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THE RIGHT TO KNOW

Learning lessons from British and European Freedom of Information Law

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ABBREVIATIONS

AAP	Australian Associated Press
AAT	Administrative Appeals Tribunal
ABC	Australian Broadcasting Corporation
ALRC	Australian Law Reform Commission
ARC	Administrative Review Council
BBC	British Broadcasting Corporation
FoI	Freedom of Information
FoISA	Freedom of Information Scotland Act
SBS	Special Broadcasting Service

1. INTRODUCTION

It is not too dramatic to say that free speech in Australia is fast becoming an oxymoron. We know it, our politicians know it and very slowly, the Australian public is starting to realise it too.

There has been a gradual tightening up of laws and attitudes relating to information which is in the public interest. It's not a party political issue, the deterioration has occurred under both Liberal and Labor governments over a sustained period of time.

The debate about free speech is not a self indulgent attempt by media proprietors to argue for reforms that will guarantee the next headline. Freedom of the press is necessary for free speech in the community generally. Without adequate information people are unable to make properly informed judgements and the democratic process stalls.

Australia's Prime Minister Kevin Rudd, who was elected just seven months ago, says he'll make some significant changes to improve FoI. He's been critical of the current FoI laws and has indicated in his pre-election policy document that he'll completely re-structure Australia's FoI legislation. Much of what he's proposing has already been introduced in the United Kingdom.

This paper will explore the success or otherwise of that UK legislation. There are two simple and fundamental questions which must be answered: Are the laws working and if not, why not? Therefore much of the research undertaken for this paper will be done by talking to those who oversee and those who use Freedom of Information law in the United Kingdom. Because the legislation is relatively new, not much has been written about it, therefore there will be a distinct emphasis in this paper on research gathered through a series of interviews with key FoI figures in Britain and to a lesser extent, Sweden.

Although there appears to be a general consensus that the FoI laws in UK are effective, they are far from perfect. Journalists and activists are dismayed by lengthy

delays in response times. There is a general acceptance that the government has perhaps deliberately failed to adequately resource the FoI Commissioner, and there are ongoing problems of recalcitrance among civil servants, reluctant to embrace the brave new world of openness.

FoI is an evolutionary process and to some extent it is still evolving, adapting to new challenges posed by societal changes and new technologies. This paper will attempt to analyse some of the current dilemmas facing those charged with upholding FoI. Current laws only cover government authorities but the campaign has begun to bring private companies which receive public money, under FoI.

Politicians are big on rhetoric when it comes to FoI, but often not so enthusiastic to legislate. This paper will examine what arguments were successful in convincing British politicians to support FoI, at least officially!

There is some evidence that a more open society is less corrupt and generally has better governance. Certainly there have been specific positive changes in Britain as a direct result of information made public under FoI laws. For example, in Scotland, all politicians expenses and receipts are now posted on the internet. It is simply no longer possible to rort the system by hiding behind privacy laws.

This paper will also endeavour to identify the types of stories which FoI has uncovered. It will become apparent that the legislation has been effective at producing lots of local and regional stories involving statistics, but the closer you get to the centre of power, the less effective the legislation appears to be.

A chapter on Sweden will also be included. Although the FoI legislative framework is very different there, Sweden is a country which has for many years placed a high priority on perfecting its Freedom of Information laws. It's model appears to be successful and it is unique in the world. The Swedes have successfully managed to de-clutter and simplify the FoI process, most requests aren't even recorded, paper work and bureaucracy is kept to a minimum.

This paper will also feature a close examination of the Scottish FoI laws. Although very similar to the UK legislation, it appears that Scotland has been more successful in changing the culture of its civil service. This will be one of the greatest challenges facing Australia when its new laws are introduced.

There is a second component to this research work. As well as analysing existing FoI models, there will be a chapter on implementation. This chapter will attempt to answer the following question; How has the media adapted to the new laws? Most of the research carried out in answering this question will be done at the BBC in London. There are important lessons which Australian journalists can learn from the experiences of their British counterparts

Once the strengths and weaknesses of the UK FoI legislation have been identified, this document will hopefully be of some practical use to Australian legislators who face the challenge of drafting our new laws.

2. BACKGROUND

The Australian Constitution contains no right to information. The federal Freedom of Information Act 1982 provides for access to documents held by Commonwealth agencies created after 1 December 1977. The Act requires that applications are made in writing and that agencies respond within 30 days to information requests.

The Act contains a considerable number of exemptions. Under the legislation Ministers can issue conclusive certificates stating that information is exempt under the provisions protecting deliberative process documents, national security and defence, Cabinet documents, and Commonwealth/State relations. These conclusive certificates cannot be reviewed during any appeal; an appeal body is only allowed to consider whether it was reasonable for the Minister to claim that the provisions of the exemption were satisfied.

The Act also contains a variety of public interest provisions depending on the type of information to which the exemption relates. For example, the exemptions relating to disclosures which would affect relations with States, the financial or property interests of the Commonwealth or the national economy, documents concerning certain operations of agencies and internal working documents are all subject to public interest tests.

Under the Act, applicants have a number of different avenues of appeal. They can appeal internally or they can request a merits review by the Administrative Appeals Tribunal (which can issue binding decisions). Appeals on possible errors of law can be made to the Federal Court or High Court.

In addition, an applicant can make a complaint at any time on matters of administration to the Commonwealth Ombudsman. The Ombudsman's decisions are not binding.

There are many criticisms of the effectiveness of the Act. The Australian Law Reform Commission and the Administrative Review Council released a joint report in January

1996 calling for substantial changes to improve the law. The review called for the creation of an office of the FoI Commissioner, it recommended the Act be more pro-disclosure, and it suggested limiting exemptions, reviewing secrecy provisions and limiting charges.

In June 1999, the Commonwealth Ombudsman found "…*widespread problems in the recording of FOI decisions and probable misuse of exemptions to the disclosure of information under the legislation*"[1] and recommended changes to the Act and the creation of an oversight agency. The Senate held an inquiry in April 2001 on a private members amendment bill to adopt the recommendations of the ALRC and ARC report but to date there have been no substantive changes to the Act.

In February 2006 the Ombudsman released a report on the Act which strongly recommended that the Government establish a FOI Commissioner, to ensure that an independent body would be tasked with monitoring and promoting the law. The Ombudsman's report more generally found that requests were often not acknowledged and that there was still an uneven culture of support for FoI among government agencies, even 20 years after its enactment.

Nothing was done in response to the Ombudsman's report.

In May last year the Australian Broadcasting Corporation joined a coalition of media organisations, including News Limited, Fairfax, the SBS, Austereo, Sky News and AAP, to launch a campaign titled, "Australia's Right to Know." The aim of the campaign was to draw public attention to the tightening of restrictions on journalists and free speech in Australia. As part of its campaign, the coalition published a list of current free speech impediments in Australia. Here are a few of them.

