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Author: The Right Honourable Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor

lordchancellor@dca.gsi.gov.uk

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Opening Remarks

I am delighted to join you at the opening of the 4th International Conference of Information Commissioners.

Let me begin by thanking our chair Richard Thomas. Richard provides real leadership to our UK Information Commissioner's Office and he is an authoritative voice in the international arena. I am grateful to him for inviting me here today.

I would also like to welcome you all to the conference – we will all benefit from the exchange of ideas and different experiences.

This is an important conference, on an important subject. The movement towards greater openness and access is now a global one, with over 50 countries around the world now adopting comprehensive Freedom of Information Acts:

- in Asia, nearly a dozen countries have either adopted access laws or are on the brink of doing so;
- South Africa enacted a wide reaching openness law in 2001 and many countries in southern and central Africa are following its lead;

- in Europe, the former Eastern Bloc countries have been quick in setting up open access regimes as they have embraced democracy. With the German Federal Freedom of Information Act coming into force from the beginning of this year, much of Europe is now covered by FOI.

And many countries have had long histories of access to information. The Nordic countries in particular - Sweden has had a Freedom of Press Act since 1766 and Denmark has an act going back as far as 1865 allowing losing parties in a court case to see all the administration files.

We in the UK have entered the field comparatively late. Despite being a manifesto commitment of the Labour Party since 1974, it was not until 2000 that this Government got the Freedom of Information Act on the statute books. In many ways, we have benefited from studying other access regimes when drawing up our legislative framework and from monitoring the effects of implementation in different jurisdictions.

Today I want to look at different international experiences and how they have proved so valuable for the UK's planning for its own legislative regime.

And I would also like to reflect on our experiences in the first year of FOI and look at how the UK experience compares to other jurisdictions.

Learning from International Experiences

FOI regimes, wherever they may be, are usually established from common principles. Governments have been motivated by citizen empowerment; by the desire to drive more democratic engagement; by the need to fight corruption; and by the simple notion that openness is a public good. More recently, Freedom of Information has been introduced because it is seen as a standard part of the governance of a liberal democracy.

And the FOI regimes themselves often also share a number of core features such as a general right of access to information to documents or records, independent review, and exemptions for sensitive information impacting on such areas as defence, national security, personal privacy, law enforcement and commercial confidentiality.

Jurisdictions – all jurisdictions - want to ensure that open government encourages good government. If the introduction of an access regime results in information simply not being recorded in order to avoid disclosure then the benefits are negligible. Equally, Governments

must still be able to govern – to discuss sensitive issues, to voice concerns as individual Ministers and able to abide by collective decision-making.

Certainly, much of the debate here during the passage of the Freedom of Information bill focussed on these issues: about providing the apparatus for as much disclosure as possible whilst ensuring the effective operation of good government.

A common feature of most access regimes are the prophets of doom who predict either Government grinding to a halt or access regime simply acting as a means of codifying what people can't see, rather than what they can.

And, at the other extreme there are people who expect the introduction of access regimes to have an immediate, tangible, transforming effect on Government.

The reality is more complex. Freedom of Information is not a quick fix. It is not a magic wand to raise trust in government overnight. It is part of a process that will change the culture of Government and public services and, over time, improve the quality of decision-making.

However, unless FOI is consciously and carefully maintained, and it's purposes are understood by people making requests and by public officials, FOI can come to be perceived as a bureaucratic hassle, without any short-term benefit. The public become cynical and officials fail to see FOI as part of public service and public communication. In some countries, policies have responded by restricting their regimes.

Some campaigners began to mourn what they saw as the death of true Freedom of Information.

But of course, the rumours have been greatly exaggerated. There is undeniable and impressive evidence of progress – albeit uneven – towards greater openness in countless jurisdictions across the world. The factors that have tended to help in this are:

- an independent review mechanism that is accessible - in other words, cheap - for the appellant and easy to use;
- incorporating harm tests into exemptions which allow disclosure where it is in the public interest;

- and, lastly, the attitude of the Government and bureaucracy to FOI, are perhaps just as important determinants of openness as the actual legislation itself. The quality of training and guidance given to those operating the legislation is particularly important.

As a result of FOI regimes, can access information of real value to them.

The UK Experience – a success?

And here in the UK, previous Governments and oppositions had talked about FOI for many years, but this Government did it. We did not forget about our promises when we got into government.

Our aim was two-fold:

- first, to empower citizens and provide them with the information about the decision and services that affect their lives;
- and, second, to improve the quality of decision-making by Government and public authorities.

FOI means that there is a legal regime to shape decisions about what to release or what not to release. Disclosure is determined by reference to a legal framework with built-in rights of appeal.

The UK FOI Act is a sophisticated instrument.

It applies to 115,000 public bodies - from the English Tourist Board, to local primary schools; police forces to the British Museum. Public authorities from the largest Government department to individual National Health Service doctors' surgeries fall within the scope.

Unlike some other jurisdictions the UK Act does not just refer to information created after implementation. The Act is fully retrospective, covering information of whatever date held by public authorities. From its introduction on 1st January 2005 any individual, from anywhere in the world, could submit requests to public bodies in the UK.

The rules are there; but the boundaries between disclosure and retention require subtle and complex judgements to be made. It does not prescribe solutions, but sets out the framework within which competing interests have to be tested.

