

The Impact of Freedom of Information on Records Management and Record Use in Local Government: a literature review

Dr Elizabeth Shepherd, Dr Alice Stevenson, Dr Andrew Flinn, Department of Information Studies, UCL

Correspondence to: Elizabeth Shepherd, Department of Information Studies, University College London, Gower Street, London WC1E 6BT, UK. Email: e.shepherd@ucl.ac.uk

Abstract

In 2008-2009 a research project, funded by the Arts and Humanities Research Council, was run by the Department of Information Studies at UCL. It examined what the impact of the UK Freedom of Information (FOI) Act 2000 has been on records management services in public authorities, especially in local government. The project considered the inter-relationship between records management and freedom of information, and examined the co-operation and partnerships needed in order to maximise the benefits of freedom of information. A part of the first phase of the research was an extensive literature review: this article introduces the literature on freedom of information and records management, focusing on the UK. It suggests that while there were significant preparations by some public authorities for the full implementation of the Act in 2005, perhaps the necessary culture change and strategic leadership did not follow. There are, as yet, few studies of the user experience of freedom of information and this is certainly an area needing further study.

Introduction

Many national governments accept the concept of access to information or freedom of information, and have introduced legislation: the UK is no exception. The UK Freedom of Information (FOI) Act 2000 came fully into force in January 2005 and represents the most important UK legislation to date to include records management guidance for all public authorities. The Act imposes significant duties and responsibilities on public authorities to give access to information. To achieve this, authorities need to know what information they hold, manage and retrieve information effectively, deal expeditiously (within 20 working days) with FOI requests, and disseminate information through a publication scheme. As such, records management practices are deemed to underpin a public authority's ability to comply with the Act. This relationship between FOI legislation and the practice of corporate records management was formally recognised by Parliament in the form of a Code of Practice on Records Management,¹ the first edition of which states that:

Freedom of information legislation is only as good as the quality of the records and other information to which it provides access. Such rights are of little use if reliable records are not created in the first place, if they cannot be found when needed or if the arrangements for their eventual destruction or transfer to an archives service are inadequate.

During the lead up to the enactment of the full provisions of the Act in 2005, the theme of good records management practice was supported by advice from The National Archives

and from the Information Commissioner, who has responsibility to promote the observance of the Code: they signed a memorandum of understanding in 2004.²

At UCL a research project ran over one year in 2008-2009, funded by the Arts and Humanities Research Council, which examined what the impact of the UK FOI Act has been on records management services in public authorities, especially local government. The project considered four specific research questions. First, how well records management services prepared for and coped with the first three years of FOI implementation. Secondly, what contribution records management services make to the ability of public authorities to comply with the Act. Thirdly, how the user experience of FOI is affected by the management of records and, fourthly, what the implications are of FOI for good practice in records management. These questions were considered from the three perspectives of records managers, FOI policy managers and FOI requestors. The project hoped to demonstrate ways in which each group interacted with and benefited from the inter-relationship between records management and FOI, and to examine the co-operation and partnerships needed in order to maximise the benefits of FOI. The study cohort for data collection comprised 19 local government authorities in the South-East of England and London, at county, unitary, city and London borough levels and 11 requestors who have used FOI. The team of researchers on this project comprised academics Drs Elizabeth Shepherd and Andrew Flinn, and Research Associate, Dr Alice Stevenson.

There is no relevant literature which specifically focuses on the London area and, in any case, the research required a wider frame of reference. So the researchers sought to explore the research context through the literature, examining the kinds of preparation local authorities had made for records management and for FOI, the impact of FOI on records management services and the user experience of FOI. One output of the research was a detailed literature review of FOI and records management, focusing on UK local government which forms the core of this article: articles elsewhere will report on the research findings of the project.³ This article therefore provides an introduction to the literature on freedom of information and records management, especially in a UK context, part of a large international literature on access to records and information, records management in its many aspects and of the broader issues of accountability, transparency and good governance, which are not covered in any detail in this review.

Records Management in Local Authorities: A background

The practice of records management within local authorities has long been characterised as erratic and lacking uniformity from council to council.⁴ It has been observed that whilst records management emerged as part of the county archivist's responsibilities in the 1950s, and as a distinct activity in a local government context around the 1960s, dedicated records management posts did not emerge until the 1980s.⁵ Even by the early 1990s, records managers were few and far between, often working from a library, archive department or county record office, and there was no perception that the records manager should have a strategic role within an organisation.⁶ For instance, twenty years ago it was observed that of the 33 London local authorities, only three employed active records management services. The primary obstacles to appointing records managers at that time were identified by Mander and by Shepherd to be low levels of records management expertise in the work force and the lack of motivation among senior management to introduce records management strategies.⁷

Few legislative drivers existed for large scale culture change in records management practices in the period to the 1990s. Although some legislation was directed towards access to information and some had records management implications these Acts were piecemeal, often affecting discrete parts of organisations where specific, narrowly-focussed procedures could be drawn up to meet access requests (e.g. medical records, access to social work and educational records). The Public Records Act (1958), updated in 1967, only applied to central government departments, together with other specified bodies, but excluded local government records. More specific to local government record management practices, the Local Government (Records) Act (1962) conferred limited discretionary powers for local authorities to provide certain archives services,⁸ the Local Government Act (1972) part VA gave the public access to certain meeting documents, while section 224 contained a general statement advocating the proper management of council records,⁹ and the Access to Local Government Information Act (1985) included guidelines for retaining council minutes and associated background documents. These pieces of legislation provide the building blocks and incentives for authorities to manage their records within an accountable system, however, there are few legal incentives for compliance. This was a fact lamented by some local authorities who, during a 2003 TNA consultation on the possibility of new legislation pertaining to records management, described the ineffectiveness of previous legislation in compelling local authorities to prioritise records management.¹⁰

