FoI and the Delivery of Diminishing Returns, or How Spin-Doctors and Journalists have Mistreated a Volatile Reform

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ABSTRACT

Freedom of Information (FoI), spin-doctors, and journalists offer a volatile mix in Australian politics. Whilst the promise of open government is seen as an essential pre-requisite for a functioning representative democracy the dynamics of FoI seem to offer no easy path to that destination. Australian journalism has tended to undervalue, under use and underestimate the potential of FoI. The increasing involvement of spin-doctors in the day-to-day activities of public administration further hampers the fourth estate role of journalism. Paradoxically it is the resurgence of public service ethics and values that may offer the best way to reform the practice, administration and effectiveness of FoI.

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ISSN 1443-8607
Volume 2, Number 3: March 2002, 187–207
The Drawing Board: An Australian Review of Public Affairs

Introduction

Four recent research themes are brought together in this paper — development of a multi-disciplinary analysis of Freedom of Information (FoI), an assessment of the management of contentious FoI requests and the role played by spin-doctors, an exploration of the media response to FoI and the importance of public service culture in making open government achievable. These research themes suggest a complex relationship between several dimensions of Freedom of Information practice. In particular, the relationship between the negative aspects of contentious issues management and a relative but variable incapacity of Australian journalists to use FoI, and the changing nature of public service culture is examined. The conundrum for advocates of FoI is that on most key indicators, qualitative or quantitative, the returns from the investment in this reform have been well below expectations or even diminishing as the years roll on.

This paper explores how the use and abuse of FoI by spin-doctors and journalists impacts upon the level and quality of commitment by public servants to the administration of the legislation. Public service culture has been identified as one of the key determinants of the success or failure of FoI in any particular jurisdiction. The activities of spin-doctors and journalists have the capacity to significantly damage public service commitment to the legislation. Journalists, in particular, have a largely latent capacity to positively influence public service commitment by the construction of their stories and the ends to which their tales are directed.

Understanding the Volatility of Access to Information Reforms

In a previous paper I argued that FoI operated across four dimensions of government information: political, bureaucratic, civic, and legal (Snell 2001: 26–32). FoI is not primarily used to bring disputes to closure (a determination in a tribunal or finding by the Ombudsman) nor is its use predictable or limited to a small and identifiable range of parties including individuals affected by a decision, non-government organizations or specialist reporters (Court, political or education roundsman). In particular FoI has a number of specific attributes that have the capacity to provoke negative or non-compliant responses from administrators:

- it grants legal and enforceable rights of access to citizens and non-government parliamentarians
- it is unpredictable in terms of requestor, type of request, timing and outcome
- management of requests is eventually ceded to an independent body (Commissioner/Court/Ombudsman)
- government information management techniques are apt to be portrayed as excessive secrecy or cover-ups
- key FoI administrators operate in an environment of diminishing training, resources and pressures promoting non-disclosure.

The purpose of FoI was 'to introduce into the governmental process a key transformational mechanism which, whilst not acting in isolation, would be the main contributor to a new process of informed and accountable decision making' (Snell 2002: 2). Australian law reformers underestimated the nature and extent of cultural change required by the bureaucracy, and the concomitant necessity to modify some central tenets of the Westminster system of government (Legal, Constitutional and Administrative Review Committee 2000, Snell & Tyson 2000). Analysis of FoI, which extends beyond a concentrated focus on the legal architecture and case law, has started to explain and provide an understanding of the failure to deliver on the expectations created by the passage of FoI laws (Terrill 2000: 30–32, Roberts 1998, 47–50). This research demonstrates that the inherent characteristics of how FoI interacts with the bureaucratic, legal, political and civic domains mean that the choice of design principles, legislative architecture and compliance environments is critical for the effectiveness of FoI.

Freedom of Information design and administration is not a simple case of flicking a switch that converts a previously closed or secret system of government into a smoothly operating paragon of openness. It is a complicated matrix of design principles, legislative architecture, administrative culture, types of requestors, request types and the returns on investment produced (in terms of democratic improvement and accountability). Often these factors may offset each other or in combination may produce significant dysfunctions for a FoI regime. A mix of weak legislation, a restrictive approach to interpretation and an Information Commissioner model of review might still produce greater access to information than a model system confronted with requests for high level policy information by persistent long term users (journalists and opposition MPs).

