

Address for response
c/o Campaign for Freedom of Information
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The Rt Hon David Cameron MP
Prime Minister
10 Downing Street
London SW1A 2AA

21 September 2015

Dear Prime Minister,

We are writing to express our serious concern about the government's approach to the Freedom of Information (FOI) Act and in particular about the Commission on Freedom of Information and the proposal to introduce fees for tribunal appeals under the Act.

It is clear from the Commission's terms of reference that its purpose is to consider new restrictions to the Act. The Commission's brief is to review the Act to consider: whether there is an appropriate balance between openness and the need to protect sensitive information; whether the 'safe space' for policy development and implementation is adequately recognised and whether changes are needed to reduce the Act's 'burden' on public authorities. The ministerial announcement of the Commission's formation stressed the need to protect the government's 'private space' for policy-making.¹ There is no indication that the Commission is expected to consider how the right of access might need to be improved.

The Commission's five members consist of two former home secretaries, Jack Straw and Lord Howard of Lympne (Michael Howard), a former permanent secretary, Lord Burns, a former independent reviewer of terrorism legislation, Lord Carlile of Berriew (Alex Carlile) and the chair of a regulatory body subject to FOI, Dame Patricia Hodgson. A government perspective on the Act's operation will be well represented on the Commission itself.

One of the Commission's members, Jack Straw, has repeatedly maintained that the Act provides too great a level of disclosure. Mr Straw has argued that the FOI exemption for the formulation of government policy should not be subject to the Act's public interest test.² Such information would then automatically be withheld in all circumstances even where no harm from disclosure was likely or the public interest clearly justified openness. Mr Straw has also suggested that the Supreme Court exceeded its powers in ruling that the ministerial veto cannot be used to overturn a court or tribunal decision under the Act unless strict

¹ www.gov.uk/government/speeches/freedom-of-information-new-commission

² The Rt Hon Jack Straw MP, oral evidence before Justice Committee, Post-Legislative Scrutiny of the Freedom of Information Act, 17 April 2012, Q.344.
www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120417.htm

conditions are satisfied.³ He has argued that there should be charges for FOI requests and that it should be significantly easier for public authorities to refuse requests on cost grounds.⁴ Mr Straw's publicly expressed views cover all the main issues within the Commission's terms of reference. Speaking in the Commons shortly before the Commission's appointment, the Justice Secretary, Michael Gove, expressly cited Mr Straw's views with approval saying that he had been 'very clear about the defects in the way in which the Act has operated'.⁵

Another member of the Commission is Ofcom's chair, Dame Patricia Hodgson. In 2012, when she was its deputy Chair, Ofcom stated that 'there is no doubt' that the FOI Act has had a 'chilling effect' on the recording of information by public authorities. One of the Commission's priorities is likely to be to consider whether there has been such an effect - and whether the right of access should be restricted to prevent it. Ofcom has also called for it to be made easier for authorities to refuse requests on cost grounds and for the time limits for responding to requests to be increased.⁶

An independent Commission is expected to reach its views based on the evidence presented to it rather than the pre-existing views of its members. Indeed, in appointing members to such a body we would expect the government to expressly avoid those who appear to have already reached and expressed firm views. It has done the opposite. The government does not appear to intend the Commission to carry out an independent and open minded inquiry. Such a review cannot provide a proper basis for significant changes to the FOI Act. The short timescale for the Commission's report, which is due by the end of November, further reinforces this impression. At the time of writing, half way towards the Commission's final deadline, it has so far not even invited evidence from the public.

The FOI Act was the subject of comprehensive post-legislative scrutiny by the Justice Committee in 2012 which found that the Act had been 'a significant enhancement of our democracy' and concluded 'We do not believe there has been any general harmful effect at all on the ability to conduct business in the public service, and in our view the additional burdens are outweighed by the benefits'. We question the need for a further review now.

