The Protection of Freedoms Bill:
Changes to FOI and the Vetting and Barring Scheme

By Tim Turner

The changes to the Freedom of Information Act in the Protection of Freedoms Bill are piecemeal but nevertheless significant. Applicants will be given a clear right to request data in a reusable, electronic form, opening the door to greatly increased reuse, and effectively removing the right of public authorities to use copyright as a barrier to disclosure. Where a public body is the only holder of copyright of requested datasets, the Freedom Bill obliges them to allow reuse.

Cynics may raise their eyebrows at the fact that Crown Copyright is excluded from this innovation, but for most public sector bodies, the frequent use of a reuse or copyright statement will have to end. Gone will be the practice of PDFing a database, or printing it out to inconvenience the applicant (an approach which, very occasionally, Act Now has been made aware of). Datasets which have been disclosed will also become a mandatory part of publication schemes,

The relevant clauses in the Bill are not full of absolutes - justification for not releasing data in reusable formats will be possible, and public authorities may exclude datasets from their publication schemes, but the effect is obvious. The perception that re-use somehow allows public authorities a measure of control over what happens to data they disclose, or that the commercial reuse of data received under FOI is somehow an abuse of the legislation, is being consigned to the dustbin of history. It's hard to imagine any politician standing up and arguing against greater use of information, even if it means huge amounts of work for the public sector.

More immediate will be the Bill's effect on jointly owned companies. Any company wholly owned by more than one public authority has been seen as exempt from FOI (although the Interpretation Act perhaps implied something different). Nevertheless, this loophole has been firmly closed by clause 93, which ensures that the automatic application of FOI to companies owned by one public authority will now apply equally to those owned by more than one. For example, the Manchester Airport Group, owned jointly by the 10 Greater Manchester councils, would become subject to FOI should this measure make it to the statute book. The exact number of companies affected by this change is not known, but it raises the interesting prospect of organisations who have been existing entirely outside FOI suddenly being plunged in at the deep end. Clearly, Section 43 will get a healthy and probably justified workout if the bill makes it through Parliament unscathed.

Perhaps the most interesting proposal of all, however, is an amendment to the Data Protection Act proposing to limit the Information Commissioner to a single term of office. One can only wonder if it is something that Christopher Graham said, or that scary picture of him on the ICO website!

Vetting and Barring

The aim of Part 5 of the Bill is to reduce the scope and scale of the scheme that aims to bar certain individuals from contact with children and vulnerable adults. Put simply, less jobs will be subject to vetting and barring, and the definitions of who is and who is not protected are more sharply made. Monitoring will be abolished, the scope for volunteering without being vetted will be must wider – a boost for the Big Society perhaps! One commentator has already stated that the thrust of the Safeguarding Vulnerable Groups Act 2006 has been reversed, with the concept of a safe list of people able to work with children set aside in favour of the former system of list of those specifically barred.

To be specific, if the Bill goes through in its current form, those who are being supervised by someone else will no longer face restrictions when teaching or training of children, while maintenance or contract workers will also be released from any obligations. A wide range of officials (including those working for CAFCASS), inspectors, and other civil servants are similar excluded from the scheme.

Some obvious protections remain - those involved in the personal care of children and locum teachers stay within the scheme's requirements. Similar changes are made to the treatment of vulnerable adults, with the same protection for particularly sensitive types of contacts.

Elsewhere, the changes streamline the scheme considerably. Previously, activities involving contact with the vulnerable sat alongside a separate stream of ancillary work where an employer would have to check whether a person was barred before deciding whether to employ them. This strand of work is abolished; such supporting activities are no longer subject to the scheme.

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