The concept of administrative compliance provides valuable insights into the dynamics of FoI (Roberts 1998: 10–11, Snell 2001: 26–32). Administrative compliance analysis suggests that within agencies, between agencies and over time, the patterns or levels of administrative compliance will vary. This variance will range from activities where there is an enthusiastic pursuit of the social purposes of the Act to the extreme of activities (many illegal or unethical) designed to undermine both the intent and requirements of the legislation. These categories of compliance have been classified as:

Proactive compliance — enthusiastic pursuit of the social purpose of the Act:

- information is identified and available in public interest without FoI requests
- exemptions are waived if there is no substantial harm in release
- adverse external review is perceived as a helpful quality control check.

Administrative compliance — timely compliance with letter and spirit of the law:

- requests are handled in a co-operative fashion
- exemptions are only applied as a last resort and to the minimum extent possible
- external review decisions are used as a future reference guide.

Administrative non-compliance — undermining of access with deficient administration and/or lack of resources:

- inadequate researching
- deficient record management
- low priority attached to processing of requests.

Adversarialism — testing of the limits of the legislation without engaging in any illegalities:

- requests processed in an 'Us-Them' environment
- adoption of broad interpretation of exemptions
- automatic resort to exemptions
- no or limited consideration of the public interest in release
- extensive and often deliberate time delays.
- Deficient statement of reasons.

Malicious non-compliance — 'a combination of actions, always intentional and sometimes illegal, designed to undermine requests for access to records:' (Roberts 1998: 10).

- shredding of documents
- deliberate non-recording of information to defeat possible future access requests
- removal of information from requested files.

Administrative compliance should be viewed as a continuum that can vary in relation to individual requests, requestors, within and between agencies and over time. Various factors can shift compliance including legislative design — the operation of the public interest test in the New Zealand Official Information Act (Snell 2000) — the activities of particular requestors, information management strategies adopted within an agency or across government, level of resourcing, structural reforms and the type of public service ethical and values regime in place.

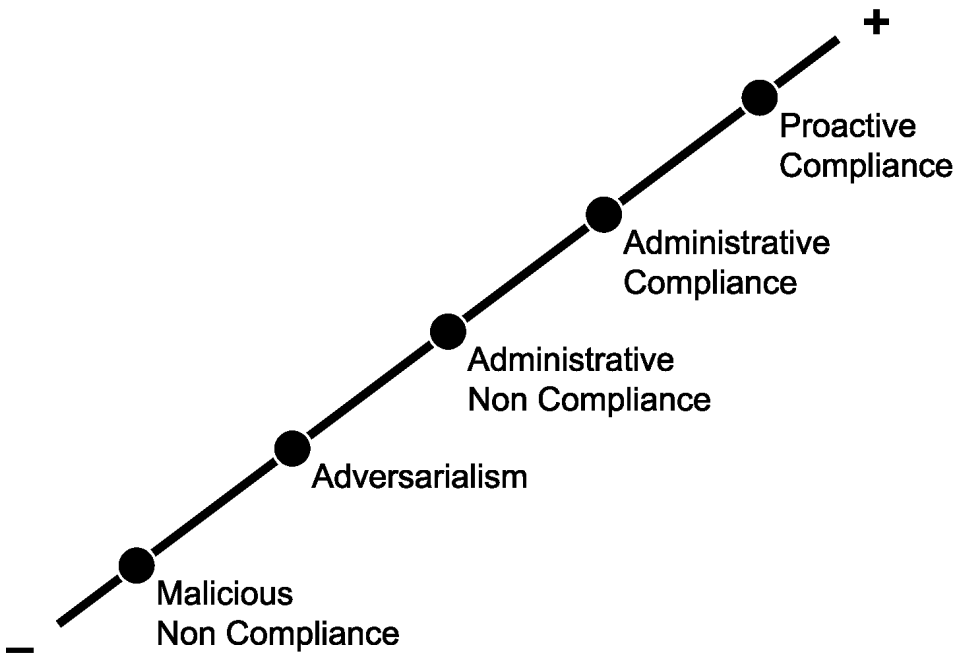

Figure 1: Administrative Compliance

The concept of administrative compliance requires a much more sophisticated approach to the reform of freedom of information laws. Amendments to the wording of an exemption provision will, where administrative compliance is the norm, produce the expected benefits of a greater release of information in that category. An identical amendment where administrative compliance is largely adversarial will produce little if any change in information flow, indeed, such an amendment could provoke a shift in administrative compliance towards a state of malicious non compliance.

