

**FREEDOM OF INFORMATION
CONSULTATION ON DRAFT LEGISLATION**

Presented to Parliament by the
Secretary of State for the Home Department
by Command of Her Majesty, May 1999

Cm 4355

PART I:

Introduction, Summary and Consultation Document

Introduction

1. This document invites consultation on the Government's proposals for a Freedom of Information Bill set out in Part II.
2. Freedom of Information is an essential component of the Government's programme to modernise British politics. This programme of constitutional reform aims to involve people more closely in the decisions which affect their lives. Giving people greater access to information is essential to that aim. The effect of Freedom of Information legislation will be that, for the first time, everyone will have the right of access to information held by bodies across the public sector. This will radically transform the relationship between Government and citizens.
3. The Government published a White Paper "Your Right to Know" in December 1997. There was a consultation exercise based on that document. Publishing a draft Bill for public consultation and pre-legislative scrutiny is the next major step in delivering the Government's promise.

Action taken to promote openness

4. Legislation is an essential step towards greater openness in the public sector. But legislation is not sufficient in itself: there needs to be a change of culture within the public sector and the Government is determined to bring about this change.
5. Indeed this Government is already delivering many of the benefits of Freedom of Information now. Examples include:
 - i. the Department of Trade and Industry published the economic analysis behind the policies set out in the White Paper "Our Competitive Future – Building the Knowledge Driven Economy";
 - ii. the Government response to consultation on the Green Paper "A Fair Deal for Consumers" contained analysis of the policy decisions;
 - iii. the White Paper "Conclusions of the Review of Energy Sources for Power Generation" contained facts and analysis behind a policy decision on consents for gas fired power stations and related issues, including summaries of four consultancy studies commissioned by the Government as part of the review;

- iv. the National Environment Research Council places a summary of key decisions taken by the Council, including background arguments, on its website within two working days of a Council meeting;
- v. the Radiocommunications Agency has published its internal guidance on procedures for licensing and licence revocation;
- vi. statistical data underpinning the Regional Competitiveness Indicators is published twice a year;
- vii. the Low Pay Commissioner has made available copies of the written evidence received during its consultation on the national minimum wage;
- viii. the Foreign and Commonwealth Office offers a real-time information service on its website. Speeches, statements, press releases and media interviews are posted on-line, often at the moment of delivery. There is also an extensive, searchable archive dating back to the last election;
- ix. the Ministry of Defence has published information on UK holdings of fissile material and has clarified the scale of the UK's operational nuclear stockpile, numbers of weapons deployed on Trident submarines and the cost of nuclear programmes (all previously highly classified);
- x. the Ministry of Defence has published information on the UK involvement in operations in Kosovo and Iraq;
- xi. the Home Office has published four volumes of immigration casework instructions to staff;
- xii. reports of the inspector of Prisons on individual establishments are published within six weeks of receipt by the Home Secretary;
- xiii. papers relating to the work of the Advisory Group on Openness in the Public Sector are placed on the Home Office website;
- xiv. the Insolvency Service established a Public Services officer in each of its 33 locations to deal with public inquiries. Information was previously only available by post, or from the Headquarters in Birmingham.

6. The Bill, if enacted will give the public the right to this kind of information if it is not already published. No longer will information be provided only at the discretion of a public authority.

7. Under the provisions of the Bill there will be a requirement on:

- i. police forces to give out information about the conduct of inquiries (provided it does not prejudice law enforcement);
 - ii. schools to explain how they apply their admission criteria;
 - iii. health authorities to provide details of how they allocate resources between different treatments;
 - iv. the Prison Service to provide information on the performance of different regimes;
 - v. hospitals and general practitioners to explain how they prioritise their waiting lists;
 - vi. National Health Service Trusts and health authorities to provide information on their administrative procedures governing private finance initiatives.
8. The public will be entitled to be told about the procedures for recruitment and appointments to (for example):
 - i. the Armed Forces;
 - ii. the Police;
 - iii. the Judiciary;
 - iv. the Civil Service;
 - v. the BBC Board of Governors.
9. There will be many instances of administrative decision making where clear reasons will have to be given including decisions taken by:
 - i. the Health and Safety Executive;
 - ii. Customs and Excise;
 - iii. the Parole Board;
 - iv. the Patent Office;
 - v. licensing authorities;
 - vi. the Department of Social Security, including the Child Support Agency.
10. The Bill will also repeal many existing statutory prohibitions on disclosure. Candidates for repeal include:
 - i. sections 25, 34 and 39 of the Radioactive Substances Act 1993;
 - ii. section 74 of the Airports Act 1986;
 - iii. section 145 of the Railways Act 1993;

- iv. section 12 of the Rivers (Prevention of Pollution) Act 1961;
- v. section 4 of the Civil Defence Act 1948;
- vi. section 154 of the Factories Act 1961;
- vii. section 59 of the Offices, Shops and Railways Premises Act 1963

The review continues.

