

Clore Leadership-AHRC Online Research Library Paper

Can archive services make FOI mean real accessibility?

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**‘More than just for
journalists’.**

**Can archive services
make FOI mean real
accessibility?**

**by Sam Collenette,
MLA supported Archives Clore Fellow 2007/9**

**Funded by the Arts and Humanities Research
Council**

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Nonetheless, any mistakes or errors in the text remain my own.

'A democracy requires accountability and accountability requires transparency. As Justice Louis Brandeis wrote, 'sunlight is said to be the best of disinfectants.' '

President Barack Obama, Memorandum on The Freedom of Information Act, 21/1/09

Report Summary

The Freedom of Information Act (FOIA) has made its mark in the few years since its introduction in 2005. The obvious and principal example is the debate over release of Cabinet material on the reasons for going to war in Iraq which, without the FOIA, would never have got off the ground. The recent revelations about MPs' expenses have once again thrown Freedom of Information (FOI) into the spotlight and have provoked a great deal of political discussion. One mother at the playgroup I attend asked the playgroup leader to stand as a councillor in the local elections because she wanted to have people in government whose judgement she trusted.

There is a lot of rhetoric about the effect FOI has in enabling improved public participation at all levels. I think there is an opportunity for archivists to help deliver on this potential but it requires a shift in the outlook of the archives sector and a repurposing of funding away from the search room and into digital delivery. I am a supporter of the need for individuals to view original material in person in a supervised environment but the focus of archive services, resources and outlook needs to change. There are urgent tasks which the local and public authority sector have ignored in the past because the priority, by necessity, has been the public service. There has been a hope too that new buildings and the attention from the TV programme 'Who do you think you are' will bring increased funding.

In the current climate of imminent cuts archives need to be bold and to trail-blaze where we can make most impact. I believe that aligning the sector with delivering on democratic renewal is the starting place. This study looks at the relationship between archives and Freedom of Information. It investigates the role archives might play in fulfilling the aspirations of the act to create transparent, accountable and open government, to engage citizens in the processes of government and to build trust in the democratic process.

Archives can and must play a part in delivering the promise of Freedom of Information. But if they are to do so archivists must be motivated and must take focused, positive action. They must create opportunities, not just wait for things to happen. Even the most senior local authority archivists are at best middle-management in terms of the structures of local government, but both they and their staff have the potential to initiate change and create a climate where FOI can play a larger part in local government and archivists can be closely involved in that process.

If this happens the results will benefit both the public – through better opportunities for participation – and the archives profession – through increased profile and influence.

Change happens as a result of direction from above and shifts from below. This mixture of a top-down and bottom-up approach is also part of my research methodology. Because there is not an extensive amount of published literature available, much of the work on this piece of research has been focused on questionnaires. At times I have found it difficult to reconcile my vision of archives delivering the FOI agenda and the focus of the questionnaire on existing resources and closure periods. These are the necessary first steps to build both a regional response that could be replicated elsewhere and the decisive leadership to drive it.

My longer term ambition is that archivists should use their skills in information rights legislation to provide an FOI advice service for the public encompassing historical and current records. This 'citizen's advice' style service would develop audiences for archives, support the government agenda on information access and raise the status of local authority archive services as public places of deposit and information providers. In order to make the service sustainable and marketable I envisage it as a shared, distributed service via the internet using the same technology as the Libraries' 'Enquire!' service (see <http://www.peoplesnetwork.gov.uk>). This type of technology could enable archivists to develop e-searchroom services, responding to internet enquiries in real time and pointing users to the information they need. It may be the first step in helping people navigate and interrogate digitised sources in the future.

I believe a service of this kind would ultimately:

- improve the public's experience, knowledge and use of public services
- develop the public's skills and confidence in accessing and negotiating officialdom
- demonstrate that using archives engages citizens in the processes of government
- develop the public's skills in asking questions to test the reliability, accuracy and relevance of information
- raise the profile of archives as a proactive, outward looking, dynamic sector
- ensure that the information management skills of archive and records management staff were used more broadly and recognised by employing authorities

I also believe that acting on a regional basis a service of this kind would

- standardise access to public records between local archives
- standardise procedures for FOI requests to public record bodies
- improve the relationship between places of deposit and public record bodies
- result in the coherent release of public sector information for re-use

The Public Records Act 1958 allowed public records to be held and made accessible by bodies other than the National Archives. It established that the Lord Chancellor could appoint 'places of deposit'. These are usually local authority archive offices,

universities, museums and hospitals.¹ The place of deposit relationship between local authority archives and public record creating bodies is problematic. Local authorities fund access to the records of public bodies, records which are no longer of interest to the public bodies themselves but form the core of local archive collections. The lack of specific resources for this relationship means there is no infrastructure governing the transfer of records. In my experience, any transfers are ad hoc and usually due to an emergency.

A service of the kind I describe would begin to build the required infrastructure. Local surveys of public records created and held by PCTs, schools, NDPBs, prisons, police, fire services etc. would encompass paper and digital records and would be undertaken jointly with the creating body. The surveys would identify which records could be made available to the public immediately through the auspices of the archive services; which should be transferred to archives and what action should be taken to preserve them. It would agree terms and conditions of access with the originating bodies. The authority for this activity originates with the Archive's status as a place of deposit and from archivists' expertise in selection, appraisal and contact with users and their research needs. This was an aspect of the research that I was unable to follow up fully. The questionnaires to participating West Midlands archives did include a section on relationships with public authorities and I am happy to provide that information with permission from participating offices.

In the course of this research three proposals surfaced:

1. That FOI is as near to archives legislation as the sector is likely to see in the short term. It puts an official seal of approval on the functions of Archive services. Advocacy for FOI is advocacy for archives. FOI and the challenges of digital preservation have blurred the distinction between current and historical information. The challenge is to ensure that information which has been made public, or is destined to be made public, will remain accessible permanently.

2. Within local authority archives, FOI teams should be transferred to work within combined archive and records management services and thereby operate within a customer focused public service environment. Alternatively, archives and records management should move to the 'democratic services' arm of the council. There are risks though of archives losing touch with users and falling in with more restrictive practices in the name of protecting the authority. In order to prevent this, I believe that archives and councils should include members of the public on their access decision panels. This would ensure that decisions were tested and justified to people outside of the system.

3. That archivists should actively develop audiences for the bulk of our collections of local and public authority decision making by providing training for the public in making effective FOI enquiries.