A similar dysfunction can occur where FoI is simply grafted onto a pre-existing Westminster system. The Queensland Legal, Constitutional and Administrative Review Committee (2000: 4) noted in there has been 'a perennial argument against FoI (usually coming from the public sector)' which asserts that FoI is incompatible with a Westminster model (see Tasmanian Government 1995). Although this argument has been constantly rejected, there has been an uncritical acceptance of a static concept of Westminster to which FoI legislation must fit. The approach of the New Zealand Danks Committee that Westminster is a living concept that needed to be modified for open government has won limited support in Australia. Many of the enduring problems of Australian FoI namely cabinet exemptions, conclusive certificates, internal working documents and commercial in confidence — stem from

the necessity to accommodate these concepts of a secret heart of government and the necessity for private discussion between Ministers and all levels of the bureaucracy.

Contentious Issue Management and Spin-doctors: Exploiting a Strategic Advantage

Several aspects of information management within government are problematic for FoI. These troublesome aspects include the way secrecy is managed, the structural and strategic advantage of government in comparison to applicants, the extension of new management techniques to the handling of FoI requests and the increased presence and efficacy of spin-doctors within both the political and administrative spheres.

Terrill has contended that governments play the FoI game with a number of key advantages despite, in theory, the reform being perceived as neutral between governments and citizens (2000: 32). Governments have institutional memory, specialised expertise, and longer-term interest in shaping case law, tribunals, and ombudsman determinations. Therefore, Terrill argues, the information relationship between government and citizens is not level or neutral. He argues that access schemes relying heavily on individual access or outcomes generated by 'the sum of atomised actions by unconnected individuals' (Terrill 2000: 32) is a strategic weakness. Furthermore such an approach neglects the 'realities of how secrecy is promoted and perpetuated' (Terrill 2000: 32).

In addition governments have at their disposal two further major advantages which are only starting to be acknowledged in FoI studies. First, the capacity to adopt a 'contentious issues management' approach in the handling of FoI requests from particular requestors and/or requests for certain types of information. Second, the influence and impact of spin-doctors at both the political and organisational level.

Contentious issues management

Ontario's information and privacy commissioner accused the provincial government of political interference aimed at thwarting freedom of information requests from journalists, opposition parties and public interest groups. Ann Cavoukian, the Information and Privacy Commissioner, stated:

> We have begun to be concerned that there may be a systemic problem, unrelated to the requirements of the Act, that is contributing to the relatively low compliance rates within the provincial sector.
>
> Although we have not been provided with details or copies of any policy documents, we have learned through our work in mediating and adjudicating provincial appeals that certain access requests that are determined to be 'contentious' are subject to different response and

> administrative procedures. This 'contentious issues management' process is managed by Cabinet Office. Our understanding of the process is sketchy, and ministry Freedom of Information and Privacy Coordinators are extremely reluctant to provide us with details; however, as we understand it, the process generally operates as follows: if an access request is made by certain individuals or groups (i.e., media, public interest groups, politicians), and/or the request concerns a topic that is high profile, politically sensitive or current, ministry Freedom of Information and Privacy Coordinators must follow the contentious issues procedures. Once designated into this category, the process requires the immediate notification of the Minister and Deputy Minister, along with the preparation of issue notes, briefing materials, etc. Cabinet Office is often involved in this process (Ontario Information and Privacy Commissioner 2001).

Forms of contentious issue management have been faintly registering on the radar of FoI monitors in several jurisdictions but have generally been seen as unique instances.[1] Given the general trends in Canadian public administration it is not surprising that the first solid evidence of a systematic contentious issues management scheme has surfaced in that country (Savoie 1999). A counter argument is that where a serious of requests are lodged across several agencies, requesting the same type of information, a coordination role by the Cabinet office might be understandable and defensible. The key consideration is whether the management role is being played to facilitate or frustrate the legislative right to access.[2]

The problem with contentious issues management is that it shifts compliance towards adversarialism and clearly impacts upon processing times, decisions about exemptions and fee determination. Furthermore, it is likely to increase the prospect of a request being contested at all levels of review. Finally, it works to undermine the informational value to the requestor whether it be for a news story, question in parliament or to promote interest in a non-government organisation's critique of a governmental program or policy.