Timetable for consultation

11. Comments are sought by 20 July 1999. All responses will be made available to the public unless a specific request for confidentiality is received. Responses should be sent to:

Stephen Winter
Freedom of Information Unit
Room 906
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

Fax: 0171 273 2684
Email: consultation.foi.ho@gnet.gov.uk

12. The Select Committee on Public Administration will be carrying out pre-legislative scrutiny of the draft Bill in parallel with the public consultation. It would assist the committee if responses could be copied to:

Mrs Pamela Fisher
Select Committee on Public Administration
Committee Office
House of Commons
LONDON SW1A 0AA
Fax: 0171 219 6606

13. The Bill will also be subject to scrutiny by the House of Lords Delegated Powers and Deregulation Committee.

The Draft Freedom of Information Bill

a. Summary and Background

14. The draft Freedom of Information Bill is a radical measure containing clear and robust access rights for those requesting information and a strong enforcement regime. There are matters, such as national security or personal privacy, where information has to be

protected. Government itself needs some protection for its internal deliberations. The draft Bill strikes a balance between extending people's access to official information and preserving confidentiality where disclosure would be against the public interest. But overall the scales are weighed decisively in favour of openness. The main features of the draft Bill are:

- a general right of access to information held by public authorities in the course of carrying out their public functions, subject to certain conditions and exemptions;
- a requirement placed on public authorities, in the light of the public interest, to consider the exercise of any discretion they may have to disclose information, even when that information may otherwise be exempt under the Bill's proposals;
- a duty imposed on public authorities to adopt a scheme for the publication of information;
- a new office of Information Commissioner, and a new Information Tribunal, with wide powers to enforce the rights created.

15. The draft Bill implements those proposals in the White Paper where primary legislation is the appropriate vehicle for doing so. Other aspects of the White Paper will be implemented through secondary legislation, codes of practice or administrative procedures.

16. Publication of the draft Bill on Freedom of Information for public consultation and pre-legislative scrutiny is a further major step towards fulfilling the Government's commitment to legislate. The proposals in the Bill follow the general principles set out in the White Paper. However, the Bill's provisions depart from the White Paper in some respects; in some areas providing a more open environment than that envisaged in "Your Right to Know", in others going slightly less far, where, after careful consideration, the original proposals were felt to be detrimental to the effective conduct of government, or would have adversely affected the public interest.

17. The deadline for comments of 20 July is necessary in order that the Government can take account of views expressed during the consultation, and of the report of the Select Committee on Public Administration, before introducing legislation into Parliament.

18. The explanatory notes which accompany the draft Bill in Part II of this document are intended to assist in understanding the purpose and effect of the proposed legislation and provide a fairly detailed guide to the Bill.

b. Schemes for publication

19. The White Paper stated that a Freedom of Information Act should be a catalyst for changes in the way that public authorities approach openness and that it should impose duties on public authorities to make information available as a matter of course. The draft Bill delivers this promise in clause 6. A duty is placed on every public authority to adopt

and maintain a scheme which relates to the publication of information and to review it from time to time. The scheme applied by the authority has to be approved by the Commissioner. These schemes will be much more than a list of what is already published. Authorities will be expected to consider the public interest in making information accessible and in the publication of reasons for their decision making. Information which falls into this category is likely to be included in the publication scheme for that authority.

c. Right to information

20. The White Paper stated that there should be a general right, exercisable by any individual, company or other body to records or information of any date held by any public authority. Clause 8 of the Bill provides clear and robust access rights. Subject to certain conditions and exemptions, an applicant has a right to be told whether information is held by the authority in question and, if so, to have it communicated to him.

21. An applicant may, by virtue of the provisions in clause 11, specify the form in which the communication is to be made and the authority must comply with any such request if it is reasonably practicable to do so. This provision is a significant advance on the existing Code of Practice on Access to Government Information, which does not provide for access to actual documents.

