

Freedom of Information

Review

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Comment

Back in Issue 100 I contemplated 'Where to for the *FoI Review*?' I made a number of suggestions about where this journal could make significant contributions to the analysis, discussion, critique and promotion of effective access to information regimes. These suggestions included articles that explored the nexus between *FoI* and other topics (privacy, whistleblowing, information policy) and from the perspectives of non-law disciplines (history, political science etc), exploring the international aspects of information access, more case studies, internal perspectives (especially from administrators) and jurisdictional updates.

An examination of this issue and the rest of the content in 2003 demonstrates that those goals are being achieved. Articles have covered *FoI* issues in Australia, Canada, Japan, Ireland and South Africa. We have had insider viewpoints from an *FoI* manager in Canada and a prisoner in Victoria. Chris Finn made the case for reconceptualising the way commercial in confidence is applied. Al Roberts and Stephen Lamble explored the use of *FoI* in foreign policy. Stephen Lamble also responded to my call for truly comparative studies. Robert Vaughn and Stephen Homewood explored the nexus between whistleblowing and *FoI* in both the USA and the UK. Justice Michael Kirby explored developments in information privacy law and policy at both the national and international levels.

This issue continues with the above themes. The first article is an extract from the last annual report from Bronwyn Keighley-Gerardy as Information Commissioner for Western Australia. It represents the voice of someone committed to an effective regime of information management and access who is unwilling on principle to compromise with proposed government changes. The second article, also from Western Australia, outlines an innovative and exciting contribution to the analysis of *FoI* from a journalism perspective. The project will attempt to create a Freedom of Information Index that measures the gap between the promise and the practice of *FoI* legislation. The third article is a combination of a short essay and a set of briefing papers produced by one of my law students this semester. His central theme, richly informed by the work of Joseph Stiglitz and others, argues that there needs to be a switch from *FoI* practice being focused on individual document access to a regime that is information based.

I would like once again to thank the subscribers, readers and contributors who have made the *FoI Review* able to live up to, almost, all of the plethora of definitions for 'review' that can be found in the *Macquarie Dictionary*. Furthermore the range, type and variety of articles have deeply enriched the study, practice and critique of *FoI*, in particular, and information access policy more generally. The past 108 issues of the *Review* have contributed enormously to what Al Roberts has labelled the Information Commons — that 'intangible pool of information about community [and political affairs] which must be publicly accessible for citizens to engage intelligently in the act of self-government'. Yet the need is for you as subscribers and readers to let me know what you want to see in the *FoI Review* and, as always, we need contributors ready to share their insights, critiques, analysis, ideas and perspectives.

I wish one and all the best for Christmas and the New Year.

Rick Snell

Government plans result in the retirement of Western Australia's Information Commissioner

Bronwyn Keighley-Gerardy has been an outstanding Information Commissioner for Western Australia. She has overseen the introduction and smooth transition of FoI in that state. More importantly she has blended the ideals of FoI with a senior public servant's experience of how to convert parliamentary intent into day-to-day practice.

Her departure from office was unnecessary and the result of short-sightedness, at the very least, produced by an obsession with budget constraints or, at the worst, yet another cynical retreat by a government uncomfortable with a statutory officer who has followed her parliamentary mandate to be independent, impartial and at arms length from government.

Over the past 10 years Western Australia has, with few exceptions, set the pace for Australian FoI best practice. In large part it is Bronwyn Keighley-Gerardy who deserves the credit. She created a hard working and pro-active

team and under her strategic leadership the Western Australian Information Commissioner was established as a trusted half-way house between government and citizens.

It was a constant delight to bump into Bronwyn at conferences. Most officeholders tend to settle into a largely administrator mode. Not Bronwyn. She was always looking for ways to make the promise of FoI not only a reality but to keep the legislation and practice up to date with the needs of government, the public service and citizens.

Hopefully, after a few long months of playing her beloved golf she may return to the FoI information commons with new thoughts, perspectives and commitment. I know she will enjoy her respite from the constant struggle to secure a balanced system of information access.

Rick Snell
November 2003

An extract from the Foreword to the Office of the Information Commissioner, Western Australia, Tenth Annual Report 2003

This is my tenth Annual Report and I am pleased to report another year of positive FoI outcomes across the public sector.

During the preparation of this report, I was informed by the Director General, Department of the Premier and Cabinet, that upon expiry of my term of appointment on 31 October 2003, the Attorney General intends to appoint an Acting Information Commissioner pending legislation to amalgamate this office with that of the State Ombudsman. As a consequence, I have decided to retire on 31 October 2003.

In 2001, it was recommended by the Machinery of Government Taskforce that the independent accountability agencies, including the Information Commissioner, consider the feasibility of co-locating to provide better services to the public. It has never been clear to me exactly how co-location could improve the level or quality of the services, which I presently provide. The surveys conducted by my office of agencies and applicants have consistently indicated a high level of satisfaction with the professionalism, timeliness and quality of its work. However, in accordance with government policy, I agreed to co-locate my office with that of the State Ombudsman at the expiry of our current lease and commenced planning for that change.

Assuming that the latest advice to me from the Director General, Department of the Premier and Cabinet, is correct, I have serious concerns about the consequences of amalgamation. At no time have I been consulted about that proposal, its timing, the effect it would have on the on-going work of my office or, indeed, on the legislative amendments that are necessary to give effect to the decision. I accept that all agencies, including FoI, must operate under budget constraints and that any duplication of

costs and services should be eliminated. However, it remains to be seen whether the intended changes produce better FoI outcomes for the public, or whether FoI will now be left to languish in the back-water of public administration. History will tell. Personally, I do not consider that the amalgamation of two statutory offices, with entirely different functions and no obvious duplication, will necessarily provide better FoI services to the public, especially not after 10 successful years of the Information Commissioner operating as an independent merits review tribunal with determinative powers.

In Western Australia, FoI has been successfully integrated into the public sector as part of contemporary public administration. The constant efforts by me and my staff have ensured that the rhetoric of openness and accountability, which is commonplace in governments today, is actually matched by action. It could be assumed, therefore, that nothing more needs to be done and it is, perhaps, not surprising that this office was targeted to achieve savings. However, in the context of the total State Budget, any savings achieved by amalgamation are miniscule and, if FoI suffers in the process, the public is entitled to ask: What is the price of accountability in Western Australia?

History elsewhere clearly indicates that governments are less enthusiastic about openness and accountability when they are on the receiving end of FoI requests and cynics might view the decision as a deliberate attempt to destroy the effectiveness of FoI in this state. Clearly, the passing of time has dimmed the collective consciousness of the public sector. However, it is worth recalling that the *FoI Act* was enacted following a crisis in public confidence about the activities of government in the late 1980s, which culminated in a Royal Commission. FoI is a vital tool of accountability and the only legitimate means

for citizens to obtain access to documents and information about the activities of state and local government agencies. It operates to limit secrecy in government and to curb the power of the Executive to control the flow of information available to the public.

If *FoI* is to be an effective tool to make agencies and government accountable, it requires a strong and independent advocate, together with a culture across the public sector and in government, which accepts that information is a public resource that is acquired or generated for the discharge of public duties, not for the benefit of elected and appointed public officials. Such information has been paid for, through one means or another, by the public. It exists for public purposes and, unless exceptional circumstances exist, the public should be able to have access to the information it requires, not merely the information fed to it by officials.

In 1992, when the *FoI* Bill was introduced into the parliament by the Hon. D L Smith, Member for Mitchell and then Minister for Justice, the Minister stated that the government regarded the position of Information Commissioner as important as that of the State Ombudsman and the Auditor General. The government did not consider that the State Ombudsman ought to be given the task of dealing with *FoI* because the then Ombudsman had enough to do with his own legislation. In the intervening years, nothing has changed.

I have also expressed my concerns about the perception of bias, as both the Commissioner for Public Sector Standards and the Office of Health Review are part of the co-location proposal and both agencies are subject to the *FoI Act*. From time to time, the Information Commissioner also makes decisions concerning the exempt status of documents created by the State Ombudsman. In my view, serious doubts about the impartiality of decisions made under the *FoI Act* could arise especially when decisions concern documents of the other three agencies and, in particular, when the amalgamated office of State Ombudsman/Information Commissioner must make a decision under the *FoI Act* about the exempt status of documents, which relate to the investigative functions of the State Ombudsman under the *Parliamentary Commissioner Act 1971*.

If the public perceives that decisions by the State Ombudsman/Information Commissioner are biased, whether or not that is in fact the case, there may well be an increase in appeals to the Supreme Court against such decisions on the ground of perceived bias, which will involve agencies in additional costs and inconvenience. I made the government aware of my concerns. The Premier acknowledged that my concerns were valid, but stated that they could be managed appropriately through the co-location process. However, it was never explained to me just how they would be managed. I am not convinced that such administrative reassurances will change the perception of the average person or complainant. Therefore, I remain concerned that the credibility, independence and impartiality of the statutory office of Information Commissioner, which I have worked hard to establish over the last 10 years, will suffer a serious blow.

When the *FoI* Bill was debated in 1992, it was apparent that members of parliament expected the administration

of *FoI* in Western Australia would be the start of a new regime offering a speedy, informal and less legalistic way of dealing with complaints about access. Over the past 10 years, I have continually refined and streamlined procedures in my office to better meet the expectations of parliament, to fairly balance competing interests, and to ensure that the culture of the public sector in Western Australia does not revert to one of self-protective reticence and denial.