Prior to the 1990s, therefore, the development of records management in local government can be characterised as slow and failing to take root and flourish. Yet, in the 1990s the pace of change seemingly quickened, leading Jones to identify a 'renaissance' in records management in this area, in spite of earlier failures.¹¹ Such a trend is certainly suggested by the employment figures collected for the archive domain between 1993 and 2001 by Davies and Ellis at the University of Wales Aberystwyth: within local government the number of posts advertised for qualified records managers rose from 0 in 1993 to 17 in 2001, with an increase identifiable each consecutive year.¹² Many reasons were attributed to this advance, including the changing organisational structure of authorities, the improvement in records management training on traditional archival courses, and the development of performance indicators and quality initiatives. In particular, the evolution of information technology was identified as a major driver for change. After the advent of a Labour Government in May 1997, the *Modernising Government* agenda, which publicised the government's vision for modernising public services, was set out in a White Paper in 1999. The Local Government Act (1999), for example, committed local authorities to develop long-term forward looking policies; to consult the communities they serve in order to deliver services; to deliver efficient services to high standards; and to make full use of information technology in delivering those services. The latter is often discussed with reference to the e-government agenda, which set government departments the target of making all government services available electronically by 2005. This had clear implications for electronic document and records management systems (EDRMS) and certainly, records management was perceived by some to lie at the heart of this agenda, presupposing that there would be radical changes in local government practice.¹³

Surveys of the sector at the end of the 1990s, however, suggest that while identifying a 'renaissance' in records management might have been at least partly true, many authorities still struggled to establish records systems and the formal management of

digital records in particular was still lacking. Certainly, the pressures of the *Modernising Government* agenda were evident in ICT arrangements, but the picture to emerge of records management in local authorities was of inadequate or partial services. TNA, for example, noted in the report on their 2003 consultation that “many responses expressed concern that at present there was little or no coherent records management provision within many authorities”.¹⁴ This view was confirmed by the Audit Commission who claimed that it had “evidence from 25 audits that records management is widely undervalued in a range of local authorities”.¹⁵ In the public eye these weaknesses were particularly visible following high profile inquiry reports, such as the *Victoria Climbié Inquiry Report*, which specifically berated poor records management practices.¹⁶ Practitioners reported to Whitman, McLeod et al that it had taken such publicly visible reports to promote awareness of and real changes in record management practices in social services.¹⁷ Again, however, rather than a full, institutional-wide reform of practices, attention focussed on discrete records management practices in certain departments.

Such inadequacies were especially noticeable in the area of electronic records management, in which, according to Barata, local authorities “had yet to make any significant progress”.¹⁸ In these analyses the *Modernising Government* agenda had impacted in the more generalized area of ICT rather than in electronic records management per se:

E-Government activities concentrate on customer-focused services and expanding contact with users. Most efforts to date have focused on the front end, including developing Web-enabled interfaces and improving the search and retrieval aspects of customer relationship management systems. Back office services are struggling to meet demand. The broader issues of records management are often being ignored, particularly in local authorities. For some it would appear that there is a general belief that implementing a commercial document management system to underpin customer relationship services will equate with better records management. This reflects a poor understanding of the aims and benefits of records management, which is broader than document management, and the abilities of the technology employed.

Barata’s findings echoed the Audit Commission’s review of the first year of electronic government implementation in England.¹⁹ They found too much emphasis on the implementation of front-end systems amongst English authorities and not enough emphasis on re-engineering local government in terms of the entire range of processes and systems. Key questions were also raised over the sustainability of the electronic government agenda in terms of both the physical (people, finance and technical infrastructure) and non-physical resources (skill, plans and strategies) available to authorities. Similarly, Benyon-Davies noted in Welsh local authorities the over-emphasis of e-government initiatives on front end systems.²⁰ One possible reason for this lack of attention to more holistic systems may be the perceptions of and attitudes to the kinds of changes that are necessary in organisations to comply with initiatives such as e-government. For example, immediate reactions to the demands of e-government reforms tended to identify the need for technological change, such as providing access to information via the website. Yet, as has been argued by McLoughlin and Cornford there are social dimensions to technological change which tend to be overlooked and neglected, including institutional context and organisation structures. Such a ‘processual

approach' also acknowledges that change is enacted by agents with different priorities and backgrounds.²¹ In terms of local government, the diversity of structures and organisational configurations would suggest that changes to information systems are equally variable. These observations and insights may also have relevance to records management, as Barata suggests, since records and record systems are one product of the processes, technology and people in an organisation, and as the research results will show, human factors are as important as system factors in the smooth operation of FOI.²²

