 London Boroughs are operating this kind of arrangement).

The NHS reorganisation of the last decade has resulted in some even more complex arrangements amongst the many resulting NHS bodies. Clinical Commissioning Groups (CCGs), which replaced Primary Care Trusts in England, are able to use Commissioning Support Units (CSUs) for legal and other services. Some CSUs provide FOIA administration services for CCGs. A decision notice of November 2017 records that the Information Commissioner ‘has been disappointed by the lack of engagement’ from a CSU which was providing this service for the CCG to which the request had been directed.¹² This is an isolated example, but perhaps it is an indication that such fragmented arrangements do not assist with FOIA compliance.

How many FOI Officers?

Perhaps the most important question is how much resource is allocated for FOI compliance. For the reasons explained above, it is a difficult question to answer. The request sent to English councils asked:

'how many FTE staff are there in [the team with lead responsibility for FOI]?'

Some authorities, answering this question, worked out (presumably roughly) how much time staff spent on FOIA; others how many staff there were in the team that managed FOIA (though those staff may in fact spend most of their time on other activities). Many were at pains to stress that FOI was only a small part of their job:

'No members of staff are currently employed solely to carry out functions in respect of the Freedom of Information Act. Corporate support for Freedom of Information is handled within Corporate Services, with the following officers working on Freedom of Information as part of wider duties...' (response 58)

Due to some councils operating in a shared service arrangement, the 63 responses submitted provide data on central FOI resource for 69 authorities. Between these 69 councils, approximately 166 FTE employees were involved in the central management of FOIA obligations. This works out as on average about 2.4 FTE per council. A few authorities reported relatively large numbers (as many as ten in the case of one London borough [response 33]) but stressed that only a small percentage of their time would be spent on FOIA. Others were clear that about 50% of one person's time was spent on FOIA coordination [response 3]. Well over half of the councils had two or less FTE employees with FOIA coordination as part of their job. If outliers with more than five employees (such as the London borough mentioned) are excluded, the average is reduced to 1.9 FTE. Taking into account the fact that these employees are usually involved in many other tasks, the average central resource dedicated to FOIA compliance will be no more than one FTE in practice.

These figures are similar to previous studies of UK local government. UCL's Constitution Unit carried out a series of surveys of councils between 2005 and 2010. This research also asked about staffing of FOIA, though unfortunately the published results do not distinguish between central FOI teams and time spent on FOIA compliance by staff in departments. The results across all the studies suggest an average of just over 2 FTE employees per council.¹³ Given that this figure includes the time of staff collating information across the council, it again seems reasonable to conclude that any dedicated central FOI resource will on average be in the region of 1 FTE employee at most.

The 2016 JISC survey of higher education found that 93% of UK universities employed at least one member of staff with responsibility for information

compliance (including FOIA). Only 11% employed more than two people for this purpose.¹⁴

What can we conclude from all this about being an FOI Officer in the UK? All (or the vast majority of) authorities appear to recognise that they need someone to lead on FOIA. Some, notably in central government, are in a position to appoint teams of people to fulfil this function. More commonly though, FOIA has had to be added to the duties of existing teams. Sometimes this has been accompanied by additional resources, but not routinely. What we call FOI Officers in the UK will often not see themselves that way, and even if they do, are likely to be distracted by other duties on a constant basis.

Around the world: FOI Officers

FOI laws around the British Isles – those of Scotland, the Isle of Man, the States of Jersey, and of Ireland – contain no requirement to appoint FOI Officers.

However, the Irish government has much to say about FOI Officers in its code of practice (discussed later in this chapter).¹⁵ The Scottish Commissioner also recognises the importance of having one person or a team with day-to-day responsibility for FOI in their guidance.¹⁶

Elsewhere, many laws specify that an individual be identified by public authorities to whom requests may be addressed. The Maltese FOIA requires authorities subject to the Act to publish ‘particulars of the officer or officers to whom requests for such access should be sent’.¹⁷ Online guidance supporting the Maltese FOIA states that ‘[e]very Public Authority has appointed an FOI Officer who shall handle requests for documents submitted by the public and represent the Public Authority on all matters related to the FOI Act.’ It provides a list of all authorities and their FOI Officers.¹⁸ The Australian FOIA similarly requires that public authorities include contact details for an officer (or officers) who can be contacted by people wanting to make a request for information in their ‘information publication scheme’.¹⁹