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1 Discussions with the New Zealand Ombudsman and Western Australian Information Commissioner conducted by email 22 October 2001.

2 In some Australian jurisdictions it has become practice to provide Ministers with a list of applicants. The Western Australian FoI Commissioner has raised this as a privacy issue but governments seem unmoved by her concerns.

Enter the spin-doctors

Spin-doctors are not recent players on the political or administrative landscape (Underwood 1999: 4).[3] However the extent, dimensions and degree of their influence has significantly increased. The use by the bureaucracy, as opposed to the corporate sector of spin-doctors and public relations firms (King 2000: 6), is less studied than the political breed of spin-doctoring. An exception is Hager and Burton (2000). John Underwood argues that the 'key fundamental truth of spin and the relationship between spin-doctors and journalists:… it's the control of the agenda that's at the very heart of this relationship' (1999). The relationship often becomes inter-dependent as both sides accommodate the operational imperatives of the other (Cockerell 2000: 13).[4]

As spin-doctors have moved closer towards central stage in the operations of government, their impact on FoI has become potentially greater and more negative. A number of activities, outlined below, and strategies adopted by spin-doctors are counterproductive to FoI and/or are catalysts in shifting administrative compliance towards non-compliance or adversarialism. The relationship between spin-doctors and FoI, both within the political and administrative spheres, is asymmetrical and two-way. Whilst the general impact is negative upon FoI, the legislation does offer a capacity for journalists and other citizens to limit or moderate the influence of spin.

Ivor Gaber outlines the 'pre-eminent position of spin within the political process' (2000: 60). He analyses spin by breaking it down into 'above' and 'below-the-line' activities. Above line activities are those generally associated with the normal operations of government information management including press releases, press conferences, briefings, interviews, distribution of speeches and arranging for selective briefings or interviews with Ministers and/or their advisors. The 'below-the-line' activities are 'those now more associated with the term 'spin-doctor' — usually covert and as much about strategy and tactics as about the imparting of information (indeed, it could be argued that they in fact have very little to do with imparting information, Gaber 2000: 60–61). These 'below-the-line' activities include:

Consistency — "ensuring that politicians 'stay on the message' is a quintessential part of the activities of spin-doctors that characterises so-called 'below-the-line' activities" (Gaber 2000: 62). FoI requests are a challenge to this technique because it allows

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3 Underwood traces the use of public relations firms back to the 1920s in the United Kingdom.

4 Cockerell, discusses the anxiety caused when Blair ordered Campbell to be less directly involved with the media. Blair noted 'Some of the journalists complain to me now and say: why isn't Alastair Campbell doing the lobby briefings any more?'

potential access to information which is inconsistent with the 'message' being promoted or is able to contradict or provide alternatives.[5]

Exclusives — 'a sustained campaign of driving the news in a particular direction over a period of time…. achieved by feeding selected journalists with a string of related stories' (Gaber 2000: 64).[6] An effective FoI system breaks down the monopoly of government spin-doctors as a key source for news stories.

Construction of a firebreak — 'this entails creating a media diversion to take journalists off the scent of an embarrassing story that seems, in journalistic parlance, to have developed legs' (Gaber 2000: 65). Firebreaks or diversions are effective in undermining or devaluing the effort, resources and time devoted to particular FoI requests. These techniques are very effective in offsetting the impact of a journalist or opposition MP's victory on external review (Coulthart 1999: 44). Coulthart recounts a senior public servant from the NSW Premier's office gloating about how 'they had 'done you [*Four Corners*] bastards over' with their little trick' (Coulthart 1999: 44).

Stoking the fire — 'the mirror image of firebreaking — finding material to keep an opponent's awkward story running' (Gaber 2000: 65). Less directly relevant to FoI except demonstrating how proactive many agencies can be if there is a clear benefit perceived for their minister. Journalists will often be directed to files relating to the previous administration for interesting stories (Coulthart 1999: 44).

Pre-empting — Confirming the substance of a story before the details and evidence are published (Gaber 2000: 66, Little 2001). Although this will not prevent a FoI story from being published, it diminishes the likely impact and duration of the story.

