

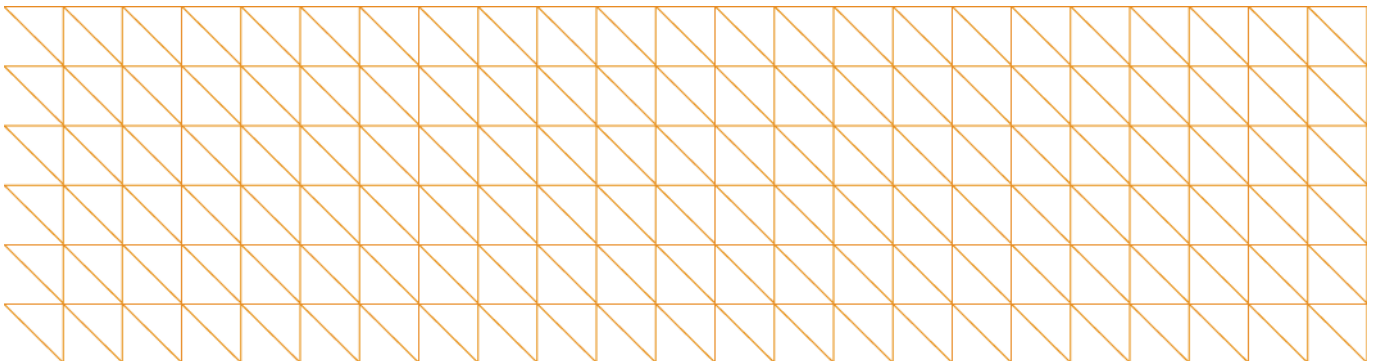


# **Freedom of Information Act 2000: Designation of additional public authorities**

**Response to Consultation**

CP(R) 27/07

16 July 2009







Ministry of  
**JUSTICE**

## **Freedom of Information 2000 Act: Designation of additional public authorities**

**Response to the consultation carried out by the Ministry of Justice.**

**This information is also available on the Ministry of Justice website:  
[www.justice.gov.uk](http://www.justice.gov.uk)**



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## Introduction and contact details

On 25 October 2007, the Ministry of Justice published a consultation document, 'Freedom of Information Act 2000: Designation of additional public authorities'. This report is the response to that consultation exercise.

The report covers:

- the background to the consultation
- a summary of the responses
- detailed responses to the specific questions raised in the consultation paper
- the next steps following this report

Further copies of this report and the consultation paper can be obtained by contacting **Mischa Daniel** at the address below:

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This report is also available on the Ministry of Justice's website:  
[www.justice.gov.uk](http://www.justice.gov.uk).

**Alternative format versions of this publication can be requested from [general.queries@justice.gsi.gov.uk](mailto:general.queries@justice.gsi.gov.uk) or alternatively call (0)20 3334 3555.**

## Background

The Freedom of Information Act 2000 (“the Act”) came into effect on 1 January 2005. Sections 4 and 5 of the Act allow for its extension to additional organisations by order. Section 4 orders can generally only be made in respect of traditional public bodies. By contrast, section 5 of the Act allows the Secretary of State to extend the Act’s coverage to include any person or organisation that:

- (a) appears to the Secretary of State to exercise functions of a public nature, or
- (b) is providing under a contract made with a public authority any service whose provision is a function of that authority.

Several section 4 orders have been made since the Act was passed in 2000 but the power under section 5 has not yet been used.

The consultation paper ‘Freedom of Information Act 2000: Designation of additional public authorities’ was published on 25<sup>th</sup> October 2007. It invited views on whether the Government should use the powers under section 5 of the Act to extend its coverage beyond the public sector and, if so, which organisations it should consider extending it to.

The consultation document was in five parts.

**Part 1** of the paper sought views on whether section 5 should be used to extend coverage of the Act. It set out five potential options:

**Option 1: take no action at this time.**

**Option 2: self-regulation by relevant organisations.**

**Option 3: build information access obligations into contracts with organisations delivering public services.**

**Option 4: introduce a section 5 order to bring a specified set of organisations within the ambit of the Act.**

**Option 5: introduce a series of section 5 orders to progressively widen coverage of the Act.**

**Part 2** of the paper discussed possible criteria that might be used to decide whether an organisation should be covered by the Act because it was exercising functions of a public nature.



**Part 3** of the paper discussed possible criteria for deciding whether an organisation should be covered by the Act because it provides services under contract with a public authority whose provision is a function of that authority.

**Part 4** of the paper discussed the requirement section 7 imposes to specify which functions or services are to be covered by the Act and how this might be implemented in practice.

**Part 5** of the paper invited nominations of organisations that respondents would wish the Department to consider designating, if coverage of the Act was extended by a section 5 order.

The consultation period closed formally on 1<sup>st</sup> February 2008 but responses received up to a month later were accepted and have been taken into account. A list of respondents is at **Annex A**.