One potential facilitator that might have been expected to address wider scale improvements to records management systems and procedures specifically was the publication of parts 1 and 2 of ISO 15489 in October 2001.²³ It represented the first international standard for records management, which developed from Australia's Standard AS 4390, and provides "an officially endorsed benchmarking model of best professional practices for global emulation".²⁴ However, an investigation by McLeod of the use of the standard in UK organisations suggested that the impact of the standard on records management practices had been limited, "medium to low", and that it was the Freedom of Information Act that had the highest profile in driving change in this area.²⁵

Yet prior to the FOI Act, a different piece of legislation with record management implications was passed. This was the Data Protection Act (DPA) 1998, which came into force on 1 March 2000. This Act replaced the Data Protection Act 1984, which it repealed, in its entirety. The Act gives individuals a right of access to information about themselves and governs the collection, storage and processing of personal information relating to identifiable living individuals. It applies to electronic and manual data (i.e. on paper) held in structured files. From 2005, it applied to all manual data. It, like the FOIA, includes a provision for the development of codes of practice, in section 51(4) of the DPA. A code of practice for archivists and records managers under the DPA was developed by a joint working group and published in 2007, which covers the entire records life cycle and addresses records in all media, and which the Information Commissioner was satisfied provided authoritative advice which should promote good practice.²⁶ Section 3 of the Code deals with records management issues and the involvement of a records manager to facilitate DPA compliance is referred to (s.3.1.1). However, there have been almost no studies of the impact that this piece of legislation had on records management practices in public authorities,²⁷ and it can only be presumed that the higher profile FOIA drew attention away from DPA. Yet, in terms of changes to the activities and position of records management in authorities some level of action and prioritization of such practices must have occurred and there is some anecdotal evidence that points towards this.²⁸ In the Department of Constitutional Affairs consultation on preparations for FOI, it was suggested that "local authorities over-estimated the problems of data protection" and that "with the Data Protection Act there was a lot of preparation and a lot of investment put into it".²⁹ As a result of the disparity between investment and eventual use, it was suggested that local authorities were suspicious of the extent of investment required for FOI. Thus the DPA can be conceived to have had implications for the impact of FOI.

Freedom of Information Act

Whilst the *Modernising Government* agenda may have laid a foundation for improvement in records management and ISO 15489 may have provided a framework of best practice, the legislative catalyst for change in records management that is most often cited is the

UK Freedom of Information Act 2000.³⁰ A Code of Practice on the Management of Records, required under section 46 of the Act, was issued by the Lord Chancellor and was accompanied by detailed guidance from the TNA.³¹ The Local Government Association, Records Management Society, Society of Archivists and the Chartered Institute of Library and Information Professionals also provided advice.³² Although effectively promoted among records management professionals and given prominence at the time of publication, in retrospect it can be argued that the Code's high level approach, and therefore inevitably generalised guidance, left a gap which resulted in a lack of the detailed guidance local authorities needed to implement records management in practice.

The Code itself is not compulsory, but it is held to be best practice. Nevertheless, the Information Commissioner's Office (ICO) can intervene in cases where public authorities are found to be failing to meet expected standards of good practice by providing advice, carrying out assessments, issuing Practice Recommendations, publicising positive and negative aspects of cases, and creating special reports to Parliament.³³

Preparation for the Act

The implications of being able to comply with FOI were viewed from the outset to be “a real test of record management” and several challenges were envisaged.³⁴ One such challenge arose from the fully retrospective nature of FOI meaning that many organisations that had inherited uncatalogued records could potentially face difficulties in finding older information. Another potential problem identified was the contradiction between the remit of the FOIA which covers information, and the emphasis on records management in the Code. Other concerns were raised with regard to the lack of senior management support.³⁵ Publication schemes should increase openness and transparency and may have encouraged authorities to implement retention and disposal schedules in a more systematic way than had been the case before. Finally, with whole public authorities needing to be accountable, the challenge of implementing and maintaining a consistent organisation-wide programme would not be insignificant:

It is easy to create a records management policy. It is comparatively easy to agree a corporate file plan and retention schedule. It is far harder to convince staff that they should cease filing their information locally and managing it according to their own ways and should embrace new, shared ways of working.³⁶

A few studies attempted to gauge the preparedness of public authorities for coping with such challenges. The first report of the Constitutional Affairs Select Committee investigated preparation across all public sectors prior to full implementation and noted that “The further one goes away from Whitehall departments, the more 'patchy' is the state of preparedness” and “in local government a varied picture emerged—with some authorities well advanced and others less so”.³⁷ The Local Government Association when giving evidence expressed concern that the advice given for records management particularly was not suited to the more complex departmental picture in local authorities and the sheer range of services provided by them:

S46 code seemed abstract and used terms LA officers don't understand. It seems to be based on culture and business needs of civil service legal departments. Local government records reflect the degree of improvisation needed to manage large organisations with constantly changing structures.

Certain services (e.g. finance) have a completely different approach to information storage, where the language of 'file closure' or the idea of discrete files for items of information are not suitable.

The Committee concluded that:

While many local authorities will be compliant with the FOI legislation when it comes fully into force in January 2005, some will not. Successful compliance will be dependent on a relatively low initial level of requests. A 'business as usual' approach is far from the intention of the Act, which aimed to introduce a culture change in the handling of information. It seems clear that, so far, too few common standards for handling FOI requests across local government have been established. It is likely that different local authorities will handle similar requests in very different ways.