In India, the RTI Act requires that public authorities designate Public Information Officers and Assistant Public Information Officers to receive and deal with requests.²⁰ Heads of Mexican agencies subject to their FOI law must designate a ‘liaison section’ responsible for proactive publication of information, processing requests, providing advice to applicants, recording requests, and training colleagues. The head of the ‘liaison section’ will also be a member of an ‘Information Committee’ that has oversight of the agency’s FOI obligations.²¹

The USA’s *FOIA Improvement Act* amended the federal FOIA in 2016. Amongst the changes were requirements to ‘beef up’ the role of the Chief FOIA Officer in each government agency, ‘who shall be a senior official of such agency’. Their role includes overall responsibility for the agency’s FOIA compliance, offering training to staff, monitoring compliance and appointing ‘FOIA Public Liaisons’.

The latter effectively have day-to-day oversight of FOIA compliance and try to resolve disputes with applicants. Requests are initially handled by 'FOIA Requester Service Centers'. If an applicant is unhappy with the service they receive from the staff of these Centers, they can contact the FOIA Public Liaisons.²²

FOI Officers in Ireland

The Irish code of practice, issued under FOIA 2014, gives particular prominence to the role of the FOI Officer. Arguably it provides a template for what an FOI Officer should be, wherever they might be fulfilling those duties.

It stresses that management boards in public authorities are expected to promote the aims of FOIA, ensure that policies and procedures are established, and also that organisational structures including 'assignment of operational responsibility to an FOI officer' are in place. They should receive 'the requisite training to enable them to undertake these roles competently'.²³ It goes on to explain the importance of the FOI Officer's role:

'While the Board's leadership role in relation to the delivery of FOI as described above is critical, the FOI officer, as the gatekeeper for the public body's FOI requests and conduit both to the requester and decision-maker, is the linchpin of a public body's capability in relation to FOI.'²⁴

The code goes on to specify the attributes required of an FOI Officer. They should:

- be given appropriate administrative support, depending on the size of the authority and the number of requests that they receive
- have sufficient expertise and experience of handling FOI requests
- have sufficient expertise in how FOIA applies to the information created by the authority
- have leadership skills and be in a position to raise significant issues with senior management or the Board
- report to senior management at least bi-annually on FOI performance
- they can have other responsibilities, but they must not encroach on their ability to perform their duties as the authority's FOI Officer.²⁵

The FOI Officer is there to provide advice on the application of exemptions, redaction, and other issues related to the handling of FOI requests. They are able to access assistance from the government's FOI Central Policy Unit or from wider FOI networks. The code stresses the importance of maintaining anonymity of applicants when specific requests are discussed by these networks.²⁶

In addition, the FOI Officer has a responsibility to maintain their knowledge of decisions of the regulator and courts, for raising awareness, including providing regular (suitably tailored) training for colleagues.²⁷ They should be in a position

to advise members of the public on how to submit valid requests, and have enough knowledge of other access regimes to be able to direct them to alternative routes as necessary.²⁸

Their role includes monitoring compliance, in particular through the collection of statistics. They should use the evidence that they build up in this way to advise senior management on whether and how procedures can be improved. They are the contact point for applicants, the Information Commissioner, central government, as well as their colleagues internally, and are expected to maintain good relationships with them. They are also responsible for maintaining and promoting the means by which requests can be made.²⁹

It is hard to think of a better description of the work of an FOI Officer than that set out in the Irish code.

Data Protection Officers

Those in organisations throughout Europe and beyond that have had to employ Data Protection Officers (DPOs) under GDPR will have found some of the description in the Irish code familiar. In particular, GDPR requires:

- that organisations support DPOs in performing their tasks and involve them in issues relating to personal information
- that DPOs have expert knowledge of data protection and how GDPR applies to their organisation
- that DPOs are able to do their jobs independently, can't be penalised for doing their jobs, and are able to report directly to the highest management level
- that DPOs can carry out other tasks as long as they don't result in a conflict of interests with their role as DPO
- that DPOs are a contact point for individuals, the Information Commissioner (or other supervisory authorities), and for colleagues within their organisation
- that DPOs also have to advise individuals and colleagues on rights and responsibilities under GDPR
- that DPOs have to monitor compliance.³⁰

Much of this mirrors the content of the Irish code of practice. There are two points arising from this. Firstly, taken together with the Irish code, GDPR provides public authorities with the basis for a person specification and job description for an FOI Officer. The second point is that given the similarities, perhaps it is appropriate to appoint a DPO as a FOI Officer, or vice versa. It is mandatory for public authorities to appoint DPOs, and in the UK, this means those authorities subject to FOIA, with the exception of parish councils (and certain similar bodies).³¹ It would make some sense to link these two responsibilities.