22. The White Paper also proposed that the public interest in Freedom of Information should be taken into account when public authorities consider whether to disclose information. This is reflected in clause 14. Where a public authority is not obliged to disclose information under the duty imposed by clause 8, it is obliged to consider disclosing that information in the exercise of any discretion it possesses. In considering the exercise of its discretion the authority must have regard to all the circumstances of the case, including the public interest in allowing public access to information held by authorities. Put simply, authorities will have to consider whether the public interest outweighs any prejudice caused in any of the circumstances set out in the exemption provisions of Part II of the Bill.

23. Taken together, the rights set out in clauses 8 and 14 provide a significant advance on those in the present Code of Practice on Access to Government Information. For the first time there is a general statutory right of access to information held by almost all public authorities. Where an exemption applies, consideration must still be given to the public interest in the disclosure of information. The present Code of Practice does not provide for statutory rights. The public interest in disclosure can be taken into account under both the Bill and the Code, but the Code applies only to those public authorities (central government and some non departmental public bodies) falling within the jurisdiction of the Parliamentary Commissioner for Administration, whilst the Bill's coverage is much wider (see para 39).

d. Exemptions

24. The White Paper set out a number of exclusions, exemptions and gateway provisions which limited the proposed right of access to information. The Bill describes all

limitations on the right of access as exemptions. At first sight, therefore, the Bill appears to contain more exemptions than either the White Paper or the Code of Practice. However, as described below, in practice the Bill is an advance on the Code of Practice and, in broad terms, delivers the policy set out in the White Paper.

25. The White Paper sets out two kinds of exclusions: institutional exclusions and functional exclusions. With regard to institutions, the White Paper stated the Security and Intelligence agencies would not be covered by the Bill. The judicial functions of courts and tribunals would also be excluded, as would operational functions of the police and police authorities. Parliament would not be covered.

26. We have considered the institutional exclusions very carefully. It is necessary to exclude the Security and Intelligence agencies from the scope of the Bill in order to preserve their ability to carry out their duties effectively in the interests of the nation. Because its work is closely analogous to that of the agencies, the National Criminal Intelligence Service is also to be exempted similarly. The Courts and judicial bodies including tribunals will not themselves be covered by the Bill. Information about the administrative functions of the courts will be available from other public bodies; information which is closely bound up with the exercise of judicial functions is the subject of a specific exemption (clause 27).

27. We have also considered carefully the inclusion of the police and police authorities and believe that they should be covered by the Bill in respect of all their activities, with exemptions available to protect sensitive information.

28. We are discussing with Parliamentary authorities whether it is possible to bring Parliament and organisations directly accountable to Parliament within the scope of the Bill, without breaching Parliamentary Privilege. Discussions are continuing on this point and if it is practical to bring Parliament within the scope of the Bill, we shall do so.

29. Functional exclusions envisaged in the White Paper were: information relating to investigation and prosecution by the police, prosecutors and other bodies carrying out law enforcement work, information relating to the commencement and conduct of civil proceedings and information covered by legal professional privilege. A class exemption has therefore been provided for information held for the purposes of criminal or regulatory investigations and prosecutions (clause 25) and for information covered by legal professional privilege (clause 33). A harm test based exemption covers other law enforcement provisions. However the Bill provides no specific exemption for other civil litigation other than the protection for information covered by legal professional privilege.

30. In relation to general exemptions, the White Paper proposed that a test of substantial harm should be used, except for policy advice and the decision taking process in Government, where a simple harm test would be appropriate.

31. There are two exemptions set out in the White Paper where, on reflection, we reached the view that a harm test is inappropriate: personal information and information supplied in confidence.

32. The disclosure of personal information is governed by international legal obligations. We are obliged to comply with the European Community Data Protection Directive and the European Convention on Human Rights (and – when it is in force – the Human Rights Act). The Convention and the Directive do not provide for the application of a harm test, and we cannot, unilaterally, provide for one. In relation to subject access (access to personal information about oneself), we have provided that such access should take place through the provisions of the Data Protection Act 1998, but we have extended the range of information available, thus promoting greater openness. We have provided that, where personal information is sought about third parties, if the Data Protection Act permits disclosure, there will be a right to it under the Freedom of Information Act.

33. We also think that we would be unjustified in seeking to overturn by the Bill duties of confidence which arise at common law. Those doing business with public authorities have the right to ensure that their confidences are respected. In many cases, public authorities need access to information held by others, which they will only be prepared to release if given an undertaking of confidentiality. The Government therefore considers that where information is supplied to a public authority in circumstances where a duty of confidence arises, it should not be required to disclose the information if to do so would constitute a breach of confidence actionable by the supplier of the information. This policy is in line with that under the existing Code of Practice.

