The Impact of the Freedom of Information Act in the UK

Transparency broadly means making ‘decisions, rules and other information visible from outside’ (Hood 2010, 989). The rise of transparency as central reform and goal of policy-makers has been powered by a mixture of technological change, ideological shifts and political crisis (Hood 2010).

One of the key ways of promoting transparency is via Freedom of Information (FOI) legislation. Between 80 and 90 countries around the world now passed some form of FOI legislation with many more considering or developing it (Vleugels 2011). At the center of every law is the right to request access to government information, subject to certain restrictions, and often, an external appeal system in the shape of a commissioner, tribunal or the courts system. Many Acts also promote wider pro-active disclosure of information by government through publication schemes (records of documents held) and online disclosure. In the UK the government has a final veto on release.

Supporters and advocates hope that FOI will bring many universal benefits including increased transparency and accountability. These could have further beneficial spin-off effects; increasing public understanding and increasing public trust in government (see Hazell et al 2010; Darch and Underwood 2010). Some also see it as an important tool for individuals to meaningfully exercise many civil, political and social rights and entitlements (Darch and Underwood 2010). However, some scholars are sceptical of the power of FOI: the objectives are ‘overstated as well as vague’ and the more revolutionary or transformative claims over trust or participation and are deeply embedded long term problems that FOI alone may not ‘cure’ (Darch and Underwood 2010, 46; Roberts 2010).

Since 2007, the Constitution Unit based at University College London has studied the impact of the Freedom of Information Act on British central government (Hazell, Worthy and Glover 2010), English local government (Worthy, Bourke and Amos 2011) and Parliament (Hazell, Worthy and Bourke 2012). In all three cases we have looked at whether FOI has met six main objectives set for it by its supporters, as highlighted in reports and speeches:

1. increased openness and transparency
2. increased accountability
3. improved decision-making in government
4. better public understanding of government decision-making
5. increased participation
6. increased public trust in government
We have also examined whether FOI has had an impact on the day-to-day operations of these bodies, either positively or negatively. This article is an extended version of evidence submitted to the House of Commons Justice Committee in 2012.

Research Methods

The research used five main methods. Interviews were conducted with 56 officials in eight British central government departments, 90 officials and others across 16 local authorities and 30 MPs, peers and officials at Westminster as well as journalists, requesters and campaigners.

An online survey of FOI requesters was created which gained the views of 200 requesters in total, half from local government and half from central government. This was a low number and was backed up by interviews and, in the case of local government, analysis of FOI 300 requests.

The media are a key user of FOI. As less than 1 in 1000 people uses FOI the media are also a key source of information for the wider public. We analysed a selection of articles in the national, regional and local press that used FOI as well as interviewing a selection of journalists. We also analysed case law emerging out of the appeal system, the ICO and Tribunal, to estimate its impact on how the law works.

The different methods helped measure the different objectives, but each had limitations. For example the online survey of requesters’, while giving an insight, did not achieve a large number of responses. The media analysis similarly is only a ‘proxy’ for how people receive information through FOI. How exactly the public interprets information is a complex and much debated issue (James 2011).

The methods are supported by other official UK studies of FOI including scrutiny by the Ministry of Justice (MOJ 2011), the House of Commons Justice Select Committee (Justice Committee 2012) and a response from the government (MOJ 2012).

Requests and Requesters

The key driver of any regime is requests. In Britain there was an initial ‘big bang’ which tailed off slightly for central government and is now increasing again. Local government is the recipient of the vast majority of requests and requests to local government have increased more than three fold in five years. Parliament has also experienced rising request numbers.

<table>
<thead>
<tr>
<th>Year</th>
<th>Local government</th>
<th>Central government</th>
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<tbody>
<tr>
<td>2005</td>
<td>60,000</td>
<td>25,000</td>
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<tr>
<td>2006</td>
<td>72,000</td>
<td>30,000</td>
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<tr>
<td>2007</td>
<td>80,000</td>
<td>33,000</td>
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A key problem underlining all FOI analysis is the lack of knowledge about requesters and their motivations. The table below is based on estimates of requester types to central and local government from FOI officers (see Hazell et al 2010; Worthy et al 2011).

