



Making Freedom of Information Requests

A Guide for Academic Researchers

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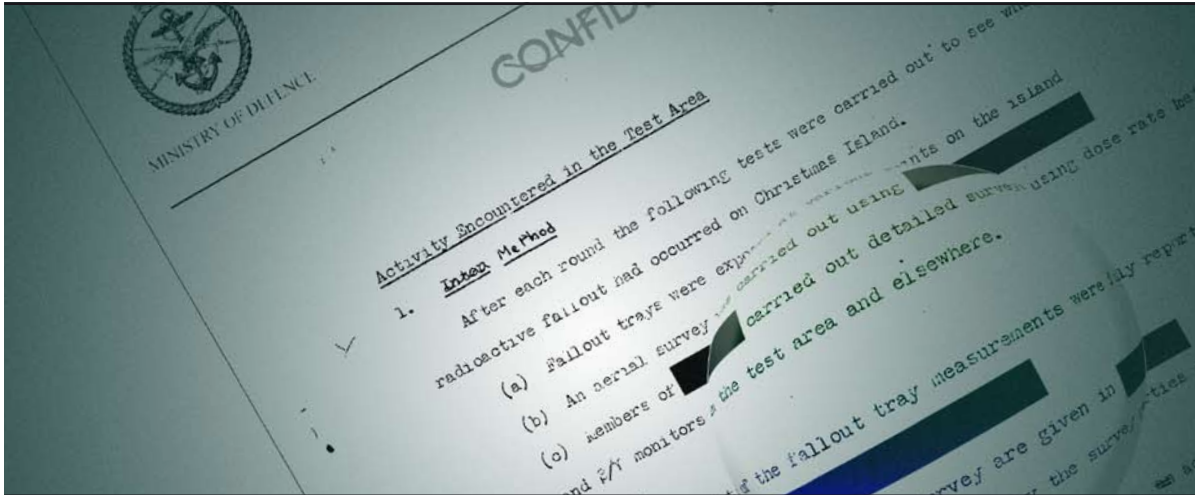
About this Guide

The Constitution Unit at University College London was awarded funding from the Leverhulme Trust to investigate the use of Freedom of Information requests by academic researchers. We have focused on the UK FOI Act 2000, but researchers should make themselves aware of the other information access statutes and methods available. By surveying and interviewing academics, and those who answer their FOI requests, we have put together this Guide to encourage and help other researchers make the best use of this research method. Many thanks to the academics and officials who shared their experiences with us.

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Why use Freedom of Information (FOI) for research?



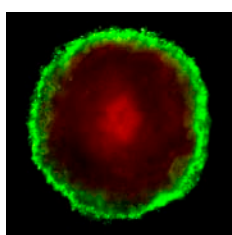
FOI has been used by academics to access a variety of material that has been useful for different aspects of research.

- It has provided evidence for a core argument
- It has given background information and context
- It has supplied statistics or quantitative data
- It has suggested a pathway of where to go next
- It has helped to dispel myths and misunderstandings

But FOI is not the answer to every researcher's prayer: the experiences of academics using FOI have been mixed. Below we identify the successes, pitfalls, tips and tricks we hope will help future academics make the best use of FOI.

Examples of the information academics have accessed through FOI

FOI isn't just for historians – academics in a variety of disciplines have analysed and critiqued current practice using FOI requests:



Making the best use of images for medical education:

The CHERRI PROJECT (Common Healthcare Educational Recordings Reusability Infrastructure – Practice, Interoperability and Ethics) asked for guidelines, protocols

and consent forms that staff members used when acquiring clinical images and recordings for academic purposes. They used this information to report on guiding principles, current practices and difficulties, to inform future policy.¹



MPs' use of new tools for scrutiny:

The Constitution Unit at UCL used FOI to find out how parliamentarians were making use of FOI themselves, by asking for details of parliamentarians' requests to government departments. They found a small group of

dedicated MPs and peers using the Act to critique government, help their constituents or generate publicity. But most parliamentarians have remained faithful to their traditional parliamentary tools, suggesting innovation in methods of 'being an MP' is limited.²



Why do dolphins beach themselves?

The UK Cetacean Strandings Investigation Programme used FOI to access information from the Ministry of Defence regarding a naval exercise. Researchers were able to rule out mid-frequency

antisubmarine sonar deployment as a contributing factor to incident of a Cetacean mass stranding event (MSE) in Cornwall in 2008.³



Changing media landscape:

The impact on the work of freelance journalists by the move of the BBC from White City in London to MediaCityUK Salford was assessed using FOI requests to the BBC to access information about their freelance employees.⁴



Better understanding of the funding of social care:

Local government increasingly uses 'Resource Allocation Systems' – essentially an algorithm to distribute money for adult social care packages of support. Asking for details about the algorithm, FOI

requests could reveal the assumptions that were built into the RAS, enabling assessment of whether the system was fair and transparent.⁵



How does 'performance management' affect policing?