34. There is a need to ensure that public authorities do not enter into duties of confidence unnecessarily, particularly in regard to contractual terms. The Code of Practice which the Secretary of State will issue under the provisions of clause 38 of the Bill will provide advice as to good practice in this area.

35. We have had to re-examine those other exemptions where the White Paper envisaged a substantial harm test. After further careful consideration our view is that a single omnibus substantial harm test cannot work properly for the range of separate exemptions proposed. What is “substantial” in relation to law enforcement, for example, may not be in relation to international relations. We consider that therefore the harm concerned must be capable of being interpreted clearly in line with the exemption in question. Where national security is an issue, for example, the test proposed is whether the exemption is required for the purpose of safeguarding national security. Where the health and safety of an individual is at issue, the test proposed is whether disclosure “would, or would be likely to, endanger the physical or mental health, or safety of an individual”. Elsewhere the proposed test is whether disclosure “would, or would be likely to prejudice matters set out in the exemption in question”.

36. The test proposed will result in a more open regime than under the existing Code of Practice in each of the areas in which it applies. The Code looks to the possibility of harm being caused: the test is risk, or reasonable expectation of prejudice, or whether disclosure could prejudice (for example) law enforcement. Under the provisions in the Bill the test is one of probability: would, or would be likely to prejudice. Thus the Bill will, of itself, lead to greater openness. The Information Commissioner will be given the power to substitute his

judgement for that of the public authority (as is currently the situation with regard to “the Ombudsman” and the Code). In this way the Commissioner will ensure that public authorities will be unsuccessful if they try to claim that prejudice will be caused in circumstances where the prejudice is trivial or frivolous. The prejudice must be real, actual or “of substance”.

37. In one area, policy advice and the decision taking process in central Government, the White Paper proposed a simple harm test, reflecting the need for public authorities to have time and space to formulate and develop new policies. There was no expectation that Freedom of Information legislation would lead to the disclosure of Cabinet papers and minutes, law officers’ advice, inter-Ministerial correspondence on developing policy, or information about the operation of a Minister’s private office. The Bill puts it beyond doubt by creating a class exemption for this kind of information in clause 28(1) in place of the simple harm test. The latter would have created potential uncertainty and costs without extending access.

38. For the same reason other areas of policy development are covered in the Bill by an exemption based on the reasonable opinion of a Minister (or other qualified person) that disclosure would, or would be likely to prejudice the policy making or decision taking processes. The Commissioner will have full powers to require disclosure if he considers that the qualified person has unreasonably applied this exemption.

e. Institutional coverage

39. The Bill proposes a very wide coverage of public authorities. The order making power in clause 2 will enable all non-departmental public bodies to be covered – and it is the Government’s intention that an order will be made in respect of all of these organisations, except where specified on the face of the Bill. Private organisations carrying out public functions and organisations performing public functions under contract are also covered by the order making power, but subject to prior consultation. Without prejudice to the outcome of any consultation with any organisation falling within the scope of the order making power it is the Government’s intention that as wide a range of functions of a broadly public nature will be covered by the scope of the Bill as possible.

40. The proposals in the Bill therefore go slightly wider than proposed in the White Paper due to the full coverage of the police and police authorities and the potential coverage of Parliament and authorities accountable to it. The Code, as noted above, applies only to bodies falling within the jurisdiction of the Parliamentary Commissioner for Administration.

f. Enforcement

41. The White Paper stated that an independent review and appeals system was essential to a Freedom of Information Act. The system should be readily available, freely accessible and quick to use. There would be an internal review stage, followed by an appeal to an Information Commissioner with wide powers to order disclosure.

42. The Bill does not specify an internal review procedure, as this is essentially an administrative matter. The proposed Code of Practice under clause 38 will set out good practice, including the provision of a complaints procedure within each public authority. The Commissioner will not have to take on a case which has not been considered by any complaints procedure set up by an authority.

43. The Commissioner will have very extensive powers to adjudicate on complaints – including the power to order an authority to disclose information under the provisions of clause 8. The Commissioner will have the power to require a public authority to provide him with sufficient information to reach a view in the case and to require an authority to take other steps to comply with the legislation (for example, to ensure that it takes decisions on disclosure within the timescale set out). Failure to comply with an order of the Commissioner can be reported to the court and dealt with as a contempt of Court.