- One newspapers request under FOI for the picture of a convicted criminal was denied by police in Victoria on the grounds of privacy-because the man was dead and he could not give his permission.

[1] Commonwealth Ombudsman, "Needs to Know"-A report into the administration of the FoI Act 1982 in Commonwealth Agencies, June 1999.

- A Victorian Court issued an order to stop one newspaper identifying a major public figure accused of fraudulent company dealings. Then it imposed another order to stop the paper saying it had been gagged.
- A major newspaper was refused an auditors report on suspected rorts of Commonwealth MPs' travel expenses. The paper appealed to a Tribunal and won, but then the Government tried to charge a million dollars in fees to hand over the report. The paper could not afford it.
- The Federal Government claimed it was "not in the public interest" to release information on the first home owners' scheme, including the number of wealthy people fraudulently claiming the seven thousand dollar grant under the scheme. A newspaper took the case to the High Court and lost.[2]

Just prior to the 2007 Federal election, the media coalition behind the Australia's Right To Know campaign, commissioned an independent audit of the state of free speech in Australia, chaired by the former Commissioner of the NSW Independent Commission Against Corruption (ICAC) Irene Moss. The findings were damning.

Specifically on FoI the report found: "*No government, federal, state or territory, has taken sustained measures to deal with an enduring culture of secrecy still evident in many agencies. There are few visible, consistent advocates of open government principles within government systems and leadership on FoI is lacking*." The report concludes: "*FoI performance is patchy across all governments…..the FoI process involves delay, high cost and what could be seen to be obstruction, often suggesting attempts to protect politically sensitive information*."[3]

The audit also highlights other unsatisfactory aspects of Australia's current FoI laws which clearly demonstrate that FoI is failing to achieve its intended purpose of opening up government activities to scrutiny and criticism.

The Audit found that: "…*In the Federal arena in particular, FoI is marked by a high degree of technicality which dominates considerations about whether disclosure is in*

[2] Australia's Right to Know- A joint statement from eight Australian media executives, May 2007
[3] The Moss Report- an independent audit into the state of free speech in Australia, Executive Summary.

the public interest. There are inadequacies in the design of the laws; too much scope for interpretation of exemption provisions in ways that lead to refusal of access to documents about matters of public interest and concern; cost barriers to access; and slow review processes that often fail to provide cost-effective resolution of complaints. There is a need for clarification about the extent to which advice to government should be based on notions of confidentiality……blanket claims seem to counter the objective of informing public debate, and accountability for government decisions."[4]

'Reporters Without Borders'[5] is a French registered, non-profit organisation which fights against censorship and laws which undermine press freedom. It publishes an annual list ranking countries on a Press Freedom Index. In 2006, Australia did not do well, it was ranked 35th in the world, well behind countries like Namibia, Lithuania, Bolivia, Estonia, South Korea and Britain.

The 2007 figures were better but still Australia found itself lagging behind countries like Latvia, Estonia and Costa Rica.

In response to this situation the Labor party, just prior to the last Federal election, issued a policy document titled: "*Government Information; restoring Trust and Integrity*."[6] In this document Labor describes FoI in Australia as "*Sclerotic*",[7] Kevin Rudd and his co-author Senator Joe Ludwig promise to make changes, most of them based on the original recommendations of the 1996 Joint Australian Law Reform Commission and Administrative Review Council's report.

Australia's new Prime Minister says he will;

- Drive a culture shift across the bureaucracy to promote a pro-disclosure culture;
- Reform the FoI Act to make lawful disclosure possible;
- Implement public interest disclosure reform for whistleblowers; and

[4] The Moss Report- an independent audit into the state of free speech in Australia, Executive Summary.
[5] Reporters without borders, Press Freedom Index, Annual Report, 2006 & 2007 figures.
[6] Federal Australian Labor Party policy document; Government Information- "Restoring Trust and Integrity", October 2007.
[7] Ibid

- Introduce further reform to provide shield protection for journalists and other professionals."[8]

The policy document goes on discuss the ways in which the now government will carry out these reforms: "…*Federal Labor will abolish conclusive certificates, implement the recommendations of the 1995 ALRC Report, Open Government, and create an independent statutory Information Commissioner to act as a whole-of government clearing house for complaints, oversight, advice and reporting for freedom of information and privacy matters*."[9]

The document stresses that the Labor party will drive "…*cultural change across the bureaucracy to promote a pro-disclosure attitude*."[10] Unfortunately there's not a lot of detail on how the government will go about making such enormous cultural changes.

According to the government's policy document, the key to change will be the appointment of a statutory Freedom of Information Commissioner who will work alongside the already existing Privacy Commissioner.

The FOI Commissioner would replace the Administrative Appeals Tribunal in the FOI review process. The Commonwealth Ombudsman's role in investigating delays and complaints about FOI would be transferred to the FOI Commissioner. At a glance, these changes appear to have some merit, but is this the best framework for Australia's new Freedom of Information legislation?

[8] Federal Australian Labor Party policy document; Government Information- "Restoring Trust and Integrity", October 2007.
[9] Ibid
[10] Ibid

3. THE UNITED KINGDOM

In the United Kingdom the Freedom of Information Act was legislated in November 2000 but didn't come into full effect until January 2005. The Act is very similar in structure and power to the proposed Australian model.

Requests for Information are made in writing to the appropriate government authority. There is provision for an Information Commissioner and a Tribunal. The Commissioner is Independent and is appointed by the Queen, his status is similar to a High Court Judge.

The UK Freedom of Information legislation is structured so that initial appeals for information which is with-held are made internally. Once that is completed, an external review to the Information Commissioner is available. His decisions are binding but appeals of the Commissioner's decisions are made to the Information Tribunal. Appeals of the Tribunal's decisions on points of law are made to the High Court of Justice.

When the Commissioner orders the release of information based on the public interest test, the decision can be overruled with a ministerial certificate. So far, this has not happened, no Minister has been game enough to invite that sort of publicity . According to the Labor politician and former Secretary of State for Constitutional Affairs, Lord Charles Falconer, this is viewed in political circles as "…*the nuclear option*…"[11]. In Australia Kevin Rudd has said he will do away with such certificates.

The Act gives any person the right of access to information held by over 100,000 public bodies. The bodies are required to respond within 20 working days but significantly the time frame can be extended to allow for consideration of release on public-interest test grounds. This has proved problematic.

[11] Interview with Lord Charles Falconer, conducted in Westminster, London 22 May 2008.

One of the major criticisms of the UK model is the huge backlog of cases. Martin Rosenbaum,[12] Head of FoI at the BBC says delays in requests being processed is the biggest problem. He says that some requests are taking two and a half to three years to be processed. This is obviously highly problematic for journalists working to tight deadlines. So far, the UK Information Commissioner Richard Thomas has asked for the assessment of public interest tests and internal reviews to be completed within two months, but there's no specific time limit fixed in law. Richard Thomas [13]says there is nothing more he can do, he can't legally set time limits if they are not part of the legislation.

