

Submission to the Review of the Freedom of Information Act, 1982 and the Australian Information Commissioner Act, 2010

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Introduction

There is a critical need to assess whether, and to what extent, Freedom of Information regimes have delivered on their political and service delivery promises of promoting open communication between governments and citizens.

FOI and its impact, effectiveness and contributions to our democratic polity is an under researched area both within Australia and internationally. This submission is to inform the review of a proposed research project that, if funded, will start from mid 2013.

We have submitted an application for a 2013 Australian Research Council Linkage grant scheme. The proposed project develops a framework for testing FOI demand and functionality, without which Australia's access to information laws could potentially remain ineffective paper constructs. We intend to examine whether recent reforms have had any impact on public access to government held information and investigate **user experiences** to identify whether there is a practical difference in the **demand and functionality** of government information across different FOI jurisdictions to provide a **report card to governments, FOI administrators and the public**. To achieve this aim our study will track internal and external actors' experiences and practices.

This is a partnership with five Australian Information Commissioners/Ombudsmen¹, and the project will provide a report card on the actual operation of Freedom of Information (FOI) across different jurisdictional contexts in Australia and the achievement of open government objectives.

The study develops an internationally innovative and replicable measurement methodology to critically assess the practical impacts and achievements of FOI legal and service delivery reforms on demand and functionality.

Public access to government held information is one of the pillars of mature democracies. It goes to the core of public participation in the political system and accountability for the elected representatives. In theory, well functioning FOI systems can help build trust

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between governments and the public (Lidberg, 2009), but actual operation of FOI appears quite different (Timmins, 2012). Prior to recent FOI reforms many users had given up on FOI as an information access tool (Lidberg, 2003; Snell, 2002; 2006). Administrators were critiqued as failing to deliver on the promise of promoting open communication between governments and citizens both in terms of the service delivery objectives of making information available, accessible and usable, and the political objectives of promoting greater openness and transparency of government (Yu and Robinson, 2012).

Since 2009 major legal reforms in several jurisdictions have led to a dual system of FOI operating in Australia. The Commonwealth, QLD, NSW, and Tasmanian jurisdictions have implemented “FOI 2.0”, which requires all government agencies to release information pro-actively unless contrary to public interest. This is also known as **push model FOI**, as government information is “pushed” to the public by pro-active disclosure. FOI 2.0 systems are reliant on digital technologies and third parties to disseminate and reuse government information. All other Australian jurisdictions follow the older “FOI 1.0” model, in which governments are legally required to release information upon request from third parties. This is also known as **pull model FOI**, as information must be “pulled” from agencies via request.

These legal reforms have been accompanied by improved digital technologies (especially internet, mobile and social media technologies), which are transforming the way governments communicate with citizens and how they secure, convert, store, protect, process, transmit, and retrieve information (Eggers 2007; Lathrop & Ruma, 2010). Consequently, members of the public have access to information and data in processes and formats that expedite access, republication, analysis and **reuse**.

The FOI 2.0 laws and emerging digital technologies have the potential to become potent political accountability tools, with the capacity to dramatically improve the flow of reliable information between governments and citizens (Roberts, 2006). It is becoming increasingly important for FOI oversight agencies, such as Information Commissioners, to develop repeatable methodologies and standardized metrics to measure how the operation of these laws are contributing to the political and service delivery objectives of open government. There is an urgent need to understand how FOI is working in Australia across different jurisdictional contexts.

The focus of this research is the lived experiences of FOI from different perspectives to help improve how FOI is communicated internally within agencies and externally amongst re-users and the broader public. We will identify and typify different FOI user roles; scope user experiences, practices and attitudes; articulate a revised Functionality Index and report findings; and develop resources and recommendations for the use of the project partners and FOI users. The project will be managed in close cooperation with the five institutional partners, who have had extensive input into the final design of this research. The partners will provide the infrastructure and the raw data from previous relevant FOI studies to aid our data gathering activities. Their role in this project emphasises its significance and timeliness because it links to their stated information management objectives by:

1. Creating a comprehensive and cross-jurisdictional database of FOI practices. This database will be hosted by the partners as part of the **Australian Information Access Portal** and form the basis of a sustainable web-based repository housing resources to maximize community re-use of government information and assist the project partners to promote greater information disclosure, digital innovation and online engagement with public.
2. Formulating a revised set of metrics applicable across different jurisdictional settings and formulating an **index** to evaluate FOI demand and functionality (hereinafter referred to as the **functionality index**).
3. Making recommendations for the implementation of a National FOI Action Plan to improve government information management practices pursuant to the 2009 report of the Government 2.0 Taskforce (see OIAC, 2011, p. 2).

This project can play a significant role in improving the **communication infrastructure** (particularly use of digital technologies) underpinning FOI in Australia by benchmarking experiences, standardising approaches to evaluation, making recommendations for better information management in the digital era and establishing resources to enhance public use and re-use of government information.