Table 2: Estimated requesters by type

<table>
<thead>
<tr>
<th>Requester</th>
<th>Local Government (%)</th>
<th>Central Government (%)</th>
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<tbody>
<tr>
<td>Public</td>
<td>37</td>
<td>39</td>
</tr>
<tr>
<td>Journalist</td>
<td>33</td>
<td>8</td>
</tr>
<tr>
<td>Business</td>
<td>22</td>
<td>8</td>
</tr>
<tr>
<td>Academic</td>
<td>1-2</td>
<td>13</td>
</tr>
</tbody>
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Contrary to the views of Tony Blair below, FOI requesters are not predominately journalists. The largest group across central and local government appears to be members of the public, a trend reflected elsewhere in the world.

Among the public users consist of a small group of politically engaged with FOI and a larger group using the Act to pursue issues of ‘micro-politics’ or of private importance (see Hazell et al 2010; Worthy et al 2011). In terms of motivations, there was a clear rise and fall of public interest with the news agenda and requests followed issues highlighted by the media from government surveillance to the gritting of roads.

One of the critiques of FOI is that it is only used by those already engaged. Rather than widening public participation it merely gives a new tool to the minority of ‘usual suspects’ already engaged (Worthy 2010). Others, such as former Scottish Information Commissioner, argue such ‘suspects’ are better seen as a vanguard of innovators (Dunion 2011).

However, ‘private’ interest requests or issues of ‘micro-politics’ far outweighed ‘political’ use. Many requests by members of the public were focused, ‘quite niche’ or on ‘specialised’ issues such as a planning dispute or parking fine at local level or access to benefits at central government.

An analysis of a small sample of 300 FOI requests found 55% were specific, with a focus on a single issue/event/location, and 20% very specific to a particular incident or place (see Worthy et al 2011, 37). The important point is that FOI is mostly used for niche issues of personal importance rather than broadly ‘political’ issues. FOI is more of a personal or ‘micro-political’ tool: about holes in roads...
and refuse hence. This means there can be a so-called ‘iceberg’ effect with a few high profile ‘attention grabbing’ requests while the vast majority of more quotidian uses go unseen (see White 2007). The variable impact of FOI is also down to the variability of requester motivations

This is also seen in other FOI regimes. Under the separate Scottish FOI regime the Scottish Information Commissioner spoke of how use of the Act is about personal issues and ‘the real worth of freedom of information [is] to be found in the pages of the local rather than the national newspaper’. In Ireland ‘many non-personal [FOI] requests can disguise [their] true nature’ as personal and focused (Dunion 2011, 458; McDonagh 2010: 82). The problem is that there may then be a dissonance between what politicians hope FOI will be used for and how it is used.

Another significant group are journalists. Although they constitute a small group, they have a large influence (see Cain et al 2003: Hayes 2009). They act as innovators and their requests often become press stories. Despite claims from government that journalists are heavy users only a few have the time and patience to use FOI, which proves somewhat slow in relation to journalistic deadlines.

Business appeared to have use FOI for central government rarely but a great deal at local level (Worthy et al 2011, 5). A final group of users were a very small group of MPs and a few members of the House of Lords, who regularly deploy FOI as part of their ‘armoury’ of weapons to hold government to account (Worthy 2012).

**What Impact Has FOI Had?**

**Central Government**

FOI has made British central government more transparent both in terms of the information it provides and the ‘culture’ within departments. This is despite the fact publication schemes were seen as rather antiquated and poorly used, having been superseded by the webpage and internet search engine. It has also led to increased accountability, particularly when FOI is used alongside other ‘traditional’ mechanisms of accountability such as the media, NGOs and, albeit a few, MPs (see Hazell et al 2010: Worthy 2010). The Justice Committee also concluded FOI had led to greater openness across public bodies particularly central government which was formerly ‘highly secretive’ (Justice Committee 2012, 11).

It has not had an impact on any of the other objectives. This is not because FOI has failed. Complex issues such as public participation and public trust are influenced by many other factors. In this sense FOI, as with many policies, was ‘oversold’ by politicians (Worthy 2010: Justice Committee 2012).

If it hasn’t realised all supporters hopes it has not realised the fears of others. It has not had any significant impact on the decision-making process or some of the key constitutional conventions such as collective responsibility. Nor does it appear to have led to a chilling effect (see Hazell et al 2010: Worthy 2010).