We are also concerned about the government's proposal to introduce fees for appeals against the Information Commissioner's decisions.⁷ Under the proposals, an appeal to the First-tier Tribunal on the papers would cost £100 while an oral hearing would cost £600. The introduction of fees for employment tribunal appeals has led to a drastic decrease in the number of cases brought. A similar effect on the number of FOI appeals is likely. Requesters often seek information about matters of public concern, so deterring them from appealing will deny the public information of wider public interest. On the other hand, fees are unlikely

³ BBC Radio 4, Today programme, 14 May 2015. www.theguardian.com/uk-news/2015/may/14/court-exceeded-its-power-in-ordering-publication-of-charles-memos-straw. The Supreme Court's ruling related to the use of the veto to block the release of Prince Charles' correspondence with ministers in response to a request by the Guardian newspaper

⁴ Oral evidence to Justice Committee, 17 April 2012, Q.355 & Q.363.
www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120417.htm

⁵ House of Commons, oral questions, 23.6.15, col. 754,
www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150623/debtext/150623-0001.htm#15062354000032

⁶ Ofcom, February 2012, Written evidence to the Justice Committee, Post-legislative Scrutiny of the Freedom of Information Act, Volume 3, Ev w176-177.

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/96vw77.htm>

⁷ https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting_documents/Government%20response%20to%20consultation%20on%20enhanced%20of%20ees%20and%20consultation%20on%20further%20fees%20proposals%20web.pdf

to discourage public authorities from challenging pro-disclosure decisions, so the move will lead to an inequality of arms between requesters and authorities. Given that the Ministry of Justice and the Justice Committee have recently begun to review the impact of employment tribunal fees on access to justice we find it remarkable that this proposal should be put forward before the results of their inquiries are even known.

We regard the FOI Act as a vital mechanism of accountability which has transformed the public's rights to information and substantially improved the scrutiny of public authorities. We would deplore any attempt to weaken it.

Yours sincerely,

Act Now Training	Ibrahim Hasan, Director
Action on Smoking and Health	Deborah Arnott, Chief Executive
Against Violence and Abuse	Donna Covey, Director
Animal Aid	Andrew Tyler, Director
Archant	Jeff Henry, Chief Executive
ARTICLE 19	Thomas Hughes, Executive Director
Article 39	Carolyn Willow, Director
Belfast Telegraph	Gail Walker, Editor
Big Brother Watch	Emma Carr, Director
British Deaf Association	Dr Terry Riley, Chair
British Humanist Association	Andrew Copson, Chief Executive
British Muslims for Secular Democracy	Nasreen Rehman, Chair
BSkyB	John Ryley, Head of Sky News
Burma Campaign UK	Mark Farmaner, Director
Campaign Against Arms Trade	Ann Feltham, Parliamentary Co-ordinator
Campaign for Better Transport	Stephen Joseph, Chief Executive
Campaign for Freedom of Information	Maurice Frankel, Director
Campaign for National Parks	Ruth Bradshaw, Policy and Research Manager
Campaign for Press & Broadcasting Freedom	Ann Field, Chair
Centre for Public Scrutiny	Jacqui McKinlay, Executive Director
Chartered Institute of Library & Information Professionals	Nick Poole, Chief Executive
Children England	Kathy Evans, Chief Executive
Children's Rights Alliance for England	Louise King, Co-Director
CN Group Limited	Robin Burgess, Chief Executive
Community Reinvest	Dr Jo Ram, Co-Founder
Computer Weekly	Bryan Glick, Editor in Chief
CORE	Marilyn Croser, Director
Corporate Watch	
Corruption Watch	Susan Hawley, Policy Director
Coventry Telegraph	Keith Perry, Editor
Cruelty Free International	Michelle Thew, Chief Executive Officer
CTC, the national cycling charity	Roger Geffen, Campaigns and Policy Director
Daily Mail	Paul Dacre, Editor; Jon Steafel, Deputy Editor; Peter Wright, Editor Emeritus; Charles Garside,