Section 111(4) of the *FoI Act* requires me to include in my report to the Speaker of the Legislative Assembly and the President of the Legislative Council any recommendations as to legislative or administrative changes that could be made to help the objects of the *Act* to be achieved. I have not heard any convincing arguments, which persuade me that the decision to either co-locate or amalgamate will actually help the objects of the *FoI Act* to be achieved.

Accordingly, I cannot, in good conscience, recommend to the Speaker or the President that those changes be facilitated by legislative amendments.

Complaints dealt with by my office

The number of applications for external review lodged with my office over the years has averaged around 190 in a full year (198 received this year). The rate of complaints has reduced significantly as a proportion of total applications, a result which I attribute to the education and advisory services provided by my office.

However, the number of complaints does not reflect the range and complexity of those matters dealt with by my office. A complaint may involve a single document of one or more pages, which may be exempt under one or more exemption clauses. In other cases, a complaint may involve tens or even hundreds of documents that can be the subject of multiple claims for exemption.

Notwithstanding the complexity of such matters, or the number of documents involved, each complaint is only recorded as a single complaint for reporting purposes, regardless of the number of issues for determination and decision.

The investigation of complaints is a time-consuming process because I must deal with each matter according to law and settled principles of natural justice. The successful resolution of complaints also depends on the willingness of the parties to resolve matters by conciliation, which is my preferred approach. Suffice to say that the average days taken by my officers to finalise complaints has been reduced, with 97% of all complaint files closed within three months. The timeliness with which I am able to deal with *FoI* complaints after 10 years of experience is further confirmation that the present model in operation in Western Australia provides the public with the most efficient and effective means of dealing with *FoI* disputes.

Bronwyn Keighley-Gerardy

The Freedom of Information Index

Measuring the gap between the promise and practice of freedom of information legislation

I have nothing to say on the topic since we don't use Fol as a journalistic tool, besides, as far as I am concerned Fol is dead.

Not to have Fol, would be like turning off the water.¹

Two news and current affairs editors with public broadcasters in two different countries — two diametrically different views on how Freedom of Information (Fol) works in practice. The editors' opinions were part of a study comparing how journalists in Western Australia and Sweden utilised Fol legislation as a journalistic tool to gather information independently. The study highlighted the immense differences in practice between two Fol legislations that on the surface share the same aims and goals: to provide individuals with access to government-held personal records to correct wrong or misleading information, to remove unnecessary secrecy to improve quality of decision making, to make government functions clearer,² and, perhaps most importantly, to 'develop political democracy through greater opportunities for public participation in the decision making'.³ Grand goals — in theory. So good, in fact, that currently more than 50 countries⁴ around the world have passed Fol legislation. It could be argued that Fol legislation has become a hallmark of liberal democracy — no Fol, no 'proper' democracy. However, the Lidberg study of the Fol regimes in Sweden and Western Australia strongly indicated that the gap between what the Fol laws promise and what they deliver in practice is rather big and there are substantial differences between countries.

This article outlines a current project at Murdoch University that aims to create the first International Comparative Freedom of Information Index that will allocate each country of study a rank indicating how its Fol regime works in practice. The article describes the theoretical foundations on which the project rests, provides an overview of the methodology and research design, and analyses a number of existing socio-economic indexes that are relevant to the creation of the Fol Index.

Background

Being ruled is at times a painful experience. It can be a source of great frustration to feel unrepresented by the party/parties in government. It can be equally frustrating when the elected representatives renege on their earlier promises. Dunn puts it thus:

To be ruled is both necessary and inherently discomfoting (as well as dangerous). For our rulers to be accountable to us softens its intrinsic humiliations, probably sets some hazy limits to the harms that they will voluntarily choose to do to us collectively, and thus diminishes some of the dangers to which their rule may expose us.⁵

Dunn covers a lot of ground: political representation, political accountability and implicitly democracy. These concepts are all disciplines in their own right and to cover them in some depth would require numerous articles. Nevertheless, they are the foundation for the Fol Index project and we need to at least touch on them to provide some background.

Representation and accountability

All countries that have adopted Fol legislation can claim to have political systems incorporating, if not all, at least most traits of democracy, albeit in some cases at an emerging level if you chose to have liberal democracy as the benchmark.⁶ Hence, it would be easy to draw the conclusion that the foundation for Fol is democracy. However, the roots⁷ of Fol can be traced back to well before liberal democracy was the strongest political system and although democracy certainly plays an important role in the emergence and evolution of Fol, it is neither its mother nor its father. We argue that those roles are played by representation and accountability.

In most political systems, ranging from totalitarian to liberal democracies, some degree of representation exists. Whether they are installed via force such as military coups or more democratically via general elections, representatives usually claim to rule on behalf of the people. Their rule is built on a contract with the citizens where they, in many cases, have gained power by promising to deliver a number of outcomes. In the case of an election, the citizens have fulfilled their 'contractual obligations' with the casting of their vote. It is now up to the representative to deliver on his or her promises. It can at times be very tricky to keep track of if and how the representative delivers. This is where the accountability mechanism comes in and where independent access to government-held information plays a vital role.

Pitkin divides the nature of representation into two main categories: authorised representation and accountable representation. She defines the difference thus:

Whereas authorization theorists see the representative as free, the represented as bound, accountability theorists see precisely the converse. The authorization theorist defines representative democracy by equating elections with a grant of authority: a man represents because he has been elected at the outset of his term of office. The accountability theorists, on the contrary, equate elections with holding to account: an elected official is a representative because (and insofar as) he will be subject to re-election or removal at the end of his term.⁸

Pitkin concludes that representation will always include some form of trusteeship. She also points out that none of the theories describes and deals with what goes on during representation, 'how a representative ought to act or what he is expected to do, how to tell whether he has represented well or badly'.⁹ This is where Fol fits in. A far-reaching and smoothly working Fol regime will provide the scrutinisers of government (the opposition, the media and individual citizens) with the information they need to determine whether the elected representatives are doing a good job during the term.

According to Dunn, democracies have two major tools (apart from elections) for democratic 'surveillance of their rulers and public officials': criminal law and Fol.¹⁰ The legal option is very limited and can only be utilised when criminal misconduct is suspected and then there is still the issue of proving the misconduct. Much more often the public is concerned with the representatives not fulfilling their end of the contract — the election promises, or

telling the truth — a ‘misconduct’ not covered by the law. This is where we turn to Fol and our expectation for it to deliver independent access to government-held information. The importance of this access for the accountability mechanism is masterfully summarised by Prezworski et al:

Yet, to evoke Kant, ‘All actions affecting the rights of other human beings are wrong if their maxim is not compatible with their being made public.’ Bobbio (from which this passage is taken, 1989: 84) comments further that ‘a precept not susceptible to being publicized can be taken to mean a precept which, if it was ever made known to the public, would arouse such a public reaction that one could not put it into action.’ We do not want governments to take actions that they would have not taken had we known why they are taking them. But this means that we have to know what the governments are doing and why independently of what they want us to know. Our authorization to rule should not include the authority to hide information from us.

Thus, even if elections give governments a broad authorization to rule, this authorization should not extend to informing us. Our information must not depend on what governments want us to know. The institutional implications are obvious: we need offices, independent statistical agencies. To coin a term, we need ‘accountability agencies,’ independent of other branches of government and subject to direct popular control, perhaps through elections.¹¹

From an international perspective the Fol Index could be such an ‘accountability agency’ or perhaps more correctly an indicator of how a specific country ranks compared to other countries when it comes to providing its citizens with independent access to government-held information — the building blocks of a far reaching political accountability that operates during both terms and election campaigns.

Then there is the issue of democracy. Political representation and accountability are both considered important traits of democracy.¹² However, agreeing on how to define democracy is as hard as getting consensus on what good art is, and for much the same reasons — the beauty of art, and democracy, is in the eye of the beholder. Held puts it thus:

The history of the idea of democracy is curious; the history of the democracies is puzzling.

There are two striking historical facts. First, nearly everyone today professes to be a democrat. Political regimes of all kinds throughout the world describe themselves as democracies. Yet what these regimes say and do is often substantially different from one to another. Democracy appears to legitimate modern political life: rule-making and law enforcement seem justified and appropriate when they are ‘democratic’.¹³

One only needs to consider the fact that both the former communist countries of Eastern Europe and the Western European countries claimed to have implemented the ‘true’ form of democracy (eg German Democratic Republic). At the moment it seems as if the liberal democratic model has the upper hand (whether this is due to liberal democracy being a superior political system or because of its close links to the highly successful capitalistic economic model is debatable). But the point is, most nations seem to want to claim to be democratic, or to be more democratic than others. This is what makes democracy such a quagmire. For the purpose of this article it will suffice to acknowledge that representative democracy plays an important role in the advancement of

Fol, because it hosts the concepts of political representation and accountability.