On the evidence gathered by the questionnaires I suggest archives develop the following action points on a regional and national basis:

¹ Public Records Act 1958 S.4(1) see Beyond the PRO: Public Records and Places of Deposit at http://www.nationalarchives.gov.uk/documents/beyond_pro.pdf (14/08/2009)

1. Establish a common and broader definition of an FOI request.
2. Collect basic figures each year: e.g. written enquiries; numbers of FOI enquiries, extent of public records held; time spent answering FOI enquiries.
3. Write the figures up as a 'record of achievement', benchmark with regional offices and share it locally with corporate FOI teams, members and public authority partners.
4. On a national basis collate these figures and highlight the contribution of the sector
5. Commission research investigating the connection, if any, between the use of archives and a resulting engagement with the authority
6. Establish audience development seminars and workshops on the history of local and public authorities; tie this in to their current overall purpose; key strategic documents and records and how people can keep informed and get involved.
7. Organise regional training in FOI and information rights legislation for archives staff.
8. Consider a regional pilot to test the feasibility of other new developments for archives such as providing training to the public in making requests for information .
9. Create a regional strategy to engage and develop partnerships with record depositing bodies
10. Ensure that these actions are publicized for example to the Local Government Association (LGA), Society of Local Authority Chief Executives (SOLACE) etc so that the profile of archive services increases and is recognised

Next Steps

There are three areas that I believe are crucial to the development of the sector:

1. **Focus on leadership.** I think leadership for the sector is particularly needed at the regional level, to then feed up to a national agenda with key figures advocating and articulating the mission and vision of archives. This collective idea builds on one of archivists' main strengths: working collaboratively. A regional grouping provides a flexible unity, offering strength in numbers combined with an understanding of the local situation. Very few structures or ideas can be transplanted from elsewhere and expect to thrive. They need to grow out of existing arrangements and be part of their communities.
2. **Demonstrate the impact that using archives can have on individuals.** The Museum, Libraries and Archives Council (MLA) developed a set of generic social outcomes to demonstrate the impact services have on their wider communities. One governmental policy priority area was designated 'Strengthening Public Life'. These outcomes include:
 - Encouraging and supporting awareness and participation in local decision-making and wider civic and political engagement
 - Building the capacity of community and voluntary groups
 - Providing safe, inclusive and trusted public spaces
 - Enabling community empowerment through the awareness of rights, benefits and external services
 - Improving the responsiveness of services to the needs of the local community, including other stakeholders

The main thrust of MLA's work has been on developing and promoting the generic learning outcomes of the 'inspiring learning for all framework'. However, archives would be an ideal test bed for many of the social outcomes, particularly focusing on the claims made by archivists about the evidential value of archives.² Archives are both process and product: they record the means by which decisions were made; and they detail the thought processes, arguments, understandings and motivations of individuals and organisations. They give the uninitiated a way in to the decision-making process. I hope funding may be available to pilot training for the public on making effective FOI requests and using existing sources to support individuals' rights and evaluating the impact. The Survey of Visitors to Archives in 2006 found that 66% of users agreed or strongly agreed that archives had value in 'supporting the rights of citizens'.³

I intend to take the idea of developing audiences for the evidential use of archives further and will look for funding to test out a programme of work and to evaluate whether the use of archives results in an increased sense of engagement with the organisation whose records are being studied. As a first step taster sessions could be arranged at ward meetings or MPs' surgeries to explain what resources are available in the archives and local studies collections. These would increase awareness, build relationships with councillors and may attract more people to the meetings.

- 3. Local authority archives status as places of deposit and the impact of the review of the 30 year rule.** It is a matter of urgency that this review is taken as an opportunity to create, mend or maintain relationships with these public authorities. It is also essential that the funding gap for this function is measured and presented to government and to the authorities themselves. There is a general feeling that electronic records will mean the end of the relationship between local archives and public authorities. However, there needs to be a debate about this and what measures there will be to facilitate public access to these records. Archivists have to initiate this debate.

Research Aims

I believe that archives (by which I mean all local and public authority archive services including those which are operated by hospitals, courts, universities and national museums) can and ought to fulfill the aspirations of the Freedom of Information Act for their authorities. I believe it is in the interests of the archives sector to espouse Freedom of Information because it is legislation that supports archive functions. The rhetoric surrounding Freedom of Information resonates with arguments made about the evidential value of archives and the wider contribution of archives to society. By taking an active role, not merely in administering Freedom of Information but advocating for it, I believe archives can increase their importance and standing in the local authority world. This idea of linking archives to the Government's key objectives is not new. In 1999, the Government Policy on Archives aimed "to demonstrate the importance of archives in our national life to opinion formers outside

² See Cooke and Cox in the bibliography

³ Public Services Quality Group, Survey of Visitors to UK Archives 2006

http://www.nca.org.uk/research_and_development/survey/survey_2006 33% strongly agreed (accessed 14/08/09)

the archival world,”⁴ As Nicky Sugar recognised in her research, ‘Why not burn the stuff?’, ‘with specific reference to modernising institutions and improving access to information, the policy states that the Government “is keen to harness the knowledge and expertise of the archive sector, which it believes has a significant role to play in the pursuit of these objectives.”’⁵ The draft strategy released by The National Archives and MLA also supports this. It emphasises, ‘Archive services need to actively demonstrate where they add value to policy targets Although, in local government, archives are not explicitly included within local performance frameworks, there is potential for archive services to make a major contribution to overall delivery of many of the local authority priorities.’⁶

Where local studies and archive facilities have come together there is a mandate for these services to provide access to the decision-making processes of their authorities both current and historic. However, the existence of these services does not on its own mean interaction with or knowledge of their application to daily life. There is a need for promotion, interpretation and support in accessing these resources. In the same way, publication schemes on official websites do not involve the public in participation. There has to be an invitation and an offer to be taken up.

My vision is that archivists should seize the initiative and use their skills in information management, public services and above all information rights legislation to provide an access to information advice service for the public, focused on FOI: an ‘information gateway’ encompassing historical and current records held by local authorities, places of deposit and locally based public records bodies such as the NHS.

There is at least a partial vacuum in many authorities, archivists can fill this and make these activities more firmly their own.

Freedom of Information

The UK Freedom of Information (FOI) Act 2000 came into force at the beginning of 2005. In their report, ‘FOIA 2000 and local government in 2007: The experience of local authorities in England’, The Constitution Unit found the annual cost of FOI to local authorities to be approximately £30 million.⁷ The Constitution Unit also found that approximately 70% of all FOI requests in 2006 were to local government⁸ with the number of requests increasing by 11% in 2007.⁹

Although the legislation itself does not define them, an ongoing study into the impact of FOI on local government establishes the aims of Freedom of Information to be:

- to increase the transparency of public authorities
- to make public authorities more accountable
- to increase public participation

⁴ Tyacke, Foreword to the ‘Government Policy on Archives’, 11.

⁵ N Sugar, ‘Why not burn the stuff?’ p25

⁶ HM Government, ‘Archives for the 21st Century’, point 3.3 page 9

⁷ See <http://www.ucl.ac.uk/constitution-unit/foi/p/downloads/LocalGovernment2007reportFINAL.pdf> p6 (05/06/09) This figure was based on 80,114 requests, with each request taking an average of 15.3 hours at £25 per hour for the period January to December 2007.