Screene's study revealed that the preparations being undertaken by the council under analysis were limited to the superficial areas of concern, with the implementation of the Code of Practice being introduced gradually between 2005 and 2007. A study of the preparation for FOI in further education colleges identified the key issue of making colleagues aware of the implications of FOI, underpinned by records management, and gaining their commitment to integrating good records management practice.³⁸

One of the obstacles to preparation was that organisations were unsure in advance of January 2005 how many requests they would receive and therefore how much resource to devote to them.³⁹

Impact of the Act

The impact of FOI is often characterised as requiring a culture change for public authorities if FOI is to be successfully implemented. The lack of such fundamental change can be one factor in a failure to be more genuinely open and accountable. Given that, as argued earlier, change needs to be modelled in both technological and social terms, it might be expected that the culture change advocated by FOI would be the necessary catalyst for actual transformations in records management.

The effects of FOI on public authorities were keenly scrutinised from the outset of full implementation, although in comparison to other FOI issues, such as the application of exemptions and the nature of vexatious requests, records management had a fairly low profile in the emerging analysis. In other words the predominant focus has been on compliance issues rather than the records management issues that underpin compliance.

Nevertheless, initial and annual surveys of FOI in local government, conducted by the Constitution Unit at UCL, have provided some broad statistical indicators.⁴⁰ These reports have stated that improvements in records management were a positive effect of FOI compliance, along with increased openness and transparency. For example, after the first six months of full FOI implementation a survey of local government noted that when asked what FOI's positive impact on local authorities had been, many responded that records management issues had been recognised and had progressed.⁴¹ Twenty-eight per cent of local authorities surveyed at the end of 2005 felt that FOI had had a positive impact on records management, whilst in 2006, 29 per cent of respondents claimed that

the most significant benefit of FOI to their organization had been that it had encouraged them to improve their records management system and 60 per cent reported improvements.⁴² Similarly, surveys undertaken by the ICO on a wider section of public authorities, also reported that one of the most common spontaneously cited benefits of FOI had been its positive impact on records management practices with 27 per cent of respondents stating this⁴³ and 87 per cent agreeing with the statement that FOI had improved records management.⁴⁴ Moreover, 57 per cent of public authorities surveyed in 2006 claimed that their filing systems would be likely to change to comply with FOI, although it was noted that large authorities were significantly more likely than small/medium authorities to have made changes.⁴⁵ Similarly positive reports of the impact of FOI on public authorities are noted for Scotland where 74% of respondents claimed that records management had improved.⁴⁶ This has led to reports that “the FOIA has led to a surge in interest in the maintenance of electronic and paper records” and that public authorities had shown “a marked increase in interest in records management as a general ‘business issue’”.⁴⁷

In reports from the Constitution Unit, the ICO and the Scottish ICO, however, there is little evidence for the specific ways in which records management in local authorities has improved, and it remains an assumption that respondents were fully aware of what records management meant in practice. As reported by the Constitution Unit in a consultation for the Audit Commission,

... we can safely say is that there are no statistics, no hard evidence, either on the improvement that FOI has actually generated in records management or in the present state generally among local authorities.⁴⁸

That said, a snapshot of actual practice is provided by the activities of the ICO in the form of Practice Recommendations and Decisions Notices that have been issued in response to complaints from requestors.⁴⁹ Overall, across the board the ICO noted that the majority of complaints received by its offices were in connection with local government, with 823 complaints about 361 councils received under FOI and the Environmental Impact Regulations during 2005 and 914 complaints about 352 councils in 2006.⁵⁰ With regard to the Practice Recommendations, a high profile case in local government involving records management is Nottingham City Council, which has received two recommendations, highlighting the council’s deficiencies in their capacity and capability to manage their records, the second of which detailed concerns about its records management practices and commented:

There is no culture of corporate information or records management in Nottingham City Council. It is not resourced as a corporate programme and does not have specific funding. Staff awareness of records management responsibilities is inconsistent.⁵¹

Whilst the practice recommendations reportedly affected Nottingham City Council’s reputation,⁵² the very fact that warnings in this form have been issued has led some to question whether local authorities more widely have fully addressed the records management issue or simply “paid lip-service to a requirement that seems to have dissipated as we rapidly approach the fourth year of the full FOI regime”.⁵³ Authorities may be taking a view on the reputational risk incurred and managing the risks rather than investing in records management services. This view was also expressed in a TNA

consultation on revision to the Code of Practice under section 46, where one respondent noted:

... the implementation of the Code of Practice is unlikely to make the transition from existing on local authorities 'wish lists' to existing on the list of priorities. Even practice recommendations would not be sufficiently punitive for many authorities to act with sufficient rigour with regards to the implementation of the Code of Practice... many will simply not do so unless it becomes a mandatory requirement...⁵⁴

In a sector where Comprehensive Performance Assessment, Best Value Indicators and a new Performance Framework with National Indicators, are of prime concern, there is a notable lack of explicit links to FOI, which may account to some extent for responses such as this. Under the National Indicators for local authorities set out in 2007, for example, 198 indicators cover the entire range of government priorities for local government, and while they do refer to the use of public libraries, visits to museums and engagement in the arts (NIs 9, 10, 11), records management is rather too remote from public service delivery to feature.⁵⁵

And as the tribunal *Randall v Information Commissioner and the Medicines and Healthcare Products Regulatory Agency* (EA/2007/0004) restated, the Lord Chancellor's section 46 Code of Practice is not legally binding, as it was provided for guidance only.⁵⁶ This questions the effectiveness of the Code of Practice in bringing about records management change, if authorities are free to ignore it.