A major part of the problem according to both Martin Rosenbaum and David Banisar, Director, Freedom of Information Project, Privacy International, is the lack of adequate resources within the Commissioners office. Martin Rosenbaum says the office was badly organised from the beginning with inadequate procedures for prioritising cases. According to David Banisar[14] the Commissioner has been unable to attract the best staff because of the location of his office (just outside of Manchester) and the relatively low pay rates which are offered. On average Commission staff are paid between 16 and 20 thousand pounds. Richard Thomas agrees that this has been problematic, because of his huge workload he describes his office as being "*... like a factory."*[15]

The FoI office is part of the Department of Justice. Last year it had a budget of four point seven million pounds, all of which was spent on complaints handling, there was no money left for proactive compliance work. The Commissioner says his office competes for funding along with the prison service and legal aid. Although he has managed to secure a slight increase in funding for the current year (five point five million pounds) Richard Thomas concludes that his relatively small budget is perhaps a "*…reflection that the government doesn't have huge enthusiasm for FoI.*"[16]

[12] Interview with Martin Rosenbaum, Head of FoI at the BBC, conducted in London 29 April 2008
[13] Interview with Richard Thomas, UK Information Commissioner, conducted in London 2 June 2008
[14] Interview with David Banisar, Director Freedom of Information Project, Privacy International, conducted in London, 29 April 2008
[15] Interview with Richard Thomas, UK Information Commissioner, conducted in London 2 June 2008
[16] Ibid

David Banisar believes the Commissioner initially took a "…*softly, softly…*[17]approach in his decisions which set the tone and resulted in the Commission not being taken seriously. Richard Thomas defends his approach by arguing , "…*I tried to avoid frightening the horses….*"[18] Thomas says, "…*FoI is a fragile flower…..there was real danger the laws could have been repealed.*"[19] Richard Thomas says he likes to encourage authorities to adopt what he terms the , "…*crown jewels approach.*"[20] No-one is suggesting that absolutely everything should be open for everyone to see, so Thomas says authorities need to be mindful of their "*crown jewels*", the information which is critical to them and which must be protected and there ought to be a presumption of openness about everything else. The Commissioners view is that, "…*Our track record is quite a tough one.*"[21]

According to FoI campaigner, Maurice Frankel,[22] the Tribunal has supported the view that governments and individuals have the right to some privacy. "*The FOI Act contains a broad exemption for anything to do with government policy formulation. Decisions come down to the Act's public interest test. The Tribunal has accepted that the public interest normally favours confidentiality while policy is being developed. Ministers and officials need, " time and space…. to hammer out policy… without the threat of lurid headlines" it says. But once the decision has been taken and announced, the case for disclosure becomes stronger.*"

David Banisar from Privacy International is critical of the structure of the UK legislation. He argues that the Tribunal is probably unnecessary. He says that once an appeal is made to the Tribunal, the legal process kicks in and there is no end to the delaying tactics which can then be used. The government will appeal almost every decision and employ expensive QC's, making it very difficult for an individual to compete. The Tribunal has however overruled the Commissioner and in the UK it's

[17] Interview with David Banisar, Director Freedom of Information Project, Privacy International, conducted in London, 29 April 2008
[18] Interview with Richard Thomas, UK Information Commissioner, conducted in London 2 June 2008
[19] Ibid
[20] Interview with Richard Thomas, UK Information Commissioner, conducted in London 2 June 2008
[21] Ibid
[22] Maurice Frankel, Campaign Director, The Campaign for the Freedom of Information, "Policy advice released after months not decades", Press Gazette, 2 May 2008

proven to be more of a liberal rather than conservative force. This is possibly because it has a variety of members, not all of whom are lawyers. [23]

The fee structure is also problematic for journalists. There are no fees for requests which cost less than £600 for central government bodies or £450 for local authorities except for copying and postage. This sounds good but most journalists requests are deemed to exceed the £600 limit. The BBC has had to find ways around this, so most searches are narrowed down to minimise the expense. In her book, "*Your Right to Know*", Heather Brooke[24] writes, "…*It is a rare occasion when the public can access public information for free. The internet has introduced the idea that much more information should be available freely if accessed online, but many agencies are still charging even to access online public registers, such as the Land Registry*."

David Banisar says there are serious flaws with the fee structure and he "…*wouldn't recommend it as a model…*".[25] He suggests a better option would be to introduce a public interest fee waiver, so that there is no charge for information which is deemed to be in the public interest.

It's important to note that once the legislation was introduced in the UK, an attempt was made to limit the number of requests from organisations. Media organisations were not given exemptions and if the reforms had gone through the BBC would have been restricted to between 4 and 5 FoI requests per year.

The BBC's Martin Rosenbaum rates the legislation an overall 6 out of 10. He says that in theory, it works, but in practice it is inconsistent because of the individuals and Departments involved. In his opinion, the nearer you get to the centre of power, the harder it gets to access information. The Prime Ministers office and the Cabinet is, he says, difficult and obstructive. The civil service still has some way to go in terms of achieving cultural change. Although they have a legal duty to assist requesters, Martin Rosenbaum describes the act of requesting information as a "…*process of*

[23] Interview with David Banisar, , Director Freedom of Information Project, Privacy International, conducted in London, 29 April 2008
[24] Heather Brooke, "Your Right to Know: How to use the Freedom of Information Act and other access laws". (London: Pluto Press, 2005), p. 245.
[25] Interview with David Banisar, Director Freedom of Information Project, Privacy International, conducted in London, 29 April 2008

persuasion…"[26] In his view, the response is inconsistent depending on the individuals and Departments you are dealing with.

According to Heather Brooke [27]cultural change will probably necessitate structural change. She says, "…*Britain needs to embrace the idea that the buck stops here. There must be total clarity about who is responsible for what. And by this I don't mean which department, in which office of which local authority. I mean the actual name of a person*…."

The Department of Justice was given the enormous task of re-educating public servants to convince them of the benefits of FoI. It set up a clearing house so that controversial requests could be vetted. As it turns out, most requests have fallen into this category. According to David Banisar of Privacy International, the Justice Department itself became a major part of the problem. He says that certain key influential individuals within the Department weren't really committed to change and they even refused to be open about what they were doing. Banisar observes that "…*FoI is an evolutionary thing, you don't turn people around in a few years. You need a high level champion to overcome resistance….that hasn't really happened in the UK.*"[28]

Lord Charles Falconer agrees. He argues that it's the older, more senior civil servants who think it's "…*silly*...",[29] but the younger generations coming through can't understand why information shouldn't be made available. The UK Commissioner Richard Thomas says that initially there were a lot of what he terms " …*chilling effect*..."[30] arguments. There were many prophets of doom and individuals who seemed genuinely afraid that the sky would fall in. This did not happen and Richard Thomas says that civil servants now are, "…*less instinctively hostile to disclosure*."[31]

[26] Interview with Martin Rosenbaum, Head of FoI at the BBC, conducted in London 29 April 2008
[27] Heather Brooke, "Your Right to Know: How to use the Freedom of Information Act and other access laws. (London: Pluto Press, 2005), p. 244.
[28] Interview with David Banisar, Director Freedom of Information Project, privacy International, conducted in London 29 April 2008
[29] Interview with Lord Charles Falconer, conducted in Westminster, London 22 May 2008
[30] Interview with Richard Thomas , UK Information Commissioner, conducted in London 2 June 2008
[31] Ibid.

