

The costs of FOIA — researching central government spending

Paul Gibbons, aka FOIMan, discusses the timeous issue of FOIA compliance costs, in light of some primary research into the burden compared with other types of public activity

One of the aims of the FOIA review Commission as explained to Parliament by Lord Bridges in July 2015 was to examine the 'burden of the Act on public authorities'. By this, of course, he means the cost – does FOIA place an unreasonable additional cost on those authorities?

The question of cost is difficult. How do you quantify expenditure on compliance with the Act? Few if any public authorities routinely monitor the time spent on answering requests. Even if they did, should the exact salary paid to relevant members of staff be taken into account? Their pensions? The use of energy by their computers, scanners and photocopiers? The office space occupied? The value of other activities that they could have been involved in?

I am always suspicious of any figure claimed for FOIA compliance for this reason. Depending on the agenda of the individual or organisation that has commissioned the research or calculated the estimate, the figure can take into account more or less of the items listed above, and others besides.

What such figures can give us is an impression of FOIA's cost. The most widely accepted figure at present is that which was commissioned by the Ministry of Justice ahead of the 2012 post-legislative scrutiny of FOIA.

Ipsos-Mori came up with an average figure of £184 per request within central government, (and £164 in the wider public sector). Again, aspects of the methodology are questionable. For example, requests made under the Environmental Information Regulations ('EIRs') were distinguished, despite generally being managed as part of FOI workloads. This resulted in an average cost for EIRs requests of £308, misleadingly suggesting that compliance with EIRs costs 50% more than FOIA.

Despite these drawbacks, at least the figures in the report provide something to work with in determining the costs of FOIA compliance. Accepting them means it's possible to estimate the costs of FOIA compliance for central government departments. According to the government's published statistics, 30,907 requests were received by the 20 core government departments in

2014. Multiplying this figure by £184 gives us a total estimated expenditure in 2014 of £5,686,888.

£5.7 million is a lot of money. Maybe we *ought* to be concerned about the cost of FOIA?

Personally, I remain sceptical about the numbers. What I thought would be useful would be to see how the figure compares with other expenditure. After all, we can't really judge how expensive something is unless we can see it in context. This was the thinking behind some research I carried out into central government department spending.

What did central government spend in 2014/15?

The government publishes details of its annual expenditure in a document called the 'Public Expenditure Statistical Analysis'. According to that report, those government departments listed spent £494,204,000,000 in 2014/15. That's £494 billion.

The figures indicate that answering FOI requests would appear to represent a minimal proportion of central government expenditure.

The scale of these figures renders them meaningless in any practical sense. I wanted to understand how much was spent on other activities to provide some context for the cost of FOI. I therefore submitted FOI requests to the 20 core government departments included in the government's FOI statistics reports.

My experience with making FOI requests to central government

If you are an FOI Officer, it is quite likely that you have never made an FOI request yourself, despite knowing a great deal about the legislation, and having a vast experience of answering very complex requests. I would recommend that you try making a request yourself, having learned a lot from the process myself.

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A common complaint of those who make FOI requests — journalists, campaigners, and members of the public — is about the timeliness of responses. If my experience was anything to go by, their complaints are often justified. Of the 20 requests that I submitted, less than half were answered within the 20 working day statutory limit. Three months after the requests were sent, some departments are yet to answer. It is frustrating to anyone conducting research to wait months for even a partially complete picture to build up.

Only one FOI Officer picked up the phone to discuss my request. It didn't appear to speed up the authority's response, but at least I knew that a human being was considering my request.

Another peculiarity was the bureaucratic nature of many responses. Most were sent as a pdf attachment to an email, rather than simply writing the response in the email itself. Some answers were almost impenetrable due to their use of civil service jargon and attempts to explain their interpretation of the request.

Others provided data that extended substantially beyond what had been asked for. If they had sought clarification or stuck to what had been requested, the response would have been cheaper (and often quicker) to produce.

One of my questions was about expenditure on Ministerial cars. Most of the responses refused this, citing section 22 of the Act because, I was told, the information was included in an annual ministerial statement made to Parliament.

However, not one department bothered to tell me where or when this would be published, or to provide a link to figures for previous years. I have been unable to locate any figures for previous years despite searching gov.uk, the Parliamentary website and that old stand-by, Google.

A different request I submitted asked about expenditure on staffing involved in external relations, press offices and marketing activities. The Cabinet Office's response was to refer me to published data on salaries of staff in the Cabinet Office. However, one of the reasons that I had made the request was because the published data provided an incomplete picture of staffing expenditure in the Cabinet Office. (It only lists staff above a particular grade, and I would have to know which roles were involved in the activities I listed to be able to calculate the answer).

The Department for Work and Pensions refused my request altogether on the grounds it estimated that providing the information would exceed the appropriate limit. This despite the fact that most other departments had felt able to provide at least some

of the requested information. Two months on, I am still waiting for the outcome of my request for an internal review.

The Treasury claimed that it was unable to tell me how much had been spent on external relations, press offices and marketing because these activities were carried out by 'a range of Treasury teams'. It was not clear therefore whether the Treasury was refusing my request on cost grounds, or whether it was arguing that the information was not held.

My experience in carrying out this research has increased my sympathy for FOI requestors. If I were still an FOI Officer, I might be inclined to be more understanding of the impatience of some of those who make requests.

The cost of external relations, press offices and marketing activities

Despite the above, the research exercise produced some useful data, particularly in relation to the subject of public relations or, as it is sometimes referred to, 'spin'.

One of my questions, asking for the total cost of external relations, press offices and marketing activities in 2014/15, was answered by most departments. Although the figures are incomplete, from the 16 departments that did answer, a total figure emerges: £157,792,726.

As with the Ipsos-Mori figures, the accuracy of the number is questionable. In most cases, the departments chose to provide spending by their nearest equivalent directorate. This means that the figures included activities going beyond those asked about.

However, the figures undoubtedly also exclude some spending in other parts of those departments that ought (on a rigid interpretation of my request) to have been taken into account.

Ultimately, the total is based on the figures that the departments themselves chose to provide — lending them a degree of legitimacy.

On this basis, expenditure on answering FOI requests made to central government is approximately 3.6% of the expenditure on public relations activities.

This will be worth recalling if the FOI Commission determines FOI to be an unacceptable burden on public authorities.

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Conclusion

Given the difficulties I mentioned in the introduction to this piece, it would be hypocritical of me not to highlight that the research I have outlined contains deficiencies.

However, I hope that I've illustrated that, whilst FOI costs money, its expense cannot be considered in isolation. Almost all public sector activity results in expenditure – it is necessary to compare spending to obtain a useful picture.

What this research doesn't consider, of course, is any benefit resulting from expenditure under any of the headings mentioned. For example, the Foreign and Commonwealth Office's figures included spending on promotion of trade and investment, which will likely result in benefits to the UK economy. Similarly, awareness of FOI can focus the minds of politicians and public employees, encouraging wiser spending decisions. Such savings are impossible to quantify, but nevertheless of value.

My experience of dealing with central government departments suggests that many public authorities could reduce the cost of FOIA compliance.

More pragmatic and less bureaucratic approaches to handling FOI requests would cut costs significantly. Taking steps to understand what applicants really require, and therefore avoiding unnecessary effort, could similarly reduce expenditure.

Finally, the exercise has been a useful reminder that FOI isn't simply about answering questions—it is a matter of customer – or public – service.

Obstructive, unhelpful and late replies do little to improve the way public authorities are seen in the early 21st century. FOI itself is an important tool in the public relations armoury of public bodies.

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