Throwing out the bodies — taking the opportunity of burying stories because of a high impact story such as Port Arthur, Budget Day etc (Gaber 2000: 68). This strategy can sometimes derail as was the case of a UK spin-doctor who, on the morning of the Twin Tower attack in New York, issued an email memo suggesting it was 'a very good day to get out anything we want to bury' (Tempest 2001). In the wake of this story has come true confessions fast and furious from current and former spin-doctors — '[T]here is nothing new in government spin-doctors releasing bad news when the attention of the press is focused elsewhere' (Wegg-Prosser 2001).

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5 An example of this is to be found in Clark (1995), where a Minister's denial of knowledge about a health problem was undermined by the release of detailed briefing papers.

6 A variant of this is the provision of an article with a Ministerial or Opposition MP by-line — usually written by a member of a media team.

Laundering — Finding a good news story to release alongside a bad news story. (Gaber 2000, Kent 2001).[7]

Ins and outs — The creation of an in-group of favoured journalists and an outer group who find themselves 'not just excluded from sources of information, but also bullied and intimidated' (Gaber 2000: 69). Underwood (1999: 5) argues:

> … unhelpful journalists who write negative copy can be frozen out of the charmed circle — and can be denied information, which of course is the life-blood of their craft. And being frozen out of the charmed circle is what happens to journalists if they're lucky. If they are less lucky they can be mercilessly bullied by the spin-doctors.

Cockerell relates how political correspondents receive personal letters from Alastair Campbell, the UK Prime Minister's Official Spokesman telling them they are no longer welcome to contact him (Cockerell 2000: 11). This can create an environment where the enterprising use of FoI by a journalist provokes the response that other sources of news or access to briefings diminish. Other 'below-the-line' activities covered by Gaber (2000) include: kite-flying (Underwood 1999: 6), raising and lowering of expectations, and milking a story.

The intersection provided by a study of spin-doctors, FoI, and contentious issues management gives an illustration of the dynamics of government information management. In isolation contentious issues management may appear to be a valuable and neutral information management tool, yet when instigated in the context of a FoI request it transforms into a technique which undermines citizens' rights to information and has the capacity to produce a rapid deterioration in the compliance environment. The circumstances which triggers a contentious issues management response — degree of sensitivity, type of applicant, likely use of information — are precisely those which prompt the more aggressive 'below-the-line' activities of spin-doctors in both the political and administrative arenas.

Traditional FoI analysis has tended to ascribe the failure to achieve open government to a vigorous desire of governments and/or the political/bureaucratic leadership to return to a preferred state of secrecy. On the other hand, it may be that FoI is particularly vulnerable when the control of the news and political agenda become the central focus of activity, or when agencies adopt their best damage control techniques without considering other information consequences.

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7 See Little (2001), in relation to the handling of SOCOG ticket story.

Relationship Between FoI and Australian Media

> Overall to use FoI as a journalist in Australia takes money, an enterprising nose for a story, persistence and compromise (Kearney 2000: 32).

The perceived wisdom about the relationship between FoI and the Australian media centres on an interplay between the media's Fourth Estate role (Schulz 1998) and the argument that FoI cannot be effective without public awareness of its existence and effective use. The media is seen as playing a crucial role in the success of FoI in two ways: by ensuring public awareness of the legislation, and by using FoI to render its role as democratic watchdog more effective. The major public benefits of media FoI use have been identified as:

- 'FoI and a free press are two of the several checks and balances essential in a true democracy' (Ricketson 1990: 13, see also Waters 1999: 2).
- Media can educate the public in the importance and use of FoI (Chadwick 1990: 199, Johnson 2000).
- Allows journalists to set the news agenda rather than just reacting to politicians and press releases (Ricketson 1990: 10).
- Active and organised media use of FoI will 'enrich the amount, quality and credibility of media reporting of government' (Chadwick 1990: 199) and will educate journalists and the public about governmental processes.
- By using FoI the media participates in the democratic process (Ricketson 1990: 13).
- By pursuing appeals, the media can test the weak points of FoI legislation, and ensure interpretation of the Act by higher authorities (Chadwick 1990: 199).

The media plays a crucial role in the democratic process as a watchdog over government, and use of FoI is critical to its effective fulfilment of this role. Some consider the media to be the fourth element in the democratic process, with the role of reporting on the other components — the executive, Parliament, and the government (Grundy 1990: 28). If the media is to effectively carry out this role, it must obtain accurate, unbiased information and ensure it reaches the public. Use of FoI facilitates this process. As Morrison (1997: 31) argued in the context of New Zealand:

> A competent news medium presents the contest in a way that allows citizens to judge whether the public good is being served, and aids those who think it is not to influence decision-making in an informed manner. In that respect, the objectives of the news media and the intent of the Official Information Act are at one.