British politicians generally do not like the FoI laws. Lord Falconer[32] says this is solely because they are worried about the publication of their expenses. He says extra expense entitlements have traditionally been granted to politicians in lieu of pay rises. Now it's all being exposed and naturally, they don't like it. Heather Brooke [33]argues, "…*You should not expect politicians to promote freedom of information. Why should they? They have a vested interest in controlling the public's access to information and thereby maintaining their grip on power*." Lord Charles Falconer argues the best any political party can hope for under FoI is a neutral outcome, but a negative one is far more likely. He believes the laws have been damaging to his own party. Lord Falconer argues that politicians can't win, if they refuse information, they look like they're hiding something, if they make information available, inevitably a negative story is published because that's what makes news. He concludes therefore that the best way to convince politicians that FoI is a good thing is to remind them that they won't always be in power, eventually they will be the Opposition and they'll need access to government information themselves.[34] Richard Thomas says governments must be convinced of the benefits of public bodies having "…*enlightened self-interest…*".[35] Governments, including Kevin Rudd's Australian Labor government, are keen to build trust, one important way to do that is to be transparent and open. Richard Thomas says he believes "…*ninety percent of public servants get it.*"[36]

The current British Prime Minister, Gordon Brown has spoken encouragingly of FoI. Despite the political heartache it inevitably brings he has concluded, [37]"*Because liberty cannot flourish in the darkness, our rights and freedoms are protected by the daylight of public scrutiny as much as by the decisions of Parliament or independent judges. So it is clear that to protect individual liberty we should have the freest possible flow of information between government and the people. In the last ten years in Britain we have created a new legislative framework requiring openness and transparency in the state's relationships with the public. The Freedom of Information*

[32] Interview with Lord Charles Falconer, conducted in Westminster, London, 22 May 2008
[33] Heather Brooke, "Your Right to Know: How to use the Freedom of Information Act and other access laws". (London: Pluto Press, 2005), p.246.
[34] Interview with Lord Charles Falconer, conducted in Westminster, London, 22 May 2008
[35] Interview with Richard Thomas, UK Information Commissioner, conducted in London 2 June 2008
[36] Ibid.
[37] Gordon Brown, British Prime Minister (2008), "Speech on Liberty", 25 October 2007

Act has been a landmark piece of legislation, enshrining for the first time in our laws the public's right to access information. Freedom of Information (FoI) can be inconvenient, at times frustrating and indeed embarrassing for governments. But Freedom of Information is the right course because government belongs to the people, not the politicians."

For all the traps it sets for politicians Lord Falconer believes that Britain's FoI laws were long overdue. Although it's been a difficult transition, he says it has resulted in better governance. This is because, "…*the more things are exposed the more your reasoning is transparent*…."[38]Lord Falconer believes that the legislation actually makes it easier for politicians to make decisions, because they are forced to argue on the basis of actual facts and ultimately they therefore have more protection for the decisions which they make.[39] Richard Thomas concludes that, "…*the legislation is almost irrevocable now*."[40]

The UK FoI model contains a number of exemptions. They fall into two categories, Absolute and Qualified. Some examples of Absolute categories includes certain court records, information which is subject to parliamentary privilege, personal information protected by the Data Protection Act and information which would be a breach of confidence and which would be subject to legal action.

The entire Intelligence Services are not covered by the Act and interestingly national security has become a growth area for corruption and abuse. According to David Banisar "…*a blanket exemption is asking for abuse*…." [41] Ideally there should be some mechanism in place so that a special magistrate could determine whether the release of certain documents would constitute a national security risk. A similar model exists in the United States.

Qualified exemptions exist in the Act where the public interest in maintaining the exemption outweighs the public interest in disclosing the information. This is where

[38] Interview with Lord Charles Falconer, conducted in Westminster, London, 22 May, 2008
[39] Ibid
[40] Interview with Richard Thomas, UK Information Commissioner, conducted in London, 2June 2008
[41] Interview with David Banisar, Director Freedom of Information Project, privacy International, conducted in London 29 April 2008

the often lengthy public interest testing process comes in to play. Some examples of information which might fall into this category includes, information which is likely to prejudice defence, or international relations, information which is likely to prejudice the economic interests of the UK, information which relates to the formulation of government policy, information concerning communications with the Royal Family, information which is likely to prejudice an individual's health or safety, and trade secrets or information which would prejudice commercial interests.

There are also privacy exemptions included the Act, but there is no distinction made between public and private figures. Therefore, under the privacy exemption it can be difficult to obtain information about public officials spending public money on public business. This is not a problem in Ireland where the legislation includes special provisions for public officials. Richard Thomas makes some important points about the delicate balance between freedom of information and privacy. One naturally challenges the other and he argues they must not be in conflict.[42]

For obvious reasons Opposition leaders are generally more enamoured of FoI Law than Prime Ministers. This is what the former British Prime Minister Tony Blair had to say when he was in Opposition, [43]"…*My argument is that if a government is genuine about wanting a partnership with the people who it is governing, then the act of government itself must be seen in some sense as a shared responsibility and the government has to empower the people and give them a say in how that politics is conducted.*" But by 2006, just one year after his government's FoI legislation came into effect Tony Blair was trying to have Parliament exempted from the Act! The Blair government claimed it was concerned about the privacy of constituents who had supplied written material to Ministers. The amendment was passed in the House of Commons but support from both parties in the House of Lords was able to stymie this attempt at effectively knee-capping the FoI legislation.

