Freedom of Information Legislation in the UK and its Implications for the HE Sector

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The legislation

- UK one of c80 countries with legislation providing for access to information held by the state
- FoI Act 2000, Environmental Information Regulations (EIR) 2004
  - came into effect 2005
- Information Commissioner’s Office established to oversee implementation of the legislation
  - ‘to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals’
- universities defined as ‘public authorities’ subject to the legislation
  - challenges for them in implementing/complying with it
Aims of the legislation

- openness and accountability of public bodies
- presumption in favour of disclosure
  - applicant-blind and motive-blind
  - freedom to pass on the information, so it becomes in effect in the public domain
- exceptions and exemptions against disclosure in specified cases
  - but most subject to a public interest test
- transparency a key theme for the Coalition Government
  - ‘Protection of Freedoms’ Bill now on its way through Parliament

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Aims of universities and researchers

- enhance knowledge and understanding
- communicate their findings
  - maximise dissemination
  - register claim to the work they have done
  - gain peer recognition and esteem
    - career rewards
    - RAE/REF ratings
    - win the next grant
- social and economic impact

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So what’s the problem?
Some recent cases

- climate change emails at UEA
  - Muir Russell Report 2010
- longitudinal set of tree ring data at Queen’s University Belfast
- subsequent requests for climate data held by UEA
  - data provided by meteorological services across the world
- Philip Morris International’s request to University of Stirling for data relating to teenagers’ smoking habits
Discussions and Guidelines

ICO-HE sector roundtable meeting September 2010: joint panel established as a discussion forum
House of Commons Science and Technology Committee recommends ICO to produce guidance for the sector on research data
forthcoming Government Review of the FoI Act and its implementation
JISC guidelines produced December 2010
RIN, JISC and ICO series of workshops on research data
ICO guidelines September 2011

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Concerns and reservations

- some issues
  - definitions: what do we mean by information?
  - costs of compliance
  - challenge to research cultures
  - ownership and ‘holding’ of information
  - personal data
  - commercial interests
  - implications for quality assurance
  - future publication of results

- similarity with issues raised in the US from the 1970s onwards

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What do we mean by information?

- ‘information recorded in any form’ (and for certain purposes may include ‘unrecorded information’)
- methods, tools, SOPs, protocols, computer programmes, algorithms, maps, scans, questionnaires, lab books, samples, images, slides, minutes, proposals, working papers, emails...........
- data
  - an integral part of the scholarly record?
  - a valuable resource for secondary analysis and re-use
  - raw, intermediate, derived.....
Costs and overheads

- costs in time and money
- administrative overhead for researchers and support staff
  - particularly as requests grow in number and complexity
  - records and data management costs
  - handling requests (especially where there is a concerted campaign)

BUT

- efficiency gains through managing records and data effectively
- FoI requests can be refused if the estimated cost of meeting them exceeds £450
Research cultures: openness and sharing?

- sharing a standard part of the culture?
- disciplinary differences
  - genomics not the same as chemistry
- role of funders in promoting openness and sharing
- common desire for control over when, how and with whom to share
- ‘ownership’ and protection for intellectual capital
- lack of career rewards for openness and/or sharing
- loss of control when the legal/bureaucratic procedures of FoI kick in

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Adverse effects on researcher behaviour?

- avoid potentially-controversial areas of research?
- avoid holding information on university systems?
- unscrupulous access and use of other researchers’ data?
Ownership and holding of information

- complex legal and contractual issues relating to ownership of information
  - employment and funding contracts
- practical problems in protecting intellectual property rights once information is disclosed
- does the university ‘hold’ information relating to personal research projects?
- what if information is held on services outside the university’s formal control?
Data and records management

- effective records management critical to universities’ ability to meet FoI obligations
- can be difficult to achieve for researchers and teams with individual and idiosyncratic needs
- moves towards data management plans and effective data management practice have a long way to go........
Personal data

- personal data exempt from disclosure under the Data Protection Act
  - but relationship between FoI and DP complex
  - uncertainties as to definitions of personal data
- concerns about impact on small-scale qualitative research
- need for greater procedural formality and rigour for research involving personal data
Commercial interests and confidentiality

- universities’ own commercial and competitive interests
  - national and international competition for research funds
  - exploitation of intellectual property

- information provided by businesses and other commercial organisations
  - protection if the information provided in confidence
  - *some* protection if disclosure would damage commercial interests (but public interest test)
  - greater difficulty in securing research collaborations with commercial partners?

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Quality assurance and scholarly discourse

- FoI requests can short-circuit QA procedures
  - data and information can be requested before they have been checked and tested, or subjected to peer review

- risk of misinterpretation
  - no legal grounds for refusal to disclose

- requests submitted for disclosure of private scholarly exchanges and reports of peer reviewers
  - some protection for ‘safe spaces’ for exchange of views (again subject to public interest test)
Future publication

- Qualified exemption for information intended for future publication
  - but intention to publish results at some point in the future, offers very little protection

- FoI Scotland Act provides *qualified* exemption for information gained in the course of a research programme, where there is an intention to publish a report

- Moves to extend that exemption to the rest of the UK
Conclusions

- too early to assess full impact and implications of FoI
- but universities and researchers have real concerns
  - some more well-founded than others
  - not all of them addressed by the ICO guidance
- Research Councils and other funders have been slow to provide guidance or amend policies
Conclusions

- risks to universities and their reputations
- will lead to closer management of researchers and their activities
- data and records management are even more important
- liaison between researchers, records managers, compliance officers
  - especially in dealing with requests when they arise

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Questions?

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