Anecdotal evidence suggested that an unintended consequence of performance management of police was 'gaming behaviour'. FOI requests helped provide some empirical evidence, by allowing

access to previously unpublished documents and statistics, 'thus addressing methodological limitations.'⁶

Access to Information: avenues and tools

The Freedom of Information Act is only one of a number of statutes and regulations that govern the right to access information held by public bodies in the UK.⁷

Legislation

- **The Freedom of Information Act 2000** 'applies to UK government departments – including those operating in Scotland – and public authorities in England, Wales and Northern Ireland.' It also covers NHS trusts, police, universities, the Houses of the UK Parliament, the Welsh and Northern Ireland Assemblies and local councils. For a full list of institutions covered, see Schedule 1 of the Act.⁸
 - **The Freedom of Information (Scotland) Act 2002** provides similar rights to information held by the Scottish Executive, Scottish public authorities and the Scottish Parliament.
 - **The Environmental Information Regulations 2004 and Environmental Information Regulations (Scotland) 2004 ('EIRs')** implement European Directive 2003/4/EC – which provides a similar right to access information that relates to the environment.
 - **The Data Protection Act** gives individuals the right to access material about themselves from any organisation. It also protects individuals having their personal information accessed by others. Consequently, there are provisions in the FOI Act which stop access to personal information.
 - **Local Government Act 1960, 1972 and 2000**
 - **Local Government (Access to Information) Act 1985**
 - **Access to Personal Files Act 1987 and Data Protection Acts 1984 and 1998**
 - **Environment and Safety Information Act 1988, Environmental Information Regulations 1992, Audit commission regulations.**
- ## Other sources
- **Websites and Digital Resources:**
 - Government and public bodies all have websites with increasing amounts of information, including data about the department as well as information on consultations and research. The UK Parliament website also contains a range of information from Library Research Papers to investigations in particular subjects by Select Committees.
 - Data.gov.uk is a repository for datasets, available for free, and allowed for re-use. There are currently 5,400 datasets available, from all central government departments and a number of other public sector bodies and local authorities. See <http://data.gov.uk/>.
 - The FOI Act itself has recently been amended by the Protection of Freedoms Act which clarifies that requests for 'information' includes the right to request datasets; and further, the dataset must be in a reusable format, and if an updated version exists, this must be made publicly available too.
 - Information held in The National Archives may also be accessed via FOI requests. See Appendix C for the FOI process at TNA.

The Basics: how to approach making an FOI request

Before you make a request

- Check the organisation's own website. Under the FOI Act, requests for information already easily accessible (i.e. online) can be refused.
- Check FOI covers the body you want to request to (see above or schedule 1 of the Act itself).
- Making contact informally first with organisations can sometimes help (see FOI Man's Top Ten Tips in Appendix A).

Using the Freedom of Information Act

Requests have to be made in writing. Most organisations will provide an email address to make requests to on their website; others will ask you to fill out an online form. You don't have to cite the Freedom of Information Act, but it might help in making sure your request is processed correctly.

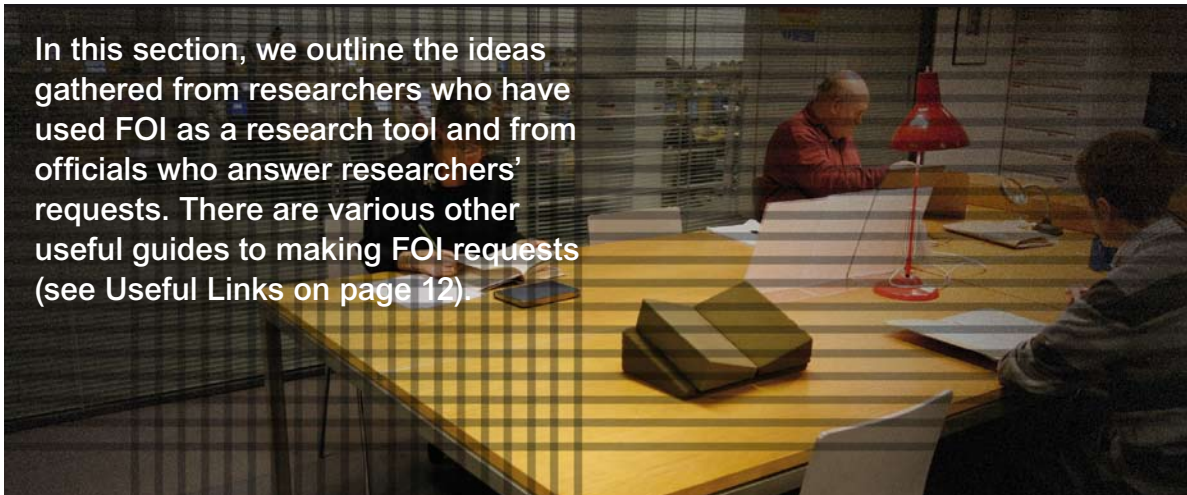
- If you make a request for information that relates to the **environment**, it should be processed under the EIRs. Organisations will cite the legislation by which they are processing your request when they reply to you.
- **Private companies** are, almost always, exempt from the UK FOI Act, even if they provide public services.

Want to see what an FOI request looks like, or how organisations typically respond? Check out www.WhatDoTheyKnow.com – an online portal where requests and the request process is publically available for all to read. WDTK estimate 14 per cent of requests made to UK central government departments are made through their site.¹

- 'Information' isn't just written material: it's photographs and recordings too. Anything 'held' by an authority, regardless of format, can be requested.
- You must **provide a way for the organisation to contact you** – either an email or postal address is acceptable as an address for correspondence- and provide your real name. If you don't, the authority 'is entitled' to treat the request as invalid.⁹
- **Requests must be acknowledged and then answered by the authority within 20 working days.** The National Archives, however, because of having to consult with departments before they release, are allowed an extra 10 working days.
- If you are unhappy with how your request has been dealt with, you can ask for an internal review, where someone else in the organisation will look at your request and the process it went through.
- If you are still unhappy after internal review, you can appeal to the Information Commissioner's Office (ICO). It is the UK's 'independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.'¹⁰
- Requests can be refused on cost grounds – if it will cost more than £450 in time to locate, retrieve or extract the material you've asked for, the organisation can refuse the request. Further, they can aggregate a 'linked series' of requests from one person (or a connected group of people) when making this calculation. This figure is £600 for government departments, parliament or the armed forces. Organisations cost a worker's time at £25 per hour.¹¹

Making a successful FOI request for research

In this section, we outline the ideas gathered from researchers who have used FOI as a research tool and from officials who answer researchers' requests. There are various other useful guides to making FOI requests (see Useful Links on page 12).



