**UK Experience of Freedom of Information as a method of enquiry**.

**Abstract**

This chapter considers Freedom of Information Act (FOIA) as a viable tool for academic research. To date, journalist, campaigners or concerned consumers have been to the forefront in using FOIs to gain information on issues as diverse as politician’s expenses, the cost of policing a royal event or the levels of food hygiene in restaurants. Yet this line of enquiry appears to be infrequently used by academic researchers. The chapter concentrates on the UK and will offer 5 areas for consideration. Firstly, we consider the value of FOIs as a research tool. Secondly, we reflect upon some of the limitations to using FOIs in research. Thirdly, we locate the FOIA within a broader process of modernising digital information and highlight some of the challenges that can present for researchers via this trend. Fourthly, we review effective use of FOI in research. Finally, we offer some observations from our own nascent research project that is using FOIs as a key methodological approach. The chapter concludes by stressing the usefulness of the FOIA for researchers to produce democratising and politically impactful research. The chapter’s aim is to highlight the practicalities of applying this method of enquiry and to further its contribution to academic research.

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**Introduction**

‘… *there really is no description of stupidly, no matter how vivid, that is adequate. I quake at the imbecility of it’*

 *(Blair, 2011, p. 516)*

Thus reflected Tony Blair in evaluating the impact of introducing the policy that began the right to use Freedom of Information requests (FOIs) in the UK. Blair had lead a landslide victory in the national elections of 1997 and the establishment of a freedom of information law began with a pledge made in the Labour Party election manifesto - *New Labour New Britain.* Upon electoral victory the manifesto pledge developed into the white paper *Your Right to Know* where the Government committed to this law as part of their wider commitment to constitutional reform that included decentralising power, individual rights and open government (Chancellor of the Duchy of Lancaster, 1997). Within three years the white paper had formed the basis of the Freedom of Information Act (FOIA) that came into force in 2000. However the major aspect of the law - right of access - did not actually come into effect until January 1st 2005. By 2005 the FOIA was a fully functional law and provided public access to information held by UK public authorities.

The coverage of the FOIA includes over 100,000 public authorities (Birkinshaw, 2010, p. 313) and guarantees access to information in the public interest. This is achieved, firstly through the obligation to respond to written requests for information and secondly, via the obligation to publish certain information as part of a ‘publication scheme’. The most recent Cabinet Office statistics record 46,681 FOI requests across central government in 2017 (Cabinet Office, 2018, p. 1). Yet, despite this wealth of potential information there appears to be a dearth of academic research using FOIA as a means to gather data and in turn to address pressing UK social and political issues (Brown, 2009).

This chapter considers Freedom of Information Act (FOIA) as a viable tool for academic research. To date, journalist, campaigners or concerned consumers have been to the forefront in using FOIs to gain information on issues as diverse as politician’s expenses, the cost of policing a royal event or the levels of food hygiene in restaurants. Yet this line of enquiry appears to be infrequently used by academic researchers. Our chapter begins by considering the value of FOIs as a research tool. Secondly, the chapter considers some of limitations to using FOIs in research. Thirdly, we locate the FOIA within a broader process of modernising digital information and highlight challenges faced by researchers utilising FOIs. Fourthly, we review the effective use of FOIs in research. Finally, we offer some observations from our nascent research project of our own that is using FOIs as a key methodological approach. The chapter concludes by stressing the usefulness of the FOIA for researchers to produce democratising and politically impactful research.

**The FOIA as a research tool**

To date there has been a coterie of commentators that have examined the value of the FOIA for research purposes (Michener and Worthy, 2018; Rodríguez and Rossel, 2018). Notable is Johnson and Hampson (2015) who investigate the practice of crime prevention in British policing. Having identified what appeared to be an emphasis on using the British Crime Survey to identity ‘crime hot spots’ they utilised FOIs to verify how such identification was taking place. The information that guided this approach was ‘Police-created, Police-held and Police-owned’ data (p. 250). Yet through FOIs the information then had to be shared with the researchers and so transcended the ownership of the data, thus revealing the potential for FOIs to allow access to areas that previously had been ‘off limits’ or difficult to access. As it was designed to do, the FOI offers transparency and accountability between officialdom (read governmentality) and those subject to such forms of power (read citizens/researcher).