This report summarises the responses and sets out the Government's proposals for extending the coverage of the Act.

As Scotland operates its own regime (Freedom of Information (Scotland) Act 2002), it will not be expected to comply with the recommendations in this report. The Scottish Government has already published its own discussion paper on a possible extension of its Act. More details on this can be found at <http://www.scotland.gov.uk/About/FOI/discussionpaper>

## Summary of responses

1. A total of 136 responses to the public consultation paper were received. Almost two thirds came from private organisations and members of the public formed the next largest group of respondents. The remaining responses came from public bodies subject to the Act, the media and parliamentarians.

**Table 1: Number of responses by type of respondent and general opinion**

Type of respondent	For	Against	Against for their business area*	Other	Total
Media	7	-	2	-	9
Private Organisation	23	22	24	14	83
Members of the public & Parliamentarians	34	-	-	-	34
Public Authority	6	-	2	2	10
<b>Total</b>	70	22	28	16	136
	<b>51%</b>	<b>16%</b>	<b>21%</b>	<b>12%</b>	

\* - Many of the respondents in this category stated they were already very open and transparent and therefore saw no benefit in extending the Act to their business area. Most stated they did not think the Government's intention was to include them in a section 5 order and explained why it would be inappropriate to do so, without declaring themselves for or against an extension in principle. The remainder stated they were for a general extension of the Act.

2. The results showed support for the extension of the Act via section 5 but revealed strongly divergent views over who it should apply to and why. A sizeable minority opposed the extension of the Act via section 5 orders.
3. In summary, the main arguments put forward in favour of extending the coverage of the Act centred around:

- the need for statutory underpinning of the public's right to know about matters of significant public interest, the exercise of democratic rights and to facilitate openness, transparency and accountability;
  - the role that public oversight achieved via the Act can play in promoting better decision making, greater effectiveness and value for money, especially in relation to services paid for through taxation; and
  - greater consistency in the information made available about organisations and services across different sectors.
4. The next most common response, shared by 1 in 5 of respondents, was that an extension of the Act to their particular area of business was unnecessary because:
- their functions are not 'functions of a public nature';
  - they already make information available on a voluntary basis or meet regulatory requirements; and / or
  - information may already be obtained from another source, such as a public authority, which is resourced to provide it and with whom the duty should remain.

The detrimental effects most commonly suggested by this group were:

- discouraging private organisations from providing public sector services;
  - commercial and competitive disadvantages to businesses required to comply with the Act; and
  - damage to the delivery of private sector, charitable and voluntary sector services if funds and efforts were diverted to dealing with obligations under the Act, particularly with regard to the Government's aim of minimising regulatory burdens.
5. A number also argued that it would be inappropriate to apply the Act to certain private sector organisations, because:
- this could conflict with international FOI obligations;
  - it might be inconsistent with other legislation which uses phrases similar to "functions of a public nature" (such as the Human Rights Act); and

- shareholders' interests should remain the focus of private sector businesses.

Some also expressed concern at the prospect of increasing the workload of the Information Commissioner's Office (ICO).

6. The remaining respondents were divided as follows:

- 1 in 6 were against extending coverage of the Act in principle. Some considered the legislation still needed time to bed in and/or that more work was required to improve the delivery of FOI by those organisations that are already subject to the Act; and
- 1 in 10 considered either that more clarity was required over the definition of 'public functions' before they could respond, or sought an extension of the Act via other means, for example, on a voluntary basis or limited to a specific sector only. Those sectors included contractors, non-statutory bodies and organisations whose sole function was to carry out a public function.

## Conclusion

1. The Government regards the Freedom of Information Act as an important success, providing unprecedented access to official information for members of the public, journalists, lobby and interest groups from over 100,000 public authorities.
2. The key objectives of the consultation were to:
  - (a) seek public opinion on whether the Government should extend the coverage of the Act; and if so
  - (b) obtain a list of bodies to be considered as potential candidates for a section 5 order or orders.
3. Responses to the consultation indicate considerable support for the principle of extending the coverage of the Act to a range of additional organisations by means of a series of section 5 orders. However a sizeable minority of respondents – some of whom have been proposed by respondents as candidates to be covered by an extension of the Act – expressed strong opposition.
4. A number of wide ranging bodies were nominated by respondents to the consultation and these have been grouped together with comparable bodies and listed in **Annex A**.
5. Question 5 of the consultation sought views from respondents over whether the balance of public interest and the resource implications of the Act should be an appropriate consideration. The majority of responses to this question agreed that this should be taken into account when deciding whether to include a body in a section 5 order.
6. In addition, the Government must consider the impact of any extension of the Act on those responsible for dealing with any consequential appeals, i.e. the Information Commissioner's Office and Information Tribunal, and the potential resource implications for them.
7. Other important considerations are the changes in the economic environment since the consultation closed, as well as commitments made in the HM Government Annual Review 2008 'Making it simple',<sup>1</sup> which sets a target of reducing the administrative burden of complying with regulations on business by 25%.