Lord Charles Falconer, a Labor Party politician and the first Secretary of State for Constitutional Affairs, under the Tony Blair government describes the incident as a

[42] Interview with Richard Thomas, UK Information Commissioner, conducted in London, 2June 2008
[43] Tony Blair, " Speech by the Rt. Hon. Tony Blair MP, Leader of the Labor Party at the Campaign for the Freedom of Information's annual awards ceremony, 25 March 1996

"…*disastrous mistake and incredibly stupid…*"[44] According to Lord Falconer, when the legislation came to the House of Lords it was almost unanimously opposed. There was only one Lord who wanted to support it, and he was so unpopular, because of his views that he was "…*treated like a leper…*" and therefore dubbed "…*Lord Leper…*".[45]

Currently the British government is under pressure to extend the legislation so that it includes non-government enterprises which are involved in government business. Maurice Frankel,[46] Director of the Campaign for Freedom of Information writes, "…*These services were previously provided by public authorities directly and would otherwise have come under the Freedom of Information Act when it came into force in 2005. Contracting-out has led to a reduction in the public's right to information, which should be restored.*" The current British Prime Minister Gordon Brown[47] has responded to these concerns. In a speech on liberty last October he announced, "…*Public information does not belong to Government, it belongs to the public on whose behalf government is conducted. Wherever possible that should be the guiding principle behind the implementation of our Freedom of Information Act. So it is right also to consider extending the coverage of freedom of information and the Freedom of Information Act. And we are also today publishing a consultation document to consider whether additional organisations discharging a public function - including in some instances private sector companies running services for the public sector - should be brought within the scope of Freedom of Information legislation...*"

For all its faults, the legislation has been particularly good at sourcing certain types of stories, particularly those featured in many of the regional papers. It's been effective for gathering statistics . For example one story the BBC was able to obtain under FoI involved police wrongfully looking up personal details of individuals. The BBC established that more than 500 police officers over a three year period were caught doing this.[48]

[44] Interview with Lord Charles Falconer, conducted in Westminster, London, 22 May 2008
[45] Ibid
[46] Maurice Frankel, Director Campaign for Freedom of Information, "Contractors should be subject to Information Act", press release, 14 March 2008
[47] Gordon Brown, British Prime Minister (2008), "Speech on Liberty", 25 October 2007
[48] Interview with Martin Rosenbaum, Head of FoI at BBC, conducted in London 29 April 2008

A number of important stories have been published in the Guardian newspaper as a direct result of the British FoI Act (2005), they're summarised by the following dot points.

- For the first time, the NHS published the death rates of individual cardiac surgeons. This allows patients to make a more informed choice on which surgeons they should allow to operate on them.
- Documents were published which pinpointed the moment when the British government's leading law officer changed his mind over the legality of the invasion of Iraq.
- Information concerning the amount of European Union subsidy received by each farmer in UK was revealed for the first time - the list shows that the Queen and Prince Charles had received more than £1m in the last two years.[49]

The BBC too has had its share of strong stories based on use of FoI. Some of them are listed below.

- There was a breakdown in communications between ambulance staff on the day of the 7 July bomb attacks (BBC London 15.3.06)
- The UK secretly supplied Israel with plutonium in the 1960's (Newsnight 9.3.06)
- Women from overseas are travelling to Britain to give birth (News Online 14.12.05)
- Survey reveals medics with alcohol problems (Real Story, 9.6.05)
- Rules were changed to make it easier for party donors to become peers (Politics Show, 20.3.05)[50]

There are many examples of stories broken in regional areas as a result of FoI requests. They can be summarised under the following headings.

a) ***Assaults*:**
   - on NHS workers/teachers/university staff
   - in children's care homes

b) ***Cost of***:

[49] News stories featured in The Guardian newspaper written using FoI http://www.guardian.co.uk/media/2007feb/28/pressandpublishing1
[50] Interview with Martin Rosenbaum, Head FoI at the BBC, conducted in London 29 April 2008

- Consultants
- Headhunters
- Investigations
- Police overtime

c) ***Crimes***:

- thefts/criminal damage/assaults at schools
- vandalism in libraries
- crimes on public transport
- local terror arrests

d) ***Food hygiene inspections*:**

- Restaurants
- school kitchens
- sports stadiums

e) ***Schools***:

- Exclusions
- truancy figures
- bullying incidents
- weapons confiscated
- drugs found
- building defects

f) ***Prisons***:

- Escapes
- drug seizures[51]

FoI activists in Britain have been lobbying for a revision of the so called, 30 year rule. The current British Prime Minister Gordon Brown has agreed in principle that the rule should be reviewed, [52]"…*Under the present arrangements historical records are transferred to the national archives and are only opened to public access after thirty years or where explicitly requested under the FoI Act. It is time to look again at whether historical records can be made available for public inspection much more swiftly than under the current arrangements...*"

[51] Interview with Martin Rosenbaum, Head FoI at the BBC, conducted in London 29 April 2008
[52] Gordon Brown, British Prime Minister (2008), "Speech on Liberty", 25 October 2007

4. MEDIA IMPLEMENTATION AND THE BBC

The BBC doesn't have a centralised system in place to streamline requests for information but in an informal way Martin Rosenbaum helps journalists requiring assistance in making FoI requests. He also runs a number of workshops during which he explains the legislation and issues tips in getting the best response from civil servants.

One of the greatest challenges to cultural change, according to the Scottish Information Commissioner is journalists who are not forensic enough in their requests, or who indulge in "…*fishing expeditions*..."[53] Kevin Dunion says civil servants like to remind him that they're not employed to provide a headline to boost the sales of newspapers.

It seems to be in everyone's interest to keep requests specific.

The ABC could run a series of similar workshops to those currently offered at the BBC. Journalists could be advised about the basics of the law, they could be issued with a standard draft text for making FoI requests, and they could be given a series of helpful hints and tips on using FoI. This could include advice about how to phrase requests to get the best results and how to "…*think inside the filing cabinet*…."[54] Journalists need to be aware of what kinds of records public authorities might actually keep on certain topics and what are the right pieces of jargon to describe them.

Like the ABC the BBC has an Investigative Unit which routinely makes FoI requests in the hope of finding a story. The unit then gives the story to the most suitable program. It's apparent from observing the BBC's experience that lobbying for legislative change is just the beginning of the process. Once Australia has its new FoI

[53] Interview with Kevin Dunion, Scottish Information Commissioner, telephone interview conducted in Oxford, 26 May 2008
[54] Interview with Martin Rosenbaum, Head of FoI at the BBC, conducted in London 29 April 2008

laws, the real work will begin. Heather Brooke[55] writes, "…..*A law is only as good as how it is used and enforced, and it is worth remembering that even repressive countries like Zimbabwe have freedom of information laws on their books...*" It will be vital for ABC journalists to become knowledgeable about the new FoI laws, and confident in using them.

As a public Corporation the BBC is also on the receiving end of many FoI requests. In fact it has a team of mostly lawyers who deal specifically with these demands. Lucy McGrath,[56] Senior Advisor on Information Policy says that around 25% of requests are from journalists fishing for stories about the BBC. Most of them involve requests for information about expenditure of public money.

Stephanie Simmonds,[57] Senior Advisor, FoI Compliance at the BBC warns that some journalists and politicians request information in the hope of finding evidence to support their views that the BBC is in some way biased in its reporting.

The Balen Report is a good example of this. The report was an internal BBC document, written by senior journalists who were themselves scrutinising the Corporations coverage of stories from the Middle East. An FoI request was made but the BBC declined to release the Report. An appeal was lodged, an internal review took place, there was a further appeal to the Information Commissioner and finally it went to the Court of Appeal.