Checklist

- ✓ Plan your requests, time them effectively and be efficient about paperwork
- ✓ Build good relationships with FOI officers
- ✓ Take the time to write a clear request
- ✓ Refine it as necessary

"I think academics could use FOI a lot more, and more effectively... they need to stop making requests at the last minute, think about exemptions, and think about planning the time to actually look at the material. Some think too narrowly: they find one file, harvest that, and fail to see the links that might lead you to an even richer seam of information... Expand your horizons, think about other search terms, or ways information is recorded or the style it might have been recorded in."

(The National Archives)

Timing, planning and collating the information

Planning your FOI requests – when to make them, and dealing with what you get back – is pivotal for any research using FOI. If you think official sources of information will be useful for your research, FOI can only help you if you think about it early.

Most researchers report making numerous, or a series of FOI requests. Researchers often want large volumes of material and so may need to make many FOI requests (also see Refining your request, below).

One tip is to start a table of the request number (organisations typically assign a number for correspondence), the date when you made the request, when it's due back, what information it relates to, and the name of the FOI officer you are corresponding with. That will enable you to manage your requests and track their progress.

Requests may not be processed in 20 days as you may run into exemptions, have to appeal, or the information you receive may require lots of processing before you can make use of it. Not all of these outcomes can be avoided, but their effects can be mitigated.

Make your FOI requests as early as possible:

- 'Think about FOI requests early. Plan the requests inside your research timetable.'¹²
- 'Expect delays – make requests as soon as possible'.¹³

- Don't be surprised if formatting becomes part of the research process – you may not always get something back in the format you asked. 'Everything in an Excel spreadsheet would be amazing! But sometimes I get pdfs – they drive me mad.'¹⁴
- 'Be realistic, you're not going to get every single response back within 20 working days!'¹⁵

If you're making more than one request to one organisation, think about spacing them out

- This is especially helpful for organisations who are answering your requests, while also giving you time between each request to process the information you receive.

"The largest volume of FOI's I have made was a tranche in late 2010, when I wrote to every single local authority in England and asked them a series of questions... because either the data wasn't being collected centrally, or because those bodies that held it were refusing to disclose it."

(FOI requester)

Tips for making the same FOI request to multiple organisations

- 'Round robins' are useful for comparisons, or where data isn't held centrally.
- Factor in how much material you might get back – your question might be targeted but you may still get a lot of information. Multiply that by the number of organisations you made the request to, and you may have a lot of work on your hands: 'I usually set aside a whole week just to sift through all the data I've got back, go through it all at once.'¹⁶
- Before making a round robin, send only two or three requests first. Check those are answered in the way you hoped, then you can refine if necessary and send out the rest. 'There's nothing worse than sending 50 requests and every one of them is denied and you have to start again.'¹⁷
- One requester recommends: 'I would allow three months for a round robin to many institutions.'¹⁸

FOI may be free for the requester (up to a certain point) but they're not free for organisations. Be responsible with your requests.

"At the beginning of my PhD, I asked less specific questions, sending FOIs on a whim... But you need to realise that FOI can be a real drain, so I want to be responsible and use everything that I get back. I ration them now, making sure each one counts, especially the round robins."

(FOI requester)

See also FOI Man's guide to responsible and effective requests in Appendix A.

Building good relationships

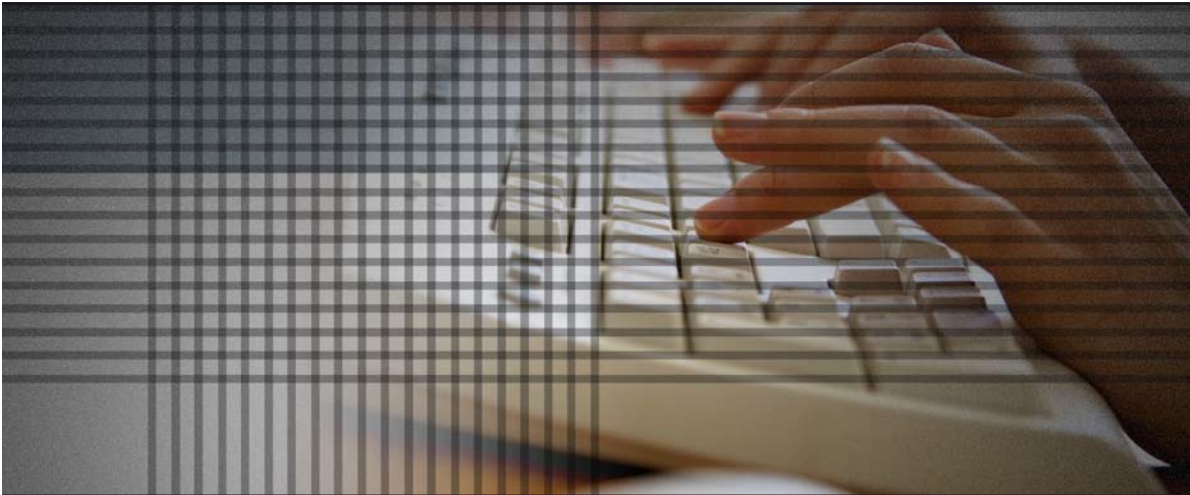
Officers are more inclined to be helpful if they know who you are, and you are cordial. When asked about the 'best' FOI requests to answer, comments from FOI officers in a recent survey included: 'Helping with information for projects/dissertations/theses just feels good!'; and 'Student requests often involve a lot of clarification, but they are grateful when they get the information and almost always send a note of thanks.'¹⁹