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<sup>1</sup> BIS  
HM Government Annual Review 2008 'Making it simple' - [www.berr.gov.uk/files/file49780.pdf](http://www.berr.gov.uk/files/file49780.pdf)

## **Consideration of candidates *not suitable* for an initial section 5 order**

### **Essential services**

8. A number of types of private organisations are very important to the way many of us go about our daily lives. Without their services, many of the activities we need or would wish to carry out would be significantly impeded; these include road hauliers and shipping companies, supermarkets and banks. All of these types of bodies were proposed by respondents to the consultation as being suitable for inclusion in the Act.
9. A number of respondents also suggested that utility companies responsible for supplying formerly nationalised services should be subject to the Act because the provision of water, electricity and – to a lesser extent - gas, rail and telecommunications services were considered essential to most people's lives. Although none of these services are funded by taxation, the view was expressed that there is a public interest in being able to obtain information about the decisions made by such companies regarding how their services are delivered.
10. The Government recognises the public interest in knowing how decisions are made and how services are delivered. However, since the Act came in to force, information about the regulated utility sectors has been made available through the regulatory authorities. The regulators covering the water, gas and electricity and communications industries (OFWAT, OFGEM and OFCOM) and the Office of Rail Regulation (ORR) are all subject to the Act. They all operate publication schemes and supply information about individual companies they regulate in accordance with the Act and their decisions are of course, subject to the FOI appeals process.
11. **The public is already able to obtain certain information on utilities such as those in the water, gas, electricity, telecommunications and rail sectors via the relevant regulating body.**
12. **However, the Government is attracted to bringing such utilities within the Act. While it does not propose to include utilities in the first section 5 order, it will carry out further consultation with the bodies concerned to assess whether it would be appropriate to include some or all of them in a subsequent section 5 order, or to extend the scope of the Act to cover them in an alternative way.**

### **Contractors**

13. Another group that the Government has given particular consideration to is those companies providing, under a contract made with a public authority, any service whose provision is a function of that authority.

Examples of this are refuse disposal and adult education services. A specific power exists under section 5(1)(b) to make an order to extend the coverage of the Act to organisations within this category.

14. Public authorities are funded by national or local taxation to fulfil public functions – many of which, since the 1980s, have been contracted out. Those contractors receive public money to perform duties of the public authority and yet requests from members of the public for information from the contractors need not be dealt with in compliance with any framework or statutory requirement to advise, assist and respond within a set timeframe and justify any refusal to supply the information requested. A report published in July 2008 by the Public Administration Select Committee of the House of Commons - '*Public Services and the Third Sector: Rhetoric and Reality*' - called for the Act (along with the Human Rights Act) to be extended to cover all organisations providing public services, including private sector contractors.
15. In their response to the consultation, however, a number of contractors and representative bodies raised strong objections to designation under the Act. In particular, organisations including the Confederation of British Industry (CBI) stated that designating private sector organisations as public authorities for FOI purposes would increase their costs and these costs would be factored into existing and future contracts – thus increasing costs to public authorities and the public. The CBI stated in its response that '*companies would find it extremely difficult to factor in FOI requests as a fixed cost when contracting with government and could set a price per request instead. This would mean contracts may engender significant additional costs where companies receive a substantial number of FOI requests.*' The point was made that information in relation to a particular contract could be requested from both the contractor and the public authority, leading to a proliferation of costs and potential litigation.
16. Some of the respondents to the consultation argued that the responsibility for providing access to details of public contracts and contractors' performance should remain with the public authority, because such information should be collected by it.
17. That information about the contractor in relation to the work undertaken on behalf of the public authority can be requested under the Act from the public authority itself is important. Even where the information sought is held by the contractor and not the public authority, it may be classed as 'held on behalf of' the public authority in accordance with section 3(2)(b) of the Act, and therefore subject to the Act.
18. It should be noted that businesses are bound by statutory obligations in relation to accounting, reporting and business ethics, all of which help safeguard the public interest. In addition, some contractors may already be subject to information rights obligations under regulations 2(2)(c) or (d) of the Environmental Information Regulations 2004, and

so would have to deal with requests for environmental information in their own right.

19. On this basis, the Government has concluded that **no general expansion of FOI in relation to contractors is appropriate at the present time.**
20. **However, the Government intends to keep this matter under review, particularly in relation to prisons, detention centres and foster care homes provided by private sector contractors on behalf of public authorities.**
21. **In the meantime, public authorities and contractors could and should do more to increase openness and transparency. In particular:**
  - **when contracting out any of their services public authorities should put into effect the guidance<sup>2</sup> on contracting, to the effect that confidentiality applied to contracts should be strictly limited;**
  - **the Government seeks to encourage contractors also to adopt high standards of proactive publication, so far as possible in line with the Information Commissioner's model publication scheme; and**
  - **the Government seeks to encourage contractors to voluntarily adhere to the principles of the Act.**

### **Professional and Voluntary Regulators**

22. The public clearly has an interest in satisfying itself – including through access to information - that sectors such as the legal profession and the advertising industry conduct themselves appropriately and are properly regulated. Bodies such as the Law Society and the Advertising Standards Authority, which advise and regulate the activities of their members, were included in the proposals received in response to the consultation.