Ultimately the court found in favour of the BBC, but interestingly it was only on a legal technicality. The case demonstrates the need for the FoI legislation to include a clause which protects the editorial space of the Public Broadcaster. It would be a sorry situation if the ABC had to make public every document which discussed the shortcomings of the Corporation.

[55] Heather Brooke, "Your Right to Know: How to use the Freedom of Information Act and other access laws. (London, Pluto Press, 2005), p.245.
[56] Interview with Lucy McGrath, Senior Advisor, Information Policy BBC, conducted in London 8 May 2008
[57] Interview with Stephanie Simmonds, Senior Advisor, FoI Compliance BBC, conducted in London 8 May 2008

With new legislation comes new responsibilities and ABC employees like BBC employees would need to be mindful of what was put on paper. Think before you hit send is probably very good advice!

5. SCOTLAND

The Freedom of Information (Scotland) Act was approved by the Scottish Parliament in May 2002 and came into effect on the 1st of January 2005. Under the Act anyone can access information from a public authority, subject to certain exemptions such as protection of personal data, commercial interests or national security.

In some ways the Scottish model more closely resembles Kevin Rudd's proposal than the UK legislation. Scotland has an Information Commissioner appointed by the Parliament, not the government. There is no Tribunal so all appeals of the Commissioners decisions are made to the Scottish Court of Appeal.

The Scottish Information Commissioner and the UK Information Commissioner have separate responsibilities. The Scottish Commissioner is responsible for all public authorities in Scotland and the UK Commissioner for all public authorities in England, Wales and Northern Ireland and for any authorities which overlap with Scotland.

A request in Scotland must be made in writing, that includes email, and the requester must supply his/her real name and address. Most requests are free of charge, but if a request is complicated and costs an authority between one hundred and six hundred pounds , the authority can charge ten percent of the cost of providing the information. If the total cost to the authority is more than six hundred pounds then a request can be refused.

The Scottish seem to have been particularly effective in bringing about cultural change within the civil service. Way back in 1996, the former British Prime Minister Tony Blair gave some indication of the enormity of the cultural changes which would have to take place if FoI was to be embraced. In his address to the Campaign for Freedom of Information's annual awards he said,[58] " *It is not some isolated*

[58] Tony Blair, "Speech by the Rt. Hon. Tony Blair MP, Leader of the Labor Party at the Campaign for the Freedom of Information's annual Awards Ceremony, 25 March, 1996

constitutional reform that we are proposing with a Freedom of Information Act. It is a change that is absolutely fundamental to how we see politics developing in this country over the next few years…..its introduction will signal a new relationship between government and people: a relationship which sees the public as legitimate stakeholders in the running of the country and sees election to serve the public as being given on trust...."

The Scottish Information Commissioner, Kevin Dunion describes himself as [59] "…*a former campaigner for Friends of the Earth, not an establishment person*…." He says he wanted the job so that he could be an "…*enforcer of the legislation, not a cheerleader*..."[60] In his former position with Friends of the Earth, Dunion was a frequent user of FoI, not a protector of information. This appears to be highly significant, it has influenced the way he views his role as someone who needs to lead the cultural revolution necessary to make FoI an accepted part of society. In contrast to the UK Commissioner Richard Thomas, who is on the record as saying he is sympathetic to the imposition FoI places on authorities, Kevin Dunion has no such sympathy. He says from the very beginning he realised that he needed "…*certainty in my approach*…."[61]

Kevin Dunion says he's made a concerted effort to issue extensive and detailed decisions, well aware that they would be challenged and would set precedents. He says one of the important functions of the Commissioner is "…*not to seek a headline in terms of decisions, but to be aware that if you take a tough decision it will set a precedent*…."[62] Kevin Dunion says he took a decision to be highly pro-active in his role. "…*You have to get out there and speak to people*..."[63] He toured the country meeting with journalists and civil servants, educating them about the changes. He believes that contributed significantly to bringing about cultural change and possibly resulted in less cynicism about the FoI office.

[59] Interview with Kevin Dunion, Scottish Information Commissioner, conducted on the phone in Oxford 26May 2008
[60] Ibid.
[61] Ibid.
[62] Interview with Kevin Dunion, Scottish Information Commissioner, conducted on the phone in Oxford 26May 2008
[63] Ibid.

The Commissioner says that although he's adopted certainty in his approach, "…*the arguments put by Authorities for withholding information aren't without merit.*"[64] The most common argument mounted by civil servants opposed to FoI is that the quality of their work will diminish. They argue that their advice will be compromised in terms of its frankness and the degree of imagination used, that in essence free-thinking will be stifled. Dunion says this response is, "…*in their DNA...*"[65] But the Scottish Information Commissioner believes that a lot of information simply isn't in that category and he can't see the point in withholding all of it on that basis. Kevin Dunion says Scotland is slowly developing a new culture where people understand that Ministers will be advised by civil servants and they're slowly coming to realise that it's not wrong to show the steps along the way to that final decision.

One decision, which Kevin Dunion said he struggled with, was to release the surgical mortality rates of all surgeons in Scotland. There was no precedent for it. Dunion says he released a detailed decision, explaining to the media that it would be misleading to draw up a league table from the results because minor surgery could not be compared to complex, risky, life saving surgery. Dunion says although surgeons generally weren't happy about it, the information was handled responsibly. The Scottish Commissioner says everyone realised it would be unfair to draw conclusions about the surgeons' performances based on the information[66]. One positive outcome was that many doctors subsequently agitated for better record keeping from the hospitals.

Kevin Dunion believes that many civil servants have begun pre-empting his decisions. If they're considering whether or not to withhold information, they often decide to disclose it, because they're aware that they might be ordered to do so, regardless.

Like the UK, Scotland has had its fair share of stories revealing extravagant expenditure of public money by politicians and their families. The Scottish Parliament now puts all expenses and copies of receipts on a public internet page, which Dunion

[64] Interview with Kevin Dunion, Scottish Information Commissioner, conducted on the phone in Oxford 26May 2008
[65] Ibid.
[66] Ibid.

says is hardly ever accessed any more. Scotland's MP's seem to police themselves fairly regularly in the knowledge that their accounts will be made public.

There is no Tribunal in the Scottish FoI model. If the Commissioners decisions are challenged then that takes place in the Scottish Court of Appeal. Dunion believes this structure provides more certainty than the UK model. He makes the point that if the Tribunal existed, why wouldn't you appeal, it gives you "…*another bite at the cherry*…."[67]He also concludes that the Tribunal tends to "…*muddy the waters*..."[68]Its existence means that the Commissioners decisions aren't necessarily so authoritative and final. Dunion admits that without a Tribunal it's expensive to go to the Court of Appeal, but he says that needs to be weighed against the greater degree of certainty which the Commissioners decisions can bring about.

Although the Scottish system does experience delays, they're nothing like the situation confronting the UK Commissioner. This is largely because the Scottish legislation specifies a twenty day time limit to consider whether or not the information is in the public interest. This is written into the legislation, there are absolutely no extensions. According to the Commissioner, Kevin Dunion [69] there is simply no need to extend the time period. If a decision is made in twenty days, it's unlikely that an authority would reverse that decision given more time.