Further evidence for current problems with records management derives from complaints made to the ICO. Some of the Decision Notices⁵⁷ issued by the ICO attest to poor records management practices in local authorities around the country. Notably, for example, even three years after the introduction of FOI, two councils were criticised for not yet possessing a records management policy (cases FS50134467 and FS5014268), while several other notices made reference to records management problems or deficiencies (e.g. FS50092946, FS50145067, FER0086785, FER0096306, FS50121882, FS50132229, FS50079486). On the other hand, resolutions of some complaints against local authorities were documented as having been facilitated by good records management practices (e.g. FS50087297, FS50087297).

An FOI request to the ICO (FOI/982) revealed that in 2007, of the 11 referrals made to TNA, nine were local authorities. All of these referrals are, at the time of writing, the subject of ongoing work or were resolved informally. A further nine referrals were made in the first half of 2009, of which four relate to local authorities. Action arising from three of these referrals is ongoing and as such formal action, such as a Practice Recommendation in relation to the section 46 Code, may arise in future. More informally, councils are encouraged to seek advice and records management assessments from TNA. Overall, then, the erratic and variable nature of records management provision in local government identified over twenty years ago remains evident.

Evidence given before the Constitutional Affairs Select Committee on 'Freedom of Information: one year on' also suggested that local government was facing problems.⁵⁸ Lydia Pollard from the Improvement and Development Agency, for example, reported that:

Local authorities are still working on records management, the vast majority still do not have a corporate records management system, they have a mix, and finding information in a manual system takes a considerable amount of time.

In particular Steve Wood, then at Liverpool John Moores University, lamented the fact that potential benefits of electronic systems were not always being exploited and that “the benefits of improved records management are not felt by users” because of the “paper-based’ mindset” of authorities.⁵⁹ Such problems in records management have been seen by Worthy and others as one of “a number of emerging obstacles that could seriously limit the [FOI] Act”.⁶⁰ One obstacle to the use of the section 46 Code to improve records management may be the feeling that it was designed for central government, rather than local authorities, in spite of the Model Action plans which were developed by TNA and tailored to specific sectors.⁶¹

In a number of ways, central government may have been better prepared for FOI, for example, the establishment of ‘clearing houses’ for ensuring consistency across departments in the handling of and responses given to FOI requests. Local authorities are, as the Senior Information Manager at Islington Council explained to the Constitutional Affairs Select Committee:

...very much on our own in terms of consistency. We rely on networks and regional groups... There is no resource given. There is certainly no hierarchy of support and guidance given to local government bodies, and that is a major factor...⁶²

Other than these sources, specific studies aimed at assessing the impact of FOI on records management in local government are few in number and limited in scope. Shepherd and Ennion did carry out an assessment of FOI impact through in-depth interviews six months after the FOIA’s implementation, but this only included one local authority.⁶³

Some results are forthcoming from Scotland, which implemented its FOIA at the same time as England and Wales. The Scottish Information Commissioner’s Office’s report on the impact of FOI in Scotland did include qualitative interviews with individuals at two local authorities, although these were more wide ranging questions related to the FOI Act rather than a detailed examination of records management practices.⁶⁴ Nevertheless, it is notable that one of the respondents within a local authority asserted that “cultural change was going to happen anyway due to websites, the modernisation agenda, and Best Value”, thus whilst FOI “is perceived to contribute to change, it is not a catalyst for change per se”.⁶⁵ Burt and Taylor noted that FOI is seen as an administrative task, rather than “a mechanism through which to generate strategic organisational change”. However, their research suggested that FOI was one factor among many which are generating “a growing awareness of the importance of information as a corporate resource” and thereby lends “new importance to the development of formal records and information management policies, systems, processes and procedures within local government”. In contrast, however, to the positive assessment of FOI impact on records management reported by the likes of the Constitution Unit, the Scottish research found little evidence of real strategic change in the way information was managed within authorities, instead observing a partial and patchy administrative shift and, perhaps, small changes in the ways in which people recorded information. For example, it was noted “one thing people

don't do now is record personal opinion. This is probably good as it removes potential for prejudicial views".

A further qualitative study by Burt and Taylor conducted in Scotland assessing the wider impact of FOI on public authorities includes insights into the effects of FOI on local authorities. The results showed that whilst the FOI Scotland Act is perceived as contributing to change within these bodies, it has not proved to be a catalyst for radical strategic transformation. Rather, the tendency has been towards the absorption of FOI needs within the existing administrative cultures already embedded within Scotland's public bodies.⁶⁶

In summary, whilst superficially FOI seems to have facilitated a change in the perception of records management, how in-depth the culture change has actually been and how far it has penetrated organisations beyond the front-end customer interface can be questioned. The positive rhetoric reflected in surveys may owe more to the culture of performance indicators than to fundamental transformations. These sources are, however, only snapshots and what is lacking is any substantial evidence for the specific ways in which records management practices have been affected by FOI implementation, a gap that the research project at UCL sought to address.