**English Local Government**
FOI has made local government more transparent, though to a lesser extent than at central level because local authorities have been opening up since the 1960s. Recent innovations in online publication are beginning to have some impact, particularly third party innovations (Worthy et al 2011).

Accountability has also been improved, with FOI often used with other mechanisms (such as the local media or NGOs) to build a wider picture of an issue. FOI has only influenced decision-making and public understanding at low levels. It has not affected participation and has had no generalisable impact on trust.

As with central government, local authorities’ key functions have not been changed by FOI. It has had no impact on how authorities deliver services or work with others, though there is tension around private companies working for local authorities and national and local media requests (see Worthy et al 2011).

UK Parliament

FOI has helped to make the UK Parliament more transparent and more accountable though the revealing of MPs’ expenses, partly through FOI, in 2009 has overshadowed all other effects (Kelso 2009: Worthy forthcoming). It does not appear to have improved public understanding of Parliament, or public participation; nor has it increased public trust, simply because of the overwhelming coverage of expenses which led to resignations and embarrassment (see Worthy and Bourke 2011: Hazell, Bourke and Worthy 2012).

Although it has led to the creation of IPSA and a new expenses system, it is not clear how much it has changed Parliamentary culture more generally. FOI has also led to smaller changes over, for example, how MPs pay restaurant bills and the tax status of Peers (See Bourke and Worthy 2011: Hazell, Bourke and Worthy 2012).

We also looked at whether MPs have used FOI as an accountability mechanism. While only a small number of MPs, mostly the opposition, use FOI it has proved to be a powerful tool. It has helped to uncover information about a range of topics from visitors to Chequers to extraordinary rendition and the Libor banking scandal (Worthy 2012).

Does FOI Have A Chilling Effect?

One possible unintended consequence of FOI may be a ‘chilling effect’, where decisions go unrecorded or are sanitised due to fear of future requests. Finding hard evidence for such an effect is very difficult as it requires proving a negative and asking interviewees to admit unprofessional conduct. Studies are divided as to whether FOI has this effect (see Badgley 2003: Hood 2007).

The former head of the Swedish National Audit Office, Inga Britt Ahlenius, identified the ‘empty archives’ phenomena in Sweden, whereby ‘important issues are discussed orally [or] by telephone’ (in Erikkson and Ostberg 2009, 118-119). Tony Blair claimed FOI had led to more caution over recording decisions as did the former Cabinet Secretary and Justice Minister claimed to have had experience of it (Justice 2012, 74-75).
Our central government study found little clear evidence. FOI was lost amid wider issues around resources, fear of leaks and changing decision-making styles (Worthy 2010, 571). Many officials were concerned more by the consequences of not having a record than having one. Others felt factors such as leaks or recording styles proved more significant. Many felt the ‘politics’ of a decision is ‘always off paper’.

There was one very clear example, in one local authority, following a damaging FOI request, members no longer commented on drafts in writing. Interviewees elsewhere said care was taken in controversial decisions or negotiations. Most were keen to point out this was not a general tendency and said it had also led to more professionalism in some cases.

It is difficult to draw a firm conclusion due to lack of evidence and the problem of disentangling causal factors. The Justice Committee ‘was not able to conclude, with any certainty, that a chilling effect has resulted from the FOI Act ‘(2012, 75). An Irish local government survey found 30 per cent of local officials claimed a chilling effect and just fewer than 50 per cent denied it (McDonagh 2010, 11). There appears to be no systematic evidence for alteration of records. However, FOI can and has caused a ‘negative’ chilling effect in specific instances, particularly with difficult or controversial topics and in problematic political situations.

The Overall Impact of FOI

FOI has met its core objectives at central and local government level and in Parliament. Public authorities are more transparent in terms of the information they release and how they work. FOI has also encouraged pro-active disclosure of a range of information, from salaries to road maintenance. The recent Justice Committee scrutiny concluded that ‘The Act has contributed to a culture of greater openness across public authorities … We welcome the efforts made by many public officials not only to implement the Act but to work with the spirit of FOI to achieve greater openness’ (Justice 2012). The government agreed in its response that the ‘Act has contributed to a culture of greater openness across public authorities’ (Justice 2012, 4).

