

Freedom of Information

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Headlines

- Justice Select Committee calls for evidence, p.18
- MP begs government to curb 'bonkers' requests, p.19
- Celebrating the FOI Officer, p.19

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FOIA's future hangs in balance

The government has published its position on what it considers to be the largest concerns about the current Freedom of Information Act 2000 as part of the continuing 'post-legislative review' process.

The 133 page memorandum (available at www.tinyurl.com/foij-links-115) fleshes out the government's plans for the future of FOIA, highlighting several areas which it considers that the Justice Committee ('the Committee') — the body responsible for handling the review — should be focussing on.

In formulating the memo,

the Ministry of Justice consulted FOI Officers from across the public sector (the results of which are summarised in a report annexed to the memorandum). However, most of the commentary focuses on issues affecting central and local government bodies.

In relation to the scope of the Act, the MoJ asks the Committee to look at which bodies are covered by the Act, as this, says the MoJ, is not always obvious. The memorandum highlights the complexity involved in adding new bodies to FOIA's scope.

On the subject of vexatious requests, the

MoJ notes that section 14 FOIA is not regularly used by public authorities, which it says may be in part due to the lack of definition of 'vexatious'.

On FOIA exemptions, the government raises concerns about protecting the convention of 'Cabinet confidentiality' — perhaps unsurprising in the light of recent comments made by departing Cabinet Secretary, Sir Gus O'Donnell. (The former Cabinet Secretary told the Commons Public Administration Select Committee in November 2011 that FOIA had stymied full and frank discussion of options by

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Court rules in favour of late raised exemptions

The Court of Appeal has ruled that public authorities may 'rely as of right' upon a different exception or exceptions in proceedings before the Information Commissioner and/or the First-tier Tribunal for refusing to disclose information under the Environmental Information Regulations 2004.

The ruling was made pursuant to an appeal brought by Simon Birkett, Founder and Director of

Clean Air in London, against the Department for Environment, Food and Rural Affairs ('Defra'). At the First-Tier Tribunal stage of Mr Birkett's appeal, the Information Commissioner's Office had joined Mr Birkett in opposing Defra. Then at the Upper Tribunal, the ICO argued for a 'middle way' whereby he and/or the First-tier Tribunal had discretion as to whether to allow reliance on a different exception or

exceptions. The ICO elected not to appear at the Court of Appeal.

Mr Birkett had argued, and maintains that, the deadlines are mandatory. He said "the appeal was an important part of an ongoing three-year battle with Defra to obtain environmental information relating to discussions between the previous government and the Mayor of London on matters of air pollution

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