

Title: Extending the Freedom of Information Act to ACPO, FOS and UCAS Lead department or agency: Ministry of Justice Other departments or agencies: Information Commissioner's Office	Impact Assessment (IA)
	IA No: MOJ 079
	Date: 16/06/2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: informationrights@justice.gsi.gov.uk	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary? <p>The Freedom of Information Act 2000 (FOIA) gives any person the legal right to ask a public authority covered by the Act for recorded information that they hold. However, coverage is limited to bodies listed in Schedule 1 of the FOIA or those who meet the criteria set out in section 6. Section 5(1)(a) of the FOIA enables the Secretary of State to make an order to extend the coverage of the FOIA to bodies that appear to him to be exercising functions of a public nature. We will broaden the application of the FOIA using this power to make a section 5 order to bring the Association of Chief Police Officers (ACPO), the Financial Services Ombudsman (FOS) and the Universities and Colleges Admissions Service (UCAS) within the Act because the Secretary of State's view is that they appear to exercise functions of a public nature. Government intervention is required so that these bodies, who exercise functions of a public nature, are subject to the same scrutiny as other public authorities.</p>	
What are the policy objectives and the intended effects? <p>The intended effect is to ensure that bodies who exercise functions of a public nature are subject to the same scrutiny as other public authorities in relation to those functions and as a result become more open, transparent and accountable. The FOIA provides the public with the right of access to information and as ACPO, FOS and UCAS have been found to exercise functions of a public nature the public should be provided with that legal right.</p>	
What policy options have been considered? Please justify preferred option (further details in Evidence Base) <p>Option 0 - Do nothing: retain the current coverage of FOIA (base case) Option 1: To extend the scope of the FOIA to the Association of Chief Police Officers (ACPO), the Financial Ombudsman Service (FOS) and the Universities and Colleges Admissions Service (UCAS)</p> <p>Option 1 is the preferred option as it is expected that this would provide the public with the right of access to information provided by the FOIA. The Secretary of State's view is that these bodies appear to exercise functions of a public nature, following consultation, and should therefore be subject to the FOIA.</p>	
When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	The review will commence in 2011
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Lord McNally Date: 16/6/11

Summary: Analysis and Evidence

Policy Option 1

Description: To extend the scope of the FOIA to include ACPO, FOS and UCAS

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£4.4m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	minimal	£0.5 million	£4.4 million

Description and scale of key monetised costs by 'main affected groups'

Transition costs to bodies brought within scope of the FOIA are expected to be minimal. Ongoing annual costs to ACPO, FOS and UCAS for responding to requests and any internal reviews are estimated to be £0.5m annually (except for the first year because of the timing of implementation).

Other key non-monetised costs by 'main affected groups'

There will be ongoing costs to Information Commissioner's Office ("ICO") from an increased number of appeals and enforcing proper application of the FOIA. There will also be costs to the Information Tribunal and higher courts, and to wider public sector from additional follow-up FOIA requests. ACPO, FOS and UCAS will also incur costs for cases that are referred to the ICO and further appeal stages.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

Extending the FOIA is intended to increase the efficiency, accountability and openness of ACPO, FOS and UCAS, which will benefit society. Providing the public with a general right of access to information could lead to greater scrutiny, increased awareness and greater confidence in ACPO, FOS and UCAS. Organisations currently within the scope of the FOIA may receive fewer requests (if these are instead directed to bodies brought within scope), although the net impact is unclear.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<ul style="list-style-type: none"> It is very difficult to predict, with certainty, the volume of requests that ACPO, FOS and UCAS would receive. There are significant risks that the volumes of FOIA requests could be very different. The above figures should be viewed as illustrative and driven by assumptions. The costs of time taken to respond to FOIA requests are based on figures that include central government departments which are generally higher than other bodies. Therefore, there is a risk that the costs to the bodies outlined could be different than anticipated. There is a risk that some of the assumptions outlined in the evidence base, based on the Frontier Economics report, are out of date and no longer valid to the proposals. 		