FOI has also made public bodies more accountable. FOI works well with other mechanisms (such as the media, MPs or NGOs) as a tool to put together information for campaigns. Although high profile cases, such as MPs’ expenses, attract publicity, FOI actually works as part of wider campaigns as a ‘jigsaw’ tool to put together information rather than to obtain scandalous ‘smoking guns’ (Worthy et al 2011).

FOI has not improved the quality of decision-making. FOI has not increased public understanding of decision-making at central government and has little impact on public participation except via ‘proxies’ either centrally or locally. A chilling effect can be seen in a few politically sensitive cases but is not happening systematically.

At local level FOI has increased public understanding of decision-making at a low level, though it is mostly used to get information rather than learn about the decision-making process. Locally it may have helped the public obtain very specific and low level information about day-to-day things such as licences or car parking (Worthy et al 2011).
Superficially FOI does not appear to have increased trust in central government but the data is sparse and points in different directions. However, the effect is very variable for local government. At local level use of FOI is diverse and trust in local government is more heavily influenced by performance and ‘community visibility’ than openness. Trust is a complex issue and the Justice Committee concluded FOI had ‘no generalisable impact’ on it (2012, 17-18). Even the seemingly clear case of trust decline created by the MPs’ expenses scandal shows nuance, as the disclosure came as confirmation not a revelation to many (Hansard Society 2010). The government agreed that such an objective may not have been entirely ‘realistic’ but was a little more optimistic that it had shifted slightly upwards (Justice 2012, 6).

‘Iron laws’ of FOI

Some key points about FOI are:

- **The media has a key influence on the impact of FOI.** Not only is the media a key user of FOI (and defender when reforms threaten it) but, given so few people make a request, it is a key conduit for shaping wider perception of FOI.

- **There is no going back.** The FOI Act cannot be repealed, however much the government may dislike it. Interviews and leaked ministerial correspondence showed how much some ministers resent FOI, but it is now part of the framework of government.

- **Government holds all the cards.** Despite its evident discomfort at the continuing pinpricks of FOI, the government remains in a very strong position. It holds the information. It can resist disclosure for years if it wants to play the system and fight appeals.

- **Both sides will game the system.** As in any field of legal regulation, there is scope to game the system. Officials and ministers will play things long if they want to delay disclosure, and they face few penalties for doing so. This was a constant refrain of requesters, especially journalists.

- **FOI never settles down.** In terms of bureaucratic routine and a body of case law FOI does begin to settle down after the early years. But at a wider political level it never does and conflict is ongoing.

- **A few FOI requests cause most of the trouble** The Pareto principle operates in FOI, as in other fields of policy. In the UK and elsewhere (e.g. New Zealand), a few high profile cases cause disproportionate effort, media attention, public controversy and political pain. Most requests are for ‘non-political’ information.

What Makes FOI Work or Not?

**Leadership is crucial to FOI.** Senior support improves internal co-operation and mitigates internal resistance. By contrast, nervousness leads to defensiveness and a lack of internal cooperation.

**Administrative culture is also important.** A whole range of factors mean that individual departments and bodies vary in their attitude. Internal cultures, experience of FOI and particular context (a local political environment, controversy over a policy) can lead to different impacts (see Piotrowski 2010).
Resources are vital and are likely to be the Achilles’ heel of FOI. How much FOI ‘costs’ is a difficult issue, with competing methodologies offering competing answers with bias in measuring cost as the benefits are more difficult to measure (Colquhoun 2010; MOJ 2011).

The media are a further crucial influence both in their use and reporting of stories. Pre-existing relations shape this dynamic. Some public bodies experienced heavy and aggressive use of FOI, others none. It seems that only a small proportion of journalists use the Act but they defend it, innovate with it and raise awareness.

Political factors can also have a strong influence. Political balance can be crucial though ideology has little bearing. A secure administration can cope with a damaging FOI request in a way that a party with a small majority cannot. Some local areas or particular departments have high levels of activism or long running controversial issues which often involves the use of FOI.

The final crucial factor is the requester. FOI is built upon one very unpredictable variable: public use. Use varies hugely from the political to the ‘micro-political’ or personal.

The Future

So what does the future hold for FOI? They key two forces that may shape developments are, on the one hand, growing technological innovation and, on the other, dwindling resources.