"Be respectful, thank officers for their work... There is so much difference in the quality of [officers'] responses, you want to acknowledge the good ones."

(FOI requester)

Tell the FOI officer why you want the information and what project you're working on: if they understand your purpose, they might be able to suggest things of interest which you haven't asked for. Officials have a duty to help to refine queries and offer guidance as the FOI Act includes a 'right to advice and assistance'. Section 16 says:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."²⁰



Writing a clear request

Do

- **Be as specific as possible** as requests may be refused if too broad²¹
- **Have patience**, organisation, diligence²²
- **Describe what kind of information is wanted** e.g. minutes, correspondence²³, and if there's a format you'd prefer, ask if it's possible
- **Ask for help** from the FOI officer in framing/ wording the request²⁴
- If you're requesting old information (for instance, records held at the National Archives), **think about old and new parlance**; your search terms might be modern words that simply won't be in the old records.
- **Ask for the file structure** or list of files available to get a sense of what is available.

Don't

- **Assume a 'record' or 'information on x' is one page.** One 'file' in the National Archives for instance, could be five boxes. Ask the FOI officer for the estimated volume (the National Archives catalogue doesn't list the physical size of what you're requesting, so best to check with them too).
- **Assume the file will be in the format** you want, or assume it's the FOI officer's job to turn it into the format you want.
- **Be afraid to enter into a conversation with the FOI officer.** However, it's also important to be as clear as you can about exactly what information you want. They can't read your mind, or do your research for you.
- **Rely on FOI as your only information source**
- **Give up if your first request doesn't work the way you wanted.** Researchers who use FOI report it can take time to get it right.
- **Let an authority ignore your request.** They have a legal obligation to reply to you, so chase them if you are only getting silence.

There are also situations where requests have been taken out of the formal FOI process, which sometimes benefits both the requester and FOI officer:

“A researcher wanted 34 files. She was coming to London at a certain time, nine months in the future. Instead of making all 34 FOI requests 20 days before she came to London, she made them early... I processed them all over the nine month timeframe, instead of 20 days each, making her life and mine a lot easier, and guaranteeing that when she turned up at [The National Archives in] Kew at the prescribed time, everything was ready for her.”

Refining your request

Nothing brings FOI more quickly into disrepute with administrators than general trawls which pay no heed to the resources required to respond to them. Only recently, research by the Ministry of Justice into the handling of FOI requests in government departments notes the onerous task of redaction made worse by ‘PhD students asking for lots of records at one time.’²⁵

Data from the Home Office about researchers’ FOI requests finds them more likely to be refused on the basis of cost limit than other requesters.²⁶

“You can bet you haven’t refined your request enough, or not made yourself as clear as you think you have.”

(FOI requester)

Requesters’ experiences highlight the need to be flexible – if you aren’t willing to enter into a dialogue about how to make your request more likely to be successful, you will disadvantage yourself.

- Be prepared to stagger your requests, or split them into smaller requests
- Learn how to make very specific requests, a good skill to master: ‘Unspecific requests tend to get deflected into areas I am not concerned about or I am told the cost to obtain the information is too great.’²⁷ Remember, your request is subject to a cost limit (section 12 of the Act).

There are also benefits for researchers to narrow down their research material. For instance, ‘It’s often a physical impossibility to see everything TNA holds on a subject!’²⁸ If you can be specific about what you want, FOI officers can help you make FOI requests for the particular information you really need, enabling you to ‘hit gold’ more easily, saving you from sieving through large volumes of information.

Staff at the National Archives report that they sometimes have to go back to requesters to ask them some basic questions to clarify and refine their request. Asking yourself these questions will help you refine your request in the first place:

- What is your research deadline? Do you even have 20 working days before your report/essay/dissertation is due? Will you have time to process what you receive from us?
- What particular kinds of material do you want? Statistical data? Decision-making material like minutes or discussion papers?
- Priority order: can you stagger your requests across time? Is there some information you would prefer to see first, and then make more requests?
- Will your material contain personal data? This will involve exemptions or redactions, which take us longer to process and will delay you accessing the information. Can you refine to avoid personal data?

Why not use FOI?

Not every FOI request will result in useful information for academics.



- the information may be released too late to be useful
- or produced in a difficult format
- it may be redacted heavily
- or not ever be released.

Academics need to bear this in mind. The Research Information Network convened a workshop for academic FOI users in 2008, and concluded:

“...it was recognised that FOI should not necessarily be the default approach to obtaining information. It may be more helpful to envisage it as a means of complementing information already obtained from elsewhere, to plug gaps through the use of focused and well thought-out enquiries...”

