

Andrew Charlesworth
Director, Centre for IT & Law

Open for Exploitation: Universities, Research and FOI

Open Information session

Society for Computers and Law - 5th Policy Forum



Openness as a “Public Good”

- Many proponents of FOI appear to regard ‘openness’ solely as a “public good”.
 - Shining light on processes/decision-making, enhancing democratic scrutiny/accountability, value for money.
- One can value such benefits but still regard some FOI outcomes as harmful to public interest goals.
- Consider, by way of a contrarian analogy, the position of a right to privacy.
 - We may regard privacy as valuable, yet there are plausible arguments that, untrammelled, privacy can be used to damage women and children’s rights, or be used to privilege the individual over the community.

UK FOIA and HEIs

- Universities are ‘public authorities’.
 - FOIA 2000, s.3(1)(a)(i) and Schedule 1, para.53(1)
- Universities receive considerable public money, and make decisions which affect an increasing % of the UK population.
- No obvious reason why processes/decision-making should not be open to scrutiny/accountability...
- There are, naturally, some interesting outcomes:
 - companies seek process info. from Universities to aggregate and sell on - cost of compiling the info. is passed to the Universities, who cannot refuse, and are restricted by FOIA vis their own costs - FOIA arbitrage.
- But these are not the focus for discussion today....

Universities, Research & Controversy

- ...but rather what about research data?
- ‘Climategate’ controversy - UEA Climatic Research Unit
 - “In July 2009 UEA received an unprecedented, and frankly administratively overwhelming, deluge of FOIA requests related to CRU. These amounted to 61 requests out of a 2009 total of 107 related to CRU, compared to annual totals of 2 in 2008 and 4 in 2007 (University totals for those years were 204, 72 and 44 respectively).”

UEA evidence before the House of Commons Science & Technology Committee

- The CRU only had 3 full-time academic staff.
- Volume of requests required the input of the UEA’s Information Policy Compliance Manager, Director of Information Services, a pro-VC, and additional administrative/secretarial support.
- The UEA/CRU did not handle the FOI requests well.

An ICO speaks...

- “...the public must be satisfied that publicly-funded universities, as with any other public authority in receipt of public funding, are properly accountable, adopt systems of good governance and can inspire public trust and confidence in their work and operations [...] The fact that the FOIA requests relate to complex scientific data does not detract from this proposition or excuse non-compliance...”

Richard Thomas, oral evidence before the House of Commons Science and Technology Committee

- It is not clear to me that requiring the provision of research data, whether ‘raw’ or ‘processed’, can in fact be used meaningfully to achieve the ends outlined above.
- One might query whether (its own faults aside) the peer review process or (heavens) the RAE is a more appropriate means of accountability in this sphere.

An ICO speaks...

- "... the simplest approach, particularly where requests tend to generate either a defensive attitude or place a great burden on the public authority, is proactive disclosure in the first place.[...] If it is particularly sensitive or there is a good reason for withholding it, fair enough, but where there is no good reason for withholding information, then why not proactively disclose it and avoid the hassle of large numbers of requests?"

Richard Thomas, oral evidence before the House of Commons Science & Technology Committee

- Simple answer: because disclosure costs time and money.
- Did RT fully comprehend the resource implications of what is suggested here, as regards research datasets.
 - e.g. there's a reason why Bristol's University Research Data Storage Facility (RDSF) is a 'petascale facility'.

MPs weigh in...

- HoC Science and Technology Committee – scientists should “become more transparent by publishing raw data and detailed methodologies.”
 - CRU and UEA criticised for not releasing data in response to FOI/EIR requests.
 - But has been pointed out that research data may not be easy to release in meaningful form:
 - “The difficulty in releasing program code is that to be understood by anyone else it needs time-consuming work on documentation, and this has not been a top priority.”

Report of the International Panel set up by the University of East Anglia to examine the research of the Climatic Research Unit.
 - Should it be an enforced priority?

Peer Review vs. Public Scrutiny

- This is not the forum to take on the thorny issue of the merits/demerits of peer review *per se*.
- However, some questions occur:
 - Are there possible issues with requiring University researchers' methodologies and data to be publicly disclosable when private sector research is not?
 - Is preparing datasets for possible 'public consumption' as important as seeking future funding, presenting papers, publishing or even, perhaps, doing further research?
 - In a commercialised research environment is it logical to require University researchers' methodologies and data to be publicly disclosable?
 - Are FOIA exemptions sufficient to protect the legitimate interests of researchers and Universities?

Another viewpoint:

- Prof. Myles Allen (Oxford University)
 - Quoted in Guardian – stated that free exchange of data with fellow scientists was a fundamental requirement of academic research. (my emphasis)
 - “There was an assumption within the climate science community that we could use our professional judgment to distinguish between professional scientists and activists or members of the public.

The big implication in all this for science is that the [FOI Act] is taking away our liberty to use our own judgment to decide who we spend time responding to. And that has a cost.”

Mixed messages

- “[Criticisms of the CRU] seem ... to reflect a lack of awareness of ... the difficult circumstances under which university research is sometimes conducted. Funding and labour pressures and the need to publish have meant that pressing ahead with new work has been at the expense of what was regarded as non-essential record keeping.

...

Although we deplore the tone of much of the criticism that has been directed at CRU, we believe that this questioning of the methods and data used ... will ultimately have a beneficial effect and improve working practices

Report of the International Panel set up by the University of East Anglia to examine the research of the Climatic Research Unit.

Unresolved questions & inconsistencies

- “A host of important unresolved questions also arises from the application of Freedom of Information legislation in an academic context. We agree with the CRU view that the authority for releasing unpublished raw data to third parties should stay with those who collected it.”

Report of the International Panel set up by the University of East Anglia to examine the research of the Climatic Research Unit.

- “...since [the] UK government adopted a policy that resulted in charging for access to data sets collected by government agencies, other countries have followed suit impeding the flow of processed and raw data to and between researchers. This is unfortunate and seems inconsistent with policies of open access to data promoted elsewhere in government.”

Ibid

Hidden Costs of FOI?

- Pros of public access to University research data
 - May inspire public trust and confidence;
 - May improve certain working practices.
- Cons
 - More documentation/administration in case of requests;
 - More interruption of research processes;
 - Possible reduction in academic freedom, due to management concerns;
 - Disinclination amongst University researchers to engage in 'controversial' areas of research;
 - Use of FOI to attack University sector research base to the benefit of private sector researchers/interests.
 - Remember when cigarettes were good for you?