Reasonable people can - and will - disagree about whether information should be released in many cases. But disclosure for its own sake is not the measure of an access regime.

And nor should we judge the regime by the exceptional cases: the requests for trivial items of information about individual Ministers or the occasional high-profile non-disclosure will not make or break FOI. What matters is the extent to which public authorities regularly and proportionately provide evidence to the public against which their performances and decision-making can be judged.

Freedom of Information demands extra of our public officials, it requires cultural change within Governments and among public officials – a shift in mindset from the ‘need to know’ to the ‘right to know’. This inevitably means that FOI delivers evolutionary change. We should not expect one-off immediate change.

And to be judged as successful, an access regime must be fair and balanced. It must command the confidence of the public and of public authorities that information that should be released will be released and information that should not be withheld.

If the system is too restrictive, the public will feel that their expectations are being frustrated.

If information which should be withheld to protect the rights of the individual and to ensure the proper functioning of Government is forced into the public domain, the public authority will cease to make decisions in an orderly and properly documented fashion. The public will lose confidence in the authorities to protect sensitive information, and third parties – including foreign Governments - won’t trust them. Trust and confidence is dependent not upon wholesale openness, but upon regulated and balanced disclosures.

It is important to recognise that FOI requests take a variety of forms – Ministers and central Government Departments are targeted by requests motivated by party political point-scoring.

A successful FOI regime must find a way through this process and ensure that it does not become the pawn of the politically motivated, but instead forms part of the process of good government and public engagement.

UK experience in Year 1

And has the UK regime been successful? In truth, it is too early to make a definitive judgement.

What we do know is that FOI in the UK now means the general public are finding out more about the decisions that affect their lives – and are using this information to ensure public authorities do more to account for and explain their actions.

FOI is providing the public, academics and the media with new means of access to understand the decision-making process. Today I am pleased to launch the First Annual Report on the Operation of the Freedom of Information Act in Central Government. Just a brief review of the headlines from this report demonstrate how much we have achieved in the UK in the first full year of FOI.

In the first year of implementation in Australia there were just short of 6,000 requests for information.

In the UK nearly 40,000 requests were received by Central Government alone during 2005. I am proud of the work we did in the UK to raise awareness of the new legislation pre-implementation. 87% of these 40,000 requests were responded to within the time limit. This is not good enough, obviously I want to see 100% answered to time, but the figures improved progressively during the year, and it does compare favourably with experience in many other countries.

The UK has done well in terms of release rates. 66% of requests received in Year 1 were granted in full. A further 13% were answered in part, with only some of the information withheld under one or more of the exemptions in the Act. This compares well with other similar regimes.

During the last year we have seen new information never previously released.

- information about the salaries of senior government officials;
- information about potential sites ear-marked for nuclear waste storage in the 1980s;

- an early release under the new access legislation saw us publish the details of individual subsidies paid to farmers in England. Those of you from European countries will be aware of the farm subsidy scheme. Denmark and the UK were the first countries to release this information about this scheme. It was an important release and rightly received widespread credit from the media and academics.

And our disclosure has been used to encourage other Governments to release this information across Europe. The Dutch and a number of the Spanish regional authorities have now released information on their levels of subsidy. I am proud that the UK Freedom of Information legislation is driving forward the move to greater openness internationally.

People can also access information about their local communities in the UK as never before. Information about the performance of their local hospitals, their local environments, their local schools.

Local communities have seen information released about the removal of graffiti from public places. About the sale of council-owned sports fields. Or about the closure of bus lanes.

This first year has been a period of implementation, adjustment and improvement. I am proud of how well Central Government and the wider public sector have coped with the demands of the new rights to know. They have adapted to the new regime very well and for most it is now part of their ordinary functions.

But there is no room for complacency. FOI continues to provide many challenges.

The UK FOI Act sets a very low bar for requestors. Unless it would cost more than £600 to find, locate and retrieve information, Government Departments must process all requests. The full cost is borne by the Department. This ensures free access to official information for the many, not the few.

As in other jurisdictions, Ministers in the UK committed to review the operation of the fees regime after a year. Contrary to press reports, there are no secret plans to introduce deterrent fees. But it is responsible for us to review the cost of providing access to information. We are in the process of doing that.

A recent Decision Notice, has shown that our Information Commissioner is sympathetic to the problems caused by vexatious requests and the need to maintain the balance between the rights of requestors and the ability of public authorities to perform their core functions. He

determined a series of persistent requests to be vexatious because the effect of the requests was of disproportionate inconvenience and expense to a particular authority.

I am pleased that our Commissioner has recognised that there is also a responsibility on applicants to use the legislation responsibly. A minority of requests received by UK public bodies have not always been well intentioned. Delving repeatedly for unknown information in the hope of finding out something interesting is not using the Act responsibly and wastes public resources.

Freedom of Information is a two-way street. The critical point is this: to ensure that the right balance is struck between responding to requests and ensuring effective governance and personal privacy is maintained. If the balance is struck then FOI can deliver a virtuous circle with sensible requests driving better decision-making.

Conclusion

I am optimistic about the future of FOI. What pleases me most is that the vast majority of requests for information really have been about issues that affect people's lives.

This, after all, is exactly what the legislation is all about.

Thank you very much for inviting me to speak to you today. I hope the rest of the conference is a great success.