Impact on admin burden (AB) (£m):	Impact on policy cost savings (£m):	In scope
New AB: N/Q	Policy cost savings: 0	No
AB savings: 0	Net: N/Q	

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			October 2011		
Which organisation(s) will enforce the policy?			Information Commissioner's Office, HMCTS		
What is the annual change in enforcement cost (£m)?			N/Q		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/Q	Non-traded: N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	Yes	p.14
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	p.14
Small firms Small Firms Impact Test guidance	Yes	p.14
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	p.14
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	p.14
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	p.14
Human rights Human Rights Impact Test guidance	No	p.14
Justice system Justice Impact Test guidance	Yes	p.14
Rural proofing Rural Proofing Impact Test guidance	No	p.14
Sustainable development Sustainable Development Impact Test guidance	Yes	p.14

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Freedom of Information Act 2000 (http://www.legislation.gov.uk/ukpga/2000/36/contents)
2	Freedom of Information Act 2000 – annual statistics on implementation in central government, Ministry of Justice publication, (http://www.justice.gov.uk/publications/docs/foi-statistics-report-2009.pdf)
3	Independent review of the impact of the Freedom of Information Act, a report prepared for the Department of Constitutional Affairs, Frontier Economics (October 2006), (http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf)
4	Coalition programme for government, (http://programmeforgovernment.hmg.gov.uk/files/2010/05/coalition-programme.pdf)
5	Freedom of Information Act 2000: designation of additional public authorities – 25 October 2007 (consultation and response paper) http://www.justice.gov.uk/consultations/cp2707.htm

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost	£0.3m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m
Total annual costs	£0.3m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m	£0.5m
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

1. Introduction

- 1.1 This Impact Assessment examines the impact of extending the scope of the Freedom of Information Act 2000 (“FOIA”) to ACPO, FOS and UCAS.
- 1.2 The FOIA contains a provision (under section 5) for the Secretary of State to bring within the scope of the FOIA bodies that appear to him to exercise functions of a public nature or who are providing a service under contract that is a function of a public authority. The Ministry of Justice consulted ACPO, FOS and UCAS in September 2009 regarding their possible inclusion within the Act under this provision and the Secretary of State considers that ACPO, FOS and UCAS should be subject to an order under section 5(1)(a) of the FOIA.

Background

- 1.3 The Government is committed to facilitating greater openness and transparency in the public sector in order to enable the public to hold politicians and public bodies to account. ‘The Coalition: our programme for government’ set out this intention stating that the Government would ‘extend the scope of the Freedom of Information Act to provide greater transparency’.
- 1.4 Since coming into force in 2005, the Freedom of Information Act is now widely used across central and local government² and the wider public sector. The Government considers that it is now time to extend the scope of the Act to ACPO, FOS and UCAS because the Secretary of State considers that they satisfy the requirements of section 5 of the FOIA. The Government believes that bodies who exercise functions of a public nature should be subject to the same scrutiny as other public authorities in relation to the functions that they exercise that are public in nature and that as a result they will become more open, transparent and accountable. The FOIA provides the public with the right of access to information and as ACPO, FOS and UCAS have been found to exercise functions of a public nature the public should be provided with that legal right.
- 1.5 The primary objective of the FOIA is to increase the openness, transparency and accountability of those bodies covered by the Act. The Government considers that the right to information:
 - Provides more information about how taxpayers’ money is spent;
 - Enables greater scrutiny of public services and allows the public to gain information about services that affect them;
 - Provides the context for better informed public debate;
 - Holds bodies to account for decisions that affect the public; and
 - Eliminates waste and duplicated effort allowing for more efficient and effective public services.
- 1.6 Section 5 of the FOIA enables the Secretary of State to designate two types of person or organisations as public authorities, those which:
 - appear to the Secretary of State to exercise functions of a public nature, or
 - provide, under a contract made with a public authority, any service whose provision is a function of that authority.
- 1.7 The Secretary of State makes a designation by making what is called a section 5 order. Section 7 of the Act requires that any section 5 order must specify the functions or services provided under contract for which that public body is designated. The Act would not apply to any other information held (which is not specified in a section 5 order) and therefore would not necessarily cover all the work carried out by an organisation. Consequently, all of the functions of some organisations could be subject to FOIA requests whereas in other cases the number of functions subject to FOIA would be more limited.
- 1.8 Under section 5(3) the Government is required to consult ‘every person to whom the order relates, or persons appearing to him to represent such persons’ before making an order under section 5. The Ministry of Justice consulted ACPO, FOS and UCAS in September 2009 regarding their possible inclusion within the Act under section 5. Following the outcome of this consultation the

² Freedom of Information Act 2000 – Annual Statistics on implementation in central government, Ministry of Justice publication

Secretary of State considers that ACPO, FOS and UCAS should be subject to an order under section 5 of the FOIA.