Alongside the Police, institutions such as Parliament are also subject to the FOIA and FOIs have been used to good effect by the media, NGOs and other groups to demonstrate accountability (Worthy, 2012). Examples include the use and abuse of parliamentary expenses - where politicians were discovered to be exploiting funds allocated for specific roles or activities, for instance, financial assistance for MPs to buy a second-home near parliament intended to make it easier for politicians to attend parliament. In some cases the homes were being let for profit which counters the intent of the funding (see The Telegraph 2012). Hazell, Bourke and Worthy’s (2012) evaluation of the impact of FOIs upon Parliament found that the Act has, ‘helped make UK Parliament even more transparent and more accountable’ albeit these are positives not matched in relation to public understanding, participation or trust (2012, p. 918). Moreover, Worthy (2012) argues few politicians use FOI in the pursuit of information or accountability. Parliamentary Questions, he attests, are the investigation method of choice for politicians – they are reluctant, or slow, to use alternative forms of enquiry. Equally, it is unusual for members of the government to question the government – either using PQs or FOIs. As Worthy finds during the period of 2005-09 when the Labour party were in power in the UK, the party making the most FOIs were the Conservatives, making about 40% of all parliamentary FOIs, compared to Labour’s 16%. However when Labour lost power in 2010 and the Conservatives formed a collation government, Labour’s rate of FOIs jumped to 64% of all requests and the Conservatives dropped to 11%. Yet to offer some perspective on how FOIs are used, MP requests rarely exceed 2% of all the requests received by governmental departments (Worthy 2012).

**Broader challenges and limitations**

While the FOIA was passed into law amidst a discourse of transparency and open government, Brown (2009) reminds us that FOIs might not always be received in that spirit. The possibility that an FOI is viewed as a ‘confrontational’ tool that is seen as primarily being about exposing bad practice. This is a possible dilemma facing researchers, particularly in light of ethical board approval tensions in university settings (see Charlesworth 2012). Walby and Luscombe (2018) have drawn attention to and questioned the need for FOIs to receive ethical approval given that these requests are concerned with organisational practice and not individuals. It is the job of the authority to remove any identifying or potentially identifying information (Savage and Hyde, 2014, p. 310) and if releasing the information would unavoidably identify someone this is grounds for exception (see Johnson and Hampson 2015). Nevertheless, it is unlikely that this should provide an avenue of explanation for why FOIs are not applied more readily by researchers – in short, compliance is unlikely to be viewed as a significant deterrent.

However this may be a growing trend where controversial or challenging research is being viewed through a defensive lens, for example FOIs seeking sensitive information – in our experience this has often related to responses to information regarding counter-terrorism or immigration policies. As we found organisations can and do present a bureaucratic conservatism, or risk-adverse approach, in how they action such requests (see Spiller, Awan and Whiting, 2018). Yet, and perhaps more pressing, there is a lack of engagement by universities with FOIs as a research tool; illustrated by the fact that rarely do doctoral schools or MA courses include FOI in taught research method classes.

Compounding this defensive perception towards the FOI is the fact that it is the world of journalism that has made most frequent use of the FOIA and in this domain there is a tendency to frame these reports as ‘exposes’. This is at the very least misleading, if not also outright unhelpful for the perception of FOIs, firstly, because the information by its very nature is publicly available and secondly because the process is simply about drawing the information into the public realm. Granted, how the information may be collected, analysed and presented can at times be experimental, inventive and very enlightening, but this is not information that was secretly extracted from an organisation, no matter how secretive they may be. Monahan and Fisher (2015) provide insight into how defensive difficulties can be circumvented by using tools such as FOIs to make initial contact. They consider ‘perceptions of threat’ and how organisations may initially view the researcher in terms of the potential damage a researcher could pose to their organisation (for example exposing trade secrets).

There are of course tactics available to organisation to hinder or dissuade requests (Luscomebe and Walby 2017; Sikka, 2017). Max Schrems’s, for example, initial efforts to access his personal information from Facebook (see Hill 2012), where he was provided with reams and reams of data is one such technique. Alongside swamping requestors, organisations may also rest behind legal exceptions or frustrate requests with additional demands for clarity. This is not to suggest all such responses are a defensive tactic; indeed, discrepancies in response may not be surprising as requests can require specific information that requires specialist knowledge to accurately access the information held. Added to this are legal pressures on FOI staff to return data within the 20 day limit. As a result, staff may be less focused on the detail of the information requested and more concentred with reaching the time constraints (see Richter and Wilson 2013). Furthermore, requests are dependent on the proficiencies and experience of the responder – as we have found there is variance in how organisations respond to initial questions, for example, when we asked for the amount of referrals made by an organisation, some respondents detailed exact numbers, while for others stated that due to the information being a ‘security issue’ they would offer no response. FOI requests as we have found are open to interpretation by those tasked with responding to the requests.