One objection to this in practice has been the suggestion that FOI Officers may have a conflict of interest, since making decision about the disclosure of information would constitute processing of data that a DPO may be asked to advise on. An answer to this is that, very often, the FOI Officer's role is simply to advise on whether or not information ought to be disclosed. The information is actually disclosed because of a legal obligation in the form of FOIA, and any decision whether or not to apply exemptions would be taken by others under the FOI Officer's advice. In any case, the UK Information Commissioner does not see a problem with appointing an FOI Officer as an authority's DPO, giving this as an example of a suitable person to appoint to the role in their GDPR guidance.³²

Recruiting FOI Officers

It is a common misconception that answering FOI requests is a basic administrative task that can be performed by anyone. Reading the requirements set out in the Irish code – which accurately captures the range of activities that FOI Officers in the UK and elsewhere are expected to perform - it is clear that this is not the case. Consider some of the tasks involved in answering a request:

- analysis of requests to identify what is being asked for and how best to provide it
- being able to read and interpret legislation and case law and apply it to specific situations
- advising colleagues, at all levels in the organisation;
- negotiating with colleagues at all levels
- liaising with officers from other organisations of all types, from local businesses to the Royal Household
- understanding and articulating arguments in favour of withholding information.

These are just some of the activities that an FOI Officer might have to engage in. Clearly this is a job that requires excellent analytical, communication, and negotiating skills. FOI Officers need to be capable of quickly building up a good understanding of their authority and where information will be found. This need for information literacy perhaps explains why many FOI Officers come from an information management background, and why the research discussed earlier shows FOI oversight very commonly being placed within information governance and records management units. Records managers, archivists and librarians are experienced at gaining a swift understanding of organisations, and the way that information flows through them. Of course, they can also support connected activities such as delivering a records management programme.

Similar benefits can be gained by appointing employees as FOI Officers that have worked in the authority for a long time. An FOI Officer in a local authority that reported answering FOI requests within the deadline in 99% of cases was asked to explain their success. They explained that they and their assistant had worked for the council for over 50 years between them:

‘This is perhaps unusual but it does mean we know whether the Council is likely to hold the information and if so, to whom the request should be directed, with a high degree of accuracy.’³³

Other professionals can bring different strengths to the role. Those with legal qualifications will be experienced at interpreting the law and arguing a position. Ultimately, whoever is recruited will bring particular strengths with them, and there will be areas of their skill set that they will want to develop.

One thing to be cautious of is overloading a job role that is intended to support FOIA compliance. It can be tempting to justify a new post by bringing together several areas of responsibility that are looking for a home. The problem with this is that the individual may end up with a job description that sets them up for failure. If the same person has responsibility for FOIA compliance, data protection, records management and maybe other tasks, and is not sufficiently resourced, it will be virtually impossible for them to succeed in all areas. As well as exposing the authority to compliance risks, such a set up will often result in low morale.

As with so much else in life, authorities will get what they pay for. If an FOI Officer is recruited on a low salary, such as the £15-16,000 offered by one council,³⁴ the authority cannot expect that person to do much more than provide basic administrative support. The burden, presumably, will need to be taken up by their colleagues, so such a decision may be a false economy.

The FOI Officer’s development

The very fact that FOIA is still something of a novelty presents a problem for FOI Officers, especially those whose main job is to manage FOIA compliance. There is no established career path for them. Yet career development has many advantages both for the individual and for their employer, including increased confidence, credibility, and productivity.³⁵

How then can FOI Officers best be developed? Development goes much further than training:

‘Training is...about people learning how to carry out a particular task in order to do a job. It has its place in developing staff, particularly in terms of meeting legal requirements such as health and safety considerations, but it is not the only aspect to consider. Development is much broader. It is about developing the whole person...’³⁶

The trick is to use a range of methods to develop. There will certainly be training courses that FOI Officers can attend, but these should be seen as part of the individual’s development jigsaw.