“[FOI] has become an important resource, but requires some skill to take advantage of it – and a degree of persistence where requests for information are initially declined. At the same time, expectations also have to be managed, and there is a need for pragmatism about what information can and can’t be realistically obtained.”²⁹

Has FOI been effective for your research? Researchers who say no:

“The public authority have consistently delayed their response and/or refused to reply. I have had to make several appeals to a higher level within that agency and one appeal to the Information Commissioner. Generally I am able to get some useful information which can be incorporated into my research and publications.”

“The UK FOI Act [has been] fairly effective, I have received quite a few documents, albeit after a long wait. On the other hand, one can of course only guess what is left out.”

“It’s been a nightmare... the process has now taken almost five months of back and forth negotiations.”

Common Problems

Delay: Requesters we spoke to and surveyed almost all encountered delay when using the FOI Act,

- 'Because of the time taken to process the kinds of complex requests likely to be of most use to researchers, those with experience of using the US Freedom of Information Act have tended to caution against its use if one is working to tight deadlines.'³⁰
- 'Some of my requests are still outstanding over a year later because I think they changed their contact details. I also reported a couple of organisations to the Information Commissioner and that caused more delay and I still didn't really obtain much information. A lot of the time the organisation will only tell you what documents they have, or give you title details of documents held in files but then will not allow access to these documents! That is very frustrating...'³¹
- 'The time and funding constraints imposed on research mean that long delays in establishing whether information can or cannot be released under FOI very directly affects the scope, accuracy and validity of research programmes.'³²
- However, one researcher says, 'If I'm flexible, I can handle it [delays]. Also, if I know the FOI officer it helps. I ask them to work with me, they are great at offering advice and helping me to clarify.'³³

Variability: In 2006, researchers were already noticing the differences in responses to FOI requests from different public organisations. Don't count on your requests being processed or answered similarly across organisations.

- 'It was evident that government departments had responded differently to FOI. The Foreign Office and the Welsh Office were singled out for praise, but a number of people expressed dissatisfaction at unreasonable delays and obscurantism by both the Home Office and the Ministry of Defence. There was often a gap between rhetoric and reality.'³⁴

Exemptions: The UK FOI Act has exemptions which allow for information to be withheld from requesters. The EIRs too have exemptions (though these are considered to be more in the requesters' favour than the FOI ones). Public organisations can refuse to release information on obvious grounds like protecting national security, but there are several exemptions that can trip researchers up more than others. Being aware of these will help you tailor a request that is more likely to get a successful result. For an extensive list of exemptions and how an organisation can use them, see the ICO's Guide to Freedom of Information.³⁵

- Cost limit – Section 12 of the FOI Act; Section 12(4)(b) of the EIRs. Researchers typically require large amounts of material for research, but the FOI Act and the EIRs allow requests to be refused on the basis of cost. Requests can be costly in ways you may not initially realise: 'Asking for Correspondence is usually the trickiest – not just because of [personal data], but because of 'it's too hard for us to find it', i.e. references in correspondence to something in particular. Plus you need to be careful narrowing it down – 'have you received correspondence on this topic' needs to be refined. Whose correspondence do you mean? During what time period?'³⁶
- Personal information – Section 40. The Data Protection Act exempts personal information from being disclosed via FOI requests. Try to frame requests to avoid asking for information that could identify living individuals.

The rule of thumb regarding statistics of personal information has been overruled: In 2006 the Office for National Statistics issued new guidance on the confidentiality of datasets: 'This guidance replaces previous practices that have been adopted within the health field, such as the rule of thumb to suppress all values in tables less than five.'³⁷ A requester reports some organisations still use the less than five rule of thumb, so 'if I'm asking for detailed statistical data about people, I mention this new 2006 guidance now so they know.'³⁸

Obstruction and misunderstandings

We asked researchers about problems they encountered with FOI: adjectives like 'onerous' and even 'Kafkaesque' featured in their replies:

- **Cost Limit:** One researcher requested data on six kinds of medications. The request was refused on the basis of cost limit. They then refined the request (asking for data on one medication only), and got back six pages of not very useful information. So the researcher gave up, thinking it wasn't worth the effort pursuing the matter.
- **Shifting goal posts:** 'I have been engaged in a ridiculous struggle with [one organisation] since March 2010 to get some fairly straightforward statistics.... First they said they didn't hold the data and [another organisation] did – so I went to them but they said they wouldn't give it to me because of 'data protection', so I referred it to the ICO. The ICO spent ages looking into it, and found the [first organisation] did hold the data after all. So I put in my request again, trying to hedge all eventualities, and they refused it again on the grounds they were going to publish it in the future (having never seen fit to do so before). I asked whether they were going to publish data going back to 2009 in the 2010-11 report... and the review is still ongoing...' ³⁹

- **Not covered by the Act** 'The first obstacle is if the organisation isn't covered by the FOI Act... . And then there are international bodies that have no FOI type provisions. Rather extraordinarily, given the Council of Europe Convention on Access to Official Documents, the Council of Europe itself seems to have no mechanism for requesting information or policy of producing it! I've been writing to them for the last year asking for a piece of information, I've even tried to enlist the support of named officials there who've offered to help me, and there has not even been a reply...' ⁴⁰

Not all FOI 'failures' are useless however:

- 'The information was so unhelpful or took so long that I omitted any mention of it from my doctoral thesis, however, I mentioned the FOI requests during my viva and I was advised to put this information into the thesis. I included it as a discussion of my methodology and why the requests were largely unsuccessful. Even the lack of success was useful in highlighting the difficulty of obtaining information for my research on my subject.' ⁴¹
-

Conclusion

Freedom of information is a useful tool but a number of points need to be remembered. Three golden rules of FOI:

- 1 Use it well and ask the right questions.** Before you use the Act make sure it is the best way to access information that is not available more easily elsewhere. If you do make requests, ensure that the questions are as specific as possible.
- 2 Make contact with the officials.** This can help you to focus the question and also helps the official understand who you are and what you want. Having a contact can also avoid misunderstandings.
- 3 Be prepared for it to take time.** Although FOI has a 20 day turn-around many users' experience is that it can take longer. Be patient and build into your planning the possibility it may take longer.