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<sup>2</sup> Ministry of Justice

*Working assumption on Procurement* - <http://www.justice.gov.uk/guidance/foi-assumptions-procurement.htm>

*Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the Freedom of Information Act 2000* - <http://www.justice.gov.uk/guidance/foi-procedural.htm>

Office of Government Commerce

<http://www.ogc.gov.uk/documents/FOI.pdf>

BIS

*Procurement manual Section B – accountability and ethical practice – B6 Open Government* - <http://www.berr.gov.uk/about/procurement/buyers-guides/page22542.html>



23. The functions of regulators such as these include advising on professional issues and, in particular, the investigation of complaints against members. In order to do this, it is essential that they have their members' confidence and regulators need to be able to obtain full disclosure of the circumstances that have given rise to the complaint. Some respondents to the consultation suggested that member bodies would be less likely to provide full disclosure to their regulatory body – and where membership is voluntary, less likely to subscribe and provide essential funding – if they knew that the regulator might disclose sensitive information they have provided in response to a request under the Act.
24. **The Government does not believe that designation of those professional or voluntary regulatory bodies proposed by respondents to the consultation is appropriate at present, but it hopes that this response document will encourage the widespread voluntary adoption of the Information Commissioner's model publication scheme as a benchmark for responsible, proactive publication.** It commends the example set by the Law Society; although its decisions cannot be appealed to the ICO or Tribunal, it voluntarily abides by the provisions of the Act in dealing with requests for information.

### **Charities**

25. The position of charities is somewhat similar to the professional and voluntary regulators in that they are not funded from the proceeds of taxation. The management of charities is also subject to regulation by the Charities Commission (which is subject to the Act) and they are required to publish annual accounts and other evidence of good practice.
26. The Government would expect charities to respond as openly and promptly as possible to reasonable requests for the information they hold. Equally, it would expect that members of the public would take particular care to ensure the requests they make to charities are reasonable and will not have the effect of unnecessarily diverting resources from charities' primary purposes.
27. It is the Government's view that to designate charities under the Act would inevitably reduce the funds available to them for their primary purpose of fulfilling their charitable objectives. Many take great care to limit the amounts spent on administration and publicity, so as to maximise the funds available to the charitable causes that are their main objective; indeed, publicising the small proportion they spend on administration etc is often a key element in their fundraising.
28. **The Government therefore considers that the benefits of bringing charities formally within the scope of the Act through a section 5 order would be significantly outweighed by the negative impact on charitable causes they support. It is not intended to include**

charities in the initial section 5 order or subsequent orders at this time.

### **Consideration of candidates *suitable* for an initial section 5 order**

29. In order for any extension of the Act to be effective, evidence of a public interest in including additional bodies is required. The Government has therefore only considered those bodies nominated as part of this consultation.

### **Academies**

30. Education is an essential service that the state offers, free of charge at the point of use, for all children in the UK. With the exception of academies, FOI applies to the governing bodies of all schools and colleges in the state sector.
31. The Act and the National Curriculum do not apply to private schools. Parents and carers who choose to pay for their child to attend a private school exercise a high degree of choice and control. The Government believes that the law as it currently applies and the disciplines of the market place provide sufficient incentive for fee-paying independent schools to operate in line with the interests of pupils and their parents. It sees **no justification at present to bring such schools within the scope of FOI.**
32. Academies are a relatively recent innovation in terms of the delivery of education. Academies are companies limited by guarantee with charitable status. Each academy is under the control of a governing body, and each has a corresponding academy trust which is responsible for the academy's land and other assets. The Department of Children, Schools and Families is subject to the Act and proactively publishes a considerable amount of information relating to academies, but the academies themselves are not caught by the Act, even though they are state-funded.
33. **The Ministry of Justice will work with the Department for Children, Schools and Families to ensure that the Government consults academies (or their representatives) about including academies in an initial section 5 order, so that they are subject to the Act in the same way as the governing bodies of maintained schools in England and Wales.**

### **UCAS**

34. UCAS is responsible for managing applications for places on higher education courses in the United Kingdom. Under the current FOI regime schools, colleges and universities are all covered by the Act. It would appear anomalous for the body in charge of managing

applications from students to higher educational institutions, the vast majority of which are covered by the Act, should not be subject to the Act itself. The implications of the decisions that UCAS facilitates with regard to placements can have a major impact on students' futures and it is appropriate that the way the applications are handled and is made as open and transparent as possible.

