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**Title:** FOI hits the UK with a bang

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The UK is entering well charted waters with its new FOI law. 28 out of the 30 OECD countries now have FOI laws in place. The plunge was taken 40 years ago by the US; over 20 years ago by Australia, Canada and New Zealand; and five years ago by Ireland. But the UK experience is already proving to be different from that of these other countries in several interesting ways.

First, the UK government implemented the Act in the run up to a general election. This was entirely the Prime Minister's doing. It was Tony Blair who insisted on the four year wait between passage of the Act in November 2000 and its implementation in January 2005, against the advice first of Jack Straw and then of Derry Irvine, who were the Ministers in charge of the policy at the time. They both argued for earlier and phased implementation, which would have allowed different parts of government to learn progressively from each other's experiences. Phased implementation has been the norm in other countries, starting with central government and then extending to local government, the health service and the wider public sector. The UK, however, experienced full implementation in one big bang. And, with exquisite irony, the Prime Minister's decision to postpone FOI's full effect meant that the Act came into force just four months before the 2005 general election.

This is the second significant difference: FOI came to the UK with an unusually high political charge. In contrast to other countries, where politicians and the media initially made few requests, Westminster MPs and journalists have been quick to exploit the potential of the new Act. The shadow Cabinet made 130 FOI requests in the first three weeks after the Act went live. Journalists have been responsible for a significant percentage of requests referred to the Clearing House (see below) in the first few months. And it is not just journalists on the national press: a glance through the UK Press Gazette shows that the regional and local press have also been

heavy and effective users of the Act, utilising the information they gain to write a wide range of stories about local authorities and services.

A third difference is that the overall volume of requests has been high. In the other countries mentioned above there was generally a slow start followed by a steady build up with a doubling or even trebling of requests over the first three years. In the UK, however, central government has found the levels of demand in just the first quarter daunting. Half a dozen Whitehall departments have had to implement contingency plans and draft in additional staff to cope with the extra burden. Senior Whitehall figures complain that too much Senior Civil Service time is devoted to checking and signing off on FOI requests.

A fourth characteristic of FOI in the UK has been the close ministerial interest in the law, which was tied to its implementation in the run-up to the election. Ministers on MISC 28 (the Cabinet Sub-Committee set up last year) were concerned about getting a grip on FOI. The result was the creation by Cabinet Office and DCA of a Clearing House, to advise departments on complex and politically sensitive requests. The Clearing House has been a central feature of the implementation strategy in Whitehall, with 1200 requests referred to it out of a total of 7000 requests received in the first ten weeks.

The Clearing House has added to delays in responding to requests, but it has also helped to ensure a far more consistent approach across Whitehall to the interpretation of the exemption provisions and the application of the public interest test. Notable FOI releases have included the disclosure of the Treasury's post mortem analysis of Black Wednesday, when the UK was forced to leave the ERM; and disclosure by DEFRA of individual grants paid to farmers and landowners as part of the regime of agricultural subsidies (information which has not, incidentally, been disclosed by the Assembly Government in Wales).

The highest profile and trickiest request by far has been that from *The Guardian* and the Opposition for the Attorney-General's legal advice on the war against Iraq, which was one of the recurrent issues in the election campaign. The Government's refusal to disclose the advice was referred to the Information Commissioner, but the advice was subsequently released by the Government following a leak to the press in the closing weeks of the campaign. The Commissioner will still have to adjudicate, on

requests for the legal advice and related documents, but the immediate sting has gone out of the issue.

Now that the election is over will the number of FOI requests decrease? The high volume of requests from journalists will probably taper off. Reporters are learning quickly that the information comes back far too late for most of their copy deadlines. In other countries it is only a few investigative journalists who make systematic use of FOI, and the same will probably apply in the UK. But the generally high volume of requests may be maintained, and, if anything, continue to rise. The UK's fees regime is remarkably liberal by international standards. There is no application fee, and there are few disincentives against multiple requests. The fees regime is to be reviewed in autumn 2005, and offers the government an opportunity to reduce demand to more manageable levels. When the Irish government reviewed their fees policy after three years, they introduced an application fee of €15, a fee for internal review of €75, and a charge for appeals to the Commissioner of €150. Following that, the number of requests halved. The Australian government also increased the fees sharply after the first three years, with similar results. In the UK, the first fees increase may come a lot sooner than that.

This article has focused mainly on the impact of FOI on central government. The Constitution Unit is also planning to conduct extensive research on the experience of FOI in local government, on which we hope to report in future articles. Our research findings and publications are to be found at [www.ucl.ac.uk/constitution-unit/foidp](http://www.ucl.ac.uk/constitution-unit/foidp)

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