What FOI did for my research

"FOI has certainly shaped my research imagination... I didn't design my project to be based on FOI but I thought of different ways to validate my data and it could do that."⁴²

'FOI allows for "path reconstruction" in which a chronological paper trail of UK policy is put together through successive FOI requests and large amounts of documents.'⁴³

"Getting access to more data (from the UK) was about making my research more robust and testing my theories further."⁴⁴

"Sometimes, people have asked to be interviewed 'off the record' and the FOI serves to confirm tip-offs."⁴⁵

"The information is first-hand and collected from within the institution. Also, perhaps more importantly, it is the ONLY way I can get hold of the information (unless I had a substantial research grant)."⁴⁶

Useful links

www.whatdotheyknow.com

Site where you can view and make FOI requests to organisations. All correspondence including the information received by requesters is viewable online.

www.cfoi.org.uk

Site of Campaign for Freedom of Information. Has guides to making FOI requests, runs courses for requesters, and a blog.

www.ico.gov.uk

Site of the UK Information Commissioner's Office. Useful pages include:

FAQs for the public:

www.ico.gov.uk/Global/faqs/freedom_of_information_act_for_the_public.aspx

How can I access official information?: www.ico.gov.uk/for_the_public/official_information/how_access.aspx

www.foiman.com/foiguide1

Site of blogger FOI Man, run by an FOI officer. Features useful tips and discussion about FOI policy.

www.nationalarchives.gov.uk/foi/requests.htm

Explains the process of FOI at the National Archives

Appendix A: FOI Man's Ten Top Tips on Making Responsible and Effective FOI Requests



1 **Count to ten before clicking 'Send'**

Or better still, sleep on it. Consider if you really do want the information, and if you do, whether you have asked the right questions.

2 **Do your research**

Is the information already available on the authority's website, perhaps in their Publication Scheme? Is there information there that could be used to make your question(s) more relevant or incisive? Has the question been asked before? There may be a 'Disclosure Log' on their website, or failing that, you could check WhatDoTheyKnow.com.

3 **Take care when making 'round robin' requests**

Remember that the more organisations you send your request to, the more public money will be spent on answering your request. And use your research to weed out authorities that the request isn't relevant to.

4 **Try an informal approach first if possible**

You may already have a professional relationship with somebody within the public authority. Alternatively, the authority may publish direct contact details for the department that deals with the issue you're concerned about. Try contacting them first to sound them out. At the very least they may be able to advise you as to what to ask for, and occasionally, they may even be able to give you more information than you would be entitled to under FOI.

5 **Be specific**

If you do decide to make a FOI request, cite the Act in your request (you don't have to but it can help to avoid confusion). Make your request as clear as possible. Don't be ambiguous. You can't blame a public authority for misinterpreting your request if you've not specified clearly what you want.

6 **Don't be greedy**

It's tempting to throw everything including the kitchen sink into your request. Don't. Keep your request short and to the point. You can always make other requests later if you want more information.

7 **Be polite**

Try not to assume that the person reading your request is determined to avoid answering your question(s). It's likely that members of your own family, perhaps some of your friends, are public servants. Would you feel content to send them your request?

8 **Be patient**

Your request isn't the only request that will be received by the authority. The people who have to answer your request will also have a number of other responsibilities to meet. Try to be patient and accept that you may not get an answer as quickly as you would like. In the vast majority of cases you will get a response before the statutory deadline of 20 working days (and note that phrase, 'working days' – in effect, organisations have a month to respond, give or take a couple of days).

9 Read the response carefully, and if necessary, use the Appeal process

A lot of effort goes into answering FOI requests, even (often especially) when your request is refused. Make sure you've understood the response.

Accept that in some cases, the authority just does not hold the information you've asked for. You may think they should, but if they haven't, you can't use FOI to force them to create it. Often the authority will explain why they don't hold it – try to read their explanation with an open mind.

If your request has been refused using one of the exemptions (FOI) or exceptions (EIR), the authority should have provided you with an explanation of which ones apply and how. Where a public interest test has been applied, they should have explained the arguments for and against disclosure.

Try to take a step back and consider whether their arguments make sense. For instance, although you might like to have access to information about employees, you probably understand that some of that information is protected by the Data Protection Act. Whilst you may not be happy with the response, it may be that the Act has been applied correctly.

If the arguments don't make sense or you disagree with them, and you still want the information, use the authority's Internal Review process. The authority should have sent you details of this process with their response. All you really need to do though is to write to them, asking for an internal review. It will help your case if you set out the reasons why you think the exemptions/exceptions don't apply. Where a public interest test has been applied, you can put forward your own arguments for disclosure if you don't think these have been considered.

Again, be patient whilst waiting for a response, and when you do receive it, read it carefully. If you are still dissatisfied with it, consider contacting the Information Commissioner and asking him to review the response. Bear in mind that this may take some time – though turnaround times at the Commissioner's Office have improved considerably in the last year.

