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List of tables and boxes

Table 1

Introduction

FOI Requests to Parliament

Table 1 shows the path taken by the Houses when requests were received. Box 1 provides a sample of some of the requests the Commons and Lords received.

Table 1 *Requests to both Houses of Parliament, by year and result, 2005-2009*

Year	Information released in full	Information released in part	Information withheld in
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- < The most common result of requests to Parliament has been **full disclosure**, in contrast to the accusations made about parliament's inherent secretiveness or derision of the Act (see Table 1).¹⁵
- < Almost 40 per cent of requests to the Lords were coded in the 'everything' else category. Misunderstanding of the Lords can be seen clearly in the questions they were asked: questions about government funding of mental health policy was referred to the appropriate department; requests for Commons' select committee files, or details of an MPs' expenses were passed to the other House.

Topics of requests

Parliamentarians	16%	8%	14%	26%	38%	24%
Select Committees	16%	16%	20%	1%	2%	9%
Particular Issue	1%	4%	14%	18%		

on s40 (personal Information) the most, reflecting requests' focus on *people* in Parliament. It is the second most common exemption used by the Lords; their first is Section 21 (information available by other means).

Parties in dispute over FOI requests can take cases to the Information Commissioner's Office (ICO). From 2005 and 2009, 22 cases involving Parliament were adjudicated, all of which related to the Commons. Of those, complaints were upheld in 12 cases. When looking at the subject of information requests, the Commons was least successful in defending withholding information about MPs' spending. This includes requests asking for travel or communications expenses of an

Radio 4 the same day, defending his obtaining of a pass for the chairman of Rail Freight Group.

- ◁ The most concrete change as a result of FOI and the 2009 Commons' expenses scandal is the creation of the **Independent Parliamentary Standards Authority (IPSA)**, which now sets the rules on MPs allowances, pays their salaries and publishes details of all their expenses. IPSA is a significant erosion of exclusive cognisance, and like other erosions, has not been universally welcomed. MPs continue to criticise IPSA for excessive, heavy-handed regulation and bureaucracy. They have attempted to amend the organisation through Member's Bills and debates.²⁶ The expenses scandal also prompted a new system of Lords' allowances, which was devised and is administered in-house and remains in peers' administration.
- ◁ There has been a concerted effort to **proactively disclose** more decision-making material by the House of Commons Commission and Management Board since late 2009. The Commission's 2011-15 Strategy states, 'We will work at every level to earn respect for the House of Commons by: having an open and transparent way of doing business...[and] encouraging public participation in parliamentary business'.²⁷ Following this, the Management Board agreed to (and the Commission later endorsed) its papers and agendas to be routinely published on the days of Board meetings, and to follow the government's transparency agenda of publishing expenditure over £25,000 and certain salary band information.²⁸ Answers to previous FOI requests are now also published on the Commons' website.²⁹

Yet while more information is released, officials felt a culture change had not followed.

The Impact of FOI: Accountability

Accountability concerns ‘the duty of an individual or organisation to answer in some way about how they have conducted their affairs’. It can be separated into two concepts: ‘giving an account’ by explaining and ‘being held to account’ by justifying.³⁸

FOI exists alongside many other accountability mechanisms for Parliament, from the media and the electorate to Parliament’s own members and rules. Both Houses’ Codes of Conduct emphasise submission to appropriate accountability. Direct contact between voters and parliament through ICTs has enhanced accountability, with email, Twitter and blogs being used to directly question MPs.³⁹

For peers and Lords’ officials, FOI offers an opportunity for a body ‘always under pressure to justify why we exist,⁴⁰ and keen to dispel the idea it is a closed gentleman’s club. It was also hoped that FOI requests, through the media, could help the Lords be held accountable and be responsive to the public.

MPs saw FOI as a new tool for the public and media to ask for information as a straightforward accountability mechanism, especially in matters of capital expenditure for instance. In our media sample, MPs were the most common individuals to be held to account, especially during the expenses scandal.