Firstly of course, FOI Officers should develop their knowledge and skills in the subject matter. The more they know, and the better they learn to apply their knowledge, the better they will be at their job (and the less stressful it will be).

If FOI Officers are not sufficiently educated about how to do their work, it can prove embarrassing and sometimes expensive for an authority. In April 2018, the London Borough of Kensington and Chelsea received a monetary penalty notice for £120,000 after accidentally disclosing personal information about landlords in the borough. The information was hidden in a pivot table within a spreadsheet. The Information Commissioner described the contravention that led to the penalty as follows:

- ‘(a) The Council did not provide the FOI team with any (or any adequate) training on the functionality of Excel spreadsheets or possible alternatives.
- (b) The Council had in place no guidance for the FOI team to check spreadsheets for data hidden in any pivot table before they are disclosed under FOI.’

FOI Officers can develop their abilities by learning from those with more experience, including managers and colleagues. The Irish code of practice highlights the importance of professional networks and these provide valuable opportunities to learn from others.

Chapter 4 of this book lists several resources that will help an FOI Officer to build and maintain their knowledge. In particular it will be essential to keep up-to-date with the latest case law.

Training will play a part. There are several providers of FOIA training in the UK (a list of these is provided in chapter 11). The main providers publish details of external courses on their websites. There are one-day courses providing overviews of the subject or focussing on specific aspects, such as the exemptions. In addition, there are longer courses leading to a qualification in FOIA. The most widely recognised such qualification is the British Computing Society’s (BCS). Most of the providers offer this qualification. It usually involves 4-5 days’ study (either intensively over a week or one day a week over a month), followed by a 3 hour exam. Some providers offer their own certificate in FOIA with a similar format. For those interested in an even more in-depth exploration, Northumbria University offers a certificate, diploma or Master’s degree in Information Rights, Law and Practice by distance learning, which as well as covering FOI, looks at data protection, information management, intellectual property and other related subjects.

A cost effective way to train a whole team is to hire an external trainer to deliver training on the authority’s own premises. If the team isn’t big enough to make this viable on its own, consider collaborating with other authorities. As well as generally being cheaper than sending several employees on an external course, it means that the trainer can be asked to tailor the training to address the authority’s particular needs.

FOI Officers will also want to consider other aspects of their development, particularly if they are interested in pursuing other opportunities in their later career. If they are interested in information rights or information governance

more broadly, they might consider developing knowledge, skills and experience in data protection and related matters. With the advent of GDPR, demand for those with data protection knowledge is high, making it a lucrative area to move into.

If the FOI Officer is part of a larger team, it may be possible to take on other roles temporarily to gain experience. Sometimes a manager will encourage staff to take on projects to stretch themselves and learn new skills.

Beyond this, the development of management and interpersonal skills will always be sensible. Employers may offer opportunities such as supervisory skills or project management courses, or may be prepared to fund attendance on them. FOI Officers will often be expected to deliver presentations and training to their colleagues, so will benefit from *Train the Trainer* type courses. All of these skills are, of course, transferrable, so will be useful however long an individual remains an FOI Officer.

Supporting FOI Officers

The job of an FOI Officer can be challenging. As the gatekeeper to the authority's information, those fulfilling this role can find themselves caught between determined applicants, who see them as blocking their access to information, and angry colleagues, often in positions of power, who view them as the enemy within. FOI Officers won't always find their efforts dissected by their colleagues in a public forum,³⁷ or raised in Parliament,³⁸ but nonetheless their situation can at times be stressful.

It is essential that those responsible for managing FOI Officers recognise the challenges that they face, and are ready to provide them with support. Chapter 11 will examine further the importance of FOI champions at a senior level within public authorities.

The attitude of FOI Officers

It is up to FOI Officers to provide leadership with a small 'I'. If they regularly bemoan FOIA and having to answer requests, then this will bolster resistance when they are trying to do their job in the future. Cynicism is a strong force, easier to fall in with than to challenge. Despite its challenges, FOIA is the reason that many FOI Officers have a job. If they are heard to query its importance, or even seen to tacitly agree with others doing so, they may end up out of one.