Debt Resistance UK	Assistant Editor; Liz Harley, Head of Legal
Deighton Pierce Glynn	Sue Willman, Partner
Democratic Audit	Sean Kippin, Managing Editor
Disabled People Against Cuts	Linda Burnip, Co-Founder
Down's Syndrome Association	Carol Boys, Chief Executive
Drone Wars UK	Chris Cole, Director
English PEN	Jo Glanville, Director; Maureen Freely, President
Equality and Diversity Forum	Ali Harris, Chief Executive
Evening Standard	Sarah Sands, Editor
Exaro	Mark Watts, Editor in Chief
Finance Uncovered	Nick Mathiason, Director
Friends of the Earth	Guy Shrubsole, Campaigner
Friends, Families and Travellers	Chris Whitwell, Director
Gender Identity Research and Education Society	Christl Hughes, Legal Consultant
Global Initiative to End All Corporal Punishment of Children	Peter Newell, Co-ordinator
Global Witness	Simon Taylor, Co-Founder and Director
Greenpeace	John Sauven, Executive Director
Guardian News and Media Limited	Gillian Phillips, Director of Editorial Legal Services
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mySociety	Mark Cridge, Chief Executive
NAT (National AIDS Trust)	Deborah Gold, Chief Executive
National Commission on Forced Marriage	Nasreen Rehman, Vice Chair
National Union of Journalists	Michelle Stanistreet, General Secretary
Newbury Weekly News	Andy Murrill, Group Editor

News Media Association	Santha Rasaiah, Legal, Policy and Regulatory Affairs Director
Newsquest	Toby Granville, Editorial Development Director; Peter John, Group Editor for Worcester/Stourbridge
Nursing Standard	Graham Scott, Editor
NWN Media	Barrie Phillips-Jones, Editorial Director
Odysseus Trust	Lord Lester of Herne Hill QC, Director
Open Data Manchester	Julian Tait, Co-Founder
Open Knowledge	Jonathan Gray, Director of Policy and Research
Open Rights Group	Jim Killock, Executive Director
OpenCorporates	Chris Taggart, Co-Founder and Chief Executive Officer
Oxford Mail and The Oxford Times	Simon O'Neill, Group Editor
People for the Ethical Treatment of Animals Foundation	Dr Julia Baines, Science Policy Advisor
Press Association	Pete Clifton, Editor in Chief; Jonathan Grun, Emeritus Editor
Press Gazette	Dominic Ponsford, Editor
Prisoners' Advice Service	Lubia Begum-Rob, Joint Managing Solicitor
Privacy International	Gus Hosein, Executive Director
Private Eye	Ian Hislop, Editor
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Public Interest Research Centre	Richard Hawkins, Director
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Renewable Energy Foundation	Dr John Constable, Director
Reprieve	Clare Algar, Executive Director
Republic	Graham Smith, Chief Executive Officer
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RoadPeace	Beccie D'Cunha, Chief Executive Officer
Salmon and Trout Conservation (UK)	Guy Linley-Adams, Solicitor
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South Wales Argus	Kevin Ward, Editor
Southern Daily Echo	Ian Murray, Editor in Chief
Southport Visitor	Andrew Brown, Editor
Spinwatch	David Miller, Director
Stop HS2	Joe Rukin, Campaign Manager
Sunday Life	Martin Breen, Editor
TaxPayers' Alliance	Jonathan Isaby, Chief Executive
Telegraph Media Group	Chris Evans, Editor and Director of Content
The Corner House	Nick Hildyard, Founder and Director
The Independent	Amol Rajan, Editor
The Independent on Sunday	Lisa Markwell, Editor
The Irish News	Noel Doran, Editor
The Mail on Sunday	Geordie Greig, Editor
The Sun	Tony Gallagher, Editor; Stig Abell, Managing Editor
The Sunday Post	Donald Martin, Editor

The Sunday Times
The Times
Transform Justice
Trinity Mirror

Trust for London
UNISON
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War on Want
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