Obstacles to accountability

Lack of coverage

Media attention given to the Lords is dwarfed by that given to the Commons, and only three press articles in our media coding used FOI material to hold the Lords to account, all about the issuing of parliamentary passes to lobbyists.⁴¹

Media culture

Many media articles in our sample presented the information without accompanying comments from actors involved or without explanation of the process of a decision, making accountability hard to pin on anyone.

Some MPs worried that FOI requests often focused on minutiae,⁴² such as office costs or restaurant bills, and it would be this, rather than their speeches or voting records, that they would have to explain to voters. Accountably through FOI was thus ‘patchy’ and driven by topical media interests.⁴³ The House of Commons, through elections at least every five years, is ultimately accountable to the electorate, but what they are judged upon can be arbitrary and not related to actual behaviour.⁴⁴ They thought FOI contributed to this trend.

Structural problems

Commons officials noted how o11.03 Tf 1 0 0 1 89.88 e200F3 11

Box 4 *Media impact on trust*

Secrecy often exacerbates scandal. Of the articles in our media sample using FOI material from Parliament, or discussing Parliament's attitude towards FOI, 117 stories (from 154) were felt to decrease trust. However, media coverage of FOI and Parliament is dominated by the story of the expenses scandal of 2009.

Here are examples of headlines from the sample, where Parliament had provided information through FOI:

- < "Peers 'give paying friends' a ticket to Parliament" (*Guardian*, 11 Dec 2007)
- < "Outrage at MPs unpaid food bill" (*Daily Mail*, 18 July 2007)
- < "A dishwasher, Sky TV, groceries ... how MPs spend taxpayers' cash" (*Guardian* 4 May 2008)
- < "Commons needs mass clearout" (*Newcastle Journal*, 19 May 2009)

Withholding information also leads to stories about secrecy, which have a negative impact on trust. Headline examples include:

- < "Where does all the money go?" (*Western Morning News*, 10 Feb 2009)
- < "M15 discovers a dark secret about Cameron, but it's going to stay a secret" (*Mirror*, 21 Feb 2005)
- < "If you cover it up, we assume the worst" (*The Times*, 21 Jun 2009)
- < "House of Shame" (*Observer*, 10 May 2009)

Trust building headlines in our sample include:

- < "Wind turbine and tidal power in £20m green plan for Westminster: Heritage concern as MPs look at scheme to cut their carbon footprint" (*Guardian*, 11 Dec 2007)
- < "West MPs lead fight over perks" (*Western Morning News*, 22 Jan 2009)

- < Other felt **trust was, and always would be, low** towards politicians. It was part of the nature of politics and very little could be done to alter it. It may also be inherent in FOI itself: 'I don't think any system of anyone checking up on anything leads to trust'.⁵⁸
- < The final view was that **FOI was inadequate or inappropriate** to deal with such a complex issue as trust. As one interviewee put it,: Trust is very complex and is often discussed in a 'context free' way which is artificial and with rather grand statements. Trust has to be earned-it is not automatic. Politicians are 'ahistorical' and 15-20 years is very far away.⁵⁹

Given the diversity of views, and the long term nature of any shift in trust, any conclusions must be provisional. FOI and trust have been profoundly shaped by one single event, itself a demonstration of the difficulties around this issue. FOI has certainly not led to an increase in trust and in the short term has probably contributed to a decline.

Explaining the Expenses Scandal

The issue of MPs' expenses has been

Box 5 *Expenses Quotes*

- < In 2002 **Robin Cook MP**, then leader of the House of Commons, warned that 'few members have rumbled to the juggernaut heading their way'.⁶³
- < **Martin Bell MP** explained back in 2002, 'you are almost invited to sign a cheque to

influenced by a range of comp

were more muted as they formed part of a wider ongoing exposé of clientelism and

The Sword and the Shield

requests made for flooding risks in a particular area, safety inspections, and correspondence relating to a particular road and, in one case, information held on a particular trawler company. A number of interviewees felt that FOI was often used for such issues rather than more high profile or national topics.