⁸ See <http://www.ucl.ac.uk/constitution-unit/foi/p/downloads/LocalGovtCaseForSupport.pdf> Section 1.1 p 1 (2/07/09)

⁹ <http://www.ucl.ac.uk/constitution-unit/foi/p/downloads/LocalGovernment2007reportFINAL.pdf> p8 (2/07/09)

- to improve public understanding
- to improve the quality of government decision making
- to improve public trust and confidence in government¹⁰

Research Objectives and Methodology

Context: I decided on this topic because I believe that the archives sector needs to attract attention to itself. The sector also needs to develop audiences for archives beyond 'Who do you think you are?'. Furthermore, in a period of recession, heritage does not often figure highly on budget holders' agendas. Cuts to the Museum, Libraries and Archives Council indicate the sector's vulnerability.

Archive services have a very low profile in comparison with the Museums and Libraries domains and cannot compete with them in terms of visitors through the door.¹¹ For this reason among others, the sector is low on the priority list of our major champion, the Museum, Libraries and Archives Council. The low profile of archives is partly because the sector has not demonstrated clearly what it stands for or what it can deliver for the government or its agencies. Other reasons include the lack of legislation to underpin the provision of local archives services whereas both libraries and museums have a statutory basis. Archives therefore tend to be the poor relation in terms of facilities, staffing, priority and publicity. In my experience, and although there are exceptions, there is also some basis for the stereotype of archivists 'keeping their heads down' and avoiding drawing attention to themselves. This lack of ambition was demonstrated in one piece of research when a blue sky thinking workshop amongst archivists imagining the 21st century archive came up with a coffee machine as a key point.¹²

The merger of The National Archives and the Office for Public Sector Information is an opportunity to raise the archive sector's profile within government. Archivists should draw on their strengths and unique skills to find other opportunities to demonstrate what value they can add to the Government's information agenda.

Aims: I intend to demonstrate that public authority archivists

- have the expertise to explain information rights to the public
- can provide practical advice to individuals on exercising those rights
- can be the experts on information rights legislation within their authorities

Methodology: I conducted a survey of the Heads of Local Authority Repositories in the West Midlands. The aims of the survey were to compare the numbers of FOI

¹⁰ <http://www.ucl.ac.uk/constitution-unit/foidp/downloads/LocalGovtCaseForSupport.pdf> (24/07/09) p 3

¹¹ 1 This table provides figures for local authority museum, archive and library services in 2006. The figures were taken from reports on the (MLA) Museums, Libraries and Archives Council website which quoted from the Museums Association and CIPFA statistics for archive and library services.

	Visitors	Cost	Staff	HLFunds	Income	Providers
Archives	800000	54 million	1234	6 million	10 million	496
Libraries	288 million	912 million	21691	6 million	97 million	3474
Museums	23 million	213 million	4374	101 million	35 million	608

¹² Jocelyn Dodd, Lisanne Gibson, Ceri Jones, Chris Pickford, Gaby Porter 'Engaging Archives with Inspiring Learning for All', Research Centre for Museums and Galleries, Leicester University for MLA North West, September 2005. p46

enquiries and the definitions used and to establish some baseline data on the time spent on enquiries and the numbers of records held on behalf of public authorities covered by the FOI Act. A further aim was to gauge the skills and resources available and assess whether archivists saw any potential in developing an extended role in FOI. I also analysed questionnaires circulated by The National Archives in three stages from November 2004 - January 2006 looking at the impact of FOI on archive services.

In addition I conducted interviews with Natalie Ceeney, CEO of The National Archives; Chris Batt, former CEO of MLA and Jonathan Peplar, County Archivist, Chester and Cheshire Archives. The aim of the interviews was to test out the idea of greater involvement by archives in Freedom of Information, to advocate for it and to find examples of archivists and archive services which have corporate FOI roles or provide training or advice to their users on accessing public records.

I made a case study of FOI training offered to researchers by the Research and Information Network. I also attended seminars run by The Constitution Unit on Information Governance, the Records Management Society Conference in May and FOI Live, The Constitution Unit's conference in June 2009. I have also used The Constitution Unit's annual surveys amongst FOI practitioners and other research and resources which are available from their website.¹³

Purpose: I believe there is a lack of confidence within the archives domain and this combined with a sense of diminishing resources and increasing responsibilities has resulted in a failure to exploit the opportunities created by the Freedom of Information Act. I hope to establish archivists' undeniable expertise in this area. I hope that my research will help motivate public authority archivists to take up the challenge.

Scope/Definitions: The majority of this research will focus on the West Midlands. UK wide examples will be used for good practice purposes. Definitions will be taken from The National Archives and Office for Public Sector Information.

Outputs: I hope that this report might also act as a stepping stone to my longer term vision of promoting the provision of a national research advice helpline, run by archivists, supporting and simplifying access to information held by public authorities and contained in current and historical public records.

Surveys

'Archive services across England and Wales have the potential to be an even more valuable resource at the heart of their communities. Their contribution to local democracy and accountability, education, learning and culture and the sense of identity and place for local people, communities and organisations, is frequently understated and consequently unrecognised. The archive sector needs to harness the skills of those dedicated professionals within its ranks who are best placed to identify and articulate the opportunities for archives to contribute in this vital way in their own local communities.'

'Archives for the 21st Century' 57-617

captured information from the services about the numbers of written enquiries they received and how many of these they counted as FOI enquiries between 2005/6 and 2007/8. I also asked how much time was spent answering FOI enquiries. The next set of questions focused on the availability of FOI knowledge, advice, training and skills in the region for staff and users and on practical questions about the archives' inclusion in the publication scheme, provision of access to current information and preservation of material made available as a result of requests for information. I also asked whether there were dedicated FOI staff and if any resources or status had been gained as a result of FOI. My final question asked for the respondents' opinions to decide whether archive services were well placed to contribute to FOI in a number of ways. The full questionnaire is available as an appendix to this report.

Methodology

The survey was circulated to the eleven local authority members of the former Heads of Repositories Group in the West Midlands in February 2009 and was closed at the end of May 2009. Nine authorities responded giving an 80% response rate. Although the small number of returns mean that this survey is statistically unreliable I believe that the findings are valuable and warrant attention. The survey was split into two halves. The first half dealt with FOI and the second looked at procedures and relationships between the services and public bodies using the NHS as an example. I have reproduced the results from the first half of the survey, the analysis and the findings here to provide the context to my arguments.

Numbers of Enquiries

Four offices were able to supply figures for the numbers of Freedom of Information enquiries received for 2005/6; 2006/7 and 2008/9. The proportion of requests to total numbers of enquiries was fairly static for each office over the three years.

This table shows the results for 2007/8.

