

Conference Report

Scholarship & the Freedom of Information Act: Year One¹
A British Academy² Specialist Workshop convened by
Professor Peter Hennessy, FBA, Queen Mary and the National Archives, London, UK,
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N.B. These notes are intended to reflect the main points of discussion and represent those issues on which general agreement was reached at the end of the day.

Points in Conclusion

- **A Rolling Conversation**

There was agreement to welcome and accept the Lord Chancellor's offer of a rolling conversation between Whitehall and the academic community³. It was hoped that such an engagement would both inform government officials and provide scholars with a better understanding of FOI legislation and implementation.

To achieve a successful FOI regime the Lord Chancellor expressed the view that a constructive approach between 'user' and 'provider' was not just a good idea, but fundamental to its ongoing success.

¹ Details of the Programme of speakers: <http://www.britac.ac.uk/events/2006/foia/prog.html>

² More information about the Academy may be found at: <http://www.britac.ac.uk>

³ Lord Falconer's speech is available at:
<http://www.dca.gov.uk/speeches/2006/sp060211.htm>

- **Academic Working Party on FOI**

The academic community needed different, rather than privileged, treatment under FOI and there was agreement that a single focus should exist to address academic interests. Accordingly, it was suggested that an Academic Working Party be established which would act as the academic voice in the 'rolling conversation' with the DCA.

It was suggested that the Academic Working Party on FOI should be established under the auspices of the British Academy. It was agreed that an approach should be made to the British Academy to take forward this proposal.

- **Resource Neutrality and the 30 Year Rule**

Concern was voiced on the implementation of FOI under a 'resource neutral' regime.

The immediate concern was that resources would be diverted from standard record review to handling FOI requests. If this occurred, there was an increased possibility that records would not be transferred to The National Archives after 30 years.

The continued release of public records on the 'drop dead' date (as Sarah Tyacke called it when Keeper of the Public Records) is an essential, fundamental and minimum requirement. There was wide agreement that sufficient resources should be made available to maintain both FOI releases and transfer of historic records to The National Archives.

- **Departmental Implementation of FOI**

It was evident that government departments had responded differently to FOI. The Foreign Office and the Welsh Office were singled out for praise, but a number of people expressed dissatisfaction at unreasonable delays and obscurantism by both the Home Office and the Ministry of Defence. There was often a gap between rhetoric and reality.

- **Collective Ministerial Responsibility**

It was felt that the exemptions in the Act which referred to collective ministerial responsibility and communications between ministers had been enforced with some inconsistency and were acting as catch-all clauses for the refusal to disclose information under FOI.

Examples were presented at the seminar in which there seemed to be little or no reasonable justification for the retention of particular information under this heading. If the intention was to retain all Cabinet and Cabinet Committee related information for 30 years it was not clear why Sections 35 and 36 had been made subject to the public interest test.

It was important to apply the intellectual argument for openness and to stress that security and secrecy were not always the same thing.

- **Publication Scheme for FOI Releases**

There was concern that the responsibility for keeping a comprehensive and up-to-date record of all releases across government under FOI was not being addressed. This needed to be remedied. It was suggested that The National Archives might act as a common service facilitating a central resource of FOI releases from central government.

It was essential that such a resource be established as soon as possible before the volume of FOI releases became too large to manage effectively.

- **Proactive Early Block Releases**

In order to advance scholarship academics needed access to blocks of material on key events. It was not possible to make informed judgements from single documents. The FCO has already led the way on this. It is suggested that the Academic Working Party act as a clearing house or review body which could draw up lists of requests for the early release of documents on significant historical events or themes, e.g. 1984/miners' strike.

The promotion of certain archival themes, or classes of documents for release under FOI (and the Public Records Act) could prove extremely valuable to both academics and government departments in opening up whole areas for informed debate and thereby reducing the FOI burden on departments by removing the need for repeated and identical requests on a particular issue.

Suggestions of themes or archival collections that could usefully be reviewed in this way would be welcomed.

- **Research Project Planning**

It was felt that the specific requirements of academics and their students should be taken into account by public bodies (and Whitehall in particular) when handling FOI requests.

The time and funding constraints imposed on research mean that long delays in establishing whether information can or can not be released under FOI very directly affects the scope, accuracy and validity of research programmes.

The possibility of developing a concordat between the academic community and public bodies was proposed. This could be brokered, in the first instance, by the Academic Working Party in its dealings with government departments.

- **Charging Regime**

It was hoped that any future charging regime would address the needs of the academic community. The possibility of introducing a fees regulation waiver for scholars should be seriously considered by DCA if amendments to legislation were brought forward.

- **JISCmail**

It was decided that the establishment of a forum to discuss the implementation, effect and output of FOI would be useful to the academic community. Accordingly, an internet discussion forum should be set up under JISCmail - in which ongoing debates and online file storage of appropriate material could be maintained and updated at minimal expenditure of effort and resources. It was hoped that the discussion group would complement and inform both the Academic Working Party and DCA users panel.

The JISCmail forum could also act as a back-up repository detailing and logging FOI releases, updated by members when new information is released to them.

To facilitate discussion of FOI implementation within the academic community, it was proposed that permission to collect and circulate the email addresses of attendees to the TNA-British Academy FOI seminar should be sought. Permission to use emails would be circulated to those attending the seminar.

- **Relations with Other Organisations**

It was considered important to the success of any oversight of the workings of FOI that the academic community should have open and effective relations with other interested groups and users of FOI. Lines of communication and cooperation should be established with other organisations and groups. Suggestion put forward included the Royal Society, journalists and other users of public-interest information.

- **DCA FOI User Group**

The decision to establish a panel of Freedom of Information users, to be chaired by Baroness Ashton (DCA), was broadly welcomed. The first meeting of the panel is scheduled for March 2006. The panel will consist of representatives from a number of constituencies and will be concerned with their experiences of accessing information under FOI legislation. It is intended that 'users' views inform and shape the development of FOI policy.

While the initiative was to be commended, it was thought essential that its membership, workings and discussion be transparent and open to scrutiny. Outside interests should be kept informed of the panel's considerations and there was a wish that the Academic Working Party should be kept up to date with its work and receive regular reports and updates.

- **Constitutional Affairs Select Committee**

It was considered important that academic input into the implementation of FOI should not be carried out in isolation. It was thought appropriate that the Select Committee on Constitutional Affairs should be kept informed of future activities and proposals.

- **Digital Records**

It was highlighted that FOI does not only apply to paper 'documents' and much material is now 'born digital'. This raises the issue of how the right to know should be applied to digital records and how access, in 20 or 30 years time, will be managed as technology now current will, by then, be rendered obsolete.

- **Civil Service Code**

The Civil Service Code is currently under review and it was suggested that some provision should be included stressing the importance of record keeping not only to ensure a well-maintained historical account, but also to enhance informed decision making and accountability in government.