

Charging for freedom of information requests for services that are already paid for by taxpayers is utterly wrong

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*The government is considering introducing charges for freedom of information requests. **David Hencke** argues that this would be fundamentally unjustifiable as it would limit both people's right to know and the right to demand information on services they have already paid for.*



It must be very tempting in these times of austerity for government to introduce charges for freedom of information (FOI) requests. Tempting it might be but it would be utterly wrong.

Giving evidence to the Commons Justice select committee's post legislative inquiry into the FOI Act, I got the strong impression that some Conservative MPs might want to do this. The example of the Republic of Ireland which has introduced charges for requests, internal reviews and appeals to the Information Commissioner, has provided an excuse.

The fact that the new act has been a resounding success with the public, journalists and also private businesses is not a reason to introduce charges. My reasons for not going down this road are not such much to do with limiting the public's right to know – although as Ireland has shown – this would be the inevitable consequence. They are more fundamental.

As a taxpayer I am obliged – I have no choice – to fund public services from my income. Therefore if I wish to know whether my money has been spent wisely and people have taken the right decisions – I should have the right to ask questions and ferret for information. As a journalist rather than a private citizen I have more time to do this – it is part of my job – and the information I discover can be communicated to thousands, if not millions, of people.

As one recent example showed – the disclosure under FOI that Ed Lester, the chief executive of the Student Loans Company, had found a legal way to avoid tens of thousands of pounds of tax – it can even lead to alerting ministers to something they were unaware.

To introduce charges would in effect be double taxation. I would be charged once for providing the service and again if I wished to find out what officials and ministers had done with my money. This is why I believe it is unacceptable.

A more subtle variant of charging is a suggestion that private citizens still receive the free service but commercial organisations like the media, private firms and official bodies paid the cost of the request – which could be anything up to £600. Again it would be unfair and also unworkable. Businesses, law firms and the media – unless they are near bankrupt – pay their share of taxes to the government and again would be charged twice for seeking to find out how and why their money was spent.

It would also be completely unworkable to run such a two tier system. There is nothing to stop me as a journalist, or indeed any business person, asking a friend to put in a FOI and getting it sent to their address. And there is no way officialdom could find out, unless they subject every private requester to a ninth degree inquisition every time they asked a public body for information.

It would be a nightmare scenario for the public sector to police and make officials extremely

unpopular with the general public. It might even lead them to face legal complaints, such as falsely accusing individuals of avoiding charges.

What is required urgently is an extension of the freedom of information act to the private sector when it provides public services. The government has an active policy of encouraging private providers – whether charities, mutual or commercial companies – to provide public services. Francis Maude, the Cabinet Office minister, in an address to the Policy Exchange think tank said that turning state provided services into mutuals owned by the staff might indeed be as widespread as privatisation of state industries in the 1980s Thatcher government.

At present the mechanism for extending FOI to new bodies is rather cumbersome – requiring a designation under the Act by ministers – usually following a consultation period. This is woefully inadequate to cope with a major shift from public to private sector providers in Whitehall, local government and the NHS. One simple solution would be to include a standard clause in any private sector provider contract saying that if the company accepted public money to run a public service they would automatically be subject to FOI requests about that particular service.

No doubt they would be a howl of protest from the business community about new burdens and costs to running the service, but given the multi million pound size of most contracts it would be a small price to pay. And if it was a standard contract it would mean that there would be a level playing field for contractors bidding for the work. It could also be confined only to the services they provided in the public sector and not to normal business contracts.

This would bring within the scope of FOI private train operators and bus companies who take taxpayers subsidies but are at the moment outside the act. It would also encourage these bodies to provide a more efficient service since they would have an incentive not to encounter the wrath of the travelling public every time they failed to provide a public service.

The public could also question and challenge the companies when they cut service provision to prove they had a case and also ask for detailed policy on protecting public safety. Similarly, it would provide the public with some protection as the NHS expands the use of private hospitals for operations as they are outside the scope of the act.

The act does require an overhaul in this area. But MPs on the committee should resist the temptation to call for charges to use the act as this would be unfair to the general public and to taxpayers. The right to demand information on services you are required to pay for without being charged is a fundamental human right that should be non-negotiable, even in the present financial climate.

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Note: This article gives the views of the author, and not the position of the British Politics and Policy blog, nor of the London School of Economics.

About the author

David Hencke is a freelance lobby journalist working for Tribune, and Exaro News, an investigative news website based in Fleet Street. He was also a member of the Lord Chancellor's Advisory Committee on the implementation of the Freedom of Information Act between 2002 and 2005. He is former Westminster Correspondent of The Guardian from 1986 to 2009 and was chairman of the Parliamentary Press Gallery in 2009.

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