44. The Commissioner will also have the power to issue practice recommendations in respect of compliance with the Code of Practice and publication schemes. These are not enforceable as such, as the Codes of Practice do not create enforceable rights. But failure to comply with a recommendation may be the subject of an adverse comment in the Commissioner's report to Parliament, which can then decide whether to question further the relevant authority.

45. We have reached the view that it would be sensible to absorb the role of Data Protection Commissioner into that of the Information Commissioner. This is a departure from the White Paper. A significant number of requests for information are likely to be for a mixture of personal and more general information and authorities will have to make arrangements for co-ordinating such requests. It would be illogical for this not also to be reflected in the enforcement arrangements. The Government believes that a combined Commissioner for information and data protection is the most efficient and effective arrangement, and the one which will deliver a consistent application of the necessary balance between personal privacy and freedom of information.

46. There will be rights of appeal against decisions of and regulatory action by the Commissioner to the proposed Tribunal. There will be a further appeal, on a point of law, to the courts. As with all public authorities, actions of the Commissioner and the Tribunal are subject to judicial review.

47. This proposal delivers an accessible and relatively fast enforcement procedure. There will be no further charge to the applicant for access to the Commissioner. Unlike access to the Parliamentary Commissioner for Administration under the Code, access to the Information Commissioner will be direct, rather than through a Member of Parliament.

Scotland, Northern Ireland and Wales

48. The Bill will not apply to those public authorities whose functions are exercisable wholly or mainly in relation to devolved matters, for Scotland, or transferred matters, for Northern Ireland (subject to paragraph 50). It will be for the devolved administrations to

determine FOI policy for these public authorities. It will be clear from the coverage provisions whether a body is subject to the UK Act or not.

49. However, where information is passed by the Government in confidence to the devolved administrations, then this information will be held in confidence and will be dealt with according to the provisions of the UK FOI Act. The Code of Practice will set out the administrative arrangements for the handling of such requests.

50. The Secretary of State for Northern Ireland will invite views and consult the political parties there to see if there is general agreement for the UK legislation to apply at least initially to all Northern Ireland public authorities.

51. Information held by the National Assembly for Wales, and by bodies accountable to it, will be covered by this Bill.

Work in Progress

52. The policy in relation to a few specialised areas is still in progress. It will be necessary to add provisions on these matters to the Bill before it is introduced into Parliament.

a. Application of the Bill to Parliament

53. As set out above, further discussions are underway with the Parliamentary authorities about the inclusion of Parliament itself and bodies accountable to it within the scope of the Bill.

b. Environmental Information Regulations

54. It is intended to revoke the current environmental information regime as set out in the Environmental Information Regulations 1998, and replace it with the FOI access right. The general access right will be modified in respect of environmental information where necessary in order to give effect to the provisions of EC Directive 90/3013/EC and the Aarhus Convention (the United Nations Economic Commission for Europe (UNECE) Convention on access to information, public participation in decision making and access to justice in environmental matters, which the UK signed in June 1998). This will involve a detailed analysis of the two regimes – it is intended that the revised regime will be set out in the Bill when it is introduced into Parliament.

c. Public Records

55. Further provisions relating to the functions of the Lord Chancellor and the Public Record Office are under discussion.

Subordinate legislation

56. The Bill contains powers to make Orders and Regulations. A brief description of some of the more significant powers and the policy intentions behind them follows.

a. Power to specify further public authorities (clause 2)

57. This power will be used to bring Non Departmental Public Bodies within the scope of the legislation and, after consultation, other bodies carrying out functions of a broadly public nature.

b. Fees (clause 9)

58. Public authorities will have the discretion to charge applicants a fee in accordance with regulations made by the Secretary of State. It is Government policy that the regulations will not permit an authority to charge more than 10% of the marginal cost of locating and disclosing the information, plus any reasonable cost for disbursements (copying, postage etc). For most applications for information the charge will be at, or possibly below, the £10 charge for subject access under the Data Protection Act. However, where an authority uses its discretion, under clause 14, to disclose information, it would also have discretion under that clause to charge a fee. It is Government policy that this should be set at a level reasonable in the circumstances and not subject to the 10% ceiling that would apply to fees under clause 9.

c. Limit on expenditure (clause 12)

59. A further regulation making power will limit the cost to an authority of dealing with a request. The ceiling will be set in the regulations, but the Government is minded to set it at £500; that figure being the marginal cost of locating and disclosing the information.

