

Introduction

In June 2012 a conference on 'Secrecy and Disclosure: Freedom of Information and the Commonwealth' was convened by Mandy Banton and Susan Williams at the Institute of Commonwealth Studies, School of Advanced Study, University of London. A brief report subsequently appeared in *The Round Table* (101:5, 471-473). The impetus for the conference arose from Dr Williams's experience of using UK Freedom of Information provisions. She explains:

Williams v Information Commissioner

'Between 2008 and 2010, I appealed against a refusal by The National Archives (TNA) of the UK to release documentation from 1961 relating to British policy in the newly-independent Congo (now Democratic Republic of the Congo (DRC)) and in the British territory of the Central African Federation (Southern Rhodesia, Northern Rhodesia and Nyasaland, which are now Zimbabwe, Zambia, and Malawi). The decision to withhold information was made under Section 27 (1) (a) of the UK Freedom of Information Act 2000, which provides that information is exempt from disclosure if it would be likely to prejudice relations between the UK and another state (in this case DRC).

My appeal contended that disclosure of the disputed information was in the public interest of the people of the UK, of DRC, and of other countries in the region. The Information Commissioner rejected this argument in relation to DRC and other countries, on the grounds that section 27 (1) (a) of the Act relates to the public interest of the UK.

The appeal reached the Information Tribunal.¹ It came to an abrupt end when I discovered that the information had already been released into the public domain by another government department.

However it was a worthwhile process, since it raised vital questions about the FOI Act and its implications for citizens of other countries, notably formerly colonised countries, in relation to the public interest test. Maurice Frankel, Director of the UK Campaign for Freedom of Information, argued to the Information Tribunal on my behalf that under Section 1(1) of the UK FOI Act, the right of access to information is available to 'any person', regardless of nationality or residence. Secondly he argued that as a matter of principle the public interest of citizens of other countries cannot be excluded from the public interest test.²

Another expert witness was Professor Tony Chafer at the University of Portsmouth, UK, a historian of the decolonisation of Africa. Echoing Frankel, Professor Chafer stated that the refusal by the Information Commissioner seemed at odds with the spirit of the FOI Act, given that any individual in any part of the world can submit an FOI request. This fact, he said, suggests that it was Parliament's intention that the public interest of the people of other countries is as valid as those of UK citizens. He drew attention to a sentence in the explanatory notes to the FOI Act: 'In particular, the applicant need not be a United Kingdom national or resident.'³

My case was also supported by Professor Georges Nzongola-Ntalaja, Professor of African and Afro-American Studies at the University of North Carolina at Chapel Hill, USA. Professor Nzongola-Ntalaja argued to the Information Tribunal that the people of DRC are concerned to concentrate on the future rather than the past, but they need to understand that past in

order to plan for the future. One particular handicap for his country is that so much of its history has been determined by external powers – and that the documents representing that history are still in the hands of those powers. It was necessary to have access to this documentation, he stated, in order to establish a baseline of fact.

Special issue of *The Round Table*

This special issue captures two of the papers presented at the 2012 conference – those by Dr Anne Thurston, Director of the International Records Management Trust (IRMT), and by Maja Daruwala and Venkatesh Nayak of the Commonwealth Human Rights Initiative (CHRI). Both have been updated for the purpose of this volume. A third editor, Professor Elizabeth Shepherd, joined Banton and Williams to put this special issue together, and contributed the paper, ‘Freedom of Information, Right to Access Information, Open Data: Who is at the table?’

Other new contributors are Dr Cherri-Ann Beckles, University of the West Indies; Associate Professor Rick Snell, University of Tasmania, and Dr Kristy Warren, University College London.

Together, the papers present overviews of the development of Freedom of Information legislation throughout the Commonwealth (Daruwala/Nayak and Shepherd); a case study of the UK Freedom of Information Act 2000 (Shepherd); an examination of records as the essential basis for accountability and transparency and thus the foundation for effective FOI in Commonwealth Africa (Thurston); the importance of adopting a pluralist approach to developing Freedom of Information schemes within specific states in the South Pacific, rather than adopting a ‘one size fits all’ model (Snell); and case studies from the Commonwealth Caribbean and from Bermuda.