The fourth estate

Prezworski et al, called above for ‘accountability agencies’ independent of the political system. To a certain extent such agencies already exist in many countries in the form of the media taking on the fourth estate role as defined by Schultz: ‘The citizens have delegated to the media to scrutinise power for them and to empower them via selecting and presenting quality information’.¹⁴ The fourth estate concept is the focus of much debate and as an entity it is under constant threat on many fronts. It needs adequate funding and, most importantly, independent access to government-held information for it to fulfill its role as an agency of accountability. For the purpose of this project we have identified investigative journalists as representatives of the fourth estate role in order to track how Fol works in practice (what it delivers) and how it functions as an accountability tool.

To summarise: democracy, in its various forms, hosts the concepts of political representation and accountability. To hold someone accountable you need information about their actions (and non-actions). This information must be obtained independently and be of high quality. If the representative can directly or indirectly vet the information they will use it for their purposes and the accountability concept falls. In theory each citizen has the capacity to use methods such as Fol, to hold their representatives accountable. In practice this role has been delegated to the political opposition and the media and in some instances lobby groups and non-government organisations. It is argued here that independent access to quality government-held information is at the core of political accountability and that Fol legislation can provide an accountability scale against which different regimes can be measured.

Overall methodology

This is a long-term project. The study deals with Fol globally. Ideally all countries that have passed Fol legislation should be part of the study. However, since there are 50 plus¹⁵ countries, and counting, that have implemented Fol, this is not practically possible. Instead this project will design a methodologically sound way of collecting the data needed to allocate Fol countries a rank indicating to what extent their Fol regime delivers on its promises. The data-collecting tools will be trialled in five countries to create a framework index that has the potential to expand to cover all Fol countries.

The countries, which will be used to set up the framework index are Australia, Sweden, the US, South Africa and Indonesia (if the Indonesian Fol Act is passed in time, with Thailand ed as a backup country). The rationale for choosing these countries is that they provide samples of different Fol traditions, economic and democratic development and a geographic spread. One example of the difference in attitudes towards ownership of information is described by Green:

Although it is dangerous to generalise, in the USA the predominant attitude is that the government collects and holds information on behalf of its citizens, and that the citizens therefore have a right to access that information. In Australia, on

the other hand, the prevailing attitude is that information belongs to the government and will be released at the government's pleasure.¹⁶

The overarching research question for the project is: *To what extent, if any, are the promises made by Freedom of Information legislation borne out by the practice?* The hypothesis is that there is a gap between what the laws aim to deliver and what is delivered in practice.

To capture the data needed to create the index, three separate studies have been conceived. The first one deals with the promise of FoI, that is the legislation itself: what its aims are and how the law purports to accommodate these aims. The second study will map the practice of FoI: what the different FoI laws deliver. A case study will involve enlisting a number of high profile investigative reporters in each country to lodge one FoI request each, tracking the progress and evaluating the outcome. The third study will survey the attitudes of leading politicians and public servants towards FoI. The surveys will be important, since they will also attempt to capture the attitudes of politicians and public servants to whistle blowing. In some FoI legislations, for example, the Swedish FoI Acts,¹⁷ journalistic sources have legal protection. Only in exceptional circumstances can a journalist be forced to reveal their sources. This is an often overlooked, but very important part of the overall information climate. The last part of the project will be the compilation of the index. Using ranking templates, the data from each study will be collapsed into a single figure for each country of study, which will in turn be the base for calculating the end rank for each country. This part of the research design is not yet finished and will pose a challenge because the bulk of the data will be of qualitative nature. This data will have to be 'translated' via the evaluation templates into a quantitative measure — the index.

Literature review

The literature shows that while a number of comparisons of different FoI regimes have been made, these studies have focused on comparing the 'letters of the law' rather than the practical outcome — what the FoI laws deliver in actual access to information. Banisar¹⁸ Coulthart,¹⁹ Harrison and Cossins,²⁰ Lamble,²¹ Ricketson,²² Snell²³ and Waters,²⁴ among others, have from an Australian perspective, and in Snell's case with international outlooks, covered a wealth of legal aspects and journalistic use of FoI. But there are no case studies tracking actual FoI requests, testing the law if you like, and international comparisons on a practical level of how the different legislations deliver on their promises. At this point the oral information climate as part of FoI also seems to be largely overlooked. Although shield laws for Australian journalists was the subject of a senate inquiry in Australia,²⁵ researchers have not focused on their importance to the overall information climate.

The Swedish literature is also centered on the legal perspectives of FoI. There is ample literature analysing and suggesting uses of FoI. Writings by, among others, Olsson,²⁶ Sefastsson,²⁷ Hederén,²⁸ Gustafsdotter,²⁹ and Löwenberg³⁰ cover these areas well. However, when it comes to testing what the Swedish FoI delivers, there are no scientific studies available. The Swedish journalism

union, Svenska Journalistförbundet, SJF, conducted two 'openness tests', of Swedish government agencies in 1997 and 2000,³¹ and although they give an indication of a relatively wide general knowledge of FoI among Swedish public servants, they are of little use from a scholarly perspective.

A search for relevant literature and earlier studies in the United States, South Africa and Indonesia (and Thailand) remains to be done. Indications are that there will be ample literature to be found in the US with its relatively 'old' FoI (1966), whereas there will be less material relating to South Africa (2000) and Indonesia (not yet passed by parliament), as relative newcomers to the FoI family.

Hence, this project will be unique in three ways:

- it will for the first time provide an international tool for comparing and evaluating access regimes in different countries based on the *practice* of FoI
- it will track genuine FoI requests to test in practice what the different FoI laws deliver
- it will incorporate protection of journalistic sources (also known as whistle blower protection and shield laws for journalists) as one measure of the overall information climate.

The promise of FoI

The research question for the first study is: *What are the aims for the different Acts and what do they promise to deliver in terms of information access?*

Access to documents

The first part of this study will deal with access to government-held documents (the term documents includes all media, electronic as well as paper based) and will profile the FoI legislations in the countries of study and evaluate them according to a template, which is still being designed. Parameters to be evaluated will include: minimum turnaround time, cost, exemptions from the act and where the act sits legally (ie as part of the constitution or not). These parameters will generate a score that will be one of the variables for calculating the end rank for the index. As mentioned above, numerous comparisons of different FoI legislations have been done and apart from reviewing the acts, this part of the project will draw on earlier studies. Banisar's global Freedom of Information Survey will be a great asset.³²

Legal protection for journalistic sources

The second part of this study will examine if legal protection of journalistic sources exists in the countries of study. In the Swedish legislation, for instance, the journalistic shield laws are 'buried' within the different acts regulating FoI, although it is still considered as the second pillar of FoI in Sweden (access to documents being the first).³³ It may be argued that the 'oral information climate' relates more to unofficial leaks and therefore falls outside the scope of this project. While this may be true the free flow of information from government into the public domain is greatly enhanced if public servants know that, rather than being penalised themselves, their employer will be penalised if they investigate who 'leaked' today's front-page story. The Swedish 'whistle blower' is further protected by the fact that the journalist is bound by law not to disclose the source risking a heavy fine and a one-year prison

term. Swedish journalists can only be forced to reveal their sources on grounds of national security, treason and if the source has broken confidentiality agreements.³⁴ Measuring other countries against this level of protection will provide another indicator of the level of information flow in the country as a complement to document access.

The practice of FoI

This part of the project will measure what the different FoI regimes deliver in practice and what attitudes leading politicians and public servants have regarding FoI.

The case study

The overarching research question is: *In practice, does FoI supply journalists (and media organisations) with independent access to government-held information?* Complemented by the sub questions:

- does the procedure facilitate or obstruct information gathering using FoI?
- what are the attitudes among public servants encountered during the process of the request?
- what quality of information does FoI deliver to journalists?

Methodology

Three experienced and 'high profile' investigative reporters in each country of study will be recruited to lodge one FoI application each to the most relevant federal/national government agency. The exact nature of the requests will be determined in a consultative process between the researchers and the reporters. It is, however, vital that the requests are as similar as possible to provide comparability between the different countries. The framework topics are:

1. The complete account/list of the Prime Minister's travel and representation expenses for 2002 and/or all the statements for the government issued credit cards used by the political and public service staff of the PM's office.
2. The complete list of nations that the country of study trades (import/export) weapons with, including sums for each country, date of trade and what sort of items.
3. Refugee issues: To be further identified with each reporter.

Each request will be tracked by the lodging reporter according to an evaluation template provided by the researchers. The template will, among other areas, cover:

- procedure: time spent preparing request, request method (eg written or verbal or both), cost and turnaround time
- attitudes encountered: public servants knowledge of FoI, general attitude towards FoI, is the public servant helpful (facilitator or obstructionist?)
- outcome: is the information accessed useful for the investigation? Is it of critical value for the story? Can you take the story further based on the information you accessed?

It is quite likely that interviews with the reporters will have to be conducted to complement the evaluation templates.

Sampling issues

Membership in the International Consortium of Investigative Journalists (ICIJ) will be used as a first screening process and one of the members of the sample group will be drawn from ICIJ's membership. Through a snowball technique, the other two members of the group will be nominated in a consultative process between the reporter and the researchers.