60. The need to set a ceiling is to provide an upper limit on the amount of public resources which must, as of right, be devoted to Freedom of Information. An authority will be required, under the provisions of clause 14, to consider the exercise of any discretion to disclose if the cost of doing so exceeds this limit, if it is in the public interest to do so.

d. Power to create additional exemptions (clause 36)

61. This power is necessary to enable the public interest to be taken into account in circumstances where, though not exempt under the legislation, it would nonetheless not be in the public interest for the information in question to be disclosed. Overseas legislation commonly provides for a Ministerial veto in such circumstances, but we have ruled out such an option. Instead the Secretary of State must first consult the Commissioner and then seek the approval of both Houses of Parliament, by an affirmative resolution. These are strong safeguards against abuse of this power.

e. Power to amend or repeal existing bars to disclosure (clause 65)

62. This power allows the Secretary of State to amend or repeal any current bars to disclosure in other legislation to facilitate greater openness. A review of these provisions is under way and some repeals will be included in the legislation, where they have been identified before introduction of the Bill into Parliament.

Conclusion

63. The Government's proposals for a Freedom of Information Bill, set out in this consultation paper, represent a significant step forward in changing the relationship between the Government and the people. Enactment of these proposals would give the people of this country one of the freest access regimes in the world.

64. Though different legal systems and traditions make direct comparisons difficult, we have set out at Table 1 below a general comparison of the proposals for the UK legislation and legislation in other countries, and at Table 2, a comparison of exemptions and harm tests. Table 3 compares the proposed legislation with the White Paper and the current Code of Practice on Access to Government Information.

65. Comments are welcome on any of the issues raised in this consultation document, or on the draft Bill itself.

66. Comments are required by 20 July 1999.

GENERAL COMPARISON OF THE PROPOSALS FOR UK LEGISLATION AND ELSEWHERE TABLE 1

Country	Enactment	Access rights and coverage	Response time limits	Appeal process
New Zealand	December 1982	Official information: “any information recorded or stored by means of any tape recorder, computer or other device; and any material subsequently derived from information so recorded or stored”. The Act gives very wide access rights to official information from Central Government, public bodies and corporations. Fully retrospective	20 days	An Ombudsman Ministers collectively have the right to veto the recommendation of the Ombudsman to disclose information but this is subject to judicial review.
Australia	March 1982	The Act gives right of access to official documents. For the purposes of the Act ‘document’ includes maps, plans, photographs, audio-tapes, video and film, and records stored electronically. The Act covers Central Government and many agencies. Public corporations are also covered though their commercial interests are exempt. The Act was not, initially retrospective in effect	30 days	An Ombudsman and an Administrative Appeals Tribunal. The Tribunal is more commonly used as they can make a binding order for disclosure. The federal court is the final avenue of appeal. Ministers may issue conclusive certificates to ensure that documents are exempt.
Canada	June 1982	The Act gives right of access to records. The definition of ‘record’ includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof”. A right of access is also provided to “any record that does not exist but can be produced from a machine readable record... using computer hardware and software and technical expertise normally used by the Government Institution” The Act covers central Government and most agencies.	30 days	An Information Commissioner, whose recommendations are not binding, further appeal is to the federal court.
USA	1966	Right of access to records. A definition of ‘record’ is not given although in practice it is assumed that this covers information in any form. The Act covers all agencies in the executive branch of the federal government. State, local and city Governments are excluded. Authorities have 20 working days to respond to requests for information. A number of states have their own FOI legislation with some states providing wider access	20 days	The courts, following internal review. No Ombudsman.

Country	Enactment	Access rights and coverage	Response time limits	Appeal process
		than others. Access rights are variable across the country.		