FOI and records management abroad

Australia enshrined FOI in law in 1982 and so has over two decades of experience of public authority implementation. Similar to the manner in which FOI is championed as a driver of records management in Britain, Australian sources frequently cited records management improvements as a direct consequence of the FOI legislation. However, as Rick Snell noted in 1993, there was little empirical evidence to support the claim. Moreover, no acknowledgement had been made in the relevant Australian literature of the other factors which may be responsible for such changes. In a paper delivered to a Records Management Association of Australia Convention, Snell presented an alternative picture of FOI and records management, painting it in a less positive light.⁶⁷ Negative possibilities such as the reduction in the quality of records were discussed, which included not recording information because of potential FOI requests, not indexing certain records and lack of senior management support for records management. Snell's survey of FOI officers and records managers in Tasmania revealed a low estimation of the positive impact on records management, offering a contrast to other literature.

An investigation conducted by the National Archives of Canada in 2001 indicated that the Access to Information Act 1982 (AIA) had had no significant impact on record-keeping.⁶⁸ The study, however, did not examine current records and how departments apply AIA to that documentation.⁶⁹ Gilbert, however, like Snell, suggested the Act's "unique capacity to disturb the existing bureaucratic culture and, by extension, its record-keeping practices" by significantly altering record-keeping practices through limiting both the creation and content of records.⁷⁰ Shifts to making decisions and communicating them orally, together with a reduction in the use of official memos were both noted as strategies used by officials who did not support FOI.⁷¹ On the other hand, Badgley, Dixon et al. have argued that such claims have been overstated in Canada and they found little evidence for them, emphasizing instead that the practice of records creation and management arises out of several factors that are not necessarily related to AIA.⁷² Hannant in Flinn and Jones recounted the Canadian debate and commented that the effect

of AIA on the record to which the historian is given access, is the production of a highly processed, redacted, fragmentary and selective file, which lacks context.⁷³ Sebina has also commented that poor records management inhibited the implementation of the South African Promotion of Access to Information Act.⁷⁴ Flinn and Jones find the Swedish situation most concerning for the historian, where the long-established right of access appears to have resulted in a paucity of material and lack of records, where important matters are discussed orally and rigorous selection of files results in thin archives.⁷⁵

In Ireland the Information Commissioner investigated this issue in his review of the impact of FOI through twelve case studies.⁷⁶ He compared records from before the implementation of the Act with those created after, and concluded that there was no evidence that less detailed information was being recorded or that certain information was being deliberately omitted. Rather the reverse scenario was apparent, with more detailed records being produced. Instead, the Irish Information Commissioner's greatest criticism with regard to records management was that there appeared to be a lack of uniformity in record-keeping practices, particularly with regard to corporate responsibility for the records management function.

Users of FOI

Research into the users of the UK's FOIA and their experience of use is limited. Broad statistics of the frequency of use by different requestor groups has been provided by the surveys conducted by the Constitution Unit and the ICO. UCL's Constitution Unit recognises eight main categories of requestor. In the first year of implementation, private individuals (43%), businesses (29 %) and journalists (11%) were the top three requestor groups identified and these remained the groups requesting the most information through FOI the following year.⁷⁷ An independent review by Frontier of the impact of FOI also identified individuals, business and journalists as making up the majority of requestors.⁷⁸ Roberts has studied requests received by the Ministry of Defence, 2005-2008, and noted that the main user groups were academics, businesses, media and journalists and private individuals.⁷⁹ UCL's Constitution Unit has undertaken in-depth studies of the UK user experience, first through a study of central government, then by an analysis of those making requests to local government.⁸⁰

Comparative information on use from other countries presents similar patterns. In Canada, the data indicates that, in 2000-2001, businesses made more use of the Act than any other group (40.9 per cent) followed by the general public (31.5 per cent), organizations (16 per cent), the media (10.8 per cent) and academics (0.8 per cent).⁸¹ While usually included in the general public category, requests from Parliamentarians in Canada are estimated to be 10 per cent of all requests.

Information on the user experience is patchy. The most visible users are journalists, and it is perhaps because of this that this user group has been subject to the most analysis, both in the UK⁸² and abroad.⁸³ Holsen et al, for example, found in 2006 that while most journalists felt that FOI had made little difference to their reporting, those working on longer-term investigative stories had used FOI as an additional tool for gathering information, especially statistical or performance data or for those stories where access to original records was important.⁸⁴ More recently, the Daily Telegraph's investigation into Westminster Members of Parliament expenses was driven by FOI disclosures.⁸⁵ Business

use in Australia, Canada and the USA was reviewed by Amos in an attempt to predict and provide guidance for business use in the UK.⁸⁶

Observations of academic use have also been made and these have suggested that academics make relatively little use of FOI legislation so far.⁸⁷ The UK Research Information Network has taken an interest in promoting the use of FOI by researchers.⁸⁸ More recently, interviews with contemporary historians who made use of the Act as a research tool to obtain information has been discussed by Flinn and Jones.⁸⁹ They concluded that while journalists might well use FOI effectively to gain specific information to support investigative reporting, contemporary historians pursuing research projects which ask broad ranging questions find FOI a somewhat imperfect resource discovery tool, with uneven outcomes and frustrating bureaucratic delays. Where researchers and records managers collaborate proactively, FOI can nevertheless prove useful.