Arguably, FOI Officers are there to challenge the *status quo*, and to promote the principles underlying the legislation. In practice, this means not just accepting requests from colleagues to refuse requests, but asking the difficult questions:

- Why can't this information go out?
- What harm will result from its disclosure?
- How likely is it that harm will occur?

- Will it really exceed the appropriate limit to provide the information?
- Have we considered the public interest in disclosing it?
- Can some of the information be disclosed?

Standing up to colleagues wanting to cross a request off their to-do list can be difficult, but time spent considering these questions when a request is first being dealt with can well save an authority time and expense in the long run. If these questions aren't considered now, they may have to be discussed with an expensive barrister when preparing the authority's case for a tribunal appeal.

Emphasising messages such as 'anything you write down might be disclosed' and 'beware of "smoking guns"' in training sessions is meant to encourage colleagues to take FOIA seriously, but can result in unintended messages. If colleagues are taught to fear FOIA, this can breed the scepticism of its requirements that often make FOI Officers' jobs so difficult. It is important to stress that the legislation provides mechanisms to assist with difficult situations, and that the role of the FOI Officer is to provide advice at those times. There are plenty of positive messages to give about FOIA, including:

- Openness is a good look – organisations that are less than open about the way that they make decisions often have a very poor public image. FOIA may not often improve trust, but the very fact that people can ask questions about their concerns makes public authorities look better than some of their private sector comparators. FOIA acts as a pressure valve for unhealthy secrets.
- Transparency can help to identify improvements – in the process of answering FOIA requests, it is often the case that public authorities find problems that they were unaware of. A request to police on one occasion resulted in them identifying a murder witness.³⁹ Several examples were provided to the Justice Select Committee in 2012 of situations where FOI requests identified savings, including thousands of pounds after it was found that some public officials were being paid through companies.⁴⁰ FOIA provides spot checks on the performance of public authorities in random areas, highlighting issues that might otherwise have gone unnoticed.
- FOIA focuses the mind – officials and politicians are likely to think more carefully before making decisions if they know that the public will be able to find out about them. In one Scottish council, for example, councillors had been funded to visit flower festivals around the world, including Tokyo and Barcelona. After this was made public through FOIA requests made by a local journalist, the council clamped down on such activities.⁴¹

How do others see FOI Officers?

FOI Officers and the teams they sit within have been rightly described as 'FOI's engine room.'⁴² It should be clear how crucial FOI Officers are to the proper functioning of FOI laws.

Even those that regularly grumble about the shortcomings of FOIA in the UK can appreciate the work that FOI Officers carry out. Journalists are amongst the biggest users of FOIA, and despite the frustrations that they often describe with it, many see FOI Officers and their role positively. A journalist from the Financial Times told a colleague that:

‘the FOI Officers in a public authority are usually your best friend.’⁴³

This is echoed by Rob Edwards, another journalist who makes regular use of FOIA and the EIR, who says that FOI Officers are often:

‘the ones who are trying to persuade the bureaucracies, in which they operate, to comply’.⁴⁴

FOI Officers carrying out their role politely and professionally will find supporters inside and outside of their organisation.

Summing up

- The UK’s FOIA does not include a requirement to appoint an FOI Officer.
- Nonetheless, compliance with FOIA will usually require the appointment of an individual or team to oversee its operation.
- FOI Officers are commonly linked to other information governance activities such as data protection and records management.
- Most public authorities appoint one or two people in this role, though they may well have a range of other responsibilities.
- Other FOI laws around the world include requirements to appoint individuals as FOI Officers.
- There are lessons to be learnt from other jurisdictions and other legal requirements about the role of FOI Officers.
- FOI Officers require knowledge and skill to do the job well – it is not a simple administrative task.
- Authorities should take care to recruit the most suitable individuals to carry out the role of FOI Officer.
- The most suitable candidates for FOI Officer roles will be information professionals (e.g. records managers, archivists and librarians), lawyers and employees with significant knowledge of the authority.
- FOI Officers should be supported by their managers and provided with development opportunities.
- FOI Officers should seek out opportunities for their own development.
- FOI Officers have an important role in championing FOI within their authority, and should be careful not to encourage cynicism.
- FOI Officers are most likely to be successful if they perform their role politely and professionally.

