

# Freedom of Information

Volume 8, Issue 5

May / June 2012

## Headlines

- Committee hears from Grieve, McNally and Maude, p.18
- Private firms to face FOI for government contracts, p.19
- Bill heralds extension to scope of section 23 FOIA, p.20

## Contents

<i>Expert comment</i>	2
<i>Commercially sensitive and confidential information</i>	3
<i>Extension of FOIA to housing associations and others</i>	6
<i>Access to documents in criminal proceedings</i>	10
<i>Recent decisions of the Commissioner and Tribunal</i>	12
<i>FOI News</i>	17

## Protection of Freedoms Bill given Royal Assent

The Protection of Freedoms Act 2012 has been given Royal Assent. The Act brings in several key changes to the Freedom of Information Act 2000.

The Act (at section 102) amends sections 11 ('means by which communication to be made'), 19 ('publication schemes') and 45 ('issue of Code of Practice by Secretary of State') FOIA, and inserts new sections 11A ('release of datasets for re-use') and 11B ('power to charge fees in relation to release of datasets for re-use'). These amendments all relate to the key change to FOIA, that public sector

departments and bodies will be required to publish datasets and ensure that such datasets are available in a re-usable format.

In another key change, the Act (at section 103) amends section 6 ('meaning of 'publically-owned company'). Currently, FOIA applies to designated public authorities and companies that are wholly owned by a single public authority. Once brought into force, the Act will extend FOIA to encompass companies that are wholly owned by a combination of: public authorities; central government; companies which are themselves

wholly owned by public authorities or the government; or persons acting on behalf of any of the above. Though there is currently no comprehensive list of the newly caught bodies, the Ministry of Justice provided a list of the bodies they believe are likely to be brought within the scope of the Act by the amendment (available at [www.pdpjournals.com/docs/87995](http://www.pdpjournals.com/docs/87995))

The third major change is that the Act removes section 80A FOIA ('information held by Northern Ireland bodies').

*(Continued on page 17)*

## Graham attacks decision to deploy veto preventing Register release

The Information Commissioner has strongly criticised the Health Secretary's decision to issue a ministerial veto preventing the disclosure of the NHS Transitional Risk Register.

Andrew Lansley issued the certificate (under section 53(2) of the Freedom of Information Act) on 8th May 2012, overruling decisions of both the Information Commissioner and the First-Tier Tribunal that it

was in the public interest to disclose the Register. The veto is designed to be used only in 'exceptional' circumstances.

In his Statement of Reasons accompanying the certificate, Mr Lansley said that this was an exceptional case because disclosure would have created "exceptional difficulties and risks" and the timing of the request came at a "particularly

sensitive time". He said "this is not a step I have taken lightly. I am a firm believer in greater transparency and this government and this department have done far more than our predecessors in publishing information about the performance and results of our policies. But there also needs to be safe space where officials are able to give ministers full and frank

*(Continued on page 17)*