35. **Subject to further consultation with UCAS the Government proposes to include it in an initial section 5 order.**

#### **The Financial Ombudsman Service**

36. The Financial Ombudsman Service (FOS) deals with disputes between consumers and businesses which provide financial services. This body was nominated by a number of respondents to the consultation paper indicating significant public interest in it. People's relationships and dealings with financial institutions are extremely important and in some way underpin a great many of our personal and professional activities. Bringing the FOS within the scope of the Act would provide greater transparency over the way disputes with and concerns about organisations within this sector are dealt with.

37. **Subject to further consultation with the FOS the Government proposes to include it in an initial section 5 order.**

#### **The Association of Chief Police Officers**

38. The Association of Chief Police Officers (ACPO) leads and coordinates the direction and development of the police service in England, Wales and Northern Ireland, in equal and active partnership with Government and the Association of Police Authorities.
39. ACPO is not a staff association; the separately constituted Chief Police Officers' Association fulfils that function. ACPO works on behalf of the police service, rather than its own members. It is funded by a combination of a Home Office grant, contributions from each of the 44 police authorities, membership subscriptions and by the proceeds of its annual exhibition.
40. In its response to the consultation, ACPO volunteered itself for inclusion in a section 5 order. In view of the very high level of public interest in the development of the police service, **the Government will include ACPO in an initial section 5 order, subject to further consultation with ACPO.**

#### **Promoting openness and transparency by non-statutory means**

41. It is expected that those organisations that have not been identified as candidates for inclusion in this first section 5 order will do as much as possible to meet the public's demand for appropriate information. In particular, it is recommended that those persons and bodies not

covered by the Act should look at the standards of proactive publication set out in the Information Commissioner's model publication scheme<sup>3</sup> (summarised in **Annex B**), and voluntarily adopt these as a baseline for the provision of information about their activities. Adopting a publication scheme that broadly follows the ICO guidance would constitute a step in demonstrating an organisation's commitment to meeting the demand for information.

42. In addition, the Government commends to public authorities and contractors the existing guidance<sup>4</sup> on access to information about contracts which should already be directing contracting practice and responses to requests for information. Public authorities and contractors should ensure that staff working in this area have up-to-date knowledge of the guidance and of relevant developments in case-law relating to the Act and the Environmental Information Regulations 2004 (EIRs). Some organisations (such as the Law Society) are already applying the principles of the Act to the requests they received and the Government encourages a wider application of this approach.

### **Next Steps**

43. As noted above, the Government proposes to consult the following organisations with a view to their designation under an initial section 5 order:

- Academy schools
- ACPO
- Financial Ombudsman Service
- UCAS

44. Subject to these bodies being included in the Order, the Government will reflect on the experience of these newly designated public authorities, as well as the impact on the Information Commissioner's Office and Information Tribunal, before assessing the case for a further extension of the Act via a section 5 order. The Government will work closely with utility companies and Network Rail to assess the likely

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<sup>3</sup> [Information Commissioner's Office](http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes.aspx)

[http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information/publication\\_schemes.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes.aspx)

<sup>4</sup> [Ministry of Justice](http://www.justice.gov.uk/guidance/foi-assumptions-procurement.htm)

*Working assumption on Procurement* - <http://www.justice.gov.uk/guidance/foi-assumptions-procurement.htm>

*Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the Freedom of Information Act 2000* - <http://www.justice.gov.uk/guidance/foi-procedural.htm>

[Office of Government Commerce](http://www.ogc.gov.uk/documents/FOI.pdf)

<http://www.ogc.gov.uk/documents/FOI.pdf>

[BIS](http://www.berr.gov.uk/about/procurement/buyers-guides/page22542.html)

*Procurement manual Section B – accountability and ethical practice – B6 Open Government* - <http://www.berr.gov.uk/about/procurement/buyers-guides/page22542.html>

benefits and impacts upon those organisations, should they to be included with the scope of the Act.

45. The Ministry of Justice will work with officials in the Department for Communities and Local Government to ensure that all local authorities are aware of their obligations under FOI and that confidentiality clauses should be limited when contracting out services to a third party.
46. The Ministry of Justice will write to each body nominated as part of this consultation to advise either of their proposed inclusion in the initial section 5 order; to explain the Government's intention to consider their suitability for a subsequent section 5 order or for inclusion within the scope of FOIA by other means; or to note their lack of suitability for inclusion at this time. In all cases, bodies will be advised of the Information Commissioner's Office's model publication scheme and all organisations will be encouraged to look again at how they make information available to their customers, even if this is a short term measure before they become subject to the Act. Existing advice made available to local authorities to minimise confidentiality clauses in contracts will also be re-emphasised.
47. **Any organisation that would wish to be considered for the initial, or a subsequent section 5 order is welcome to contact the FOI Policy and Strategy Unit in the Information Policy Division, Ministry of Justice, 102 Petty France, London, SW1H 9AJ.**