Yet as Waters (1999: 3) notes these theoretical virtues of the relationship between FoI and the media are more often qualified by a list of journalist grievances or difficulties encountered in using FoI. The critiques range from suspicions of cynical

manipulation of requests handling (Hannan 2001) to an assessment that FoI has barely changed Australian journalism (Chulov 2000: 7).

There is also a viewpoint that the media have under performed in relation to freedom of information (Snell 1998). Waters (1999: 22) has identified four main ways that FoI laws can be made to work more effectively for the media including amendments to the law, bureaucracy doing things differently, media changing its approach and a role for intermediaries (external research centres and support organizations). Others, including this author, have been more critical of the media:

> The argument can be made that the Australian media is at best a de facto and largely non-participating member of the FoI constituency in Australia. Looking at the history of the introduction of FoI in Australia this may not be a surprising conclusion. FoI largely entered the domain of the Australian fourth estate as a 'gift' from the other estates of the body politic. Using Waterford's analogy, Australian journalists have found themselves in possession of a journalistic tool of which they have only a passing appreciation and have allowed to rust away at the bottom of their toolkit or in some jurisdictions to be severely damaged. Journalists, media organisations and associations have, since the arrival of this 'gift', fought strong campaigns against its removal or serious alteration. Yet those struggles have been largely reactive and late in the day responses to fairly blatant attempts at curtailing the efficacy of FoI by the Executive arm of government. What has been missing has been the proactive, long term nurturing and monitoring of FoI practice, legislation and outcomes (Snell 1998).

Osler has clearly outlined that the faded promise of the journalism and FoI relationship is not unique to Australia. He argues that it was 'anticipated (indeed assumed as a given) that journalists of all media would seize upon the legislation, opening windows in their own craft, and thus give new vitality not only to their coverage of our national business in Ottawa, but by extension to their coverage of all public affairs' (Osler 1999: 1).

In Australia there has been a slow re-engagement with FoI by a small but growing number of journalists and media organizations (Kearney 2000). Many of these journalists and organizations had drifted from the field of engagement often as a result of growing levels of frustration with the costs, low return for effort, a perception that the rules were one-sided and/or a simple recognition that other story sources were easier to pursue (Birnbauer 2000, Coulthart 1999). Some organizations

have been addressing some of the neglect of the past by sponsoring conferences[8] or running longer analytical coverage of the general operation of FoI in Australia.[9]

There has been a growing critique of the politicisation of FoI by many journalists (Hannan 2001). In particular Chulov (2000) argues that 'FoI has never been at arm's length from the political domain — as it was intended to be. In many cases it has been captive to political agendas'. This analysis seems to rely on the premise that FoI can and should be treated as a neutral reform and that a shift towards open government or the merging of access principles into a Westminster model will be apolitical. Most of the early reformers in various jurisdictions realised that FoI was both a potentially powerful and certainly a highly political reform. Osler remains us of Joe Clark's words in 1978:

> What we are talking about is power — political power. We are talking about the reality that real power is limited to those who have facts. In a democracy that power and that information should be shared broadly. In Canada today they are not, and to that degree we are no longer a democracy in any sensible sense of that word. There is excessive power concentrated in the hands of those who hide public information from the people and Parliament of Canada' (Osler 1999: 1).

Certainly in the United States early media advocates for right to know legislation (a much wider brief than FoI legislation) like Brucker (1947) and Cross (1953) understood that the reforms were about altering the balance between the media, citizens, parliament and community groups in comparison to the Executive. In part this misconception to the political dimension of FoI in Australia has occurred, as Terrill (2000: 32) reminds us, because it was packaged together with other administrative law reforms such as Ombudsman, Administrative Appeals Tribunal and codified judicial review. This packaging led to FoI largely been studied, applied and approached as a single dimension legalistic reform.

Therefore journalists express surprise when their use of FoI as a simple legalistic tool to gather information produces highly political reactions. Journalists are puzzled or become cynical when FoI fails to 'loosen the political gatekeeper's hold on sensitive information' (Chulov 2000: 6). The diagnosis of FoI as a neutral apolitical reform has led to journalists ignoring needed reforms or the necessity maintain a rearguard defence against the return of secrecy.