Problem under consideration

- 1.9 If a body carries out functions of a public nature then the public should have the general right to information provided by the FOIA. The public should have an enforceable right to information about services that affect them and should be able to hold bodies to account for decisions that affect them in respect of those functions exercised that are public in nature.
- 1.10 The Ministry of Justice consulted directly with ACPO, FOS and UCAS in 2009 following a public consultation in 2007 about whether the Government should consider extending the FOIA and if so which bodies it should consider³. Following that public consultation the Government announced in its response to the consultation that they would consider Academy Schools, ACPO, FOS and UCAS and that if these bodies were deemed to meet the criteria under section 5 they would be subject to the first section 5 order. Academies have since been brought within the Act via primary legislation.
- 1.11 As part of the consultation process discussions took place with ACPO, FOS and UCAS and some concerns regarding inclusion within the FOIA were raised. The concerns raised related to the resource burden of complying with requests and the release of certain information, such as that which was commercially sensitive. However, in the main these concerns were largely overcome and the bodies concerned were content that the exemptions set out in the FOIA provided sufficient protection.
- 1.12 Following the consultation ACPO have been found to exercise functions of a public nature in relation to all its functions as set out in its objectives in its Memorandum and Articles of Association. FOS has been found to exercise functions of a public nature in respect of the administration of an ombudsman scheme in accordance with Part 16 of, and Schedule 17 to, the Financial Services and Markets Act 2000, which covers all of FOS's functions. UCAS has been found to exercise functions of a public nature in respect of their functions relating to the provision and maintenance of admissions services for higher education establishments already covered by the FOIA or the Freedom of Information (Scotland) Act 2002 - this excludes some of the functions of UCAS such as the functions of UCAS media⁴.
- 1.13 The Ministry of Justice intends to bring forward a section 5 order to designate ACPO, FOS and UCAS as public authorities for the purposes of the Act in respect of their functions that are deemed to be functions of a public nature. Those functions that have not been deemed to be functions of a public nature, such as some of the functions of UCAS, are not covered by this order and so will not be subject to the FOIA.

Economic rationale for intervention

- 1.14 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.15 The Government considers that there are equity and efficiency arguments for government intervention. It is considered inequitable that ACPO, FOS and UCAS have been found to exercise functions of a public nature and are not currently subject to the FOIA while others are. It is considered that organisations that exercise functions of a public nature should be within the scope of the FOIA. Extending the coverage of the FOIA would give the public greater access to official

³ Freedom of Information Act 2000: designation of additional public authorities - <http://www.justice.gov.uk/consultations/cp2707.htm>

⁴ UCAS describes these functions on its website as follows, "UCAS Media supports the core mission of UCAS with income-generating activities and by achieving increasing recognition for the organisation as a first-class supplier of quality goods and services. Activities include events, publishing activities, advertising, sponsorship and other marketing services that aim to provide and promote services for students and their advisers".

information about services that affect them, ensuring greater public scrutiny over those bodies that exercise functions of a public nature. This may provide greater public confidence in the functions they perform or public services they provide. In turn, this may generate direct 'economic welfare' benefits. There may be further 'economic welfare' benefits if as a result, the bodies operate more closely in line with the preferences of society.

1.16 The proposal may also generate efficiency benefits if the increased scrutiny provided by the FOIA leads to ACPO, FOS and UCAS operating more efficiently. However, as the proposal is likely to increase the administrative burdens placed on the affected bodies, the proposal will generate some associated efficiency costs.

Affected Stakeholder Groups, Organisations and Sectors

1.17 Extending the scope of the FOIA will primarily impact on ACPO, FOS and UCAS as they will become subject to the FOIA.

1.18 In addition to ACPO, FOS and UCAS the following groups would also be affected by the proposals:

- **Private citizens** – would be able to make Freedom of Information (FOI) requests to the bodies brought within scope of the FOIA. They would have a right to be informed in writing by that body whether it holds information of the description specified in the request; and if that is the case, to have that information communicated to them subject to any exemptions that might apply.
- **Journalists** – would be able to make FOI requests to the bodies brought within scope of the FOIA. They would have a right to be informed in writing by that body whether it holds information of the description specified in the request; and if that is the case, to have that information communicated to them subject to any exemptions that might apply.
- **Businesses** - would be able to make FOI requests to the public bodies brought within scope of the FOIA. They would have a right to be informed in writing by that public body whether it holds information of the description specified in the request; and if that is the case, to have that information communicated to them subject to any exemptions that might apply.
- **Other bodies already covered by the FOIA** – those bodies already within the scope of the FOIA could see a reduction in the number of requests they receive if requests are directed towards a body that is brought within scope. However, it is also possible that if more information is available following the inclusion of these bodies then other bodies already covered will receive more requests as follow-up requests could be made about the available information.