	Total Written Enquiries	Number of FOI requests	Proportion
Office A	3266	69	2.10%
Office B	3408	18	0.50%
Office C	3435	296	8.60%
Office D	8755	1353	15.50%

Time Spent

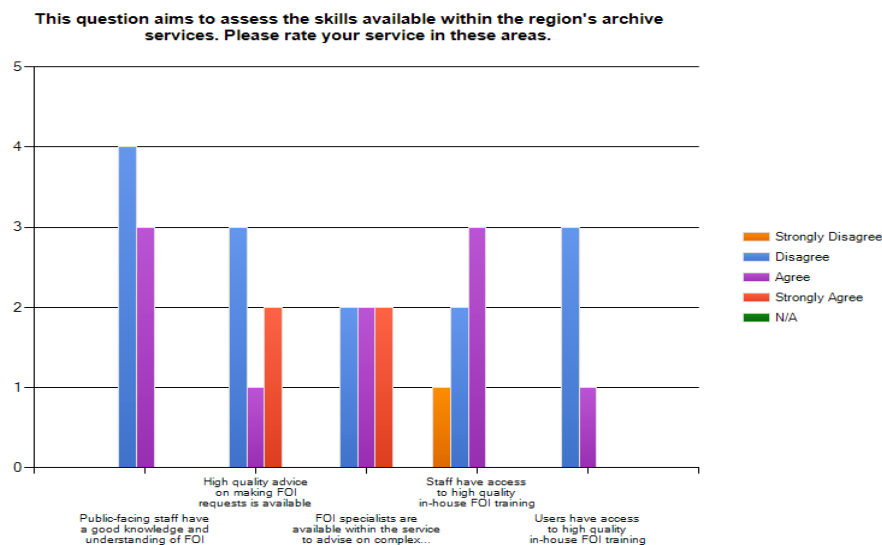
An estimate of 15 hours per enquiry was offered by one office and this matches well with the average time spent on Freedom of Information enquiries by FOI officers reporting to The Constitution Unit in 2007/8. Other offices spent between 3 and 20 hours on average per enquiry.

Quantity of Records held

Two offices provided figures for this question. Most offices were unable to provide an estimate mainly because the collections are uncatalogued or are stored disparately.

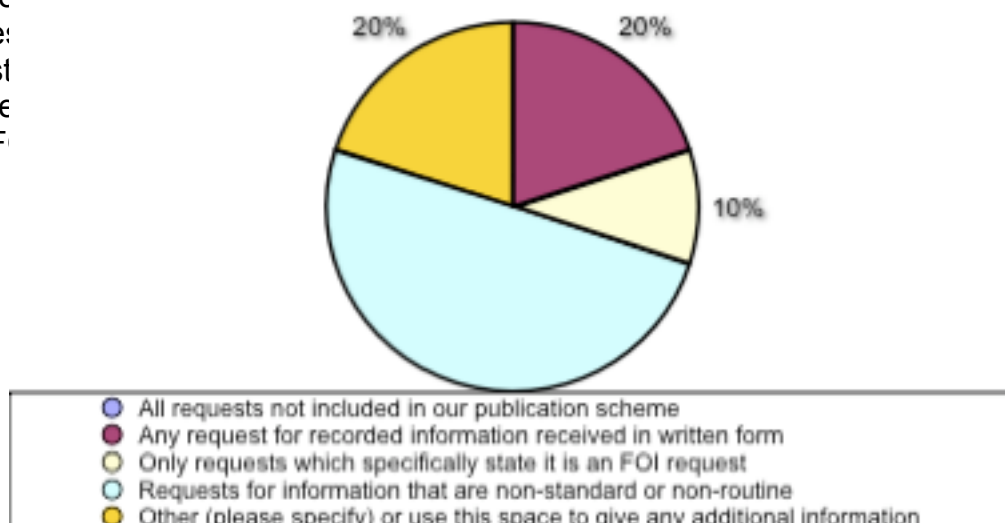
Key Findings

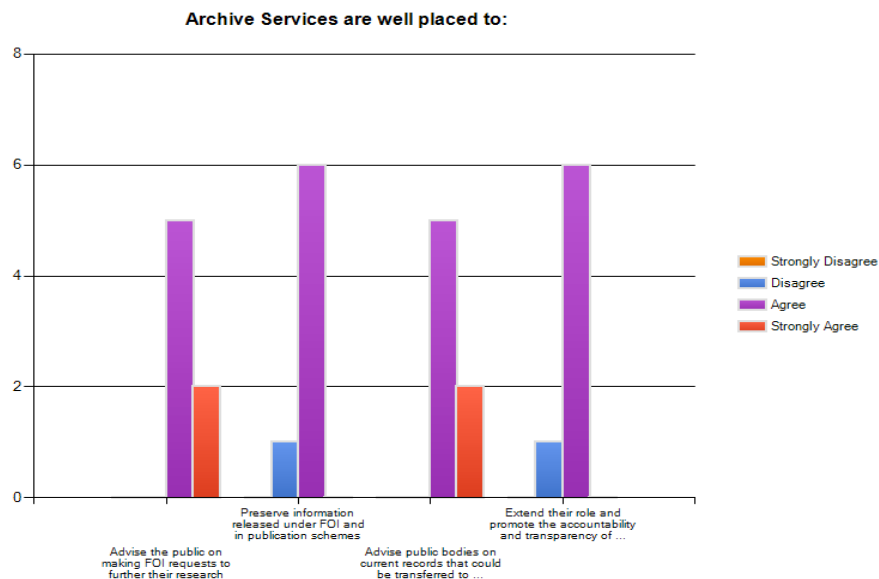
- 50% of respondents defined an FOI request as a request for information that is non standard or non routine



- 57% (4 offices) disagreed that public facing staff have a good knowledge of FOI.
- Two offices strongly agreed that high quality advice on making requests is available; one agreed and three offices (50%) disagreed.
- Most disagreed that users have access to high quality in house training
- All Archive services are included on their authority's publication scheme but
- 5'

offices profile uses in offices lowering





- 100% agreed or strongly agreed that Archive services were well placed to advise the public on making FOI requests. The same number felt that Archive services were well placed to advise public bodies on their current records.
- 85% agreed that services were well placed to preserve information released under FOI and that archive services should extend their role and promote the accountability and transparency of public bodies and authorities.
- Two offices identified limited staffing and resources as precluding active involvement. The effort needed to build strong relationships with Council departments and public bodies and maintain those relationships was felt to be beyond existing capacities.

Analysis

The numbers of Freedom of Information requests varied considerably between offices. The highest numbers were recorded for an office which defined a request as 'any written request for recorded information.' The other three offices used the definition, 'any non standard or non routine enquiry'. In practice I suspect that enquiries are only counted as FOI enquiries if they are dealt with by dedicated FOI personnel (where these staff exist), but also that the principal trigger for classifying a request as FOI is requesting information from closed records.