10 Use the information you receive responsibly

If you want to use the information you've been sent, do so responsibly. One example of this is asking for permission if you want to reproduce a document that's been sent to you (or at the very least acknowledging the source). Even though you've been sent the information, the copyright will normally still belong to the authority concerned or whoever gave it to them.

If you're reporting on the information disclosed, try to provide context. Often the response will include an explanation of why, for instance, so much was spent on the particular activity you've asked about, or how spending compares with other similar organisations. Even if it doesn't, it will often be a straightforward task to find contextual data or background. Whilst it may not make for as spectacular a story, excluding these facts could distort the impression given to your audience. This impression may well be convenient in the short term, but it could damage your reputation with the organisations that provide information to you, and ultimately with your audience if they learn that they are being misled.

Appendix B: Examples of FOI requests

Example 1

Dear Foreign and Commonwealth Office (FCO),

For purposes of policy research, I am planning to make a request for FCO documents under the UK Freedom of Information Act. My request for documents will concern the UK position on the EU transparency policy during the period before Regulation 1049/2001/EC. I would like to request documents kept by the UK administration relating to the following subjects:

- Decision making on Council Decision 93/731/EC (1993)
- Decision making on transparency and openness during the Intergovernmental Conference (IGC) of 1996
- Decision making on Regulation 1049/2001/EC

With regard to the above, my interest is firstly in memoranda for the Working Party on Information or the COREPER, submitted by the UK permanent representation in Brussels or the FCO, as well as summaries of such meetings drawn up by UK representatives.

Secondly, I am interested in internal communications between the UK permanent representation and the FCO.

In order to come to an expedient FOI request, I would like to ask for your advice on how this request can be best made; whether it should be partitioned in several requests, and if so, how many.

Yours sincerely...⁴⁷

Example 2

Dear Department for Education,

I would like a list of all educational institutions offering A-Levels within the UK. Ideally the information would be contained within an excel spreadsheet. The information I am looking for is (ideally, the column headings):

- Name of Institution
- Specialist status (If Any)
- Location/Town
- Pupil Numbers
- Number of Pupils Achieving ABB results or Above in 2011 Results

It may be that you do not have information in exactly this form, or in a single spreadsheet. Please feel free to phone me to say what information you do have, and in what form, because that may suffice.

Many Thanks...⁴⁸

Appendix C: Information from the National Archives

The National Archives (TNA) is the UK government's official archive, with over 11 million records covering 1000 years of history. It selects about five per cent of government records each year for permanent preservation. Over 98% of these records are open to the public, and for those not currently classed as open documents FOI requests can be made. You can read about the National Archives' different types of records and access to them here: www.nationalarchives.gov.uk/about/.

"It amazes us the variety of what we hold, and what people are researching..."

(The National Archives)

How FOI works with records from the National Archives

- TNA report all levels of researchers make FOI requests for the records they hold – professors, undergraduates, PhD candidates, even students still at school. They work in all kinds of disciplines: Law, geography, journalism, social science, history, politics, medical science and economics.
- After 30 years, official records are routinely transferred to TNA (though this 30 year rule is changing to 20 years, see below). When a record is being prepared for transfer to TNA, the Department must assess its status (in accordance with the FOI Act) to determine if it should be Open or Closed.
- Most records are 'Open' – accessible in several ways. Members of the public holding a 'readers ticket' can pre-order documents (up to 20 at a time) and visit the National Archives to view them.
 - Some records are 'Closed' – under the exemptions of the FOI Act. This is where the FOI request process at TNA must be used to access them.
 - Closed records contain sensitive information, for instance, personal data about a living and identifiable individual, or information relating to the UK's relationships with other countries. (Exemptions at section 40 and section 27 of the FOI Act).
- Closed records currently held at TNA stand at approximately 149,000 out of 11 million (about 1.3 per cent).

The TNA FOI process – www.nationalarchives.gov.uk/foi/requests.htm

When an FOI request is made for a closed record, TNA reviews the whole file (which takes time) making recommendations on what is appropriate to release, or withhold.

- TNA consults with the transferring department as required by the FOI Act – Section 66.
- The Act has made specific provisions for The National Archives and the handling of historical records – see Part 6 of the Act and sections 62 – 67. This means that the public interest test is carried out by the Department, not TNA; but absolute exemptions are recommended and determined by TNA. 'It's collaborative,' say TNA staff.
- The usual FOI Act provisions – the emphasis on openness, applying exemptions, carrying out the 'public interest test' – are carried out on these records like any other FOI request, except for this collaborative consultation process. Again the Act makes allowances for this under Section 10, providing TNA with an additional 10 working days to respond.⁴⁹

Recent changes to the 30 year rule

- There should soon be changes to the 30 year rule. Under the Public Records Act 1958, public records are required to be transferred to the National Archives 30 years after their creation. Section 45 of the Constitutional Reform and Governance Act 2010 changes this time to 20 years.
- Some information, however, will remain under the 30 year rule. There are four exemptions within the FOI Act which if deemed to relate to the information in question, will keep the release time at 30 years. These are:
 - section 36(2)(a)(ii) if deemed to prejudice the work of the Executive Committee of the Northern Ireland Assembly
 - section 36(2)(c) if deemed to prejudice the effective conduct of public affairs in Northern Ireland
 - section 28 if deemed to prejudice relations within the UK
 - section 43 if deemed to prejudice commercial interests.