Ireland	1998	Right of access to official information contained in records: a 'record' includes any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound, images or both), any form in which data (within the meaning of the Data Protection Act) are held, any other form (including machine readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing. The Act covers central government and its agencies, local government and public bodies and organisations financed with public monies or loans or in which the government owns a majority interest. The Act is not retrospective in effect, except for personal records	28 days	An information Commissioner, whose decisions are binding. Ministers may issue certificates in specific areas, these are outside the Information Commissioner's remit.
The Netherlands	1991	Right of access to Information contained in documents: document is defined as "a written document or other material containing data which is deposited with an administrative authority. The Act covers central and local government, public bodies and statutory organisations. The Act is retrospective	15 days. (Up to a further 15 days with advance written notification, supplying reasons)	The courts
France	1978	Access to administrative documents: defined as any files, reports, studies, records, minutes, statistics, directives, instructions, circulars, memoranda and Ministerial replies involving an interpretation of substantive law or a description of administrative procedures, opinions, except for opinions given by the Council of State and the administrative courts, forecasts and decisions in writing, in the form of sound or visual recordings, and non-personal computerised information. The act is retrospective.		Applications for information are made through a commission for access to administrative documents. Appeals are dealt with through local courts or the State Council (the principal court in the country
The UK Bill		Access to 'information', defined as 'information recorded in any form'. Covers public authorities, including central an local government, the NHS, schools and colleges, NDPBs and potentially private organisations carrying out public functions. Access fully retrospective.	Promptly, but within 40 days	An Information Commissioner who may issue a decision notice requiring compliance. Further appeal to an Information Tribunal.

TABLE 2**COMPARISON OF EXEMPTIONS AND HARM TESTS IN FOI**

EXEMPTIONS IN UK BILL	AUSTRALIA	NEW ZEALAND	IRELAND	THE NETHERLANDS	USA	CANADA
1.Information accessible to the public by other means. Class exemption	Yes Documents open to public access	Not specified	Yes Class exemption	Not specified	Not specified	Yes If published or available for purchase
2. Information intended for future publication. Class exemption	Yes Defer until publication due	Not specified	Yes Class exemption If publication due within 3 months	Not specified	Not specified	Yes If publication is due within 3 months
3. Information supplied by, or relating to work of, bodies dealing with security matters Class exemption	Not specified	Not specified	Yes 'Adversely affect'	Not specified	Not specified	Not specified
4. National security. If necessary to safeguard national security	Yes Class exemption	Yes 'Would be likely to prejudice'	Yes 'Adverse effect'	Yes Class exemption	Yes, by executive order	Yes 'reasonably be expected to be injurious'
5. Defence. 'would, or would be likely to prejudice'	Yes 'Reasonably expected to cause damage'	Yes 'Would be likely to prejudice'	Yes 'Adversely affect'	Yes 'Damage security of state'	Yes, by executive order	Yes 'reasonably be expected to be injurious'
6. International	Yes	Yes	Yes	Yes	Yes,	Yes

relations. 'would, or would be likely to prejudice'	'Reasonably expected to cause damage'	'Would be likely to Prejudice'	'Adversely affect'	'importance of disclosure does not outweigh [the interest]'	by executive order	'reasonably be expected to be injurious'
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EXEMPTIONS IN UK BILL	AUSTRALIA	NEW ZEALAND	IRELAND	THE NETHERLANDS	USA	CANADA
7. The economy. 'would, or would be likely to prejudice'	Yes 'Substantial adverse effect'	Yes 'Would be likely to damage seriously'	Yes 'Avoid prejudice to substantial economic interest'	Yes 'importance of disclosure does not outweigh [the interest]'	Not specified	Yes 'Reasonably be expected to prejudice competitive position/ reasonably expected to be materially injurious'
8. Investigation and proceedings conducted by public authorities. Class exemption	Yes 'Prejudice conduct of investigation or fair trial'	Yes 'Would be likely to prejudice'	Yes 'significant adverse effect'	Yes 'importance of disclosure does not outweigh [the interest]'	Yes Class exemption	Yes 'Reasonably expected to be injurious'
9. Law enforcement. 'Would or would be likely to prejudice'	Yes 'Prejudice fair trial'	Yes 'Would be likely to prejudice'	Yes 'Reasonably be expected to prejudice'	Yes 'importance of disclosure does not outweigh [the interest]'	Yes Class exemption	Yes Class exemption
10. Judicial functions. Class exemption	Yes Class exemption	Courts not covered	Yes Class exemption	Yes Class exemption	Yes Class exemption	Yes Hearings 'in camera'
11. Decision making and policy formulation. Class exemption	Yes Class exemption 'Factual Information available'	Yes 'Maintains constitutional conventions'	Yes Class exemption	Yes, Class exemption, but factual information disclosable.	Yes, by executive order	Yes Class exemption
13. Personal	Yes	Yes	Yes	Yes	Yes	Yes