The survey

The purpose of the survey study is to answer the question: what are the attitudes to FoI and legal protection of journalistic sources among leading politicians and public servants. The questionnaires will be sent to all federal/national ministers heading a department, the chief public servant and the FoI coordinator. The rationale for targeting federal/national government departments is that the countries of study have slightly different political systems. Some have a federal system — some do not. To achieve comparability in the data, the studies need to be implemented on a national level. Another advantage using national agencies, including the Prime Minister's Office, is that the attitudes towards FoI and the flow of information influencing other levels of government come from the top. The argument is that if the highest office in the land is not keen on openness you can hardly expect the other layers of government to be different. The surveys will most likely be built on the evaluation forms used by our FoI reporters enabling a comparison between what FoI delivers in practice and what the official view (or perhaps 'spin') is.³⁵

To get a general indication and to put the project into a further global context a questionnaire, again built around the FoI reporter evaluation template, will be sent to all the ICIJ members that operate in countries that have implemented FoI legislation. On last count this was 27 countries.³⁶

The FoI Index

The general purpose of an index is to provide an overview over large quantities of data that are usually complex in nature. There are different types of indexes, some entirely built on quantitative data such as crime and stock market indexes. However, in the last 10–15 years, a number of 'socio-economic' indexes have been created. One defining property of these indexes is that they often combine quantitative and qualitative data.³⁷ Neuman points out that an index is quite easy to create and at face value seems to have great validity. He argues that the researcher therefore has a great responsibility to make sure that 'every item in the index has face validity ... each part of the construct should be measured with at least one indicator'.³⁸ In other words, the legitimacy of an index rests to a large extent on the methodology used to create it. As part of building the method for the Freedom of Information Index, three existing indexes have been analysed.

The Corruption Perceptions Index

Transparency International (TI) is a non-profit organisation based in Berlin, Germany. TI has published the Corruption Perceptions Index (CPI) since 1995. The Index

was originally designed by Dr Johann Graf Lambsdorff and his colleagues based at Göttingen University in Germany. In its mission statement TI defines the purpose of the organisation thus: 'to curb corruption by mobilising a global coalition to promote and strengthen international and national Integrity Systems.'³⁹ The bulk of TI's funding comes from public institutions and foundations around the globe. The private sector does also contribute to TI.⁴⁰

The CPI is described as a composite index⁴¹ that attempts to capture the perceptions of the level of corruption as perceived by analysts and expatriate business people.⁴² The index is based on selected answers drawn from a number of surveys. In all, 15 survey sources were included in the 2002 edition of the CPI. The surveys were implemented between 2000–2002 (implementing institution/company in brackets): State Capacity Survey (Columbia University), Asian Intelligence Issue (Political and Economic Risk Consultancy), Institute for Management Development, IMD, Switzerland (World Competitiveness Yearbook), World Business Environment Survey (World Bank), Opacity Index (Pricewaterhouse Coopers), Country Risk Service and Country Forecast (Economist Intelligence Unit), Nations in Transit (Freedom House), Africa Competitiveness Report (World Economic Forum), Global Competitiveness Report (World Economic Forum), Corruption Survey (Gallup International on behalf of TI).⁴³

The respondents were asked to rank how severe they perceived the corruption to be in a specific country. A typical question is like this one from the Asian Intelligence Issue survey: 'How do you rate corruption in terms of its quality or contribution to the overall living/working environment?'⁴⁴ Each source/survey uses its own scaling system. To combine the results of the surveys into one single measure per country (allocating a rank on a scale from 1–10, where 1 is high rate of corruption) the designers of the CPI use a two-step approach. Step one uses the standard deviation method to standardise each source after which the average for each country is calculated.⁴⁵ This method was adequate for the first few years of 'merging' the different sources. However, Lambsdorff and his colleagues noted a tendency towards 'continuously smaller diversity of assessments'. There were also instances where scores would be below 0 (eg. Bangladesh –1.7) and above 10 (eg. Finland).⁴⁶ To avoid this they concluded that the scores had to be stretched using the more complicated beta transformation standardization method available in most statistics softwares. This method made sure that the ranks stayed within the 10-point scale relative to each other.

A number of the surveys cover the same countries. This overlap, argues Lambsdorff, allows for cross-referencing of the ranking. This is, according to Lambsdorff, the main strength of the methodology behind the CPI and allows for relatively high confidence intervals in the ranking of the individual countries.⁴⁷

Analysis

As Lambsdorff points out 'unbiased, hard data [regarding the extent of corruption in a country] continue to be difficult to obtain and usually raise problematic questions with respect to validity'.⁴⁸ It could be argued that this is based

on the intrinsic secrecy surrounding corruption. Put simply, corruption is hard (perhaps close to impossible) to measure in quantifiable terms. Hence, the CPI rests entirely (as the name suggests) on a number of peoples' perceptions of the extent of corruption. However, as Lambsdorff says, this may still be the most credible way of comparing corruption in different nations.⁴⁹ Because no other measure of corruption exists, the base data is the ranking provided by the respondents. This is a validity problem in itself.

Another validity problem is the selection of the sample groups. The respondents are drawn from two groups: expatriate business people and analysts from the academic and corporate sector. None of the surveys include respondents drawn from citizens of a country or the public and political sector. (This has been somewhat rectified by the recent publication of the Global Corruption Barometer, a pilot survey distributed to 40,838 citizens in 47 countries measuring attitudes within each country towards corruption.)⁵⁰

Dow Jones Sustainability Indexes

The Dow Jones Sustainability Indexes (DJSI) is an offspring to the Dow Jones Stock Market Index and was introduced in September 1999 with the aim to 'provide objective benchmarks for the financial products that are linked to economic, environmental and social criteria.'⁵¹ It is a commercial entity financed by the sale of licences, which allows licensees (mainly financial management companies) to use the index for benchmarking sustainable investment portfolios. Currently the indexes rank 10% of the largest 2500 companies globally and 'aim to cover 20% of the total global market cap of each industry'.⁵² We sought information about the cost of each licence and got the following response from the SAM-Group, a Swiss-based business company that collects and analyses the data for the index:

Thank you for your interest in the Dow Jones Sustainability Indexes. Information about the license fees is something that we only provide directly to interested prospects — mainly, because it's competitive information, but also because the price varies depending on the product. However, should you need further information about the license fees for academic purposes, please let me know.⁵³

The DJSI cover three main areas in their data collection: economic performance (with emphasis on corporate governance), environmental impact and performance, and social performance. Each area is weighted roughly a third each in calculating the figures for the end rank. The most important data collection instrument is an extensive questionnaire⁵⁴ to be filled out and signed by the companies' CEO or equivalent. The answers are then cross-referenced with among other sources media reports and stakeholder reports. A major difference to the CPI is that the analysts rank the answers in the questionnaire according to a template. For example the area criteria 'corporate governance' has the general weighting of 0.054. The specific question: How many members are on your Board of Directors? carries the weight of 0.08. The answers are given the score in the following intervals:

11–15 Board Members:	100
6–10 Board Members:	75
0–5 Board Members:	0

Hence, if the company had 12 Board Members the end value for this answer would be calculated thus:

$$100 \times 0.08 \times 0.054 = 0.432^{55}$$

Analysis

Apart from the method used to evaluate and calculate the rank, the DJSI is quite similar to the CPI and shares the same validity problems. At the core is, again, that the DJSI does not generate its own independent quantitative data. It relies on the management of companies to provide accurate data in areas that are notoriously hard to verify and check. The DJSI also battles a general legitimacy problem in that it does not exclude companies producing chemicals, weapons and tobacco products. The DJSI lists a number of arguments for including all sorts of companies in its index. One is that by including, for instance, highly polluting companies and picking the best of the worst 'we recognize that some companies are more responsible in managing their impacts than others and are thereby leading their peers towards a more sustainable way of doing business'.⁵⁶

DJSI recognises that transparency is an important part of building up the legitimacy for the index and it is to their credit that the whole methodology and the questionnaire used is available on their website (apart from the price of the licence ...). To further the validity of the index, the international audit firm Price Waterhouse Coopers has confirmed that the sustainability evaluations are in line with the methodologies and applied appropriately by the SAM Group staff.⁵⁷ Given the cloud hanging over international auditing firms in the wake of Arthur Anderson's role in the Enron corporate fraud case, the question arises whether this really strengthens the validity of the DJSI. Perhaps an audit by university-based independent researchers would be preferable.

The Conflict Barometer

The last socio-economic index we looked at is the Conflict Barometer, created, compiled and published annually by the Heidelberg Institute on International Conflict (HIK) at Heidelberg University in Germany. The HIK is a non-profit registered organisation and 'is dedicated to research, evolution, and documentation of inner- and interstate political conflicts'.⁵⁸ We included this index in our analysis because it claims to use both quantitative and qualitative data.⁵⁹ A very elaborate coding system is used to track and describe the more than 301 conflicts contained in the database that is the core of the index.

Analysis

As with the other indexes described, the bulk of the data is not independently generated, but relies on earlier studies and media coverage of conflicts.⁶⁰ The Barometer allocates a rank of between 1 and 4 to each conflict, where 1 is latent conflict and 4 is war. However, it is very unclear how the different ranks are calculated. The most important lesson learnt from the Conflict Barometer is that it is vital to clearly explain what methodology is used and how the rank is calculated.

