



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

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



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

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

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

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?

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



Questions?

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