Although it looks good superficially, research carried out by academics Eleanor Burt and John Taylor indicates there are still some real problems associated with FoI in Scotland. This is what they concluded in their 2007 report to the Commissioner.[70]
"*Respondents and interviewees have argued strongly that existing organisational forms, practices, and resource limitations pose great difficulties for delivering the integrated, concerted and timeous responses needed for successful FoI. A second perceived difficulty for public bodies in implementing FoISA is what many refer to as 'abuse of the Act', particularly by some journalists. A third difficulty arises from the*

[67] Interview with Kevin Dunion, Scottish Information Commissioner, telephone interview conducted in Oxford 26 May 2008.
[68] Ibid.
[69] Ibid
[70] Eleanor Burt and John Taylor; "The Freedom of Information (Scotland) Act 2002: New Modes of Information Management in Scottish Public Bodies?" Report to the Scottish Information Commissioner, 28 September 2007

'political environment' within which responses to FoI requests are managed. Public bodies must serve political masters and they must also be aware that decisions made by them can have political consequences that can go beyond what might initially have been anticipated."

As in England, the Scottish authorities are now trying to grapple with the difficulties associated in dealing with private companies which have contracts with public authorities. At the moment, all private companies, no matter what their affiliations, remain outside the scope of FoI. Some progress has been made on this front. Kevin Dunion says he recently made a decision which required a public Health Authority to make public the details of a contract it had with a provider. Dunion says this has "*…completely transformed the landscape in Scotland…..three years ago these were untouchable….*"[71] Now, public Health Authorities assume that any contract they sign will be made public. The problem is that a lot of information is held by private providers and currently they're under no legal obligation to disclose information because they remain outside the scope of Scottish FoI laws. This is the next frontier. The UK Commissioner Richard Thomas makes the point that because of his departments limited resources, the practicalities of extending FoI to cover private companies spending public money, are difficult.[72]

[71] Interview with Kevin Dunion, Scottish Information Commissioner, telephone interview conducted 26 may 2008
[72] Interview with Richard Thomas, UK Information Commissioner, conducted in London, 2 June 2008

6. SWEDEN

The Swedish Freedom of Information model is exceptional, and there are some aspects of it which are worth close examination.

The principle of openness "*Offentlighetsgrundsatsen*" has been long enshrined in Swedish law[73]. Sweden enacted the world's first Freedom of Information Act in 1766. There are four fundamental laws that make up the Swedish Constitution. Of those, the Instrument of Government and the Freedom of the Press Act specifically provide for freedom of information. Chapter 2, Article 1 of The Instrument of Government guarantees that all citizens have the right of:[74]

> "*Freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others*."

Public authorities must respond immediately to requests for official documents. Requests can be in any form and can be anonymous. Each authority is required to keep a register of all official documents and most polices are publicly available. This makes it possible for ordinary citizens to go to the Prime Minister's office and view copies of all of his correspondence.

Under the Act, there are discretionary exemptions to protect national security and foreign relations; fiscal policy, the inspection and supervisory functions of public authorities; prevention of crime; the public economic interest; the protection of privacy; and the preservation of plant or animal species.

All documents that are secret must be specified by law. Decisions by public authorities to deny access to official documents may be appealed internally. They can then be appealed to the courts.

[73] David Banisar "Freedom of Information Around the World 2006-A Global Survey of Access to Government Information Laws", Privacy International, page 141.
[74] The Constitution of Sweden (official English translation published by Swedish Parliament, 2000)

The fundamental principle which sets the Swedish model apart from all others is the cultural acceptance that all information should be open and available unless there's a good reason why it shouldn't be. This attitude is very much the opposite of what exists in other countries, including Australia. There are historical reasons for this. By the middle of the 18th century Sweden had reached what it termed an "…*era of liberty*…."[75] For the first time the Parliament, which broadly represented the people, found itself with more power than the King and the Government. Subsequently a two party system evolved . Both parties soon realised they needed access to government information to be effective in opposition, so they agreed to legislate and the Freedom of the Press Act was born.

Because this principle was enshrined in the constitution, it became part of Swedish culture. It was part of the nations constitutional framework and as such would never be easily changed or even challenged.

Despite this history, the Head of staff of the Swedish Parliamentary Ombudsman Institution, Kjell Swanstrom, says Swedish civil servants still need to be constantly reminded of the importance of maintaining an open and helpful attitude towards requests for information. He says [76] "…*It's still not very natural for them, and you have to teach them all the time the arguments behind this openness*…."

There is one other key feature of the Swedish model which is vital in making the legislation so effective. It can be demonstrated by a small experiment I conducted whilst in Stockholm. At 10am on Tuesday 13th of May 2008 I entered the Documents Centre at Fredsgattan 8, Stockholm. I introduced myself to the security officer at the desk as an Australian journalist and I asked him whether it was possible for me to request some information from the Prime Ministers office. I was promptly escorted through the door to a room with about 10 computers and one civil servant. I asked for all the correspondence between Kevin Rudd and the Swedish prime Minister Fredrik Reinfeldt. Nobody asked me who I was, nobody asked me for identification, nobody asked why I wanted the information. I was simply told my request was being looked

[75] Interview with Kjell Swanstrom, Head of staff of the Swedish Parliamentary Ombudsman Institution. Conducted in Stockholm, 13 May 2008
[76] Ibid

at and the information would be made available to me as soon as the Prime Ministers office checked it for national security purposes. Within a few hours I was emailed one letter, the only correspondence between the two Prime Ministers since Kevin Rudd's ascension to Prime Minister five months ago. It was a friendly letter, congratulating Mr Rudd on his electoral success (see appendix). Admittedly, it would be difficult to get a news story from that piece of information, but the exercise demonstrates the ease with which it is possible to quickly and effectively access information in Sweden.

The fact that a request can be made verbally and anonymously is highly significant. There is no paper work surrounding a simple straight forward request for information. The idea is to keep the process moving along, not to get bogged down in paper work, and it works! Swedish civil servants are told to attend to FoI requests as a priority, any delay of more than two days is considered unsatisfactory. Kjell Swanstrom[77] says when he is asked how many FoI requests his office receives he is unable to answer because there is no record, no paperwork, for most simple requests, he says it's just not necessary and it slows the whole process down.

The Swedish model is not without its problems. Kjell Swanstrom [78] says there are still delays and he says although Sweden is very good at the FoI side, it isn't so good at the privacy end. This is demonstrated by a case involving a Swedish scientist who was researching ADHD (Attention Deficit Hyperactivity Disorder) in children. He carried out his work with the permission of a number of parents who were told that information concerning their children would be kept confidential. When his findings were published, some of his colleagues requested access to his research papers. They were denied, but they appealed to the Administrative Court. The court ordered the scientist to reveal parts of the documents, but in contravention of the order the scientist refused. Under Swedish law, in cases like this, the Parliamentary Ombudsman can act as a prosecutor. The scientist involved was prosecuted and received a hefty fine. In the meantime, some of the parents involved in the case and the scientists wife destroyed all the paperwork, they too were subsequently prosecuted.