Conclusion

This article introduces the literature on freedom of information and records management, focusing on the UK. The issues covered here provided the research context for the study of the relationships between records management and freedom of information in local government, a research project carried out at UCL in 2008-09. There is large international literature on access to information, records management and of the broader issues of accountability, transparency and good governance, which we have not attempted to cover in this review. However, this literature review does allow us to draw some conclusions about the state of research and dissemination of knowledge in the field. Records management in UK local government has been studied from time to time, mainly through brief surveys which allow us to characterise the state of activity at particular points.⁹⁰ More thorough studies and reports in the 1990s and early 2000s suggest that from a fairly low historical base, local authorities struggled to make comprehensive and embedded changes to their information management practices and strategies.⁹¹ In spite of international records management standards, legislative improvements and stronger direction by central government through *Modernising Government* and *E-government* agendas, local government often failed to make significant progress in implementing effective records management systems, in particular for digital records.

Freedom of information legislation in the UK was only one part of information policy legislation: it followed the Data Protection Acts 1984 and 1998, which were enacted to bring the UK into line with the requirements of European Directives on data protection. Interestingly, although many local authorities established systems to deal with data protection requests and requirements, including the need to manage both digital and paper files and to monitor requests, few studies have been carried out of the impact of data protection on records management. When freedom of information legislation was enacted, as well as the Code of Practice on records management, much other guidance on the records management implications of FOI was published and promoted, and a number of studies on the inter-relationships were proposed. The literature review shows that FOI was expected to have a greater impact than data protection on records management, and there were significant preparations for the full implementation of the Act. For example, many authorities recognised the need to review and destroy records in line with retention schedules, to implement consistent records management systems across a whole organisation rather than piecemeal, and to train employees in new systems for tracking

FOI requests and for the underlying information management. However, experience since 2005 suggests that perhaps the necessary culture change and strategic leadership did not follow. It remains true that while many individuals report that improvements in records management should and have followed FOI implementation, there is little evidence for the specific ways in which records management in local authorities has actually changed.⁹² Indeed, Decision Notices and Practice Recommendations from the ICO provide evidence that the erratic and variable picture of records management in local government seen 20 years ago is still evident.

There are few studies yet of the user experience of FOI, although some work has been undertaken in countries such as Canada which have a much longer history of access to information legislation. In the UK, journalists have made high profile use of the Act to discover details of the salaries and expenses claims of public figures, businesses and local interest and pressure groups are making increasing numbers of requests about local issues, and contemporary historians have begun to explore the use of FOI as a part of their resource discovery mechanisms. Much more fruitful work could be undertaken on exploring the user experience, whether for accountability and transparency, contemporary history or other purposes, and in particular whether records and information management can play a greater role in promoting new uses of records.

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Notes

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- ¹ TNA 2002; a revised Code was published in 2009, TNA 2009.
- ² TNA, 2004 c.
- ³ The research team is writing a second article which will report on the results of the research and which will look in more detail at the methodology and data collection strategies adopted, so these matters are not explored here.
- ⁴ Mander 1989, Shepherd 1994.
- ⁵ This may partly have been in response to the Local Government Act (1984) which abolished the Metropolitan Counties in April 1986; Wright (1989) suggested that it was only because of this that records management became a priority in the mid-1980s.
- ⁶ Shepherd 1994, 18, Jones 1994, 14.
- ⁷ Shepherd 1994, Mander 1989.
- ⁸ Section 1(1) of this act says that 'A local authority may do all such things as appear to it necessary or expedient for enabling adequate use to be made of records under its control'. This act has been successively amended to cover all country councils, all London boroughs, metropolitan districts and unitary councils.
- ⁹ (s.224) requires local authorities to 'make proper arrangements with respect to any documents that belong to or are in the custody of the council of any of their officers'.
- ¹⁰ TNA 2004 b, 18.
- ¹¹ Jones 1994.
- ¹² Davies and Ellis 2003, 23, table II.
- ¹³ RMS 2003, 2.
- ¹⁴ TNA 2004 b, 18.
- ¹⁵ TNA 2004 b, 18.
- ¹⁶ Laming 2003.
- ¹⁷ Whitman, McLeod et al. 2001, 264.
- ¹⁸ Barata 2002; Barata 2004, 65, 67.
- ¹⁹ Audit Commission 2002.
- ²⁰ Benyon-Davies and Williams 2003, 147.
- ²¹ McLoughlin and Cornford 2006.
- ²² See endnote 3.
- ²³ ISO 2001; ISO 2001; Stephens 2001.
- ²⁴ Stephens 2000.
- ²⁵ McLeod 2003 a; McLeod 2003 b; McLeod 2004; McLeod 2005.
- ²⁶ TNA and others 2007.
- ²⁷ The Constitution Unit did undertake one brief survey of Data Protection Officers in central government, Cook 2002, but the scope of this study was very limited, focussing upon the processing of requests.
- ²⁸ For example, the joint working party on data protection for archivists and records managers which functioned from 1998-2002, and which eventually led to the publication of the Code of Practice, (TNA and others, 2007).
- ²⁹ CASC 2004, 29.
- ³⁰ The UK FOI Act covers England and Wales and UK government. There is separate legislation for Scotland (Freedom of Information (Scotland) Act 2002).
- ³¹ A similar code, S.61, is part of the Scottish Act. TNA 2004.
- ³² Amos, Baxter et al. 2001.
- ³³ http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/freedom_of_information_ico_enforcement_strategy.pdf (accessed on 9 June 2008).
- ³⁴ Dilys Jones in Janes 2004; Bailey 2005.
- ³⁵ Screene 2005.
- ³⁶ Bailey 2005.
- ³⁷ CASC 2004.
- ³⁸ Edward and McLeod 2004.
- ³⁹ Shepherd and Ennion 2007, 38.
- ⁴⁰ Amos and Holsen 2005 a; Amos and Holsen 2005 b; Amos, Holsen et al. 2006; Amos and Holsen 2007; Amos, Dobias et al. 2008.
- ⁴¹ Amos and Holsen 2005 b, 34.
- ⁴² Amos, Holsen et al. 2006, 22; Amos and Holsen 2007, 17.
- ⁴³ Only 'openness/transparency' was more spontaneously cited (35 per cent).
- ⁴⁴ ICO 2006; ICO 2007; ICO 2008.
- ⁴⁵ ICO 2006, 6; ICO 2006, 7.
- ⁴⁶ Burt and Taylor 2007, 29; SIC 2007, 30.

