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Public Sector Information Regulations

Presentation for a briefing for M25 Libraries

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I have been asked to give a personal account of my experiences of looking into the Public Sector Information regulations at City University London. I am not intending to speak so much as an expert about the PSI regulations, but rather as someone who has been investigating them, experiencing quite a lot of confusion, and then has arrived at an interpretation which I think makes sense (at least to me!). In this sense I think I may have been in the same position as many of you. So I am aiming to share something of the process I went through in arriving at this interpretation, as well as how we at City University are implementing the requirements of the regulations. But it may well be the case that there are still things for me to learn, or have misunderstood.

The next thing I should say is that I am of course a librarian, not a lawyer, even though I am extremely familiar with legislation through working with copyright. I have investigated the Public Sector Information regulations and have formed some opinions, but these opinions are mine alone, and nothing I say this afternoon should be construed as legal advice! It is entirely possible that there are alternative interpretations, or that I may be mistaken in some of my views.

In the first part of this presentation I have considered the difficulty I experienced in seeing how the PSI regulations and Freedom of Information legislation are different, as well as in interpreting certain aspects of the PSI regulations. I have also considered the variety in interpretations by different institutions that seem to have resulted. In the second part of the presentation I will describe how I went about making the arrangements for complying with the regulations at City University London. I will also be suggesting ways of approaching interpreting and implementing the regulations.

PSI /FOI?

So how did this legislation seem different to FOI when I started looking into it? When you read in the PSI regulations: 'A public sector body must respond to a request for re-use promptly and in any event before the end of the twentieth working day beginning with the day after receipt' (1), it is hard to see how this is different. From my experience in my last role of supplying information about medical research in response to FOI requests, the information was often requested for specific purposes, and therefore was certainly

being re-used (for example being analysed, or used for benchmarking). In fact, guidance from The National Archives states: 'Information obtained under access legislation [including FOI] presumes the re-usability of the information unless it is otherwise excluded (for example by third-party copyright or exemption)' (1). But when I read on the website of a certain County Council 'FOI is about access to information and does not give an automatic right to re-use the information' (2), which seems to me to be contradictory, I started to get very confused.

This concept of re-use opens up another problem for me, which is what exactly it means in this context. I discussed this with colleagues, and our interpretation was that it means exploiting the document or information in a tangible way (for example analysing, exhibiting, re-publishing), and not just personal reading. But I don't know if that is what the regulations are intending to convey.

Another aspect of the regulations where a rather disconcerting degree of interpretation appears to be necessary is in writing the Public Task statement, given that there is no precise template for us to follow, other than that it is our 'core role and functions' (3). In fact I have come to see that this is quite sensible, although certainly rather challenging for us; it is true that university libraries can potentially have a surprisingly wide remit. For example, some are legal deposit libraries, one is also a public library (The Hive in Worcester), many have historically important archives, and some universities may have libraries with a very specialised focus (there are many examples but one that springs to mind is the Scott Polar Research Institute at the University of Cambridge).

There are some other aspects that confused me, and that I feel could potentially confuse requestors:

1. Some information that would previously have been requested using FOI may now be part of the Public Task, and so is now presumably subject to the PSI regulations instead (I'm thinking of information such as policies and perhaps certain financial information). I think I'm right in saying that either FOI or PSI can apply to any particular information, but not both; and if the requested information is part of our Public Task, it is PSI.
2. The PSI regulations seem to me to potentially cover a disconcertingly wide and diverse range of documentation. It could include what might be described as management information, such as statistics and policies - information produced 'as part of established custom and practice' - this is the terminology from guidance produced by The National Archives (3). And of course it also includes archival material – this will be a very important aspect for some universities, though not so much for City University as we do not have a large archive. Some of this material (particularly archival) may not have been subject to access legislation before.
3. The PSI regulations may cover different information and documents in different university libraries, depending on how they have defined their Public Task.