## **Consultation Co-ordinator contact details**

If you have any comments or complaints about the **consultation process** rather than about the topic covered by this paper, you should contact Julia Bradford, Ministry of Justice Consultation Co-ordinator, email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

**Julia Bradford**  
**Consultation Co-ordinator**  
**Ministry of Justice**  
**102 Petty France**  
**London**  
**SW1H 9AJ**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

## **The standard consultation criteria adopted by Ministry of Justice**

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## **ANNEX A – Summary of responses to specific questions**

### **1. Do you support extending the coverage of the FOI Act to organisations that carry out functions of a public nature and to contractors who provide services to a public authority whose provision is a function of that public authority?**

A narrow majority of those responding to this question supported an extension to the Act to cover organisations that carry out functions of a public nature and to contractors providing public authority services.

However, a significant number of respondents did not support an extension of the Act's coverage.

A number of responses indicated that they were supportive of an extension of FOI, but considered that it should either be on a voluntary basis or to specific sectors only.

Some respondents thought that the consultation paper lacked a clear definition of what a 'public function' might be and therefore that they did not have sufficient information to be able to respond to this question.

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### **2. Of the five proposed options, which do you consider the best option? Or would some other option, or combination of options, be preferable? Please explain your reasoning.**

Option 5, chosen by 21% of respondents, was the most popular option. This would introduce a series of section 5 orders to progressively widen the coverage of the Act.

At 17%, the second most favoured option among respondents was Option 1 ('do nothing') followed by Option 3 (building information access obligations into public service contracts) at 7%.

Option 4, which would see a single section 5 order, came fourth with support from only 4% of respondents. Private organisations were most in favour of a single section 5 order (option 4). They believed that agreed and clear criteria for coverage would be useful and would allow sufficient time for bodies to prepare to a realistic timetable.



Option 2 – self-regulation by relevant organisations - was the least favoured single option, attracting only 3% support. It was, however, the option most frequently included by the 18% of respondents who thought a combination of options would work the best – usually, though not exclusively, combined with Option 3.

**Table 2: Types of respondent and preferred options**

Type of respondent	Options						Not Answered	<u>Total</u>
	1	2	3	4	5	Comb.		
Media, Parliamentarian, Public authority*	-	-	1	1	7	9	2	20
Private Organisation	23	4	8	4	14	13	17	83
Members of the public	-	-	1	1	8	3	20	33
<b><u>Total</u></b>	23	4	10	6	29	25	39	136
	<b>17%</b>	<b>3%</b>	<b>7%</b>	<b>4%</b>	<b>21%</b>	<b>18%</b>	<b>29%</b>	

\* - combined because fewer than 10 responses received and so individual responses could be identified

**3. Should some form of public funding be essential in order for an organisation to be considered for inclusion in a section 5 order, or should this be just one of a number of relevant factors to be considered?**

More than 80% of the respondents who answered this question believed either that public funding was essential or that it should be one of a number of relevant factors when considering extending the coverage of the Act.

Other respondents were concerned at the possibility that Government might regard the receipt of public funding as rendering charities and voluntary sector organisations suitable candidates for a section 5 order. A number expressed the view that designating private sector organisations as public authorities for the purposes of the Act would

cause disproportionate burdens and have a direct impact on their ability to deliver services. These respondents argued that the receipt of public funding should be irrelevant in this context.

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**4. Are there any organisations or categories of organisations that do not receive public funding but that you believe should be covered by the Act? Please explain why.**

Those who responded to this question suggested a wide range of bodies, including:

- the Law Society
  - Lobbyists
  - Charities
- 

**5. Do you agree that the balance between the public interest and the potential burden of FOI is an appropriate consideration when deciding whether to cover an organisation?**

Of those who responded to this question, the majority agreed that the balance between the public interest and the potential burden of FOI was an appropriate consideration.

The main argument made by respondents who did not agree that it was an appropriate consideration was that the public demand for information about an organisation should be the overriding reason for deciding whether it should be covered by the Act.

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**6. To what extent do you think that the factors listed, or any other factors, should be taken into account in determining whether organisations performing public functions should be brought within the ambit of the Act?**

The majority of respondents to this question agreed that the factors listed in the consultation should be taken into account. These factors were:

- amount of public funding
- the extent to which the function is seen as a core function of the state
- the Act's coverage of comparable organisations within the same sector
- the nature of the organisation
- the size of the organisation
- any effect on competition
- the level of existing regulation.

Of the above factors, respondents gave particular emphasis to the amount of public funding and coverage of comparable organisations. Many considered that organisations in receipt of considerable public funding should be made formally accountable for it and that FOI should be standardised across sectors to enable greater clarity for the public wanting to gain access to information from organisations.