The guidance from The National Archives on deciding whether an enquiry should be handled as FOI or not is, 'if you have to go away and look for the information to answer the question, it should probably be handled as an FOI request.'¹⁴ In practice this means anything that is non-routine and takes longer than fifteen minutes.¹⁵ It is worth bearing in mind that the Act itself defines a "request for information" as a request which is (a) in writing, (b) states the name of the applicant and an address for correspondence, and (c) describes the information requested.¹⁶ In other words, legally, any request for information from a public body covered by the Act, could be treated as a Freedom of Information request. In view of the correlation between the

¹⁴ See http://www.nationalarchives.gov.uk/documents/foi_guide.pdf (2/07/09) p42

¹⁵ Email from Teresa Bastow, FOI Manager, The National Archives sent to the author 20/7/09

¹⁶ http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000036_en_2 (20/07/09) Section 8 page 2

Act and archival functions I believe archivists should count any request for information from records held by the archive as a Freedom of Information request.

The lack of available figures for the numbers of requests, time spent answering requests and the quantity of records stored make it difficult to assess the significance of archive services' contribution. The average number of enquiries received by local authorities in England is 207 per year with county authorities receiving between 111-119 requests per quarter in 2007.¹⁷ Numbers for unitary, metropolitan and district councils are much lower. In view of these modest figures, requests administered by archives are a significant proportion of the overall total. One county office received 296 enquiries which is nearly half the average county total. Another office with a wider definition of FOI enquiries received nearly three times the average county total. These statistics are worth recording because they reveal the significant contribution archive services are making to support FOI. It is a contribution that is currently overlooked.

The survey showed that offices are willing to work together to address some of the challenges of FOI. A regional approach would enable Archives to take a strategic and directive role with depositing authorities and aim for consistency for the public. Although most offices disagreed that public facing staff had a good knowledge and understanding of FOI respondents were positive about the potential to deliver advice to the public on making FOI requests. I presented my results to the Archive Forum and in the course of the discussion one office offered to provide training for public facing staff on FOI and it was agreed that the region would host a training session. Respondents were also positive about the potential of archive services to make current information available; preserving what is released under FOI and promoting the transparency and accountability of public authorities. There is clear support here for archives to develop their role, to re-focus on the evidential value of archives and support public authority attempts to promote democratic renewal.

Action Points

Using the information and conclusions from the analysis set out above it is possible to establish a series of action points which would help potentially develop common or shared services, or at least a consistency in the approach to providing such services.

These are:

1. Establish a common and broader definition of an FOI request.
2. Collect basic figures each year: e.g. written enquiries; numbers of FOI enquiries, extent of public records held; time spent answering FOI enquiries.
3. Write the figures up as a 'record of achievement', benchmark with regional offices and share it locally with corporate FOI teams, members and public authority partners.
4. On a national basis collate these figures and flag the contribution of the sector
5. Commission research investigating the connection, if any, between the use of archives and a resulting engagement with the authority

¹⁷ <http://www.ucl.ac.uk/constitution-unit/foidp/downloads/LocalGovernment2007reportFINAL.pdf> p11 (2/07/09)

6. Establish audience development seminars and workshops on the history of local and public authorities; tie this in to their current overall purpose; key strategic documents and records and how people can keep informed and get involved.
7. Organise regional training in FOI and information rights legislation for staff.
8. Develop a regional approach to agree consistent procedures with depositors.
9. Consider a regional pilot to test the feasibility of other new developments for Archives such as providing training to the public in making requests for information or how to further their research by asking the right questions.
10. Create a regional strategy to engage and develop partnerships with record depositing bodies
11. Ensure that these actions are publicized for example to the Local Government Association (LGA), Society of Local Authority Chief Executives (SOLACE) etc so that the profile of archive services increases and is recognised

The National Archives Survey

The National Archives circulated three questionnaires to archive offices in 2004-6 in a research project to assess the impact of FOI. The survey probed into the preparations and expectations of archive services in the months coming up to implementation and then looked at actual impact to see whether these expectations were realised and if the preparations had been along the right lines. The first questionnaire was distributed in November 2004, the second in February 2005 and the last in January 2006. The questionnaires were completed by twenty three offices: nine local authorities, eight universities, and six national bodies. In the first questionnaire offices were asked to record up to five benefits of FOI for the public and for their authorities. Archivists listed fifty seven benefits for the public including quicker, easier, wider access to information; greater accountability and transparency and a greater role in decision-making. Sixty eight benefits to authorities were listed including improved records management across the organisation; greater public confidence and trust in authorities; improved services and efficiency; better decision-making processes; better internal communication and increased awareness of the role of archives and the information held.

Interestingly in the second survey The National Archives note in their 'Analysis of Phase Two Report' that, 'One of the most prominent themes of perceived benefits to organisations of FOI, revealed in November, was improved relationships between the public and the public authorities, improved customer service, greater public trust and accountability. None of the respondents mention it again here. Similarly, there is no mention of better communications within the organisations themselves, which was a key theme previously.'¹⁸ Unfortunately the question was not asked again in the 2006 questionnaire. However, in The Constitution Unit's annual survey for 2007 respondents listed the benefits of FOI as:

1. Openness, transparency and accountability 32%
2. Improvements within the organisation (not related to records management) 28%
3. Better records management, including information management 25%
4. Improved relationship with the public 11% ¹⁹

¹⁸ Analysis of Phase 2 questionnaires, TNA, supplied to the author p49

¹⁹ The Constitution Unit, FOIA 2000 and local government in 2007: The experience of local authorities in England, p 21

Although practitioners list these as the main benefits of the act, asking what the benefits of the act have been for users would clearly be even more valuable. The Constitution Unit's last two pieces of research looking at the impact of FOI on central and now local government have attempted to do this. However, it is difficult to attract FOI requesters to participate in surveys. Instead, it would be easier, and I believe comparable, to create a focus group of archive users and discuss the impact using local authority records has had on their relationship with the council or other public authority. In my experience, archive users have independently expressed their surprise and satisfaction that the local authority has made an effort to preserve its records. It would be interesting to discover whether that satisfaction translates into a feeling of engagement or trust for the organisation in the longer term.

The surveys also demonstrated a wide variance in the way Freedom of Information requests were defined. In the second questionnaire circulated in February 2005 offices were asked how they defined an FOI enquiry. In the analysis of these responses it was noted that, 'Organisations seem in the most part to have either a) classed virtually everything as an FOI request or b) classed virtually nothing as an FOI requests, counting most requests as 'advice and guidance' or 'other' instead.'²⁰

Susan Healy remarked that, 'The majority of archives services are continuing to handle most enquiries as business as usual, which often means as general advice and guidance cases. Removal to formal FOI handling procedures takes place only if a trigger applies. The triggers mentioned include that the enquiry mentions the Act, the information is held or likely to be held, requested information is in archives that are not yet generally accessible, the enquiry would take longer than an hour to process, the enquirer clearly expects the archives service to provide the information, or the requested information cannot be provided without a search. A minority of archives services, however, are handling all written enquiries as FOI requests.'²¹

In her paper Susan Healy also talks about archives' implicit use of the section 21 exemption (that is, a request for information which is already 'reasonably accessible' to the applicant by other means) and the treatment of most requests as 'business as usual' requests. She says 'one of the risks of disconnecting FOI and other provision of information is that enquirers never become aware that a statutory framework exists and, in particular, provides complaint and appeal rights. ... to take advantage of the remedies available, disappointed enquirers need to know they exist. The data gathered so far suggests that many enquirers may remain ignorant of rights they might have used, had they known of them.'²²

It is important to remember that requesters are not and should not need to be expert, or even well informed, about the intricacies of the FOI Act. Part of the purpose of involving archivists, with their specialised skills in public service provision, is that it should enable more people to exercise any rights they may have without ever even hearing or having to use the expression 'FOI'. It is useful though to inform people that these are their rights under Freedom of Information as a way of demonstrating how the legislation is of use and relevance to everyone. This is part of advocating for FOI: building the numbers of people who it has had relevance for; relating it back into

²⁰ Analysis of Phase 2 questionnaires, TNA, supplied to the author p 4

²¹ Susan Healy, FOI and Archives, Durham University Paper, April 2005 supplied to the author

²² *ibid*

a relationship with the authority and broadening the types of uses the act is employed for.