As well as aspects that are open to interpretation, there are also highly specific aspects of the PSI regulations, which for me added to the difficulty of understanding them properly. For example, we need only supply information if it has been used before, and the purpose for which it was used is different to that for which it was created. Similarly if we pass information to another public sector body as part of our Public Task (such as statistics to SCONUL), this is not considered re-use and does not require us to make the information available to anyone else. But if we subsequently make those statistics available to another body or individual, for example another university for the purposes of comparison or benchmarking, we must then make them available for the same purpose to anyone else who asks.

From looking at the approaches of other university libraries, it is clear that a variety of interpretations have resulted from the legislation. I am not going to comment on the interpretations, or identify institutions, but I will give examples. One university has stated that their 'museum and archival collections are not covered by the PSI Regulations. For administrative convenience, …[they have]… decided to apply the same terms and conditions to both library materials and the archival and museum collections it holds for the University.' (So I think they're saying that they are applying PSI principles anyway.) By contrast, the Public

Task of another university only refers to their Archives and makes no reference to their Library. And I have found only one university that has produced a list of information assets, which is something that guidance from The National Archives indicates is necessary.

So it can be seen how difficult it seems to be to pin down very precisely the parameters of the legislation, because of the room for flexibility (which is potentially helpful), combined as well with highly specific aspects. It is rather disconcerting, as it is the law and so we want to, and need to, get it right! I think that the important thing to remember is that PSI is primarily about allowing re-use in a consistent and open manner, which is what we try and do anyway as librarians. Asking ourselves the following questions is an approach that may help in considering the arrangements to be made for complying with the regulations, as well as responding to requests:

1. Is the requested information/document within our Public Task?
2. Is the document subject to any exception (i.e., subject to third party copyright, or confidentially or personally sensitive)?
3. Does the request clearly state what the requestor wishes to use it for?
4. Has the document been used for the same purpose before, either by ourselves or another body?
5. Is it appropriate for us to make a charge for supplying the document?

Another approach that I found helpful in clarifying matters to myself was to consider what information is covered by our Public Task. I did this using the guidance on Public Task statements from The National Archives (the section called 'What information falls within my Public Task').

1. It is essential to your public service (e.g., policies)
2. It is produced as part of a statutory requirement (I haven't been able to think of any examples where this would be the case)
3. It is produced by established custom and practice (e.g., statistics, policies)
4. It enjoys authoritative status by virtue of being issued by you as a public sector body (e.g., library guides, if not already publicly available)
5. You are the only source for the information (e.g., material in our archive)
6. Its creation and maintenance is funded through taxation rather than revenues or private investment (e.g., budget, expenditure – although be careful if the information is commercially sensitive, such as quotations from suppliers of electronic resources).

<u>Practicalities: Implementation at City University London</u>

I am now going to describe how I went about making the arrangements for complying with the regulations at City University London.

One of the first things I did was to involve the Information Compliance Officer, who has operational responsibility for handling FOI requests. In my view it is necessary to involve the person who has responsibility for this sort of access legislation in your institution, even though PSI only pertains to the library. This will ensure expertise in how to respond to such requests in the right sort of way, and in having to deal with the Information Commissioner's Office if necessary. It will also reduce the amount of resource required from the Library (which is probably good news for all of us!), and will mitigate against any risk caused by problematic requests. In our case this was also the way to get the necessary information on the 'Legal' webpage of the university's website, which we felt should happen - I don't know if any other universities have done this but it always seemed to me that legally PSI has equal status with FOI (even if it doesn't apply to the whole university) so it was logical for it to be included there, as FOI is. PSI certainly

enjoys equal status in that requestors are able to complain to the Information Commissioner's Office if they are unhappy with the outcome of a request.

Our text for the legal page includes:

1. Where to find the list of information assets in our libraries' collections
2. The information that a requestor must supply in order to have the request considered.
3. How to request a review of our Public Task statement
4. Contact details
5. When the statement will next be reviewed

Involving the Information Compliance Officer also allowed us to integrate the workflow for PSI into that for other requests: at City University messages sent to the FOI and Data Protection Access email addresses are routed to a single mailbox, from where they are then sent to the most appropriate recipients within the university to provide the information (or give a reason why it shouldn't be provided). PSI requests will be treated in the same way though of course will always come to the Library. The Information Compliance Officer has produced a written process and a flow diagram to show how PSI has been integrated into existing workflows.