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8 *The Age* sponsored the 1999 Communications Law Centre *Right to Know Conference* in Melbourne.

9 Especially *The Australian* Media supplement.

The misdiagnosis of the political dimensions of FoI has a four-fold impact. First, there is a crude labelling of all non-release of requested information as an unjustified use of secrecy. Second, there is a failure by journalists and media institutions to address the structural and strategic imbalances identified by Terrill (2000). Third, only a small minority of journalists appreciate that their best allies in the information game are those statutory officers who have the authority, capacity and commitment to apply both the letter and spirit of the legislation (See Kearney 2000: 32–33, Coulthart 1999: 46, Waters 1999: 10). Fourth, discouraged and frustrated journalists surrender the battlefield failing to appreciate that this concedes a, if not the, key arena to those whose interests are most challenged by FoI; namely the spin-doctors and Saul's systems men (Saul 1997: 44). Journalists need to bear in mind the comments of Sir Zelman Cowan (1993: 76) who wrote that:

> It is the responsibility of the press to inform the public so it can bring its influence to bear in an informed and intelligent manner; the press is thus an essential cog in the machinery of self-governance. To whatever extent the press fails to meet these responsibilities, democracy suffers.

Creating a Culture of Openness and Transparency

> By creating a culture of access, I mean creating a culture where providing information is seen as an integral and valued part of the job of every public servant. Not something outside of their 'real job' or an annoyance to be dealt with — my sense is that this new perception would influence how governmental information is created, sorted and communicated.
>
> Andree Delagrave, Chair, Access to Information Task Force, Canada
> March 2001

Access to information literature rarely mentions FoI officers. If they are mentioned it is as marginal extras in a game largely played by the media, applicants and key insiders (be it spin-doctors, senior bureaucrats or Ministers). In previous papers I have explored the concept of an FoI constituency (Snell 1998, Snell 2001: 29–30), first raised by Roberts (1998); the central concept is that the vitality of FoI requires an active constituency (made up of various groups including applicants, the media, academics, public interest law firms, citizen groups). Very often FoI officers are excluded from the list (Nader 1970: 14), however as journalists and researchers like Coulthart (1999), Kearney (2000) and Waters (1999), indicate it is often the quality and nature of the relationship between the applicant and FoI officer which makes all the difference. Waters (1999: 10) found that the journalists' experience with FoI officers was that 'they also commented on the very different attitudes they find — some FoI officers seem genuinely committed to the ideal of open government, trying

to help applicants get as much information as possible, while others are deliberately, and often creatively, obstructive'.

In every jurisdiction it is the commitment, professionalism and support for the legislation by FoI officers that seems to be the critical ingredient.

> 'Kearney and Stapleton have observed in the context of Ireland that on reflection, the single critical factor overlooked by us when first approaching FoI was that it was a change process, not just a legislating matter.' Canadians and Australians had paid lip service to this concept but always deep down believing that a magic mix of watertight exemptions, the right interpretative approach and an appropriate mechanism of judicial review would suffice. If necessary a degree of training might complete the process. (Snell 2001: 29).

Law reform organizations and parliamentary committees within Australia and internationally have only recently returned the focus to the vital role played by FoI officers and public service culture (Australian Law Reform Commission 1996 paragraphs 4.12–4.21). The South Australia Legislative Review Committee (2001: 38–42) felt that agency culture was one of the key reforms needed. The Canadian Information Commissioner (2001, Chapter 2) has strongly argued that the crafting of laws for access will be only as effective as the level and type of commitment public officials bring to their task of administering the legislation.

A dedicated cadre of FoI officers who value and advance key public service values of service to the public in the public interest, will have the following impact on FoI administration in addition to any legislative mandates or external pressure (see Figure 1):

- preventing or minimising negative compliance shifts
- promoting and/or increasing the likelihood of positive compliance shifts
- minimising or curtailing the 'below-the-line' activities of spin-doctors
- facilitate and improve the media's capacity to use FoI as a precise and informed information and accountability tool.

The Canadian Access to Information Task Force has started to link democratic values with public service values and best information management practices.[10] The 1999 Canadian Task Force on Public Service Values and Ethics argued that 'the most important defining factor for the role and values of the public service of Canada is its democratic mission and public trust: helping minsters; under law and the

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10 The author was involved in a number of briefings with the Taskforce in Ottawa in May 2001 and has exchanged several emails with the Taskforce on this topic since that time. The final report of the Taskforce has not been delivered.