In response to questions about the impact of the act on archive services in February 2005, offices flagged up changes to the way enquiries were handled, particularly the provision of a paid research service. Three respondents spoke of increased awareness of the archives service and increased efficiency in answering enquiries. Seven identified improved records management and three spoke of the positive impact on acquisition with authorities transferring records in a greater volume and more quickly.

Concerns about the impact of the act fell broadly into two areas: Seven respondents spoke of the possibility of private depositors withdrawing or refusing to deposit their archives and four identified the additional staff time spent on answering or processing requests. One respondent felt that FOI would decrease the information in records "as public servants become more circumspect about the effects of FOI on written information."

In the third questionnaire nineteen respondents agreed with the statement that, 'FOI requires us to do what we do already and have always done i.e. provide access to information in archives'. One office disagreed on the basis that FOI required them to do much more research in response to enquiries than previously. Sixteen offices disagreed that, 'FOI has caused some reduction in core services and activities of the office in order to respond to enquiries.' Of the four that agreed only one office commented saying, 'There has been a reduction in the maximum length of time spent on general enquiries in order to tackle FOI requests requiring lengthy record searches. There has been a reduction in time spent on core activities such as cataloguing.'²³

The sense I get from these questionnaires sent one year into FOI is, as one respondent put it, 'archive offices should already be meeting most of the demands of FOI'. Many of the respondents noted that the act had made no discernible difference to the way they handled enquiries or on the way the department operated. One respondent noted that FOI had an effect on the work of the Archivist, 'as she is seen as a source of information on FOI/DP and has spent quite a lot of time responding to internal enquiries'. Formal involvement in the corporate process was mentioned by a number of services both within universities and local authorities.

Analysis

Although the survey was conducted a number of years ago, and the situation may now have changed, the positive nature of most of the responses indicates I think a level of ease with the Act and its effect on archive services. There is an underlying belief that, 'the legislation frames the environment in which I answer all enquiries - so it has simply been business as usual this last year.'²⁴ and 'We're in the information business, so legislation which enshrines access is no great worry in itself'²⁵ There is also a sense of the Act enabling better contact with the public and as one office

²³ Third TNA Research Questionnaire on the effect of FOI on Archives

²⁴ *ibid*

²⁵ Second TNA Research Questionnaire quoted from the 'initial analysis' spreadsheet sent to the author by Susan Healy

suggests, a 'greater understanding of the viewpoint of the public'²⁶ The level of optimism about the Act and its effect on archive services is a cause for celebration. It suggests that this group of respondents, albeit, self selecting, would support an extension of archive services' role in the direction suggested by this research.

²⁶ *ibid*

Interviews

Archives need a shared narrative and stronger leadership to demonstrate their value to society. Promoting the key role of archives in understanding our past and building identity could attract greater support and investment. At present people don't always have a clear idea about their entitlement or even what archives do. Archivists need to think more about their services in terms of citizen needs and expectations'

Chris Batt, Interview (7th April 2009)

The interviews were conducted between February and April 2009. The questions were different in each case but each interviewee was asked for their response to the idea of greater involvement for Archives with Freedom of Information.

Questions asked included:

- Should archivists offer training to the public in making FOI requests?
- Should archivists extend their role and provide advice to the public on accessing current records?
- Is FOI a good vehicle for advocacy for archives?
- Do you think a national research advice line for the public, run by archivists, would raise the status of archives?

The reaction of interviewees to the idea that archives should align themselves more with FOI was mostly negative. Concerns were raised by practitioners about the effect promoting Freedom of Information might have on relationships with depositors. The Act was described by Jonathan Peplar as a 'flawed instrument' and it was suggested that if government were disappointed with the numbers of people making requests, that archives with their equally low visitor figures were unlikely to have an impact. It was not seen as a 'powerful enough lever'²⁷.

Chris Batt characterised FOI as a failure because 'a right of access does not equate with accessibility'. I believe archivists can act as the interpreters and intermediaries to ensure citizens get those rights and the authorities get the benefit of an informed and interested electorate. In the same interview Chris Batt acknowledged that 'archivists and librarians are going to have to be much more aggressive in defence of their collections.'²⁸ This chimes with Proctor, Cook and Williams in the preface to *Political Pressure and the Archival Record* that "Rather than just paying lip service to the notion of information access as a democratic marker, we may have to become proactive in defence of that ideal." MLA's recent publication of guidelines on controversial material in public library collections is also of relevance to this point.²⁹ The third sector was also put forward as likely to be much more effective in promoting the information rights of individuals than an attempt to win policy makers over to the idea of archives' involvement in Freedom of Information.

²⁷ Interview with Jonathan Peplar 20th February 2009

²⁸ Interview with Chris Batt 7th April 2009

²⁹ MLA, 'Guidance on the management of controversial material in public libraries,' April 2009

Natalie Ceeney agreed that archives had ‘gone too far over to the heritage side, and need to be about the present, as well as about heritage.’ Natalie Ceeney also agreed that FOI and records management should be brought within, or integrally linked to, archive services to overcome the ‘divorce between current and historic records’³⁰ This mirrors The National Archives’ experience as one of the top three recipients of all governmental Freedom of Information enquiries. However, actively promoting Freedom of Information was seen as a no-go because as she emphasised ‘FOI decisions are political and it is a risk... From a Chief Executive Officer’s point of view there is no upside with FOI... If archives actively encourage FOI requests they may be seen to be promoting the disclosure of political issues.’³¹ Finally, Natalie Ceeney stressed that most FOI requests are about current or recent, and not historical events.

I of course accept that these comments, coming from senior and experienced people familiar with the demands and practice of FOI, are to be respected. However they do not in my view disbar attempts, such as I am advocating to improve public services in the FOI field and hence improve the provision of access to information. I also believe that the main reason for this negative reaction is because of the bad reputation FOI has. Efforts to demonstrate and support the broader use of information rights should eventually redress this. One commentator suggested that part of the problem was in the name. Freedom of Information strikes fear in the hearts of many, whereas repackaging it as a research advice service or an attempt to promote democratic renewal through access to archives would be less sensitive and easier for everyone to support. However, I believe that the reputation and controversy of FOI is part of the value to archives. It cannot help but draw attention to the sector. Tackling this head on rather than going round the edges would demonstrate archives’ capacity, ability and responsibility to take the lead.