Concluding index analysis

The CPI has risen to prominence quickly. Since its start in 1995 it has emerged as one of the leading indicators in the social sciences, in spite of its inherent weaknesses, as pointed out above. The DJSI currently has 47 licensees⁶¹ and is often quoted as an authority in ranking companies' performance from a sustainability perspective, again despite much the same weaknesses as the CPI. The Conflict Barometer is less well known, but shares the same core problem with the other indexes described: the lack of independent generation of quantitative and qualitative data. This indicates that there is a need for instruments and tools that can visualise complex structures in society, such as corruption, corporate sustainability and political conflict, in a way that is more easily comprehended. In an increasingly globalised and complex world order, it also seems more relevant than ever to compare different countries in terms of their social structures, problems and solutions.

This is very promising for the Freedom of Information Index. Like the indexes profiled above it will provide overview and make it easier to understand and compare how information flows in different countries. The greatest strength of the Freedom of Information Index compared to the other indexes profiled in this article is that it will have a component where what it sets out to rank will be independently put to the test and measured via a case study. The final ranking templates for evaluating the data provided by the different studies are still under design. It is, however, highly likely that a model similar to the weighting used in the DJSI will be used for the survey answers. The greatest challenge will be to create a sound evaluation template for the case study — the most important part of the project.

Conclusion

This article has outlined the Freedom of Information Index project currently underway at Murdoch University. It has argued the need for an international comparative tool that can be used to evaluate FoI regimes in different countries. The basis for the argument is the need for increased accountability in systems that use political representation. At the core of political accountability, it has been pointed out, is the independent access to government-held information. Without this independent access the media cannot fulfil its fourth estate role of scrutinising power. The best tool, to date, to guarantee this access are various FoI acts.

The article has profiled a number of existing socio-economic indexes and pointed to their main weaknesses: the lack of independently gathered data. At the core of the Freedom of Information Index will be a case study that will, in practice, track a number of FoI requests, hence generating the sort of data missing in the other indexes described.

It has been pointed out that the different FoI laws globally are at very different stages in their 'evolution'. There is widespread consensus among the users of FoI in Australia that the different Acts need change and reform. The capacity to compare and contrast different FoI regimes could be an important agent of change, not only in Australia, but perhaps on a global scale.

In the end FoI is about the right to knowledge — the right to know what our elected representatives are doing and how they are performing — independently without the spin. When former US President James Madison in 1822 chaired the committee which drafted the First Amendment to the US Constitution he put it thus:

Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both.⁶²

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References

- J Lidberg, 'For Your Information — the Impact of Freedom of Information Legislation on Journalism Practice and Content in Western Australia and Sweden' (MA, Murdoch University, 2003) 14 and 49.
- A R Olsson, *Yttrandefrihet Och Tryckfrihet*, First ed. (Stockholm: Tiden, 1992) 19-48.
- M Ricketson and R Snell, 'FoI: Threatened by Governments, Underused by Journalists — Still a Sharp Tool,' in *Journalism — Investigation and Research*, ed. S. Tanner (Sydney: Longman, 2002) 150-163.
- D. Banisar, 'Freedom of Information and Access to Government Record Laws around the World,' (Privacy International <<http://www.privacyinternational.org/>>, 2003) Introduction.
- J Dunn, 'Situating Democratic Political Accountability,' in *Democracy, Accountability and Representation*, eds. A Przeworski et al. (New York: Cambridge University Press, 1999) 343-4.
- Banisar, above, n 4, 1-7.
- S Lamble, 'Freedom of Information, a Finnish Clergyman's Gift to Democracy,' (2002) 97 *Freedom of Information Review* 2-8.
- H Pitkin, *The Concept of Representation* (London: University of California Press, 1967) 55-6.
- Ibid, 56.
- D Dunn, 'Mixing Elected and Nonelected Officials in Democratic Policy Making: Fundamentals of Accountability and Responsibility,' in *Democracy, Accountability and Representation*, eds. A. Przeworski et al. (New York: Cambridge University Press, 1999) 297-300.
- A Przeworski, et al. *Democracy, Accountability and Representation* (Cambridge: Cambridge University Press, 1999) 24.
- D Held, *Models of Democracy*, 2nd ed. (Stanford, CA: Stanford University Press, 1996) xi
- Ibid., xi.
- J Schultz, *Reviving the Fourth Estate* (Melbourne: Cambridge University Press, 1998) 15.
- Banisar, above, n 4, 2-8.
- K Green, 'Database Journalism,' in *Journalism — Investigation and Research*, ed. S. Tanner (Sydney: Longman, 2002) 87.
- T Sefastsson, *Offentlighetsprincipen I Praktiken* (Stockholm, Sweden: Prisma, 1999) 117-27.
- Banisar, above, n 4.
- R Coulthart, 'Why the FoI Act Is a Joke — or Don't Shoot the Media, We're Doing Our Best,' (1999) 81 *Freedom of Information Review*.
- K Harrison and A Cossins, *Documents, Dossiers and the inside Dope — a Practical Guide to Freedom of Information* (Sydney: Allen & Unwin, 1993).
- Lamble, 'Freedom of Information, a Finnish Clergyman's Gift to Democracy.'
- Ricketson and Snell, 'FoI: Threatened by Governments, Underused by Journalists — Still a Sharp Tool.'
- R Snell, 'In Search of the Freedom of Information Constituency: Case 1 — the Media,' (1988) 78 *Freedom of Information Review*.
- N Waters, 'Print Media Use of Freedom of Information Laws in Australia,' (Sydney: Australian Centre for Independent Journalism University of Technology Sydney, 1999).
- Commonwealth of Australia, 'Off the Record, Shield Laws for Journalists Confidential Sources,' (Canberra: Parliament of the Commonwealth of Australia, 1994).
- Olsson, above, n 2.
- Sefastsson, above, n 17.
- J Hederén, *Journalistiska Arbetsmetoder* (Göteborg: Spektra, 1988).
- J Gustafsdotter, *Murvlarnas Lagbok* (Kalmar, Sweden: FOJO, 2001).
- A Löwenberg, *Undersökande Journalistik* (Stockholm: Ordfront, 1992).
- Available on the SJF website: <www.sjf.se>.
- Banisar, above, n 4.
- Sefastsson, above, n 17.
- Ibid, 120-7.
- The core issue in this part is to probe the attitudes towards the ownership of information. Does the government own the information held by its department, or is the government the custodian, keeping the information on behalf of the public?
- Center for Public Integrity, *Member Biographies* (2003 [cited 14/8/2003]); available from <<http://www.icij.org/dtaweb/ICIJMemberBios.asp>>.
- L. Nueman, *Social Research Methods — Qualitative and Quantitative Approaches* (Sydney: Allyn and Bacon, 2000) 177.
- Ibid.
- Transparency International, *Mission Statement*, available from <www.transparency.org/about_ti/mission.html> at June 8 2003.
- Transparency International, *About Ti* available from <www.transparency.org/about_ti/funded.html> at August 6 2003.
- Neuman, above, n 37, 177.
- Transparency International, *Methodology* available from <www.transparency.org/cpi/2002/dnld/cpi2002.methodology.pdf> at 5 March 2003.
- Ibid, appendix.
- Ibid, appendix.
- Ibid, 5.
- Ibid 5-6.
- Ibid 2.
- Ibid 1.
- Ibid 1.
- H Bosh, 'Introducing the Ti Global Corruption Barometer,' *Ti Australia News*, no. 35 (2003) 1.
- Dow Jones Sustainability Indexes, *Frequently Asked Questions*, available from <<http://www.sustainability-index.com/html/other/faq.html>> at 28 November 2003.
- ibid.
- Alexander Barkawi, e-mail, 11 November 2003.
- Dow Jones Sustainability Indexes, *Questionnaire*, available from <<http://www.sustainability-index.com/assessment/infosources.html>> at 28 November 2003.
- Dow Jones Sustainability Indexes, *Guidebook*, available from <<http://www.sustainability-index.com/html/publications/guidebooks.html>> at 28 November 2003, I: 8-14.
- Dow Jones Sustainability Indexes, *Frequently Asked Questions*, available from <www.sustainability-index.com/html/other/faq.html> at 28 November 2003.
- Dow Jones Sustainability Indexes, *Verification*, available from <<http://www.sustainability-index.com/html/assessment/verification.html>> at 28 November 2003.
- Heidelberg Institute on International Conflict Research, *Conflict Barometer*, available from <http://www.hiik.de/en/index_e.htm> at 28 November 2003.
- Heidelberg Institute for International Conflict Research, *Kosimo Manual*, available from <http://www.hiik.de/en/index_e.htm> 1.
- ibid 2.
- Dow Jones Sustainability Indexes, *Licensing*, available from <<http://www.sustainability-index.com/html/other/licensing.html>>.
- M Pitt-Payne and T Supperstone, *The Freedom of Information Act of 2000* (London: Butterworths, 2001) v.

Making the switch to an information-based freedom of information regime

[Editor's note

In my administrative law class this year I set my students the task of looking at a number of areas (Fol, ombudsman, whistleblowing, reasons for decisions) by constructing a short essay and three small briefing papers. Several of the contributions were outstanding and in particular built on the work of a number of writers and articles that have been previously published in the *Fol Review*.

Over the next few issues I intend to publish a few of these contributions. In part because they offer fresh perspectives and in part because they show contributors (and potential contributors) that their ideas are having an impact. Furthermore, for the students it is an opportunity for them to contribute to a growing field of analysis.

R.S.]

The Essay Task: 'Critically analyse the proposition that a strong freedom of information regime is important for good governance in Australia, before outlining steps that might be taken to strengthen current regimes.'