Constitution, to serve the common good'. As FoI contributes to and supports accountability, an informed dialogue between governments and citizens and the dissemination of accurate government information is therefore part of the democratic mission of the public service.

There often seems to be a natural fit when dedicated public servants become involved in and/or responsible for FoI in their agencies. Instead of managing an alien and threatening concept their reaction is one of engagement. The Canadian Task Force on Public Service Values and Ethics 1999 stated 'In the heart of most public servants lies the conviction that service to the public, to the public interest is what makes their profession like no other. It is why they chose it, for the most part; and why they keep at it, with enthusiasm and conviction, despite difficulties and frustrations along the way'. The Canadian Information Commissioner (2001) linked the strength and resilience of this conviction in part to the attitude of Ministerial and bureaucratic leadership:

> Finally, the senior management cadre must realize that the attitude its members express towards access rages like a grassfire through a department. If employees feel that compliance is not a priority for the leaders, increasing instances will be seen of delays, inflated fees, antagonism towards requestors, inadequate searches, increasing numbers of complaints and more visits from my investigators. When the leaders decide not to keep minutes of meetings, and advise others not to write things down, when they perpetuate the myths about abusive requestors, when they tolerate giving the Minister's needs priority over legal rights, when they do not foster a culture of openness in general their employees get the message loud and clear.

Therefore the machinations of spin-doctors and their 'below-the-line' bag of tricks need to be offset. In part this will occur if there is an educated, constructive but vigilant community of users. Journalists by the very nature of their calling, skill of their craft and dependency on 'a right to know' mission are essential members of this community. However, their membership must be more than a plethora of requests and screaming headlines of a 'state of secrecy' when requests are refused. FoI officers need to be able to show to their internal audience and management worthwhile outcomes of the time, energy and commitment made to FoI. Opposition frontbenchers who request a truckload of documents then never ask a question in parliament chip away at that commitment. A journalist who uses FoI material, without attribution, in numerous stories but screams blue murder when a particular request is denied batters that commitment. Editors who run anti-secrecy campaigns but fail to find the time to lobby for constructive law reform or better resourcing for FoI allow that commitment to weaken.

Conclusion

Compliance, and how to achieve and improve it, is one of the fundamental questions of FoI practice. By understanding the multi-dimensional aspects of FoI we come closer to appreciating the complexities and levers needed to alter compliance. Complications arise because in each of these dimensions — bureaucratic, legal, civic and political — there are different underlying assumptions. In effect we need a combination of levers (legislative, cultural, administrative, ethical) that aligns FoI with the democratic missions of the public service, journalists and other citizens.

This choice of levers is further complicated because of the changing administrative landscape from the flow-on effects of the information revolution, reinvention and restructuring of the state, a flux in ethical values and globalisation. We are now confronted by an information commons that is rapidly diminishing (Roberts 2000). In a later article Roberts argues:

> What is needed is a method of reasoning about boundaries of access law that builds on explicit propositions about the good that could be produced by improving transparency. A better method of reasoning would focus on the deleterious effects of opacity — that is, on the harms that may be caused when access to information is denied. In particular, we can refer to harm to a citizen's fundamental interests — and more specifically, those interests that undergird the set of generally recognized basic human rights (Roberts 2001: 256).

In the past twelve months I have given presentations to, and met with, FoI officers in several jurisdictions.[11] There has been a perceptible but subtle shift in the commitment to and support of access legislation (Access to Information Task Force Canada 2001). Experienced and senior coordinators have retired or moved onto new areas of responsibility. In the wake of these old hands is a younger cohort who have had less opportunity to view FoI as anything other than another burdensome responsibility. Furthermore even those committed veterans who remain have grown weary from defending the promise of FoI from the spinners from within and the scribes from without.

FoI has not recently become politicised it has been and will remain a highly political process. This process requires skilful and committed adherents who see their role as not only just serving their immediate masters (editors or senior bureaucrats) but also as renewing the genius of democracy. The stories of late night shredders, cunning spin-doctors, and process abusers have to be told. Yet so does the story of the Minister who supported his FoI coordinator by saying, 'it's a free kick to those bastards but its good for democracy'.

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11 Including Canada, New Zealand, Ireland, South Australia and Tasmania.

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