**Modernizing Digital Information**

Richter & Wilson (2013) argue that FOIs are part of a wider information modernization agenda. Where the collection, analysis and transparency of influential data was revamped to provide reassurances to the public that governmental authorities were acting in a legal and acceptable manner. Key to their work was uncovering the variance in how local authorities deal with the FOI Act. Organisations are conscious of their responsibility in providing information, but are also mindful to comply and not face legislative enquiry for essentially not doing their role correctly. There is a ‘performative quality’ to FOIs where citizens ask questions and organisations are obliged to respond. Richter and Wilson argue that rather than informing citizens of their rights and illuminating how governments may be held to account, the process is further evidence of individualisation, where the citizen becomes a customer rather than exercising their civil rights. Indeed, one could add this may be exacerbated by how local governments are failing to engage with citizens because the emphasis remains on meeting their legislative duty and rarely does the process go any deeper. As we have experienced responses often do not go beyond the cursory or the bare minimum of what is expected. However where we disagree with Richter and Wilson is that this for the researcher is about using rights correctly and availing of the methods available to the researcher. In that regard it goes beyond the performative (but this is not to suggest it always excludes it), the aim as we see it is about knowledge generation and gaining insight through the rights available to the researcher.

It is also worth remembering that researcher’s findings may also be subject to a FOI – therefore confidential information may affect ethical concerns for the researcher, but also this has potential ramifications for those supplying the information. Monahan & Fisher (2015) consider how researchers should be aware that many organisations ‘research’ researchers, whereby they view the researchers previous research and form political lead synopsis of what the likely research will review and how their organisations are likely to be analysed (also see Spiller 2015). This of course should not prevent the organisation from fulfilling their duties, nevertheless it will more than likely influence their overview. More specifically, if the research takes a critical perspective of the activities of the organisation then requests for information will be looked upon less favourable (see Berg 2009). These types of responses add to the burden of the researcher attempting to make contact and in the case of difficult-to-access organisations, often contributes to the dilemma of how to approach the organisations.

An example of the challenges faced by researchers can be viewed in the dilemma once faced by Sterling University in Scotland, where a team looking into the marketing of cigarettes and the attitudes of teenagers to smoking was subject to a FOI. The interview data and other material was requested first by a law firm and when challenged by the research team and the ICO (UK’s Data Protection Authority) established that the law firm was making the request on behalf of their client Philip Morris – a giant in the tobacco industry. The University argued the information they held was confidential and that teenagers offered their comment in good faith. Equally the University researchers argued the research data they had found would be unlikely to gain acceptance if the tobacco industry had commissioned the research. Therefore producing a clear dilemma as to how sensitive information is processed and to whom the information holds value and why they are requesting it. This to a large degree is the crux of FOI and transparency – all information should be available to those who request it, whether as citizen or customer. In relation to the Sterling case, Philip Morris withdrew their request for information, but there remains ethical concerns for university researchers or those working with information that has clear economic value and/or health or other implications.

**Effective FOI requests for research purposes**

In our research we have found that while organisations respond to requests, the quality and detail offered can be variable (discussed below). This certainly does not negate the value of FOIs as a research tool but does highlight the attention needed in forming questions that will prompt accurate and informative responses. For example, FOIs allow for very effective comparative analysis between data held across similar authorities, thus allowing the researcher to ask identical questions across a selected sector to prompt considerations of how, for example, a new governmental policy has been enacted. However, while FOIs are often useful in this sort of comparative endeavour, their value in providing *explanations* for a new policy or why a policy has been enacted in a particular way is likely to be less forthcoming.

What can be debilitating for the researcher and the research data produced is the quality of the FOI and the quality of the response from the organisation. The former includes elements the research team can mitigate against by ensuring that their request is focused and unambiguous (see Information Commissioner’s Office, 2019b). While this is never a precise science, asking direct questions with clear parameters should reduce the possibility of question being ignored or perceived as unanswerable. Indeed, having a realistic agenda that is attentive to the likelihood of specific information being available should be a consideration for any researcher. This, of course, needs to be balanced against the comprehensibility of the request so that a non-subject specialist (which those responding to the FOI may very well be) can understand, locate and provide the information. While working in this manner can be productive it has also faced accusations of ‘research on the cheap’, where responses generate information that informs similar or comparable research publication. For instance, Breathnach, et. al. (2011) warns of using FOI in the name of thriftiness, here medical researchers compel fellow institutions to impart data relevant to the requestors’ research, all with the intention of expanding findings for the purpose of publication. [[1]](#footnote-1)

The quality of the response however is outside of the researchers hands and can be a frustration to the process of data generation and collection. Sometimes, even where the researcher has been diligent in how they have constructed the request they will find that information is either not what was requested or has not been provided in the format that was expected. The former of these can often be non-problematically overcome with an informal reply from the researcher or in more extreme cases, an appeal (in the UK this is made via the Information Commissioner Office (ICO)). Differentiations in the presentation of the information received can create hindrances. For example, as we have found in our work, when institutions are asked to provide details on the number of staff who had received a particular type of training, responses included raw numbers, percentages and more ambiguous phrases such as “all front line staff”. These responses are not immediately helpful but do offer some insight into how those tasked with responding to requests are dealing with them and indeed it does offer a response that once secondary information is verified (in this instance the number of front line staff at the institution) will offer concrete data.