Open Data

FOI is increasingly merging with online developments (Grimmelikhuijsen and Welch 2012). In the US with the Obama administrations reforms or David Cameron’s transparency agenda Open Data and online transparency reforms share many of the same objectives as FOI (Huijboom and Van Den Broek 2011; Halonen 2012). These reforms include the development of new platforms for data, publication of frontline service and spending data as well as innovations such as online crime maps (Cabinet Office 2012).

The new Open Data push is likely to drive increased transparency and provide support and impetus for FOI officers and transparency advocates within organisations. To date the impact of Open Data has been variable. The Public Accounts Committee (PAC), reviewing the progress to date, pointed to a lack of user interest at all levels, partly because the information was ‘raw’ (2012).

One flagship innovation in the UK has been to publish all local authority spending over £500 online. Early research into the publication indicates very different experiences, from no effect and no interest to high profile use. Kent County Council had only 3000 visits to the webpage in sixteen months, which included internal hits (Justice 2012, 15). Others, had use of the data by the local media and trade unions (Worthy et al 2011, 16). There appears to be little use by the public yet, according to a Local Government Association survey of local authorities (LGA 2012). There is no sign of an ‘army’ of citizen auditors holding authorities to account that the government has hoped for, and is unlikely to appear given the reluctance of the public to look through raw data (LGA 2012).
Some are concerned, both in the UK and elsewhere, that publishing spending data encourages emphasis on 'costs' rather than impact (Fung and Weil 2010, 106-7).

However, while not directly used by the public the local spending data has launched several interesting third party innovations, some of which have been created ‘upwards’ from the community and others between public bodies (LGA 2012). Within local government there is a sense that the publication may have had other beneficial effects on accountability and efficiency (LGA 2012). Open Data advocates and officials feel online publication, FOI and new innovations will serve to mutually reinforce each other (Cabinet Office 2012: PAC 2012). This can already be seen with sites run by MySociety (such as whatdotheyknow) that publishes FOI’s publically or Openly Local that provides a platform to analyse and compare local spending data at the push of a button.

Resources

Across the world government austerity drives are having the side-effect of undermining FOI systems due to staff loss and resource cut backs reinforced, in some countries, by a feeling that FOI is neither ‘essential’ nor well used (see Roberts 2012). A lack of resources may lead to a slowing down or, in the worst case scenario, a ‘stagnation’ of FOI operations, a seen in Canada in the early 2000s (Roberts 2012). The danger is that request numbers will increase and innovations proliferate but resources will be taken away. FOI is not yet seen as a ‘frontline’ service and is likely to suffer financially in favour of ‘vital’ services, especially in bodies where support for FOI is ‘lukewarm’ (see below). FOI is already facing growing numbers with officers feeling they are at, if not over, capacity. In the UK the government recently expressed concern that FOI was providing the best ‘value for money’ and spoke of reviewing the way in which the ‘costs’ of each request was calculated (Justice 2012, 4). The contracting out of service delivery may also create gaps in FOI coverage.

Transparency lessons for government and media

Government

Leadership is crucial to making FOI work. For transparency to be successful senior politicians both within organisations and nationally need to push for it and support. Senior support allows experimentation and ensures compliance. By contrast, lack of support (and even resistance) leads to defensiveness and internal resistance. The failure of leaders to take FOI seriously can have repercussions, as seen in the MPs’ expenses case where the speaker’s defensiveness helped lead to his resignation (Hazell et al 2012). Those local authorities with a supportive leadership, who saw FOI as part of their wider engagement, appeared to fare better than those who saw it as an additional burden.

However, the problem is that leaders quickly go off FOI. The government warned that ‘the formative years of open government will be difficult, tricky and uncomfortable at times’ (Cabinet Office 2012, 6). Tony Blair, who passed the FOI Act, later controversially summed up this view in his memoirs:
The truth is that the FOI Act isn't used, for the most part, by ‘the people’. It's used by journalists. For political leaders, it’s like saying to someone who is hitting you over the head with a stick, ‘Hey, try this instead’, and handing them a mallet (Blair 2010, 516-517).