Appendix 1: FOIA Administration Research

A sample of roughly a quarter of all principal local authorities in England was selected, consisting of 7 County Councils, 8 Metropolitan Boroughs, 14 Unitary Authorities, 7 London Boroughs and 32 District Councils (a slightly smaller proportion of these were selected given their predominance). They were sent an FOI request consisting of 12 questions as follows.

“Dear FOI Officer

I am conducting research into administration of FOI requests and I would be grateful if you could provide the following information.

Part 1: The following questions aim to establish how requests are logged and monitored.

1. What system(s) do you use to log and monitor FOI requests? e.g. spreadsheet, Access database, specialist software (please identify the brand/supplier if so)
2. What criteria do you use to decide whether correspondence should be logged as an FOI request or (for example) handled as "business as usual"?
3. Are requesters' names routinely removed from requests before they are circulated more widely within the authority?

Part 2: The following questions aim to establish what resources your authority allocates to the support of FOI centrally, and whether requests are answered by a central team or devolved to departments across the authority.

4. Do you have an individual member of staff and/or team with lead responsibility for FOI (e.g. FOI Officer or Information Governance team)?
5. If so, how many FTE staff are there in this team?
6. What other responsibilities do staff in this team have? (eg data protection, records management, etc)
7. Are responses to FOI requests normally drafted by the central FOI Officer/team, or are they drafted by staff in the department with lead responsibility for the subject matter of the request?
8. Who approves responses before they are sent out?

Part 3: The following questions are designed to establish the timeliness of responses and how this is monitored within the authority.

9. How many FOI requests did your authority receive in 2016? Please include requests under the Environmental Information Regulations (EIR) within this figure if you log these separately.

10. How many of those FOI & EIR requests received in 2016 did your authority answer within 20 working days?

11. Who is FOI performance (e.g. request volumes and timeliness) reported to internally?

12. How often are such reports made?

As a former FOI Officer myself, I understand the pressures involved and thank you for your time.”

63 authorities responded out of 69. The first full response arrived within an hour of the first working day beginning (perhaps indicating that these questions were not too onerous).

Two questions asked about numbers of requests received and numbers answered within 20 working days in 2016. These questions were asked to see if there was any apparent relationship between particular practices and performance against the 20 working day deadline.

Authorities were then banded by performance: 90%+, 81-89%, 80% or less. This enabled an initial analysis of responses to specific questions, specifically:

- use of specialist software
- whether names are removed from requests before circulation
- whether there is an FOI Officer or Team
- whether a centralised or devolved approach is used
- whether performance is reported on
- whether approval is sought for responses (and from whom)
- whether performance is reported on at least monthly.

Follow-up questions were sent to a small number of authorities that had indicated performance of 90%+ in responding to requests on time. The email containing the questions specified that this was not intended to be handled as an FOI request, and invited respondents to explain why they thought they were so successful at meeting the deadline, and asking them what advice they would give to other authorities.

Chapter 10: The FOI Officer

¹ Hazell, R., Worthy, B. and Glover, M., *The Impact of the Freedom of Information Act on Central Government in the UK: Does FOI Work?*, AIAA, 2010, p.101

² Department for Constitutional Affairs, Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under

Part 1 of the Freedom of Information Act 2000, Issued under s.45 of the Act, November 2004, para.15

³ Justice Committee, Post-legislative scrutiny of the Freedom of Information Act 2000, HC 96-I, TSO, 2012, chapter 3

⁴ Independent Commission on Freedom of Information, Independent Commission on Freedom of Information Report, TSO, 2016

⁵ Justice Committee, *op.cit.*, 2012, conclusions and recommendations

⁶ Worthy, B., *The Politics of Freedom of Information*, Manchester University Press, 2017, p.168

⁷ Burt, E. and Taylor, J., *The Freedom of Information (Scotland) Act 2002: New Modes of Information Management in Scottish Public Bodies? Report to The Scottish Information Commissioner*, 2007

⁸ Information legislation and management survey 2016, JISC, 30 March 2017 www.jisc.ac.uk/reports/information-legislation-and-management-survey-2016 (last accessed 4 June 2018)

⁹ Hazell, R., Worthy, B. and Glover, M., 2010, *op.cit.*, 108

¹⁰ Bourke, G., Amos, J., et al, *FOIA 2000 and local government in 2010: the experience of local authorities in England*, UCL Constitution Unit, 2011

¹¹ Worthy, B, John, P and Vannoni, M, 'Transparency at the Parish Pump: A Field Experiment to Measure the Effectiveness of Freedom of Information Requests', 2015. Available at SSRN: <https://ssrn.com/abstract=2699198> . Last accessed 18 March 2018.