**FOIA for us**

In this chapter we have undoubtedly highlighted a number of challenges and limitations that present when researchers use the FOIA as a data generation technique. The literature does suggest FOIA can be a hindrance to organizations, yet for investigative journalists, to cite one example, they have proven illuminating qualities in highlighting information that had a public interest and while available had not been requested. In moving toward a conclusion we wish to stress the benefits the FOIA has presented to our nascent research project.

The project we refer to is one that is examining a particular aspect of the UK Prevent Strategy often referred to as the ‘Prevent Duty’. The Prevent Strategy is one part of the UK’s counter‑terrorism strategy that aims to ‘stop people becoming terrorists or supporting terrorism’ (Home Office, 2018: 31). In 2015 this was expanded to place a statutory duty (the Prevent Duty) on a series of public authorities meaning that they must pay ‘due regard to the need to prevent people from being drawn into terrorism’ (Counter Terrorism and Security Act, 2015). Among other things this meant that public authorities must report activity that may indicate a prevalence toward radicalization and/or the support of terrorism. The remit of the strategy covers state-funded organizations, such as hospitals schools, prisons and local authorities.

In our study we have placed the focus upon UK Higher Education (UKHE) specifically with a view to understanding just how higher education providers are implementing the strategy and indeed what actions they have taken in reaction to the strategy. The institutions we have focused on share many similarities, such as publically accessible webpages detailing their approach to this new duty and how they are implementing it. However within the webpages what becomes immediately apparent are discrepancies – be they how the strategy has been interpreted, the language used or how HE providers have understood and implemented this duty. As a result we have undertaken a structured survey of Prevent Duty policies and guidance within UKHE to establish in greater detail what the Duty actually looks like across the sector and where and in what form sameness and divergence exist.

The approach we have taken in this survey is to send an FOI to 160 UKHE providers which includes universities, colleges and performing arts centres. In the FOI we have asked for detail on how providers have organised to respond to their duty, how many staff they have trained as well as who and how, what non-public facing (or in-house) information and guidance has been produced about the strategy, and finally, we also sought details on the amount of referrals that have been made in relation to those suspected of extremism, radicalisation or terrorism. The project is in its very early stages and FOIs were sent to institutions beginning in November 2018. To date, we have had responses from 158 of the 160 institutions we sent requests to. The vast majority of these responses came within the expected 20 days and where delays did occur we often received a pre-emptive email informing us the reply would likely be arriving after the 20 days. The high response rate and speed with which we received this data is a key strength to FOIs, however, at the time of writing there are still 2 responses outstanding that have well surpassed the 20 day limit despite informal prompts on our part.

We must be careful to note that the methodological decisions a researcher makes are often dependent on the information they seek or indeed on their skill set. However, when comparing the expediency of FOIs versus alternatives such as interviews that often include a long process of organization, conduct, transcription, analysis and write-up there are clear benefits and efficiencies here. Indeed, an added advantage to FOI responses is that they come ready categorized, if all questions have been answered they can be quickly calibrated and compared. It is the promptness of data generation and its ready-made organisation that can produce data sets of quality and interest with potential to get to the heart of pressing social issues.

Nevertheless, as we have found in our initial reviews of the data there are clear challenges to be faced, firstly in chasing up those non-responses. This required a high degree of organisation and patience keeping track of who has not responded and engaging in a dialogue to ensure we get/got the data. Secondly, generic and obfucating response to our questions, for instance, when providers where asked how many student referrals for suspected vulnerability they had made. Clearly, this is the most sensitive area of our FOI but the discrepency across the reponses is quite telling as the majority *did* provide an answer (surmising it is in the public interest) and yet a significant minority refused the same questions either citing exemeptions concerning national security or potential identification of individuals.