1. Introduction

Critiquing the proposition requires identifying the foundational elements of good governance in Australia. Once identified, these foundational elements can be used to determine whether freedom of information (Fol) can properly be regarded as important for good governance in Australia. Identification can be achieved by evaluating the competing theoretical bases of Australia's system of government.

2. Sovereignty and good governance

Fol is often viewed as a hindrance to good governance,¹ largely because of the tendency for good governance to be translated to 'efficient governance'. The translation is unjustified given contemporary Australian conceptions of sovereignty. These conceptions are reflected in major shifts in the citizen–state relationship, and mean that the Australian variant of parliamentary sovereignty² is no longer sustainable, if ever it was.³ Shifts include the relocation of citizens to the forefront of the state, as evinced by the increasing conferral of legislative rights and obligations. The courts have also upped the status of citizens by relying more and more on their standards and values to develop the law.⁴ When coupled with growing doubts about the legitimacy of parliamentary sovereignty,⁵ these shifts should be taken as a general acknowledgement of the ascendancy of popular sovereignty in Australia.

Popular sovereignty cedes supreme power to citizens, and makes government the trustee of their will.⁶ Finn rightly points out that government's trusteeship makes it accountable to citizens.⁷ If, as has been argued, Australia's polity rests on the doctrine of popular sovereignty, accountability can be taken as a foundational element of good governance. Even so, because popular sovereignty

preordains no particular system of government, and delineates no specific values for the governing of society,⁸ the notion of good governance cannot be considered solely on this basis. Good governance must be further conceptualised with reference to liberal representative democracy, the system of government chosen by Australian citizens in exercise of their sovereignty. Clearly, the right to choose government is a vital function of all liberal representative democracies. This aside, Australia's variant has its own peculiarities. These include democratic procedural inclusiveness, such as the right to participate in decision-making;⁹ freedom of expression; and (it is arguable) the right to flourish, or to have access to the material bases (including education, employment and housing) that facilitate livelihood.

These peculiarities are central to the Australian experience of liberal representative democracy, although they are neither exhaustive nor exclusively Australian. Along with accountability and the right to choose government, they represent foundational elements of good governance in Australia. And while necessary, efficiency is secondary (or at best collateral) to their promotion. Accordingly, Fol can only be regarded as important for good governance if it is shown to be beneficial or conducive to the upkeep of these foundational elements. As will be argued, Fol is not only beneficial, but is crucial to their upkeep, and cannot realistically be reduced to an expensive, inefficient and unproductive hindrance.

3. Fol and good governance

3.1. Choosing government and citizen participation

Citizen participation in decision-making has come into favour recently, by way of domestic and international law.¹⁰ It is aided by Fol in much the same way as the right to choose government, and the two will be considered together. Suppose the government's chance of re-election hinges on the legitimacy of some soon-to-be executed policy. It is quite probable that the government will have exclusive control over the information required for proper evaluation of the policy.¹¹ Without the access afforded by Fol, citizens' right to influence the policy, and to choose whether to re-elect the government according to whether they agree with its actions in light of all relevant information, is hollowed out.¹² In other words, citizens are deprived of the tools required to carry out the role which democracy assigns to them.¹³ And although they retain the right to participate and to choose, they do so in only the most artificial of senses, one which falls well short of that required by a representative democracy based on popular sovereignty.¹⁴

3.2. Freedom of expression

Like citizen participation in decision-making, freedom of expression is a fairly recent device in Australia. It too stems from domestic and international innovations such as the free speech cases¹⁵ and the United Nations *International Covenant on Civil and Political Rights* 1966

(ICCPR), which Australia has signed and ratified.¹⁶ Roberts argues that freedom of expression is not a purely negative right, but that it obliges governments to take positive steps to guarantee and promote free speech.¹⁷ If this is justified,¹⁸ then Fol is a principal force in securing freedom of expression, and is therefore necessary for good governance.

3.3. Accountability and the right to flourish

As noted above, the right to have access to the material bases that facilitate livelihood can appropriately be regarded as a foundational element of good governance. The extent to which Fol increases access to these material bases is not entirely clear, although a few observations can be hazarded. Withholding information from citizens no doubt results in isolated and unpredictable disclosures of large quantities of information. Stiglitz argues that economies would be more stable with a steady flow of information because less attention would be given to any single piece.¹⁹ The steady information flow provided by an Fol-sponsored 'informational commons'²⁰ would fashion a more flourishing and stable society in non-economic ways as well. Primarily, it would encourage government to be accountable and to deal truthfully with its citizenry, which (in turn) would lead to openness,²¹ increase confidence in government,²² and ease concerns about the pursuit of secret agendas.

Additionally, it is arguable that informational deprivation strengthens the process whereby 'officials receive credit for good results, whether they deserve the credit or not, and are condemned for bad results'²³ in identical fashion. Here, an informational commons would force governments to respond directly to reality when setting policies, rather than ignoring it in favour of other methods. Significantly, this would make abuses of power less likely and enhance the likelihood of providing for the basic needs of citizens. While this is clear in Australia, it is most evident in developing countries where Fol is drastically needed as a means to further human development.²⁴

4. Strengthening current Fol regimes

4.1. Weaknesses and remedies

The foregoing establishes that a strong Fol regime is essential for good governance in Australia, and elsewhere. (In fact, insofar as this conclusion hinges on popular sovereignty, it is arguable that a strong Fol regime is a universal prerequisite for good governance.)²⁵ While there are many factors that contribute to the inadequacy of prevailing Fol regimes, it is arguable that they stem from a common source. This is particularly clear when some of the typical weaknesses and remedies are outlined. One oft-cited weakness is the failure of Fol legislation to account for contemporary changes to the state, such as the delegation of functions to the private sector and government business enterprises, which although publicly owned, operate independently of government.²⁶ These changes, it is argued, threaten the effectiveness of Fol²⁷ and should be dealt with by expanding Fol legislation to cover all organisations which carry out important public functions.²⁸

The remedy is justified when it is considered that delegation does not occur unless the state consciously accepts

ultimate responsibility for the function to be performed or the service to be provided.²⁹ If any government decided to adopt the remedy, it could easily find a workable legislative or policy design already in place. This highlights that the weakness is not as technical as is often assumed, but that 'it reflects an underlying confusion about how the boundaries of access laws should be drawn'.³⁰ Lessening this confusion would strengthen current Fol regimes far more than putting in place quick-fix technical remedies. Take the above example. Unaccompanied, expanding Fol legislation to cover all important public functions would be unsuccessful, largely because it merely targets words, which are not worth a straw without the political will to sustain them.

Equally concerning is the tendency for quick-fix remedies to divert attention from underlying deficiencies. In Australia, this has created major difficulties. For example, confusion and ignorance about the boundaries of Fol laws has encouraged government agencies to abuse the legal frameworks and spirit of Fol legislation.³¹ Illustrative is one Fol request, which purportedly cost \$7000 to process, despite having been made in relation to a specific document whose file number was included.³² Abuse of the cabinet exemption³³ and privacy provisions³⁴ has also become standard practice. In light of these (and other) abuses, it is clear that attitudes towards Fol must change, probably as a condition precedent to the strengthening of current regimes.

Having said that, it is arguable that certain Fol frameworks are more conducive to attitude change than are others. Snell points out that the loose terminology of New Zealand's *Official Information Act 1982*, provides incentives for openness because it allows retreat to be made at any time.³⁵ The *Official Information Act* also outscores its Australian counterpart³⁶ by targeting information rather than documents.³⁷ This no doubt increases the likelihood of the real issue being tackled, namely, whether the actual information requested should be released, as opposed to the kind of information requested.³⁸

4.2. Changing paradigms

Given the limitations of legalistic approaches,³⁹ the crucial step is to forge a culture of openness by creating support for the intent of Fol legislation.⁴⁰ This can be achieved by alerting citizens, government and government agencies to the benefits of strengthening Fol regimes. For example, Fol is often seen as a costly privilege which burdens taxpayers.⁴¹ In fact, it is likely that strengthening regimes would save public money by fostering debate about public policies and exposing flaws at an early stage.⁴²

In ignorance of such benefits, government has rarely acted to strengthen Fol regimes. Whether intended or not, government inactivity has reinforced access-related difficulties: domestic responsibilities continue to militate against involvement by single parents, and poor language skills continue to frustrate requests made by people of non-English speaking backgrounds.⁴³ Insofar as these difficulties occur independently of the conduct of Fol officers and government agencies, it is arguable that they pass beyond the scope of Fol reform. However, the argument is unsound because it implies that access has nothing to do with the adequacy of Fol processes. Obviously,

this is wrong. If the connection between government attitudes and practical difficulties was brought to the forefront of the FoI debate, solutions could be put in place that would strengthen current regimes. Government attitudes could be targeted and incrementally improved,⁴⁴ and collaboration promoted. Collaborative programs would benefit citizens and government. For example, government could approach community centres to explain FoI processes to isolated applicants⁴⁵ and to channel community concerns to government agencies.