Other factors that were suggested for consideration were:

- external economic factors
  - whether information is already accessible from a public authority
  - whether an organisation has a strong influence on the formation of government policy
  - whether the organisation is responsible for distributing public funds.
-

**7. Do you agree that the coverage of FOI should extend to contractors who provide services under contract with a public authority whose provision is a function of that authority? If you disagree, please give your reasons.**

The majority of respondents failed to answer this question. Of those who did respond, most agreed that contractors who provide services under contract with public authorities should be brought within the ambit of the Act.

However, a number of responses from private organisations disagreed with this. The main arguments made against their coverage may be summarised as:

- the burden of FOI would discourage contractors from applying for public sector contracts, damaging the provision of services
- the cost of contracts to public authorities would increase as private sector organisations would factor the costs and risks of dealing with FOI into contracts
- the potential public benefit of their being covered is reduced or negated by the fact that information to which the public is entitled may already be obtained from the contracting public authority, with whom the duty to provide services rests.

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**8. Do you agree that information relating to an organisation's administration of a public service or function, for example in the areas listed in paragraph 33, should be subject to FOI? If not, please give your reasons.**

The majority of respondents failed to answer this question but of those who did, most agreed that information relating to an organisation's administration of public services or functions – for example, staffing and disciplinary procedures, management and leadership (including financial management), project management and monitoring, records management - should be subject to FOI. This would be consistent with the Act's existing coverage.

However, a significant number of respondents to this question disagreed with this proposition, which they considered would increase the burden of dealing with FOI requests. Those respondents argued that the coverage of the Act should only apply to functions that were inherently of a public nature.

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**9. Which organisations, or types of organisations, do you believe should be considered for inclusion in any extension of FOI under s. 5 of the Act, and why?**

Some bodies already covered by the Act were suggested by respondents, for example:

Casino Advisory Panel (panel wound up in Feb 2007, significant information held by Department for Culture, Media and Sport)  
Financial Services Authority  
Government Regional Offices  
London Underground (through Transport for London)  
Independent Broadcasting Authority (dissolved by Broadcasting Act 1990, succeeded by OFCOM which is covered by FOIA)  
Olympic Delivery Authority  
Public libraries (via local authorities)  
Regional Development Agencies  
Royal Mail  
Trust schools

Below are the organisations that were submitted by respondents for consideration for inclusion in any extension to FOI.

**Educational Sector**

Academy schools  
Bute House Prep School  
Exam boards in England and Wales  
Independent Fee Paying Schools  
Private companies running town hall education services

**Transport Sector**

Arriva  
Association of Train Operating Companies  
British Airport Authority  
British Airways  
Central Trains  
Chiltern Railways  
Companies providing ITSO smartcards and related services for national concessionary travel scheme  
Easyjet  
First Bus  
Harbour Authorities  
London and Continental Railways  
National Express  
Network Rail

South West Trains  
Stagecoach  
Statutory tolled undertakings

**Representative/Regulatory Bodies**

Advertising Standards Authority  
Association of Chief Police Officers (ACPO)  
Association of Local Councils  
British Standards Institute  
Financial Ombudsman Service  
Institute for Chartered Accountants in England and Wales  
International Accounting Standards Board  
National Anti-doping organisations  
Press Complaints Commission  
Quality Assurance Agency  
Solicitors Regulation Authority  
The Corporation of Trinity House of Deptford Strond  
The Law Society  
UCAS

**Utilities and Telecommunications/IT Sector**

British Energy  
British Telecom  
Cable and Wireless  
Centrica  
Clearcast  
Companies awarded contracts relating to 'Transformational Government'  
Kingston Communication  
National Grid  
Nominet UK  
Severn Trent Water  
Thames Water  
Three Valleys Water

**Retail, Commercial and Industrial Sector**

ASDA  
Banks  
Car makers  
Food and drink companies  
Sainsbury's  
Tesco

### **Health Sector**

Companies awarded contracts for National programmes for IT programmes in the NHS  
GlaxoSmithKline UK Ltd  
Local Medical Committees  
Those private bodies supplying NHS services not currently covered by FOIA  
Private Healthcare providers

### **Detention and offender services**

GEO Group UK  
Group 4 Securicor Justice Service  
Immigration Removal Centres  
Kalyx  
National Probation Service contractors  
Premier Custodial Group  
Private contractors running Secure Training Centres  
Private Prisons  
Private security firms carrying out prisoner escort duties  
Private security firms operating electronic tagging of offenders

### **Science Sector**

Companies experimenting on animals  
Companies selling biometric technologies  
Science Promotion companies

### **Housing/Development Sector**

Developers of land  
Housing Associations  
New Deal Communities Partnerships  
Registered Social Landlords  
Tenant/owner user organisations and their contractors  
Urban development corporations

### **Care Sector**

Companies awarded contracts relating to ContactPoint and eCAF  
Local Safeguarding Children Boards  
Private Children's and Care homes

**Local Government Sector**

Local Strategic Partnerships  
Regional Assemblies

**Other Contractors**

Companies awarded contracts relating to the National Identity Scheme  
inc e-borders, biometric visa and related trials and initiatives  
Companies involved in farming, mining, forestry and timber extraction  
Nuclear Site License Companies  
Parking adjudicators  
PFI contractors  
Public sector contractors in parking services  
Serco  
Sodexo