Keeping detailed records is one of the keys to success when dealing with access legislation such as FOI and PSI. Although I'm sure that we all already keep records of requests for use of material in our custodianship, we should review our practices to make sure that they are appropriate for implementing the PSI regulations. For example, perhaps we haven't always used a formal licence when granting permission for re-use, and might decide to going forward – the licence used and its details will need to be recorded, as we will need to use the same licence if we are asked for the same information for the same purpose again; and there may be other information that now should be recorded. Information Compliance staff should keep records of requests, but Library staff should continue to keep their own records, in case there are specific library or archive related details that non-specialist staff may overlook.

I will now talk about how I approached writing the Public Task statement. I started this with some trepidation because of my previously mentioned concerns about the extent of the freedom we have in doing this. So first I looked at other statements from other institutions, and it seems that they tend to include some (but not necessarily all) of the following:

1. Description/history of the work of the institution
2. Reference to any relevant university regulations or similar regarding the library's existence
3. Reference to strategy documents
4. A description of the activities of the library
5. A description of how PSI requests and comments on the Public Task statement will be handled
6. When the statement will be reviewed

This helped a lot, and writing the statement proved easier than I anticipated. I used existing text as much as possible from our library website, that briefly explains what we do, and I also provided links to other documents to enlarge upon this (following the lead of the Cambridge University Library Public Task statement here); these were our Library Services Strategic Vision for 2015-2018, and Library Services Operational Plan 2015-2016. In our case I didn't feel that any reference to our university's or library's history was necessary; Cambridge University Library did include this, but I can understand why they might feel that they want to make reference to their heritage. I would strongly advise both re-using text and linking to pre-existing documents if possible, as it saves time. This enabled me to keep the statement fairly brief, as they mostly seem to be. If you're not sure how to start writing your Public Task statement, there are now quite a number available from various universities which could be used as models to get you started.

Finally, another measure which we felt was necessary was to brief certain senior members of the university's administration, as it is important that they are aware of any changes in law that affects the university. One of these was the University Secretary, whose main role is to administer and support the University Council and its Committees. I expect that there is an equivalent role in other universities, but perhaps not with the same job title. The University Secretary at City University has previously been a Director General of the Cabinet Office, so again it was not without trepidation that I entered this meeting; in fact he was very friendly, and had some interesting suggestions to make.

He encouraged us to consider that this could be an opportunity to make a small profit, given that libraries are permitted to make 'a reasonable return on investment'. In fact, at City University we are only going to charge for cost recovery, and not profit, unless the proposed re-use is commercial; we don't feel that it is our purpose as a Library Service to make a profit under any other circumstance. It is of course the case that other universities do expect and depend on revenue from extensive re-use of archival documents for all sorts of purposes, particularly commercially, but we do not have a large archive so this will probably not be such an issue for us. Note that any charges have to be consistent, and even if not published, have to be made available if requested.

Conclusion

As I've already said, it is a fact that making information available to people is what we are about as professional librarians, and so it seems to me that in many cases this legislation will not make a significant difference to what we already do if we were asked for information anyway – I am sure that we normally do allow people to re-use information that we can provide subject to certain conditions. The legislation merely formalises this, and helps us by encouraging us to ensure that we are doing so in an informed and consistent way.

References

(1) The Re-use of Public Sector Information Regulations 2015, SI 2015/1415

(2) Dorsetforyou.com (2015) The re-use of public sector information (PSI). https://www.dorsetforyou.com/article/419373/The-re-use-of-public-sector-information-PSI (Accessed 7 March 2016)

(3) The National Archives (2015) Guidance on Public Task statements. http://www.nationalarchives.gov.uk/documents/information-management/guidance-on-public-task-statements.pdf (Accessed 7 March 2015)