In their discussions all contributors stress the essential role of good record-keeping to underpin FOI legislation, and deplore the commonly held but misplaced assumptions that efficient records management regimes necessarily exist. As Dr Andrew McDonald⁴ noted in

his closing remarks to the 2012 conference, 'What matters is whether citizens secure access to the relevant information. Parliamentary draftsmen cannot deliver that on their own. Record keepers matter.' Particular emphasis is laid on growing evidence that good records management is increasingly difficult to achieve in a digital world, even where it has been effective in paper-based systems. Thurston stresses that the ability to achieve openness depends upon the quality, completeness and accessibility of government records and data. Shepherd reports on the impact of the UK FOI Act on public authorities, focusing on records management implications and drawing on research undertaken by UCL.

How best to ensure the introduction of the most effective provisions of the legislation for individual states is another major concern: whether to use a model statute drawn up by an international organisation such as the Commonwealth Secretariat, the United Nations or Article 19⁵, to borrow from a neighbouring jurisdiction, or to start completely *de novo*. Examples of such approaches are given. In a wide-ranging discussion which includes insights from outside the Commonwealth – for example from China, Ethiopia and Mexico – Snell utilises the theoretical concept of the 'empty signifier' in arguing that experience in the South Pacific Region shows that the temptation to simply impose FOI legislation that meets 'best practice' criteria must be resisted. His case studies come from Vanuatu and Tonga – two states yet to enact FOI legislation.

Several contributors refer to the Open Government Partnership launched in 2011 and this is further discussed in Thurston's paper, 'Access to Reliable Public Records as Evidence for Freedom of Information in Commonwealth Africa'. Thurston also highlights the work of the United Nations in preparing for post-2015 Sustainable Development Goals aimed at eradicating poverty and transforming economies, which has led to calls for a 'transparency revolution'.

While others briefly mention the role of the media and of civil society in both agitating for the introduction of FOI legislation and ensuring public dissemination of its provisions, these themes are highlighted in the article by Maja Daruwala and Venkatesh Nayak, who stress the need for capacity-building in these spheres to ensure that enacted legislation is of genuine value to citizens. CHRI works for the *practical* realisation of human rights in the countries of the Commonwealth. Its 'Right to Information' website is designed to provide legislators, advocates and the public with resources on international and Commonwealth principles and standards. The site also provides a comprehensive collection of national right to information resources for all 53 countries of the Commonwealth, including legislation, papers and links to other useful websites. The work of CHRI – specifically in the South Pacific – is further explored, and commended, in Snell's article.

In her overview of the development of FOI legislation in the Commonwealth Caribbean Beckles focuses on the concepts of 'open government' and 'citizen engagement' as they relate to access to information, stressing the benefits to both governments and citizens of increased transparency and free interchange of information. She highlights the culture of secrecy which emerged from the colonial experience and persuasively comments on the malign influence of the Official Secrets Acts introduced into the British West Indies and, of course, into other parts of the former British Empire, in strengthening existing and ingrained habits of official secrecy and opaqueness. Beckles's case study is from Jamaica.

In the final article Kristy Warren examines the genesis of FOI legislation in Bermuda, situating her argument within the contexts of the UK government's re-examination of its relationship with the remaining dependent territories; increasing international demands for good governance; and political debate and change within a small island society shaped by

colonialism, slavery and racial segregation and now dependent on international business and tourism for its survival. The Bermuda Public Access to Information Act came into effect only on 1 April 2015.

¹ Williams v Information Commissioner EA/2010/0100

² www.cfoi.org.uk/pdf/cfoiEA20100100.pdf

³ **Section 8: Request for information**

49. This section lays down the conditions which must be fulfilled in order that a request for information is dealt with in accordance with the provisions of the Act. The conditions include a requirement that the applicant describes the information requested. A request for information can be made by any individual or body, regardless of the purpose of the application. An applicant will have to identify himself for the purposes of the application, but the identity of the applicant is otherwise of no concern to the authority except in the case of vexatious or repeated requests (section 14), and personal information (section 40(1) - if the applicant is the subject of the personal information, the provisions of the Data Protection Act 1998 will apply). In particular, the applicant need not be a United Kingdom national or resident.

[.http://www.legislation.gov.uk/ukpga/2000/36/notes](http://www.legislation.gov.uk/ukpga/2000/36/notes)

⁴ Dr Andrew McDonald oversaw the implementation of the UK FoI Act as Constitution Director in the Department of Constitutional Affairs

⁵ Article 19 is a human rights organisation focusing on the defense and promotion of freedom of expression and freedom of information worldwide. It takes its name from Article 19 of the Universal Declaration of Human Rights, which states, 'Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.'