**Miscellaneous Sectors**

Charities (generally; Barnardo's was also specifically nominated)  
College of Arms  
National Register of Public Service Interpreters  
The Marine Society and Sea Cadets  
Vendors providing voting machines

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## **Annex B – List of respondents**

ACPO

ACPO rep for National Forensic Procurement Programme - Leicestershire  
Constabulary

Advertising Standards Authority

Anthony Croxford

ARK Academies

Association of Chartered Certified Accountants

Association of Electricity Producers

Association of Medical Research Charities

Association of Train Operating Companies

Audit Commission

Bail for Immigration Detainees

Barnado's

Bell Dening Solicitors

Bill MacKeith

Business in Sport and Leisure

Calderdale Council

Camelot Group plc

Campaign for Freedom of Information

Campaign for Press and Broadcasting Freedom

CBI

CCPR

Charity Commission

Charity Finance Directors' Group  
Children's Rights Alliance for England  
Christopher Carnaghan  
Clifford Chance LLP  
Confederation of Passenger Transport UK  
Cornwall County Council  
Data Protection Forum - coordinated responses from members  
David Botibol  
David Hillas  
David Ingham  
Deloitte & Touche LLP  
Department for International Development  
Dr Lynne Jones MP  
E.ON UK plc  
East Thames Group  
Energy Retail Association  
Environmental Services Association  
Ethnic Minority Foundation  
Ewen Macmillian  
FirstGroup plc  
Friends of the Earth  
Ganesh Sittampalam  
Gas Forum  
Higher Education Funding Council for England  
Independent Schools Inspectorate  
Information Commissioner

Information Tribunal  
In-House Charity Lawyers Group  
Intellect  
ITV plc & Channel 5 Broadcasting Ltd  
Jeff Lampert  
John Mickleborough  
Ken Sorrie  
Kent Messenger Group  
Kong Luk  
Learning and Skills Council  
Lewis Silkin  
Local Government Association  
Lovells LLP - on behalf of a number of clients  
Lynn McNab  
Madeleine Lee  
Mark  
Matthew Stephenson  
Maurice Hoffman  
Metropolitan Housing Trust  
Michael J Ross  
Michael Toth  
Mobile Broadband Group  
Museums, Libraries and Archives Council  
National Campaign for the Arts  
National Council for Voluntary Organisations  
National Grid

National Housing Federation

National Society for the Prevention of Cruelty to Children

National Union of Journalists

Network Rail

Newspaper Society

NO2ID

Norman Baird

Northern Ireland Council for Voluntary Action

Northern Ireland Federation of Housing Associations

Northgate Information Solutions

Northrop Grumman Corporation International Inc - UK Branch

Nuclear Decommissioning Agency

Office of Rail Regulation

Open Rights Group

Oxfam

P

Paul Fallon

Paul McLoughlin

Paul Raynor

Paul Westley

POhWER

PPP Forum

Press Complaints Commission

Privacy Laws and Business

QinetiQ

Quality Assurance Agency

Rail Safety and Standards Board

Richard Adam

Richard Buttrey

Robert Davenport

Rosemary Galli

Royal Mail Group

Royal National Lifeboat Institution

Royal Yachting Association

Scott McCraughan

Scottish Federation of Housing Associations

Scottish Power

Sid Smith

Simon Bezant

Simon Fox

Society of Editors

Sport England

Stephen Bouvier

Sue Ryder Care

Telegraph Media Group

The British Computer Society

The Church of England Archbishops' Council

The Corporate Responsibility (CORE) Coalition

The Institute of Chartered Accountants in England and Wales

The Market Research Society

The National Archives

The Scottish Churches Committee

Theatre Resource

UK Home Care Association Ltd

UK Sport

UNISON

University of St Andrews

Wales Council for Voluntary Action

Walsall City Academy

Wellcome Trust

Welsh Assembly Government

Which?

## **Annex C– Information Commissioner’s Model Publication Scheme<sup>5</sup>**

1. **Who we are and what we do**  
Organisational information, structures, locations and contacts.
2. **What we spend and how we spend it**  
Financial information about projected and actual income and expenditure, procurement, contracts and financial audit.
3. **What are our priorities and how we are doing**  
Strategies and plans, performance indicators, audits, inspections and reviews.
4. **How we make decisions**  
Decision-making processes and records of decisions.
5. **Our policies and procedures**  
Current written protocols, policies and procedures for delivering our services and responsibilities.
6. **Lists and registers**
7. **The services we offer**  
Information about the services the department provides including leaflets, guidance and newsletters.

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<sup>5</sup> For more advice on publication schemes, see the Information Commissioner’s guidance at the following link:  
[http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information/publication\\_schemes.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes.aspx)







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