Empirical significance and innovations

This study provides the first **comparative benchmark data of contemporary FOI practices** in Australia, and specifically comparing FOI 1.0 and 2.0 regime performance. Within Australia and internationally, few comparative studies have been conducted to evaluate the role of FOI in managing and bolstering governments' information resources (Dekkers et al, 2006). What prior studies have revealed is that FOI laws on their own do not necessarily ensure greater access to government information. Rather, FOI regimes worldwide typically display poor functionality and Australia's FOI performance particularly ranks poorly (Lidberg, 2003, 2009; Snell 2007). Existing research suggests that the Australian FOI regimes have failed to deliver on their promise of greater government accessibility, transparency and accountability. While there is a vast amount of literature on FOI 1.0 from different approaches and disciplines (Stubbs, 2012), there is no independent evidence of an "increase in the quantity and significance of disclosures" since the implementation of FOI (Timmins, 2012). Moreover, the effects of legal and technological changes to FOI remain untested. To ensure that FOI laws are more than a paper construct or a democratic 'showcase', the functionality of the laws, particularly how they work in practice, needs to be assessed. These and other findings (ALRC, 1996; Lidberg, 2003, 2006, 2009; Snell 2000, 2006, 2007) were one of the catalysts for several regimes moving from FOI 1.0 to FOI 2.0. This study fulfills the urgent need to examine the effects of this transition on information sharing practices and experiences between governments and communities.

Methodological significance and innovations

This study develops an internationally innovative and repeatable methodology based on a new set of standardised metrics with which to rigorously and systematically assess, compare and benchmark the operation of FOI regimes, nationally and internationally. Despite the paradigmatic legal and technological changes arising from the transition to FOI 2.0, the question of FOI performance is routinely evaluated by quantitative measures such as how many FOI requests are made, granted, refused, appealed or are successful (see Hazel and Worthy, 2010, 354; Lidberg 2009; Breit, Snell & Neal, 2011; Breit, Snell and Henman, 2012). But such traditional evaluation methodologies cannot shed light on how effectively governments are **communicating information** and whether the sharing of information by government with community has produced measureable economic, social and democratic benefits (OAIC 2011, p. 1).

The limitations of these evaluation methodologies are recognised by academics and governments alike (Hazel & Worthy 2010; Dekkers et al 2006, OAIC 2011). For example, the Australian Government 2.0 Taskforce (Gruen, 2009) called on the Office of the Australian Information Commissioner (OAIC) to **develop a methodology, a revised functionality index and a standardised set of metrics** for reporting to government on the social, democratic and economic value generated from published government information. Subsequently, the OAIC Issues Paper (2011) called for repeatable methodologies to evaluate FOI's contribution to open government. This proposed project's development of a '**functionality index**', based on different actor experiences directly addresses these concerns and calls. This index will evaluate FOI functionality in terms of both the **political objective** of promoting transparency and accountability, and the **service delivery objectives** of promoting innovative and meaningful uses of government information to produce economic efficiencies and returns (Yu and Robinson, 2012). This new index will be constructed by adapting evaluation frameworks used in international and Australian studies (see Dekkers et al, 2006; OAIC, 2011). It will also be uniquely informed by a cross-disciplinary research approach that investigates FOI functionality across legal, administrative and communication policy settings drawing on the CIs expertise in the fields of journalism and communication (Breit and Lidberg), media and administrative law (Snell, Breit and Lidberg) and e-governance, public policy and public administration (Henman).

Government FOI administration significance and innovation

These empirical and methodological contributions are expected to underpin innovation in the policy, practice and administration of FOI policy, with enhancements in open government, government accountability and performance. Data generated from this study will directly inform recommendations for and the implementation of an inaugural National FOI Action Plan for improving FOI performance. The project will identify the roles and key concerns of FOI users, reusers and administrators and offer evidence-based feedback to project partners on how to enhance service delivery and design of FOI communication environments, thereby delivering incentives for all governments to strive for greater openness and indirectly greater political accountability.

In advancing knowledge and policy innovation, our research will lead to the establishment and launch of a **cross-Jurisdictional FOI assessment/monitoring website**, known as **The Australian Information Access Portal**. The portal will contain the FOI Functionality Index and a comparative report card on FOI demand and functionality in Australia. This portal will be managed by project partners to provide a sustainable evaluation tool on FOI performance and data for the State and Federal FOI Commissioners/Ombudsmen to use as part of public forums on FOI. It will serve as a guide to users of FOI, such as investigative journalists and the public, and will help maximize community re-use of government information and assist project partners to promote greater information disclosure, digital delivery innovation and online engagement with publics.

Conclusion

At the heart of the project is the need to assess whether, and to what extent, FOI regimes have delivered on their political and service delivery promises of promoting open communication between governments and citizens. In order to do this, this project develops a framework for testing FOI demand and functionality, without which Australia's access to information laws could potentially remain ineffective paper constructs. We will examine whether recent reforms have had any impact on public access to government held information and investigate **user experiences** to identify whether there is a practical difference in the **demand and functionality** of government information across different FOI jurisdictions to provide a **report card to governments, FOI administrators and the public**.

Reviews of FOI systems are valuable as they collate quantitative user and administration data such number of requests, how many was approved and rejected and how many was appealed. However, reviews that do not include a functionality assessment will provide an incomplete analysis and only provide a partial response to the questions raised by the terms of reference for this review issued by the Commonwealth Attorney General. To take the information access systems in Australia to the next level where they could potentially become a trust building exercise between governments and the public, qualitative functionality tests of FOI have to be performed. It is our hope that the proposal summarized in this submission will provide the missing link in FOI assessment and functionality monitoring in Australia.

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