[77] Interview with Kjell Swanstrom, Head of staff of the Swedish Parliamentary Ombudsman Institution. Conducted in Stockholm, 13 May 2008
[78] Ibid

Swanstrom makes the point that many academics feel that the FoI laws create problems for them in their relationships with international colleagues.[79] He says it can hinder international collaboration because researchers from other countries are reluctant to share material which they believe should be confidential.

There are other problems which Sweden has experienced as a result of its FoI Laws. Predictably, politicians have found ways around making potentially damaging information accessible. A good deal of what would be good information is simply not put into documents. Kjell Swanstrom says,[80]"*…this has been observed in our public debate*…." Swedish politicians have become adept at making short notations during meetings. Some politicians have been publicly criticised for failing to keep adequate records of meetings and conversations. Sweden is now considering the need to legislate to make it compulsory for politicians to produce documents.

This has not yet become a problem in Britain. Lord Charles Falconer[81] says he hasn't noticed any changes in the way British politicians keep notes and documentation. He believes this is because politicians realise the vast majority of their work will never be the subject of an FoI request, it's only a small percentage which will be scrutinised and therefore it's not worth making dramatic changes to work habits.

The Scottish Information Commissioner Kevin Dunion says that after three years, civil servants in his country are now in the position to look back and ask, what observable harm has been done? Dunion says, "*…there is no evidence that civil servants are less likely to send emails and advise Ministers.*"[82]

In Sweden, legislators have realised the need to amend their legislation to accommodate new technologies. The legislation now includes the term [83]"*…potential document…*" which refers to information kept in a digitalised form in a computer data

[79] Interview with Kjell Swanstrom, Head of staff of the Swedish Parliamentary Ombudsman Institution. Conducted in Stockholm, 13 May 2008
[80] Ibid
[81] Interview with Lord Charles Falconer, conducted in Westminster, London, 22 May 2008
[82] Interview with Kevin Dunion, Scottish Information Commissioner, telephone interview conducted 26 May 2008
[83] Interview with Kjell Swanstrom, Head of staff of the Swedish Parliamentary Ombudsman Institution. Conducted in Stockholm, 13 May 2008

base which could easily be put into a document. Therefore, the amended FoI laws give individuals the right to access information which is in a data base, but not necessarily in official document form.

A lot of effort is put in to ensuring that Sweden's public authorities keep detailed and up to date indexing systems, so that information can be located quickly. It is compulsory for authorities to have a good structure in place for making information readily available. Documents must be registered, this includes documents which contain sensitive information. Applicants might be denied the right to view these documents but they are allowed to know that they exist. There are four Ombudsmen who try to allocate fifteen working days each, per year, to carry out inspections of the public authorities to ensure their records are in order.

Although the Swedish model is not without its problems, Kjell Swanstrom is convinced that overall an open approach is the best. He says in relation to Sweden [84]"*…We do not suffer from such serious corruption as other countries…..mentally if you have to consider the risk that what you do could be made public you hesitate to do it…..people are more careful and there is less cynicism towards politicians.*"

[84] Interview with Kjell Swanstrom, Head of staff of the Swedish Parliamentary Ombudsman Institution. Conducted in Stockholm 13 May 2008

7. CONCLUSION

Governments around the world are increasingly embracing the rhetoric of Freedom of Information. In the UK, this rhetoric has been matched by action. We can only hope the same will happen in Australia. To some extent it's easier for politicians to embrace the principles of FoI whilst in Opposition, from that standpoint they have nothing to lose and everything to gain. Australia's Prime Minister Kevin Rudd made many promises whilst in Opposition, now he has the opportunity to match his rhetoric with action. Ideally, this should happen soon.

The FoI model which Kevin Rudd has proposed for Australia looks very similar to the UK model. Most people, even it's critics agree, that the UK model is working, though not without some difficulties. The structure is sound, but some of the underlying attitudes are not. Genuine and Effective FoI law involves not just legislative change, but cultural and attitudinal change as well. It involves a fundamental belief that governments govern in partnership with communities, not from on high. That ideology needs to begin at the top so it can filter down through the public service. These huge cultural changes need to be championed and actively nurtured.

Information Commissioners must be independent and must be independently appointed. They must have enough power to be taken seriously. They must be personally committed to the principles of open government and they must be adequately resourced.

Ideally there should be a legislated deadline for consideration of public interest concerns, this is important in preventing delays and backlogs which, if left unchecked, bring the whole enterprise to a standstill.

The majority of FoI requests should be able to be made with minimal paperwork, if any. The legislation should specify qualified, rather than blanket exemptions. It should be accepted that all public authorities must be allowed some time and space for self-analysis, without the threat of an unwelcome headline.

Fees must be kept to a minimum, if they are too high, FoI will not be used and the legislation will become redundant. Politicians must be closely monitored to ensure they respect this principle. It's also worth considering a fee waiver for information which is defined as being in the public interest.

The legislation should be extended to include private companies and contractors who receive and spend public money. There should also be a review of the Australian Cabinet Records 30 Year Rule.

Once these measures are in place they should be vigilantly guarded and protected to ensure that attempts to alter or overturn them are not successful. It seems inevitable that these attempts will be made once the political pain is felt.

There are lessons too for journalists as they adapt to the new FoI environment. There will be lots of stories, but FoI requests should be reasonable and specific. The new law should be embraced and used vigorously. Journalists, particularly those representing the ABC should and will be at the forefront of this brave new world of openness.

Effective legislation will be the beginning. The British experience has demonstrated the need for a vigilant FoI community to remain active. Only three years old and already the British legislation has experienced two major assaults. But it has survived, it is a workable model, and there is hope that if Kevin Rudd remains true to his policy promises, Australia will be restored to its position as a world leader on FoI.

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APPENDIX

REGERINGSKANSLIET

Stockholm, 3 December 2007

Prime Minister

The Hon Kevin Rudd MP
Prime Minister of Australia

Dear Prime Minister

On behalf of the Swedish Government I wish to congratulate you to the victory in the 2007 federal election and your appointment as Prime Minister of Australia.

I would like to take the opportunity to stress the Swedish government's appreciation of Australia as a partner with regard to both bilateral relations and global affairs.

The same core values underpin our respective societies – democracy, respect for human rights, and rule of law. On the international scene we share a commitment to upholding the principles of multilateralism and international law in order to make the world a safer place.

I look forward to our future cooperation in areas of common interest, not least regarding climate change, energy supply and environmental issues.

Med hjärtliga hälsningar från Sverige,

Fredrik Reinfeldt
Prime Minister of Sweden

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