Thirdly, as this kind of response has served to highlight, there was an anxiety on our part about constructing the questions to be asked in the FOI. We agonized for a long time on what we would ask and how we would ask it, concluding that 7 questions would be reasonable. Any more than this we thought ran the risk of not receiving detailed responses – and therefore there was pressure to get the 7 precise. Interestingly, Fowler, *et. al* (2013) found in their review of published academic papers using FOI as a data sources, on average 86 FOIs were made per published paper and of those FOIs made they usually contained 5 questions. Selecting the ‘right’ questions is no different to many research situations, as the question is often the key to unlocking a new discovery. Equally as our FOIs began to produce replies and generate data another anxiety manifested in relation to how we will eventually present this research in publication. Pressing here, is whether we identify those who have responded with substandard information (as we are legally entitled to do). In ‘naming and shaming’ are we overstepping our role as researchers and becoming adjudicators? Or, is this our role? This is a dilemma we are still wrestling with.

**Conclusion**

In this chapter we began with the hesitancy and fears that FOIs have presented for those who have implementeted this technique by offering an overview of such work within a UK context. We have also drawn on how this is a ‘modern’ tool that can and should be used in the light for which it was intended - to increase transparency and provide a data platform to tackle pressing social issues. Finally, we have described how our emerging project is availing of this tool and some of the initial findings and conudrums it has presented. What we are keen to stress is our belief that the FOI is a valid and apt tool for the researcher.

Luscombe and Walby (2017: 384) talk of the ‘precariousness’ to FOI networks and its functioning – each part must work to ensure a sucessful FOI. When one element ceases then the FOI grinds to a halt, for example, a non-response or not answering a question due to ‘security issues’. Thus ‘creatively handling unexpected barriers’ is a methodoligical component to FOIs (Luscombe and Walby 2017: 379) and this is certainly something we have experienced with more ambiguous and less precise responses such as the aforementioned, ‘all frontline staff’. Yet, these challenges of data collection are similar to many other forms of research, but what the FOI offers above many of these is a clear trajectory on ‘studying-up’ (Lippert, Walby and Wilkinson, 2015). What Lippert, Walby and Wilkinson refer to here is getting access to those hard to reach or secretive governmental agencies that alternative methodological approaches such as interviews or participant observation often struggle with when detailed knowledge of the organisation, its structure and management levels are needed to identify gatekeepers or those with authority for the relevant information (McClean 2010; Morrill et al. 1999). While the institutions we have looked at in our own research project are not those typically thought of as the secretive kind, the material we are requesting is potentially sensitive and often engenders something of a ‘chilling effect’ (Spiller, Awan, and Whiting, 2018). FOIs have not only given us swift access to these institutions but also information surrounding a contemporary and politically contentious policy.

More importantly, perhaps, is that FOIs have the potential to study-down or study-sideways. In our experience when studying fellow institutions and requesting responses from other UK universities, studying sideways has very much been the case. Our requests have not had a focus on secretive information and indeed have having a working insight into how UK universities function does alleviate some of the difficulties we may have had in, as mentioned above, looking for gatekeepers or knowing who to question. Nevertheless, the FOIs have allowed us to gain factual responses to the activities undertaken by the universities and provided a clear overview of how these institutions action their responsibliites.

The clear benefit to the information generated through FOIs is that it supplements, expands or strengthens findings through the added detail they present. Indeed as mentioned it is also a tool of relative immediacy as the 20 day rule of response can stimulate a viable dataset with a speed that can be rarely replicated in other approaches to research. However, the most important benefit of the FOIA for researchers returns us to the Act’s original intention: transparency. As our opening quote attests, Tony Blair regrets his role in introducing the FOIA. However, the Act has empowered citizens and researchers to source information, as well as helping to increase accountability of these authorities and central Government. The information produced from FOIs can further our knowledge of how publically funded organisations operate and how they enact Government policy, all of which provides a better sense of how the state functions and gives us a fuller insight into, for example, the formal extension of counter-terrorism into he public sector. Indeed, as we have demonstrated, the FOIA can be used to hold organsations to account or conduct resarch on the the cheap, but can also be used to produce data and futher knowledge and this is something researchers can readily engage with.

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**Biographies**

**Keith Spiller**

Keith’s research focuses on the social consequences of surveillance and monitoring, with an emphasis on the impact of governmental regulatory policy. His recent book examines new forms of public duty mandated by the UK Counter Terrorism and Security Act (2015) and its bearing on the educational sector. Presently his research concentrates on the project *Desecuritising Higher Education* (Joseph Rowntree Charitable Trust), which reviews Prevent Duty policies and guidance within HE providers across the UK. He has also published work on eBorders, money laundering, CCTV, lifelogging, the Prevent Strategy and the impacts of security regimes on organisations and individuals.

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1. That said, there are protections for such information, section 22 of the FOIA states of considerations in favour of withholding information until a planned publication date. [↑](#footnote-ref-1)