5. Conclusion

Although legislative change is important, it should not be allowed to divert attention from the primacy of outdated paradigms, which account for most of the deficiencies of current FoI regimes. It is foolish to think that government and government agencies will reassess these paradigms without continued pressure from commentators. Non-bureaucratic commentary provided much of the impetus needed to kick-start the Australian FoI movement,⁴⁶ and its current lack of success should not dishearten those calling for change. More than anything, it is time to dig in, and ensure that the solutions theorised today are the solutions implemented tomorrow. Indeed, it seems that good governance depends upon it.

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References

1. R Snell and J Upcher, 'Freedom of information and parliament: A limited accountability tool for a key constituency?' (2002) 100 *Freedom of Information Review* 35-41, 35.
2. P Finn, 'A Sovereign People, A Public Trust' in P Finn (ed), *Essays on Law and Government*, Law Book Co, 1995, 3, notes that the Australian variant surrenders supreme power to parliament subject to the *Commonwealth Constitution*.
3. See P Finn, n 2, 3.
4. P Finn, n 2, 6.
5. R Snell and J Upcher, n 1, 38-9 note that parliament no longer serves its traditional purpose because its power is now subordinate to the power of political parties. Obviously, it is hard to justify a notion which forfeits supreme power to an institution which does not serve its purpose.
6. H Wright, 'Sovereignty and the People — the New Constitutional Grundnorm?' (1998) *Federal Law Review* 165-94, 167-8.
7. P Finn, n 2, 29.
8. P Finn, n 2, 4.
9. R Snell, 'In search of the Freedom of Information Constituency: Case 1 — The Media' (1998) 78 *Freedom of Information Review* 81-4, 81.
10. See the United Nations *International Covenant on Civil and Political Rights* 1966 <<http://www.magnacartaplus.org/uno-docs/covenant.htm>> at 29 July 2003.
11. A Roberts, 'Structural Pluralism and the Right to Information' in R Calland and A Tilley (eds), *The Right to Know, the Right to Live: Access to Information and Socio-economic Justice*, Open Democracy Advice Centre, Cape Town 2002, 15.
12. J Stiglitz, 'Transparency in Government' in R Islam (ed), *The Right to Tell: The Role of Mass Media in Economic Development*, The World Bank, Washington DC 2002, 30.
13. A Roberts, n 11, 16.
14. See Briefing paper 1 for a discussion of the practical relationship between FoI and citizen participation in decision-making.
15. *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106; *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1.
16. United Nations *International Covenant on Civil and Political Rights* 1966, n 10.
17. A Roberts, n 11, 15.
18. See Briefing paper 2 for a justification, and for exploration of the idea that FoI is a citizenry right and a governmental obligation.
19. J Stiglitz, n 12, 37.
20. R Snell and J Upcher, n 1, 39.
21. J Stiglitz, n 12, 38.
22. N Seddon, 'Contracting Out and Administrative Law' (September 2000) 26 *Australian Institute of Administrative Law Forum*, 67-72, 70-71
23. J Stiglitz, n 12, 35.
24. See Video on FoI in India, Principles of public law class 5: Freedom of information (29 July 2003).
25. See the *United Nations Universal Declaration of Human Rights* 1948, Art 21(3) <<http://www.magnacartaplus.org/uno-docs/univ-right.htm#en1>> (29 July 2003), which provides that '[t]he will of the people shall be the basis of the authority of government'.
26. A Roberts, 'Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law' (2000) 60 (4) *Public Administration Review* 308-320, 311.
27. M Taggart, 'The Nature and Functions of the State' in P Cane and M Tushnet (eds), *The Oxford Handbook of Legal Studies*, Oxford University Press, Oxford 2003, 7.
28. R Snell, 'Rethinking Administrative Law: A Redundancy Package for Freedom of Information' in S Kneebone (ed), *Administrative Law and the Rule of Law: Still Part of the Same Package?* Australian Institute of Administrative Law, Canberra 1999, 99.
29. M Taggart, n 27, 13.
30. A Roberts, n 11, 8.
31. G Terrill, 'Individualism and freedom of information legislation' (2000) 87 *Freedom of Information Review* 30-2, 30.
32. Evans B, 'The Use by Journalists of the Australian Freedom of Information Regime' (2003) 103 *Freedom of Information Review* 8-16, 11.
33. R Snell, 'Administrative Compliance — Evaluating the Effectiveness of Freedom of Information' (2001) 93 *Freedom of Information Review* 26-32, 28.
34. J Waterford, 'Commentary: Protection of Information Rights' in J McMillan (ed), *Administrative Law under the Coalition Government*, Australian Institute of Administrative Law, Canberra 1997, 111.
35. R Snell, 'The Kiwi Paradox — A Comparison of Freedom of Information in Australia and New Zealand' (2000) *Federal Law Review* 575-616, 614.
36. *Freedom of Information Act 1982* (Cth)
37. R Snell, n 35, 577.
38. See also Briefing paper 3, which argues that shifting the focus to information would positively affect administrative decision-making.
39. See A Roberts, n 26, 317.
40. R Snell and J Upcher, n 1, 37.
41. S Tongue, 'Protection of Information Rights' in McMillan J (ed), *Administrative Law under the Coalition Government*, Australian Institute of Administrative Law, Canberra 1997, 109.
42. J Bronskill, 'Response to "Closing the Window: How Public Sector Restructuring Limits Access to Government Information"' (1999) *Government Information in Canada* No 17 <<http://www.usask.ca/library/gic/17/bronskill.html>> (25 July 2003).
43. M Geddes, 'Poverty, Excluded Communities and Local Democracy' in N Jewson and S McGregor (eds), *Contested Governance and New Spatial Divisions*, Routledge, London 1997, 209.
44. See 'Battling Corruption: PM throws down gauntlet' *The Nation* (Thailand), 22 August 2003.
45. G Terrill, n 31, 31.
46. R Snell, n 35, 579.

Briefing paper 1: An outline of the practical relationship between freedom of information and citizen participation in decision-making

As outlined in the essay, only well informed citizens are able to participate meaningfully in government decision-making processes. Because of this, governments have an incentive to distort or limit information.¹ This incentive dissuades governments from strengthening freedom of information (Fol) regimes, which, by militating against secrecy, increase the likelihood of citizens being well informed. In recognition of this, commentators must continue to press for atypical action on the part of governments. After all, it is unacceptable that information should be withheld when its only vice is that it enables citizens to discuss, review and participate in government decision-making processes.²

Like commentators, media outlets play a particularly important role in preventing governments from becoming self-styled information monopolists.³ This is because becoming informed implies a cost. Citizens have thresholds to the time and effort they are willing to invest in accessing government information.⁴ It is naive to expect that citizens will dedicate their spare time to tracking government information,⁵ even if Fol regimes are significantly strengthened. If truth be told, citizens dedicate their spare time to reading newspapers and watching television. Therefore, citizen participation relies heavily on the productivity of media outlets.⁶ And this is why Fol legislation is crucial. As Snell points out, access to a significant proportion of pre-decisional government documents will equip the media (and therefore citizens) with enough information to measure the adequacy of policy programs.⁷

Two observations can be made about the practical state of citizen participation in decision-making. The first relates to Terrill's criticism of the limited ad hoc involvement afforded citizens by Fol legislation.⁸ Terrill's criticism is unjustified because it assumes that only direct participation is meaningful. In fact, participation via media outlets is probably more meaningful than direct participation. This is because media outlets (and other citizen agents) possess the resources needed to ferret out and convert raw government information into intelligible information that can easily be used.⁹ The existence of such a vast public relations industry provides evidence of the legitimacy of media-derived participation, as does the constant seeking of positive spins by governments.

Briefing paper 2: Privileges, rights and the relationship between freedom of information and freedom of expression

As noted in the essay, freedom of expression (FOE) is not a purely negative right, but obliges governments to take positive steps to guarantee and promote free speech.¹ For some time, governments have recognised this obligation, and have acted accordingly. For example, governments enforce rules to prevent the exclusive ownership of broadcast and print media, and finance public broadcasting to provide an outlet for voices neglected by commercial media.² Roberts argues that government information monopolists should be treated in the same way as their would-be media counterparts; namely, by

The second observation relates to the danger facing citizen participation in decision-making. This danger stems from the view that Fol legislation is undesirable because it is only used by privileged information elites.¹⁰ Obviously, this view disregards the benefits for citizen participation when Fol legislation is used by information elites such as media outlets. If there is genuine concern that Fol is being misused by media outlets to manufacture sensational scoops, this is no cause to attack Fol legislation. Rather, media outlets should be targeted, and reforms introduced which reduce misuse. For example, information could be released to all media outlets instead of the original applicant, as happens occasionally in New Zealand.¹¹ Also, this would lessen the ability of governments to avoid criticism by releasing information to allied media outlets.¹² In light of this, it is vital that media outlets fortify their use of Fol legislation, and continue to set the news agenda for the advancement of citizen participation in decision-making.

