

MAINTAINING OPEN GOVERNMENT

The government's decision to set up an independent cross-party Commission on Freedom of Information to review the working of the Freedom of Information Act 2000 (FOI) has created a marked sense of unease in a number of quarters. Lord Bridges, Secretary for the Cabinet Office, set out the following terms of reference for the commission in a written Parliamentary statement on July 17:

“The Commission will review the Act to consider whether there is an appropriate public interest balance between transparency, accountability and the need for sensitive information to have robust protection, and whether the operation of the Act adequately recognises the need for a ‘safe space’ for policy development and implementation and frank advice.

“The Commission may also consider the need to maintain public access to information, and the burden of the Act on public authorities, and whether change is needed to moderate that while maintaining public access to information.”

Lord Burns, a former Permanent Secretary to the Treasury, is chairing the Commission, which comprises the Rt Hon Jack Straw (former Home Secretary and Lord Chancellor); Lord Howard of Lympne (former Home Secretary); Lord Carlile of Berriew (former Independent Reviewer of Terrorism Legislation) and Dame Patricia Hodgson (former Chair of Ofcom).

The Campaign for Freedom of Information (CFOI) and press bodies such as the Society of Editors were quick to voice their concerns on a number of issues. There was some dismay that freedom of information practitioners and campaigners were not represented on the commission, which is composed of establishment and governmental figures. At least one member – Jack Straw – has been critical of the FOIA, described by former Prime Minister Tony Blair as one of the biggest mistakes made by his government.

In his written statement Lord Bridges declared the government's support for the FOI, but he then went on to say that ... “after more than a decade in operation it is time that the process is reviewed to make sure it's working effectively.” Three years ago just such a review of the FOIA was carried out by the Justice Select Committee in its post-legislative scrutiny. The committee concluded in its report that the Act “was working well” and had proved to be “a significant enhancement of our democracy” (see *Post-legislative scrutiny of the Freedom of Information Act 2000*, House of Commons Justice Committee, HC 96-1, July 26, 2012). The government's decision to examine the FOIA again so soon, coupled with the commission's terms of reference and composition, has led the CFOI and its supporters to conclude that the present administration wishes to consider the case for restricting the right of access in three particular areas: preventing the disclosure of government policy discussions; strengthening the ministerial veto; and reducing the “burden” placed on public authorities by the Act.

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The commission is scheduled to publish its findings by the end of November, which freedom of information campaigners feel does not allow much time for a thorough assessment of how the FOI has operated since it came into force. The statement by Lord Bridges also confirmed that with effect from July 17, 2015 responsibility for freedom of information policy was being transferred from the Ministry of Justice to the Cabinet Office. This decision to pass the overseeing of freedom of information to a body at the centre of government – and one hardly renowned for its openness – has been interpreted as further evidence of the Prime Minister's wish to exert greater control over the operation of the FOI. Mr Cameron has made no secret of his belief that the FOI does the process of government a disservice by exerting an inhibiting effect on discussions between senior civil servants and ministers. Will the commission see fit to resist the pressure that undoubtedly exists to clip the FOI's wings? The right of access under the Act could easily be restricted by, for example, reducing the maximum costs that public authorities can claim for providing information under an FOI request (currently £600 for central government and £450 for all other authorities).

The FOI is not without its failings. It has problems with the ministerial veto (as evidenced by the Supreme Court decision in *Evans v AG*), and does not extend to some public bodies or the private provision of public services. Despite these shortcomings, the Act has a vital role to play in opening up the workings of government to public scrutiny and should not be weakened in any way.

■ This is the 100th issue of *Amicus Curiae*, which was launched in October 1997 as a bi-monthly journal published on behalf of the IALS and SALS by Sweet & Maxwell. The IALS subsequently took over the publication of *Amicus* on a quarterly basis. I would like to thank subscribers and readers over the years for their support, the many authors who have contributed articles on a wide range of subjects, and all those within the Institute who have been involved with the journal.

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