information. Class exemption	Class exemption	'Would be likely to prejudice interests'	Class exemption	'importance of disclosure does not outweigh [the interest]'	Class exemption	Class exemption
EXEMPTIONS IN UK BILL	AUSTRALIA	NEW ZEALAND	IRELAND	THE NETHERLANDS	USA	CANADA
14. Information provided in confidence. Class exemption	Yes Class exemption	Yes 'Would be likely to prejudice'	Yes Class exemption	Yes Class exemption	Yes Class exemption	Yes Class exemption
15. Legal professional privilege. Class exemption	Yes Class exemption	Yes Class exemption	Yes Class exemption	Yes 'importance of disclosure does not outweigh [the interest]'	Yes Class exemption	Yes Class exemption
16. Commercial interests. 'Would or would be likely to prejudice'	Yes 'Reasonably be expected to affect ... adversely'	Yes Would be likely unreasonably to prejudice	Yes 'cause undue disturbance'	Yes 'importance of disclosure does not outweigh [the interest]'	Yes, where document obtained in confidence	Yes Class exemption
17. Communications with Her Majesty etc, and Honours. Class exemption	Not specified	Yes 'maintains constitutional conventions with respect to'	Yes Excludes all records relating to the President.	In part – 'does not endanger the unity of the Crown'	Not applicable	Not specified
18. Statutory Bars. Yes	Yes	Not specified	Yes	Not specified	Yes	Yes

TABLE 3

**COMPARISON BETWEEN THE CODE OF PRACTICE ON ACCESS TO GOVERNMENT INFORMATION,
THE WHITE PAPER, “YOUR RIGHT TO KNOW
AND THE DRAFT BILL**

Issue	Code of Practice on Access Government Information	White Paper Proposal	Draft Bill	Comments
Institutional Coverage	Central Government except Cabinet Office and Prime Minister’s Office. NDPBs which are answerable to the Parliamentary Commissioner for Administration (the Ombudsman).	Public authorities except Security and Intelligence Agencies and Parliament. Only administrative functions of Police, Police Authorities, Courts and Tribunals.	Public authorities except Security and Intelligence Agencies and NCIS. Inclusion of Parliament and bodies accountable to it under discussion.	Bill has considerably wider coverage than the code of practice, and is a little wider than the White Paper proposals. If agreement for the inclusion of Parliament and bodies accountable to it is obtained, then the Bill will have significantly wider coverage than the White Paper.
Right of access	Information, but not to specific documents or records.	Information including to specific documents and records.	Information. Applicant may specify form of access.	Bill delivers White Paper promise. Bill is significant advance on the code.
Exemptions	Fifteen headings covering a range of issues. Where harm test is specified it is based on a test of “risk or reasonable expectation of harm”, that is a possibility of harm.	Seven headings covering most of the areas set out in the Code. Harm test is “substantial harm” except for policy advice which is “simple harm”. Some exclusions and gateway provisions also limit access to information.	Twenty one clauses limit access rights, though issues covered are comparable with the White Paper if exclusion and gateway provisions are taken into account. Harm test in the main is “would or would be likely to prejudice” looking to the probability of harm.	Bill is significant advance on the Code with its shift from “possibility” of harm to “probability” of harm but differs in some respect from the White Paper. The ability of the Commissioner to substitute his judgement for that of the public authority, will ensure that trivial or frivolous prejudice is

			Central government policy advice is subject to a class exemption. No harm test in respect of privacy and confidentiality because of overriding rights.	not used as an excuse to withhold information; thus delivering the White Paper's promise that harm caused would have to be "real, actual, or of substance." Less open than the White Paper as regard to policy advice.
Public Interest	Code encourages public authorities to consider whether the public interest in disclosure outweighs the harm caused to an interest. The Parliamentary Commissioner for Administration (the "Ombudsman") can take this factor into account.	Promised that there would be a public interest test in favour of disclosure.	Where an exemption applies, a public authority, must consider the exercise of any discretion to disclose taking account of the public interest	Bill delivers the promise in the White Paper. Similar public interest powers to the Code, but requirement to consider any discretion in the Bill is wider than either the Code or the White Paper.
Enforcement	An applicant can ask his Member of Parliament to refer a refusal to supply information to the Parliamentary Commissioner for Administration.	White Paper promised an Information Commissioner with the ability to force disclosure	The proposed Information Commissioner will have wide powers to gather information and to enforce his decisions. He will have the power to order the disclosure of information. Refusal to follow a notice from the Commissioner can be reported in the court as contempt. Appeals possible by both parties to the tribunal.	Bill delivers the White Paper promise. Easier access to enforcement procedures than under the Code as no need to involve Member of Parliament.