¹² ICO decision notice FS50652566, 29 November 2017, paras 50-52

¹³ Evaluating the Impact of FOI on local government: surveys, UCL Constitution Unit, 2012 www.ucl.ac.uk/constitution-unit/research/foi/foi-and-local-government (last accessed 4 June 2018)

¹⁴ Information legislation and management survey 2016, JISC, 30 March 2017 www.jisc.ac.uk/reports/information-legislation-and-management-survey-2016 (last accessed 4 June 2018)

¹⁵ *Code of Practice for Freedom of Information for Public Bodies* (Ireland), Department of Public Expenditure and Reform, September 2015, <http://foi.gov.ie/download/foi-code-of-practice/?wpdmdl=1247> (last accessed 23 April 2018)

¹⁶ *Setting up your FOI function: Guidance for Scottish public authorities new to FOI*, Scottish Information Commissioner, v.1.07, 12 September 2017, p.5

¹⁷ Freedom of Information Act 2009 (Malta), s.17(1)(d)

¹⁸ Home page, foi.gov.mt (last accessed 2 June 2018)

¹⁹ Freedom of Information Act 1982 (Australia), s.8(2)(i)

²⁰ Right to Information Act 2005 (India), s.5

²¹ Transparency and Access to Government Information Act 2002 (Mexico), Art.28-29 (from a translation by McAllister, C. provided by Doyle, K. (2002) 'Mexico's new Freedom of Information Law', National Security Archive <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/>)

²² Freedom of Information Act, 5 U.S.C., § 552, (j) (www.justice.gov/oip/freedom-information-act-5-usc-552)

²³ *Code of Practice for Freedom of Information for Public Bodies* (Ireland), *op.cit.*, para. 2.4

²⁴ *ibid*, para. 2.9

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- ²⁵ *ibid.*, paras. 2.10-2.12
- ²⁶ *ibid.*, paras. 2.13-2.14
- ²⁷ *ibid.*, para. 2.15
- ²⁸ *ibid.* paras. 2.18-2.19
- ²⁹ *ibid.*, paras. 2.20-2.24
- ³⁰ GDPR, Art. 37-39
- ³¹ Data Protection Act 2018, s.7
- ³² 'Data Protection Officers', *The Guide to the General Data Protection Regulation*, ICO website, ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-officers/ (last accessed 2 June 2018)
- ³³ Email from respondent, 13 February 2018
- ³⁴ Reported in Burgess M, *FOI - a practical guide for U.K. journalists*, Routledge, 2015 p.102
- ³⁵ Pratchett, T., Young, G. et al, *Practical Tips for Developing Your Staff*, Facet Publishing, 2016, p.28
- ³⁶ *ibid.*
- ³⁷ Gibbons, P., 'You be the judge', FOIMan blog, 10 March 2015 www.foiman.com/archives/1463 (last accessed 5 June 2018)
- ³⁸ Hansard HC 14 March 2012 vol.542 col.133WH
- ³⁹ Justice Committee, Post-legislative scrutiny of the Freedom of Information Act 2000, vol.III, Evidence from the Association of Chief Police Officers, TSO, 2012, para. 2.5
- ⁴⁰ Justice Committee, HC96-I, op.cit., 2012, para. 50
- ⁴¹ Stewart, S. (2008), 'Exclusive: Glasgow City Council junkets pruned', *Daily Record*, <https://www.dailyrecord.co.uk/news/scottish-news/exclusive-glasgow-city-council-junkets-987550> (accessed 12 February 2018)
- ⁴² *ibid.* p.134
- ⁴³ Burgess M, *FOI - a practical guide for U.K. journalists*, 2015, p.161
- ⁴⁴ *ibid.*, p.103