

Making Power Speak: FOI from a Practitioner's View



The government has sought to increase accountability and trust with central and local government by pursuing a transparency agenda. Openness (transparency) is supposed to lead to accountability. Once we have accountability, then we will have trust. The Freedom of Information Act (FOIA) provides some transparency. However, for the practitioner it highlights a tension between privacy and openness. The tension raises questions in three areas. First, there is an uncertainty over informant rights, which limits accountability. Second, the dialectic of disclosure emerges as a practitioner, acting on behalf of an authority, has to balance accountability and privacy. Third, the power of organisational silence can limit accountability. These are shaped by an organisational culture and the wider political culture of the regime.

The three areas reflect what Seth Kreimer calls an ecology of transparency. An ecology relies on three interconnected areas. First, there has to be a permanent infrastructure of civil servants with integrity and internal watchdogs. Second, there have to be opportunities to publish and share information. Third, there has to be a set of civil society actors, such as the press or campaign groups, that are capable of pursuing prolonged campaigns to disclose information. Kreimer's analysis was the whole political system. This essay focuses on the role of the practitioner within this larger system.

Political Culture: the context for the organisational culture and the practitioner

An organisation can be opaque to itself and to the public. Such opacity limits the accountability. The promise of transparency, offered by FOIA, has not penetrated the surface of the political or organisational cultures. A pinhole exists to view inside the organisation. The question remains whether the transparency agenda will open up the blinds.

The wider political culture may reinforce organisational opacity. The public's ability to participate within the local political process may be limited. As the public cannot use the information, more of it does not lead to accountability. If transparency does not penetrate the organisation's surface, then its culture will not change. Yet, if a transparent organisational culture is to develop, it has to be one where information flows freely within an organisation. Without a free flow of information, it is not transparent to itself or the public.

There are good reasons to limit transparency, yet this only applies to a small subset of information. However, those reasons soon cover the organisation because of the nature of bureaucracy. As Max Weber, argued bureaucracies seek to avoid openness so secrecy reinforced. A need to know culture begins to dominate which is reinforced by a risk adverse organisational ethos. When there is no advantage to challenging the political

ethos of silence and opacity, an organisation can become as opaque to its employees as it is to the public.

Employees receive a limited amount of information about the organisation. Yet, that makes employees opaque to the organisation and in doing so they become unwilling or unable to pass critical information upwards. When the organisation is not transparent downwards, it will not be transparent upwards. When employees participate, (engage) with decisions, by being informed of what is happening within the organisation, it will be more successful. The reason is that problems will be known before they emerge fully blown and dealt with at an earlier stage. At the same time, shared information allows emerging opportunities to be seized. To change the political and organisational culture of opacity, the public have the ability and knowledge to exercise their information rights. However, these may be limited.

Uncertainty over information rights can undermine accountability

Citizens can only exercise their information rights, if they are aware of them. Yet, that uncertainty can occur for a number of reasons. First, the community's knowledge of the organisation may be limited. The applicant does not have the understanding of the organisation, in its own community, which inhibits and limits the ability to hold it to account. Second they may not know the extent of their rights and how the FOIA process works.

If the public is not aware of their information rights, the organisation has a duty to help them understand those rights. However, advice and assistance is not enough. There is no substitute for asking the right question and that creates two tensions. The first is between the individual, the community, and the organisation. The second is between the practitioner and the applicant.



If the public are unaware of how, or why, decisions are made within an organisation, then they cannot hold it to account. Even if the public wanted to, they would be unable to penetrate the executive's space. However, the executive space limits employees even as it limits the public. When employees are unaware of what is happening the culture of need to know, mentioned above, can become one of does not want to know. At that point, the internal opacity becomes toxic as the loss of information rights limits the information within an organisation and thereby externally.

The second tension is the relationship between the individual and the organisation, and this is where the practitioner has a direct role. The ability to ask the right question to obtain the right information to hold an authority to account relies, indirectly upon the organisation and the practitioner. The FOI practitioner faces a dilemma how far to go in helping the public when they are unaware of how decisions are made within an organisation. The FOIA process is not a truth seeking activity, so the practitioner is not supporting an applicant's search for the truth rather they act as interface with the public by working to help the organisation comply with the law and still protect and promote the organisation's interest within that framework. Therein we have the dialectic of disclosure.

The dialectic of disclosure

The dialectic of disclosure refers to the balancing process a practitioner undertakes as disclosure is mediated through a political prism. The dialectic is more than the need to balance legislation between privacy and openness. From the practitioner point of view, the challenge is to balance the citizen's right to know with the demands for privacy within the organisation and the third parties. The organisation's privacy, is more than simply opacity, it relates to the need for decision-making efficacy and respect the organisation's confidential business. There is a need, as Tony Blair said, to have a space free from immediate scrutiny for debate and discussion to occur. Federalist Paper 70 describes the executive's advantage, to which all executives aspire, aptly. A single executive has the virtues of "decision, activity, secrecy, and despatch." For an executive, each is constrained by the FOIA. Yet, it is the FOIA practitioner's role to encourage compliance, within a political framework.

Politics can make the dialectic of disclosure problematic. Officers will always need to be aware of, and sensitive to, the organisation's politics because it has a responsibility to protect itself. Therein a public interest problem emerges. If the organisation sees itself as distinct from, and counter to, the public it will start to see the organisation's interests as the public interest. The challenge is to reveal to the applicant yet protect what is in the organisation's interests.

Organisational silence can delay and thereby undermine accountability



An organisation can delay disclosure to the point where it becomes silence. Another form of organisational silence can be seen demonstrated by the Metropolitan police officer who deceived the press and public after the death of Jean Charles de Menezes. The follow up inquest found that evidence had been deleted to cover up what had been done.

We trust the organisation and people to do the right thing when maintaining the public order and our public life. For example, we expect the water supply to be safe because it is for a common good not a private good, or an organisational good. If the organisational good came into conflict with the public good, we would expect the choice to be the public good.

Yet, this is not what happened in Camelford, Cornwall on 6 July 1988, when 20,000 tonnes of aluminium sulphate were accidentally put into the town's drinking water. By itself, the incident was problematic, but what made it worse was the water authority pursued a conscious strategy of silence. They insisted the water was safe. The officers within the water authority knew something was wrong. However, the executive did not tell the public and told officers to remain quiet.



For accountability to succeed, transparency has to lead to trust. Yet, accountability based upon transparency carried out opaquely undermines that trust. To paraphrase Charles de Gaulle, the power of government is silence. Anyone can speak truth to power; FOIA gets power to speak the truth, but it relies upon practitioners to make that happen, if the political realm allows them that room. The issue remains whether the transparency agenda will create that political culture.

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