Blair’s assertions are not borne out by the facts about who uses FOI. However, negative perceptions create resistance. His comments were supported by others. The former head of the civil service claimed FOI undermined good government. The former Cabinet Secretary and Justice Minister claimed to have had experience of it (Justice 2012, 74-75). David Cameron, a supporter of transparency, also spoke of how it can ‘occasionally fur up the arteries of government’ (BBC 7 Mar 2012). The danger is that such negativity may encourage poor behaviour and lead to a small ‘anti-FOI’ group at the very top of government (BBC 14 Mar 2012).

In several local authorities there is a similar rumble of discontent at the time and resources FOI uses and the damage ‘frivolous’ requests cause. One County council leader spoke of how they ‘boiled over with rage’ at ‘spurious requests’ over the cost of tea bags and there was concern at ‘politically difficult’ requests from other leaders (Worthy et al 2011, 27). The difficulty is how FOI is encountered: senior officials only ever see a few requests, often the most sensitive or most potentially damaging and often from journalists. They thus get a very narrow, and negative, view of what requests are received. This, combined with a politicians natural dislike of ‘surprises’ leads to perception that FOI is a ‘problem’ and is ‘abused’ by the media. These views of FOI can then percolate the institution.

The dislike of FOI can also translate into action detrimental to FOI. The government has a veto to prevent the release of information, even if the appeals system rules in favour. In the UK the veto has now been used five times to prevent the release of information including for Cabinet discussions over the war in Iraq and correspondence between Prince Charles and the government (House of Commons Library 2012). While use has been relatively restrained by international standards, each use is seen as signalling lack of faith in the system and the government has mentioned changing the circumstances in which it can be used (House of Commons Library 2012,5: Justice 2012, 17-20).

More than use of the veto a government can also reform the Act. In 2006 an attempt was made by the Blair government to introduce fees for FOI, as happened in Ireland in 2005. This was closely followed by an attempt by a group of MPs to remove Parliament from the FOI Act (Hazell et al 2012). Although both ultimately failed it is possible that future governments, sceptical of FOI, may try again whether directly, through changes or indirectly through ‘resource starvation’.

The media

Tony Blair claimed that FOI ‘results in a battle between the government and media’ and ‘tilted the scales on various contentious issues towards the media’ (Blair 2012). In a hostile environment like the UK it is unsurprising that FOI is seen as another weapon in the battle between parts of the media and government. Officials and politicians complained of ‘abuse’ of the Act while journalists spoke of evasion and resistance from government.
It appears that only a small group of journalists use FOI regularly as it can be time consuming: obtaining the MPs’ expenses process took from January 2004 until June 2009 (Keslo 2009). Some use it forensically on key issues while others use it to ask all authorities or departments the same question. It is these ‘round robins’ that often cause frustration. Journalists often use it alongside other tools—the MPs’ expenses was partly an FOI but also a leak (Winnett and Rayner 2009, 347).

A national and local level there is use of FOI by journalists that frequently highlights ‘negative’ behaviour such as poor policy, scandal or wasted money. Some of this may be ‘spurious’ (though this is a subjective judgement). At central and local level the national press used FOI stories to focus on the wasting of public money, unethical behaviour or poor performance: this stretched from controversial issues such as surveillance legislation to salaries, costs of away days or payment to celebrities for switching on Christmas lights (Worthy et al 2011 23-24).

On the other hand FOI has played a key role in exposing corruption in the MPs’ expenses scandal as well as in the Scottish Parliament and Northern Ireland Assembly (Hazell et al 2010, 225-226; 209-212). Requests by journalists at the BBC also helped force access to high level Cabinet Office papers as part of the recent Hillsborough Inquiry (BBC 30 Nov 2011).

However, how or if the local press uses FOI varies greatly: some local authorities have had heavy use but others virtually none (see Worthy et al 2011). This can depend on pre-existing relationships. Those with poor elations experienced strong campaigns against particular policies or even individuals. Others with better relations (or a weak local press) have had none. Here politics can come into play: an authority in a strong position can weather controversy better than, for example, a governing party with a small majority.

Fung, Graham, and Weil’s (2007) highlighted two key forces that shape how or if a transparency system works. On the one hand external political coalitions must ‘apply pressure’ and, as seen above, the media is key player in this. On the other hand FOI needs ‘champions within government’. Without these two features, applying momentum and force, transparency policies ‘remain in [a] political dead end…underutilized, implemented weakly and subject to gradual erosion’ (Fung, Graham, and Weil 2007, 112).

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