Added to this are **indirect uses of FOI**

Use of FOI , especially in the wake of the MPs' expense scandal, is viewed as 'uncouth, an underhand tactic' (Interview). As one put it 'the Lords operate with courtesy and FOI breaks this 'clubby' bond'.¹¹⁸

Parliamentarians and FOI Elsewhere

Hazell's 1987 study of FOI in Canada, Australia and New Zealand outlined the potential of FOI for Parliamentarians explaining how FOI potentially gave 'access to great attack material [and] publicity'. However, he concluded that 'strangely, FOI has been used relatively little by the parliamentary opposition in all three countries'. He also noted that the number of PQs had not diminished with the advent of the

controversy or fallout, such as by alerting media officials with lines to take.¹²⁶ However, Canada's experience needs to be seen within the context of an Act that has attracted very low levels of use generally and encountered substantial hostility and resistance from politicians and officials.

Ireland

Ireland has had FOI legislation since 1997. As with Australia and Canada, TDs have been a very small group of users, comprising around 1 to 2 per cent of total requests.¹²⁷ Moreover, since 2003 the Act has been subject to a standard application fee which means that request numbers overall have fallen sharply. Ireland has also experienced hostility, particularly from government.¹²⁸

A search of the Irish press reveals a few high profile uses of FOI by opposition members, using the Act to reveal links between the Tourism Minister and contractors, over uncertainties over Irish banks before they collapsed.¹²⁹ Moreover, since 2008-09 the Act has received publicity as it was used, in combination with parliamentary questions, to gradually open up the issue of ministerial expenses in a slow motion version of the UK's expenses scandal. This led to the resignation of the Speaker of the Dail in October 2009.¹³⁰ Nevertheless use remains low as in the above countries.

New Zealand

New Zealand is seen as the world's most progressive FOI regime, within a context of an open and multi-party political system. It is also the only country from among Westminster comparators in which the trend seems to have shifted and use by MPs has increased.

The reason for the increased use seems to have been the introduction of the Mixed Member Proportional (MMP) voting system in 1996, which increased the number of parties represented in Parliament and, consequently, the competition for stories and publicity. As White explains:

As the political scene became more complex and more strongly contested, there was an immediate effect on the OIA [Official Information Act]. It became a core tool for parliamentary researchers and opposition members of Parliament who were seeking information. That search for information on the one hand supports their constitutional task of holding government to account. On the other, it feeds a political need to uncover scandal and create headlines.¹³¹

This has also led to increased use of requests with other tools. In 2001 the New Zealand Ombudsman made the first mention in an Annual Report of the OIA and 'the development of an interplay with the use of parliamentary questions and select committee processes as opposition parliamentarians made use of the full range of tools to obtain information.'¹³² In a further innovation, it is also alleged that some opposition members have used a combination of OIA and PQs to bombard and overwhelm particular departments.¹³³

Consequently, White notes how the use of OIA by the opposition has led to unwillingness to assist researchers or opposition members.¹³⁴ In 2005 new guidance issued by the government made it explicit that parliamentarians may be charged for information, though its impact is not clear.¹³⁵

Conclusion

The Shield: the impact of FOI on Parliament

- < FOI requests to Parliament on the whole have focused on the Commons and on the individual behaviour of MPs.
- < Although Parliament was already a transparent institution, FOI has made it more open and transparent about a range of issues. It has not, however, yet changed the culture.
- < It has made Parliament more accountable albeit for matters that some consider minor or narrow.
- < The dominant issue of expenses means that trust has not increased in the short term.
- < The protections in the Act for Parliament have functioned well and preserved the areas of privilege some feared FOI could undermine.
- < FOI has helped changed policy not only on expenses but also on range of minor issues from parliamentary passes to restaurant bills.
- < Parliament presents particular difficulties for FOI due to its unique governance arrangements and strong culture. These two features contributed to the MPs' expenses scandal of 2009.
- < The case of Parliament helps increase our understanding of how FOI affects public organisations. It is not a useful tool to obtain an overview of how

as a measure of performance by websites like TheyWorkForYou.com. It may also change as a result of major institutional change, like an elected Lords, or increased competition in the Commons through PR.

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