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- ⁴⁷ FOIJ 2006.
- ⁴⁸ Amos and Simpson 2007, 14.
- ⁴⁹ All these cases are only those with published notices, but the ICO also resolves many FOI complaints informally without recourse to such notices. In 2007/08 48% of cases were informally resolved, and only 14% of cases resulted in a Decision Notice being served (http://www.ico.gov.uk/about_us/what_we_do/corporate_information/complaints_handling_performance.a_spx accessed 1 July 2008). The ICO's enforcement team, for example, will often refer public authorities to the TNA for advice when deficiencies in their records management systems or policies are identified.
- ⁵⁰ ICO 2006, 10; ICO disclosure log reference FOI/579; http://www.ico.gov.uk/Home/Global/freedom_of_information_issues_disclosure_log.aspx (accessed on 1 July 2008).
- ⁵¹ ICO Oct 2007, 4.
- ⁵² FOIJ 2007.
- ⁵³ Jones 2008, 10.
- ⁵⁴ TNA 2007, 1.
- ⁵⁵ Communities and Local Government 2007.
- ⁵⁶ Grant and Hill 2008. In this case the public authority was unable to supply information to the complainant because it did not have an adequate indexing system to enable it to locate relevant documents.
- ⁵⁷ http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx (accessed 1 July 2008)
- ⁵⁸ CASC 2006.
- ⁵⁹ CASC 2006.
- ⁶⁰ Worthy 2008, 100.
- ⁶¹ TNA 2004 a.
- ⁶² This view was also expressed in the Audit Commission's survey: "There is no single forum for guidance for developing local authority thinking at a strategic level on FOI or more widely on information management." (Amos and Simpson 2007, 23).
- ⁶³ Shepherd and Ennion 2007.
- ⁶⁴ SIC 2007.
- ⁶⁵ Burt and Taylor 2007, 58.
- ⁶⁶ Burt and Taylor 2008.
- ⁶⁷ Snell 1993.
- ⁶⁸ ATIATF 2002.
- ⁶⁹ Glover, Holsen et al. 2006, 61.
- ⁷⁰ Gilbert 2000.
- ⁷¹ It is a fear that was expressed prior to the implementation of the UK's FOIA, Wade 2004, although there is no evidence yet for the 'chilling effect' according to preliminary research by UCL's Constitution Unit, R. Hazell, B. Worthy, et al. 2008. It has also been reported during the review of the 30-year rule in Britain, P. Dacre, J. Pilling, D. Cannadine 2009, pp. 23 and 27.
- ⁷² Gilbert 2000; Badgley, Dixon et al. 2003.
- ⁷³ Flinn and Jones 2009, 132-133.
- ⁷⁴ Sebina 2009.
- ⁷⁵ Flinn and Jones 2009, 6, 118-122.
- ⁷⁶ Murphy 2001.
- ⁷⁷ The other categories (politician, academic/student, campaign group/charity, local authority employee and lawyer) were not represented above 4%. Amos, Holsen et al. 2006, 6; Amos and Holsen 2007, 5.
- ⁷⁸ Frontier 2006.
- ⁷⁹ Roberts 2009.
- ⁸⁰ <http://www.ucl.ac.uk/constitution-unit/foidp/research/Evaluation/index.html> (accessed 25 June 2008).
- ⁸¹ ATIATF 2002, 9.
- ⁸² Mathieson and Porter Chamberlain 2005; Holsen, MacDonald and Glover 2007.
- ⁸³ Murphy 2001, 38-39; Evans 2003.
- ⁸⁴ Holsen, MacDonald and Glover 2007, 13-14.
- ⁸⁵ Daily Telegraph 2009.
- ⁸⁶ Amos 1999.
- ⁸⁷ Lee 2005.
- ⁸⁸ RIN workshop on Researchers' Use of FOI, see <http://www.rin.ac.uk/foi-workshop>
- ⁸⁹ Flinn and Jones 2009.
- ⁹⁰ Mander 1989, Shepherd 1994, Jones 1994.
- ⁹¹ Barata 2002, TNA 2004 b.

⁹² Amos and Holsen 2005 b, Amos, Holsen et al. 2006.