Training the public in making Freedom of Information requests

In the course of this research I came across two workshop providers offering training in making Freedom of Information requests. The Campaign for Freedom of Information and the Research Information Network’s run a public workshop for historians and researchers on using the Act. Other organisations which offer support and advice to the public on making requests for information include the website, ‘What do they know’ www.whatdotheyknow.com and the Information Commissioner at www.ico.gov.uk. It is a requirement of the Act that there is a duty to ‘advise and assist’ the public at all times in the course of requesting information. However, these organizations, in particular the web based service, are seen as encouraging vexatious requests by making it easier to contact organisations and by publishing the responses of FOI practitioners. Their work is building a community of FOI enquiry experts passing on expertise and support to people who have just realised there is something they want to know about the way an organisation works or a decision that was made by that organisation. I think archivists could provide similar expertise and advice to their local and online communities. The case study below will demonstrate the benefits of providing training to users on the most effective way to make requests under FOI.

³⁰ Interview with Natalie Ceeney, 7th April 2009

³¹ *ibid*

Case Study

The Research Information Network made a podcast available on their website of highlights from a workshop which took place on 9th September 2008 in London called 'Researchers' use of Freedom of Information'. (<http://www.rin.ac.uk/foi-podcast>) This included contributions from Maurice Frankel, Campaign for Freedom of Information; Elisabeth Shepherd, UCL Department of Library Studies; Dr Duncan Tanner, Bangor University; Dr Michael Jubb, Director of the Research Information Network; Teresa Bastow, The National Archives; Steve Wood, Information Commissioner's Office. At the end of the workshop, Maurice Frankel characterized the participants' realisation that although Freedom of Information was an important resource for research, 'it takes skill, learning and understanding to use it. You can't just say there's FOI go away and use it. They need to learn how to use it: to learn what is likely to be disclosed under the Act and what would be an unrealistic request.' Steve Wood commented that he would, 'encourage researchers to make responsible use of the legislation. When you make a request it is consuming public money and the best way is for researchers to understand how to make effective requests; for public authorities to be very aware of their duty to assist and advise and for both parties to think about their role.' One delegate to the workshop commented as a result of the workshop that she now realised that 'FOI is more than just for journalists'. Dr Michael Jubb spoke of the key message from the day being that 'researchers need guidance in how to effectively frame requests.' and that the 'challenge ... is to talk to bodies responsible for training researchers in how to help them be better equipped.'

Analysis

If historians and academic researchers benefit from the provision of training then evidently training to the public would help make more people aware of their rights to access information. The citizen cannot reasonably be expected to know that FOI might be relevant to the questions they want answered or to have or develop the skills necessary to make effective requests. This means by and large that FOI is in the main for 'extraordinary people'. I believe that archivists are well placed to become an intermediary between the citizen and their FOI rights. Widening the appeal, usage and relevance of the FOI act would improve its reputation and meet the aspirations of its supporters. I believe the best way archivists could achieve this is by providing training on how to make effective FOI requests. The training would reduce the number of unrealistic requests. It would also help manage people's expectations and would help the authorities answering requests because the requests would be more focused. At the same time archivists could support the participation and democratic renewal agenda by providing courses and information to citizens on the resources held by the archive and local studies services and what they could be used for. For example, current census information, planning application listings, Ordnance Survey maps, council meeting agendas and minutes, school governors' reports, Ofsted information and Care home inspections.

In the course of this research, concerns were expressed by a number of individuals about the pitfalls of encouraging Freedom of Information requests. One interviewee commented on 'avoiding opening the floodgates'. Others were concerned that there would be a backlash from depositors. Freedom of Information requests are seen as the preserve of mischief makers, journalists and the lunatic fringe. Yet the process of

asking questions clearly engages people directly in the business of their local or public authority. It is also a self fulfilling destiny that FOI is seen as difficult when the only enquiries that are classed as FOI are sensitive, difficult or in terms of archive enquiries, relate to closed records.

This is why I believe archivists need to broaden their definition of enquiries to include those relating to open collections too. Although this means an increase in staff time spent logging and monitoring the enquiries there is a purpose behind it. The purpose is to highlight the role archive services and archivists play in connecting people with the information held in public records and in exercising the citizen's right of access. Incidentally if the definition is broadened there is likely to be an increased number of refusals under FOI because the information will often be reasonably accessible in the public search-room.

If archivists take this route they will have to ensure that the explanation of this to the public does not use the jargon of the act but explains in a positive way that the information is available already and therefore does not have to be released. Archivists should bear in mind that they are part of the public relations team for FOI, for their own service and that of the wider authority they are part of. Not only does this demonstrate the value of the Archive service to the authority more clearly, it also provides a body of evidence to lobby for funding for digitisation programmes.

The experience of users on the 'What Do They Know' site was reported on by Francis Irving, co-creator of the site at the FOI Live conference in June 2009. He gave the example of Margaret Campbell who through her Freedom of Information requests has compiled a survey, 'Allotment Waiting lists in England' available from the National Society of Allotment and Leisure Gardeners website www.nsalg.org.uk. Francis Irving saw the Freedom of Information act as an opportunity to open up the dialogue between the citizen and government.

At the conference Francis Irving and Maurice Frankel both commented on the less positive experiences of requesters faced with bureaucratic or legalistic responses. The responses couched in legal jargon often blighted the fact that the information sought was being released. Other examples included refusing the request under Freedom of Information because the information was already published but failing to provide a copy of the publication or explaining where it was available. A public service outlook, such as that of archives or libraries, would focus on making the experience as positive as possible for the enquirer.

The local authority archives network consists of 124 archive services located in county or borough councils across England and Wales. Collectively they are excellently placed to, and realistically could provide an accessible research advice network with good availability, strong skills and a route into the communities. Good public service and a commitment to providing advice and information would create an opportunity for councils and other public authorities to make capital out of this relationship. And there would be real benefits for the average, non-expert citizen in terms of improved access to information that has potential to bring practical benefits to the local community.

Conclusions

'The government speaks a lot about FOI being for the 'ordinary citizen'. If that operates anywhere, it should be at local level, helping people to access information that is relevant to their daily lives and local area. We hypothesize that even at local level, it is mainly 'extraordinary' people such as businesses, journalists or people pursuing particular interests or grievances who make FOI requests.'

These are my three findings:

- 1) Freedom of Information legislation is as close as we are going to get to archives legislation
- 2) As a major recipient of FOI enquiries archive services should incorporate council FOI teams
- 3) Archive services should provide training to the public on making effective FOI requests

Of these three the third suggestion has been the most controversial. The first has been accepted and seen to be a useful way of looking at the relationship between archives and FOI. The second suggestion has been queried by a service which has a version of this model in place but is in the process of relinquishing the team to legal services because they cannot cope with the numbers of enquiries received.