References

1. J Stiglitz, 'Transparency in Government' in R Islam (ed), *The Right to Tell: The Role of Mass Media in Economic Development*, The World Bank, Washington DC 2002, 29.
2. *Commonwealth v John Fairfax & Sons Ltd* (1980) 147 CLR 39, 52 (Mason J).
3. H Wright, 'Sovereignty and the people — The New Constitutional Grundnorm?' (1998) *Federal Law Review* 165-194, 192.
4. J Stiglitz, n 1, 33.
5. R Snell, 'The Kiwi Paradox — A Comparison of Freedom of Information in Australia and New Zealand' (2000) *Federal Law Review* 575-616 at 600.
6. H Wright, n 3, 192.
7. R Snell, n 5, 600.
8. G Terrill, *Secrecy and Openness. Publicity and Propaganda: The Politics of Australian Federal Government Communication, c1960-1976* (dissertation submitted for the degree of Doctor of Philosophy at Queensland University of Technology, 1996), 206-7.
9. Snell, R 'Rethinking Administrative Law: A Redundancy Package for Freedom of Information' in S Kneebone (ed), *Administrative Law and the Rule of Law: Still Part of the Same Package?* Australian Institute of Administrative Law, Canberra 1999, 105.
10. R Snell, 'In Search of the Freedom of Information Constituency: Case 1 — The Media' (1998) 78 *Freedom of Information Review* 81-84, 81.
11. R Snell, n 5, 590.
12. See P Totaro, 'No Such Thing as a Free Set of Documents' (2002) 101 *Freedom of Information Review* 60, 60.

having their power curbed to better provide for free expression.³ In forwarding this argument, Roberts assumes that FOE is not achieved without freedom of information (Fol). This assumption is justified by Article 19 of the *United Nations Covenant on Civil and Political Rights* 1966, which provides that FOE 'includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers'.⁴

Article 29 depicts FOE far more realistically than definitions which purport to divorce it from Fol. This becomes particularly clear when FOE is taken out of its typically

theoretical setting, and applied practically. Take the private sector, whose proponents are required to disclose information under corporations legislation.⁵ The share market assesses the performance of firms by reference to information disclosed, and assessments are reflected in share prices. Shareholders dissatisfied with performance can exit by selling stock or express dissatisfaction by voting out management.⁶ In effect, the ability of shareholders to express dissatisfaction depends on information being disclosed, which (in turn) depends on corporations legislation. The same is true for government. Without FoI legislation, citizens lose the ability to express well-informed dissatisfaction with governments, and short of becoming ex-pats, possess no remedial mechanisms.

As one of the few devices which allow citizens to exercise FOE, FoI regimes should not be viewed as privileges or optional tools for good governance. On the contrary, their maintenance and strengthening should be viewed as an obligation on the part of governments, and a right held by citizens. Problematically, the treatment of FoI regimes as mere privileges has perpetuated secrecy.⁷ Just as this has denied citizens their rights, so too has it promoted poor government decision-making processes. This is attributable to what Stiglitz calls the problem of leaks:

To maintain secrecy, the circle of those involved in decision-making is often greatly circumscribed, and some of those who are able to provide valuable insights are cut out of the discussion.⁸

Obviously, this causes a vicious cycle whereby governments make mistakes, become defensive, and circumscribe the circle even more to prevent criticism.⁹ The

decision-making processes of the present Liberal and National (Coalition) government, which exclude even senior level bureaucrats,¹⁰ are in point. In fact, Coalition practices highlight that FoI must be treated as a right if government decision-making is to be strengthened. When FoI is so treated, interesting questions arise regarding the legitimacy of government agencies profiting from the sale of information. Surely, the withholding of information for profit (and for most other purposes) violates the rights of citizens, and is theft.

References

1. A Roberts, 'Structural pluralism and the right to information' in R Calland and A Tilley (eds), *The Right to Know, the Right to Live: Access to Information and Socio-economic Justice*, Open Democracy Advice Centre, Cape Town 2002, 15.
2. A Roberts, n 1, 15.
3. A Roberts, n 1, 16.
4. United Nations *International Covenant on Civil and Political Rights* 1966 <<http://www.magnacartaplus.org/uno-docs/covenant.htm>> (29 July 2003).
5. *Corporations Act 2001* (Cth).
6. M Taggart, 'The Nature and Functions of the State' in P Cane and M Tushnet (eds), *The Oxford Handbook of Legal Studies*, Oxford University Press, Oxford 2003, 11.
7. G Terrill, 'Individualism and freedom of information legislation' (2000) 87 *Freedom of Information Review* 30-32, 30.
8. J Stiglitz, 'Transparency in Government' in R Islam (ed), *The Right to Tell: The Role of Mass Media in Economic Development*, The World Bank, Washington DC 2002, 33.
9. J Stiglitz, n 8, 33-4.
10. R Creyke, 'Sunset for the Administrative Law Industry? Reflections on Developments under a Coalition Government' in J McMillan (ed), *Administrative Law under the Coalition Government*, Australian Institute of Administrative Law, Canberra 1997, 21.

Briefing paper 3: Concerning a duty to give reasons for decisions, and the switch to an information-based freedom of information regime

Australia's *Freedom of Information Act 1982* (Cth) applies only to documents.¹ This has given rise to several avoidance strategies. In some cases, government officials are careful about what they write down and what remains a 'mouth-to-ear secret';² in others, documents are manipulated to fit exemptions.³ The essay outlines some of the advantages that would stem from following New Zealand's lead and changing the emphasis to information.⁴ However, for want of space, it does not explore the advantages for administrative decision-making. This is unfortunate, as it is arguable that the switch (if made) could be used to create a quasi-duty to give reasons for administrative decisions.

A duty to give reasons would reduce hopeless legal challenges;⁵ increase citizen confidence in decision-making;⁶ and accord with citizens' expectations.⁷ Also, a duty would ensure reasons were properly articulated, which in all likelihood would result in fewer cases like *Dornan v Riordan*⁸ — concerning a 200-odd page decision with everything but reasons.⁹ These and other benefits¹⁰ propel a duty to give reasons to the top of Australia's administrative law wish-list. This is reinforced by flaws in some of the arguments against a duty. One such argument is that a duty would place undue burdens on decision-makers.¹¹ However, the duty to give reasons under European Union law has not caused any noticeable administrative burdens.¹² Also, the courts have

continually stressed that decision-makers are not required to dot every 'i' and cross every 't' when giving reasons.¹³ The Federal Court, for example, will not examine reasons with an 'unduly critical or technical eye'.¹⁴

The foregoing establishes that a duty to give reasons would improve decision-making in Australia. The question is whether a strong information-based freedom of information (FoI) regime could be used to sustain it. In *Osmond*,¹⁵ the High Court (HC) decided there was no general common law duty to give reasons. Recently, commentators have pressed the HC to update its position. Opinions vary about how the HC should do this, although fairness,¹⁶ legislative reform and social change¹⁷ are well-represented in the literature.

The fairness approach is undesirable because it is too vague¹⁸ and values-oriented to be a proper legal concept. The legislative reform approach is reasonable, but it is unclear whether it would be accepted: one of the HC's concerns in *Osmond* was that a duty should come from the legislature rather than the courts. This concern suggests that FoI legislation could sustain a duty if it was strengthened to capture information. This conclusion is supported by the fact that all reasons amount to information, whether they are rational or not; and the fact that citizens already use FoI legislation to access reasons.¹⁹ Moreover, it was noted in *Osmond*, that legislation should be construed to impose a duty in the absence of

contrary intention.²⁰ Beneficially, an FoI-derived duty would be non-confrontational, and, as such, would not force compliance. That it would instead encourage genuine attitude change, suggests it is time to switch to information.

References

1. R Snell, 'The Kiwi Paradox — A Comparison of Freedom of Information in Australia and New Zealand' (2000) *Federal Law Review* 575-616, 586.
2. J Stiglitz, 'Transparency in Government' in R Islam (ed), *The Right to Tell: The Role of Mass Media in Economic Development*, The World Bank, Washington DC 2002, 40.
3. R Snell, 'Cabinet Exemptions in Australia — Saying Goodbye to the Midas Touch?' (2002) 102 *Freedom of Information Review* 65-7, 66.
4. See also R Snell, n 1, 584-7.
5. R Snell, 'Reasons for Decisions: the Tasmanian FoI Act' (1992) 40 *Freedom of Information Review* 42-4, 43.
6. D J Mullan, *Administrative Law*, Irwin Law, Toronto 2001, 310.
7. B Zipster, 'Revisiting Osmond: In Search of a Duty to Give Reasons' (1998) *Public Law Review* 3-5, 5.
8. (1990) 24 FCR 564.
9. A Goldberg, 'When are Reasons for Decisions Considered Inadequate?' (March 2000) 24 *Australian Institute of Administrative Law Forum* 1-8, 3-4.
10. See *Osmond v Public Service Board* [1984] 3 NSWLR 447 per Kirby P at 463.
11. P Robertshaw, 'Providing Reasons for Administrative Decisions' (1998) 27(1) *Anglo-American Law Review* 29-65, 34.
12. P Robertshaw, n 11, 60.
13. M Aronson and B Dyer, *Judicial Review of Administrative Action*, 2nd ed, LBC Information Services, Melbourne 2000, 447.
14. H Katzen, 'Inadequacy of Reasons as a Ground of Appeal' (1993) 1 *Australian Journal of Administrative Law* 33-44, 37.
15. *Public Service Board of New South Wales v Osmond* (1986) 159 CLR 656.
16. See P Robertshaw, n 11, 45-9.
17. P Robertshaw, n 11, 45.
18. P Robertshaw, n 11, 45.
19. See G Terrill, 'Individualism and Freedom of Information Legislation' (2000) 87 *Freedom of Information Review* 30-2, 30.
20. J Deane, n 15, 676.

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