Endnotes

- 1 Rachel Ellaway, Helen Cameron, Michael Ross, Graeme Laurie, Margaret Maxwell and Rebekah Pratt, Mar 2006. 'Clinical Recordings for Academic Non-clinical Settings, CHERRI: Common Healthcare Educational Recordings Reusability Infrastructure, www.jisc.ac.uk/media/documents/programmes/digitalrepositories/clinicalrecordingreport.pdf
- 2 Ben Worthy and Robert Hazell 2010. The Sword: How MPs and peers have used Freedom of Information in the UK. Political Studies Association Annual Conference, Edinburgh. 31 Mar.
- 3 P.D. Jepson and R. Deaville (ZSL), 2009, Investigation of the common dolphin mass stranding event in Cornwall, 9th June 2008, www.zsl.org/science/news/dolphin-strandings-report,598,NS.html
- 4 Anonymous survey response.
- 5 Anonymous survey response
- 6 Written evidence from Rodger Patrick, Submission to House of Commons Justice Select Committee, Post-legislative Scrutiny of the Freedom of Information Act. Feb 2012, www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/writev/foi/foi.pdf
- 7 Campaign for Freedom of Information's Guide to FOI, www.cfoi.org.uk/pdf/foi_guide.pdf.
- 8 See www.legislation.gov.uk/ukpga/2000/36/schedule/1
- 9 For guidance on pseudonyms and valid addresses, see Information Commissioner's Office, "Valid request – name and address for correspondence" (specialist guidance), www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/name_of_applicant_fop083_v1.pdf
- 10 See www.ico.gov.uk
- 11 For guidance on cost limits and other valid reasons to refuse a request, see Information Commissioner's Office, "When can we refuse a request for information?", Guide to Freedom of Information, www.ico.gov.uk/for_organisations/freedom_of_information/guide/refusing_a_request.aspx
- 12 Interview with National Archives staff
- 13 Michael Kandiah. "The Freedom of Information Act as a tool for researchers." Research Information Network Regional workshops on Freedom of Information and HE researchers, University College London, 1 Apr 2010
- 14 Interview
- 15 Interview
- 16 Interview
- 17 Interview
- 18 Interview
- 19 Daniel Swallow and Gabrielle Bourke. "The Freedom of Information Act and Higher Education: The experience of FOI officers in the UK." The Constitution Unit, Jun 2012, www.ucl.ac.uk/constitution-unit/research/foi/foi-universities/he-foi-officers-survey-report.pdf
- 20 See www.legislation.gov.uk/ukpga/2000/36/section/16
- 21 Michael Kandiah. "The Freedom of Information Act as a tool for researchers." Research Information Network Regional workshops on Freedom of Information and HE researchers, University College London, 1 Apr 2010
- 22 Tommy Kane. Presentation to Research Information Network Regional workshops on Freedom of Information and HE researchers, Strathclyde University, Glasgow, 12 Apr 2010
- 23 Michael Kandiah. "The Freedom of Information Act as a tool for researchers." Research Information Network Regional workshops on Freedom of Information and HE researchers, University College London, 1 Apr 2010
- 24 Michael Kandiah. "The Freedom of Information Act as a tool for researchers." Research Information Network Regional workshops on Freedom of Information and HE researchers, University College London, 1 Apr 2010
- 25 Ministry of Justice. "Memorandum to the Justice Select Committee Post-Legislative Assessment of the Freedom of Information Act 2000." Cm 8236, Dec 2011, www.justice.gov.uk/downloads/publications/policy/moj/post-legislative-assessment-of-the-foi-act.pdf

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- 26** Analysis of Home Office FOI data
- 27** Anonymous academic survey data
- 28** Interview with National Archives staff
- 29** Research Information Network. "Summary report from Researchers and freedom of information – a workshop." London, 9 Sep 2008, www.rin.ac.uk/system/files/attachments/FOI-workshop-summary-report.pdf
- 30** Raymond Lee. "The UK Freedom of Information Act and Social Research." *International Journal of Social Research Methodology* 8, no. 1 (2005): 1-18.
- 31** Interview
- 32** Rosaleen Hughes, Alban Webb, and Stephen Twigge. "Scholarship & the Freedom of Information Act: Year One." Report of British Academy Specialist Workshop, The British Academy, London, 11 Feb 2006, www.britac.ac.uk/news/news.cfm/newsid/223.
- 33** Interview
- 34** Rosaleen Hughes, Alban Webb, and Stephen Twigge. "Scholarship & the Freedom of Information Act: Year One." Report of British Academy Specialist Workshop, The British Academy, London, 11 Feb 2006, www.britac.ac.uk/news/news.cfm/newsid/223.
- 35** Information Commissioner's Office, "When can we refuse a request for information?", Guide to Freedom of Information, www.ico.gov.uk/for_organisations/freedom_of_information/guide/refusing_a_request.aspx
- 36** Interview
- 37** Office for National Statistics. "Review of the Dissemination of Health Statistics: Confidentiality Guidance." London, 2006, www.ons.gov.uk/ons/guide-method/best-practice/disclosure-control-of-health-statistics/confidentiality-guidance.pdf
- 38** Interview
- 39** Interview
- 40** Anonymous academic survey data
- 41** Interview
- 42** Interview
- 43** Anonymous academic survey data
- 44** Interview
- 45** Interview
- 46** Anonymous academic survey data
- 47** Example of a request submitted by survey respondent
- 48** Example of a request from WhatDoTheyKnow.com
- 49** See the Freedom of Information (Time for Compliance with Request) Regulations 2004, www.opsi.gov.uk/si/si2004/20043364.htm
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Notes