The Freedom of Information Act as Archives Legislation

FOIA provides a general right of access to information held by publicly funded authorities. It provides a code of practice for records management and includes reference to historical as well as current records and places of deposit. The publication scheme supports both libraries and archives as providers of access to information and encourages the transfer of valuable non-current records to archives as an efficient way of making information available for access and thereby exempt under the Act. In effect therefore the FOI Act supports archival functions for public authorities.

Incorporating local authority FOI Teams

In the course of this research I have met and heard from a number of FOI practitioners who are mostly situated within legal departments in their local authorities. They are disconnected from the public, are perceived as, one practitioner put it, 'the enemy within', and seem not to be greatly concerned with enabling the provision of requested information to those requesting it, wherever possible, but rather to be fixated on 'vexatious requests'. Restructuring these teams and incorporating them within archive services would move the focus of their work to a customer centred environment. It is worth remembering that the FOI Act (section 16) imposes a clear and unequivocal duty on public authorities to 'provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it'. As the Information Commissioner's Office states 'Providing advice and assistance amounts

to good customer service'³² The enquiries received and dealt with by the teams would be broader and more representative of the public at large. It would also enable FOI practitioners to be public-facing and to develop expertise in clarifying, perhaps even face to face, what information is required, rather than a literal reading of the request. Clearly archive services would still require access to legal opinion on complex and sensitive requests. However, as a further benefit this move would facilitate good contact between archives and legal services. I also believe that another helpful innovation would be to create an internal review team with a member of the public sitting on it. The purpose would be to have an outside eye judge what might be sensitive or harmful rather than what can be a spiralling bureaucratic response so wary of precedent that less is made available than prior to the adoption of the Act.

Francis Irving, founder of www.whatdotheyknow.com; Maurice Frankel, Director of the Campaign for Freedom of Information and Graham Smith, Deputy Information Commissioner gave examples of legalistic responses to requests at the FOI Live conference. They demonstrated how this bureaucratic style alienated the public. In one case the fact that the information had been released was obscured by the jargon and was only revealed on page two of the correspondence. The presentations made it clear that local authorities were missing out on building trust, confidence and a good relationship with their taxpayers. The ultimate aims of the Act to build participation and engagement are in danger of being lost by this approach.

Viewing the FOI Act as a means to hear from the public about what it is that concerns them and what it is that they wish to have access to is a much more effective and economic way of communicating than spending large amounts of money on consultation or public relations. Acting as a conduit for FOI requests would alert archivists to the types of records of interest to the public which should be considered for transfer to the archive. Archivists' skills lie in identifying records which have research potential. Applying these skills to advise authorities on the reuse of information and the pro-active publication of information could have a very positive impact.

All of these factors point to there being an important gap in general provision for access to information, and to this being a gap which archive services are well placed to fill, and to fill effectively and economically.

Providing Training to the public in making effective FOI requests

A number of the people I approached through interview and consulted with about this research saw things differently. Their perception was that encouraging requests was a major risk and therefore one that would not be and was not being welcomed by the public authorities. It was seen as an extremely controversial activity that would cause embarrassment and likely damage to the relationship between the authority and the archive. I disagree with this view. Training to promote and encourage FOI requests could arguably be seen to go beyond the requirements of the act which makes it 'the

³²

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/22_06_09_foi_advice_and_assistance_v2.pdf (24/07/09)p2

duty of a public authority to provide advice and assistance ... to persons who propose to make, or have made, requests for information to it'.³³

However, in terms of the aims of the Act to promote participation and engagement and the Code of Practice accompanying the Act it makes sense to publicise the opportunity and to inform people about their rights. Provision of training, whether as one on one advice to enquirers or as a formal course perhaps especially to those whose engagement with the FOI Act is going to be more than a 'one-off', is one way to achieve this. It might also help to ensure that the types of requests received and categories of requester become more broadly representative than they currently are. In an earlier version of their specialist guide on advice and assistance The Information Commissioner's Office states 'A public authority's duty to provide advice and assistance is extensive and will apply to both prospective and actual applicants for information.'³⁴ And they regard compliance with this duty as an important factor when considering appeals against refusal of information.

Opening a dialogue can feel risky because it requires giving up some authority and recognising the power of the other person in the discussion. However, this is what the process of empowerment and changing the culture of secrecy is about. Archivists are gatekeepers to an enormous amount of information that must be made available to the public. It needs to be made available alongside the tools to help people assess its value, consider the nuances of its meaning and interrogate the authenticity of the information contained within it. We have a duty to get the message out and it starts with encouraging people to ask questions.

By offering advice and training there is a chance to mediate and influence the way requests are made that is of benefit to both parties. Training courses run by the Research Information Network (www.rin.ac.uk) advise researchers on using Freedom of Information to open up new avenues of research. In a podcast from the first workshop the participants and leaders of the training discuss how to frame the requests effectively; to be realistic about the quantities and the type of information likely to be released; to be clear about the information required and the format.³⁵ The act is often seen as being exploited by journalists or those with an axe to grind. The revelations in the Telegraph about MPs expenses have given Freedom of Information a very high profile and have increased concerns within public authorities about targeted campaigns preoccupied with muck-raking. Actually, these types of campaign will happen regardless of whether archive services open up the process and provide advice on making requests. I believe that the existence of such a service would illustrate a commitment to participation and to listening to the public that is worth courting the controversy to implement. It would certainly raise the profile of the archive service.

The Joint National Archives and MLA archives consultation strategy, 'Archives for the 21st Century', states that 'Archives have great potential to support public policy objectives'. The strategy argues that, 'Strategic engagement with policy- and

³³ http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000036_en_2 (20/7/09) section 16 p 2

³⁴ http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/advice_and_assistance_v1.0_171208.pdf p2 (24/07/09)

³⁵ <http://www.rin.ac.uk/foi-podcast> (21/07/09)

decision- makers across both local and national government will demonstrate the role and value of archives in the development of a robust democracy.' In 'A model for excellence for publicly funded archive services', the seventh point is 'Innovate, be entrepreneurial and able to adapt to new working methods.'³⁶ The information rights agenda is a chance to apply our skills in a way that serves the needs of the public, our authorities and our services. Archivists need to seize this opportunity and others offered by the reuse of public information and Thirty Year Rule Review or else the leadership and direction of it will fall to someone else.

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³⁶ <http://www.nationalarchives.gov.uk/documents/archivesconsultation/archives-for-the-21st-century-england.pdf> (21/7/09) p 8, ibid p13 and ibid p16 consecutively

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[http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf](#)

[http://www.justice.gov.uk/guidance/docs/foi-section46-code-of-practice.pdf](#)

The National Archives Guidelines

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Information Commissioner's Office

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