2. Costs and benefits

2.1 This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of the option are compared to the "do-nothing" option. Impact Assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.

2.2 There is only one piece of independent research that the Government can use to estimate the likely cost implications of extending the FOIA to ACPO, FOS and UCAS. This is a report that Frontier Economics produced in 2006 on the impact of the FOIA⁵. This impact assessment also draws on annual statistics collected on implementation in central government of the FOIA and departmental expertise on the FOIA⁶.

⁵ This can be found at <http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

⁶ The Ministry of Justice is responsible for Freedom of Information policy and as well as dealing with FOI requests directed towards the department it also assists other bodies within its remit with their information requests. The Central Clearing House was established in 2004 provides expert advice on complex, sensitive, or high profile requests for information; ensures consistency across central government in the handling of certain requests and works to develop, through litigation, the boundaries of the legislation in accordance with government policy. There is therefore significant experience of working with the FOIA and of other bodies experiences of the FOIA.

2.3 In conducting the cost benefit analysis, we have considered the effects of each policy option over a 10-year period. In order to estimate costs over this period we have used the 3.5% social discount rate (taken from the Treasury's Green Book⁷).

Option 0: "Do Nothing"/Base Case

2.4 Under the "do-nothing" option the FOIA would not be extended and no additional public bodies would be included within scope of the FOIA.

2.5 In 2009, monitored central government bodies received a total of 40,548 non-routine FOI and Environmental Information Regulation ("EIR") requests⁸. Departments of State received 59% of these requests while other monitored bodies received the remaining 41%⁹.

2.6 If no action is taken ACPO, FOS and UCAS, who are considered to exercise functions of a public nature, would continue to be exempt from the provisions of the FOIA and the public would have no enforceable general right of access to the information they hold in relation to those functions. These bodies may therefore attract public criticism for not being open, transparent and accountable as there would be no enforceable right to information available. In addition, there is a risk that members of the public would lose confidence in public services if they are unable to obtain information that they are interested in or in services that affect them. There is also a risk that other bodies already covered by the FOIA may receive a higher volume of requests as they will receive requests about those bodies not currently covered.

2.7 The "do-nothing" option is compared against itself and therefore its costs and benefits are necessarily zero, as is its net present value (NPV)¹⁰.

Option 1: Make a section 5 order to include ACPO, FOS and UCAS within the scope of the Freedom of Information Act (2000)

Description:

2.8 This option is to add ACPO, FOS and UCAS within the scope of the FOIA, through a section 5 order. Section 5 of the Freedom of Information Act (2000) enables the Secretary of State to make an order to include persons or offices within scope of the FOIA that he believes are exercising functions of a public nature or who are providing under contract with a public authority a function of that authority.

2.9 This impact assessment assesses the potential impact of bringing ACPO, FOS and UCAS within the FOI regime as the Secretary of State considers that they exercise functions of a public nature. ACPO, FOS and UCAS will be required to respond to requests for information from members of the public for official information they hold within 20 days, subject to any permitted extension, or application of any exemptions and also set up a publication scheme.

2.10 The inclusion of bodies within the FOIA that exercise functions of a public nature under section 5 is out of scope of the 'One In, One Out' rule. As the only functions of the bodies that will be subject to an order under section 5 are those concerned with exercising functions of a public nature, it is considered that these bodies should be considered to be public service delivery organisations for the purpose of the 'One in One Out' rule.

Costs of Option 1

Transitional costs

Costs to ACPO, FOS and UCAS

2.11 When they are brought within the FOIA ACPO, FOS and UCAS will be required to ensure they have in place suitable processes to log, allocate and respond to requests for information. These

⁷ HM Treasury's Green Book, Appraisal and Evaluation in Central Government, http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

⁸ Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, executive summary, p.4

⁹ Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, executive summary, p.4

¹⁰ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

organisations would also have to ensure that all staff responsible for dealing with requests receive appropriate training. These organisations would also need to ensure that they have the appropriate appeals processes in place if requesters are not content with the responses they receive.

2.12 In addition, organisations covered by the legislation would need to comply with section 19 of the FOIA and adopt and maintain a publication scheme. Section 19(2) of the Act lists the requirements of a publication scheme, which must:

- a. specify classes of information which the public authority publishes or intends to publish;
- b. specify the manner in which information of each class is, or is intended to be, published; and
- c. specify whether the material is, or is intended to be, available to the public free of charge or on payment.

2.13 In order to estimate the average transition cost each organisation will incur we have estimated the average time that would be spent to prepare for inclusion within the FOIA based on departmental expertise and experience. These estimates were set out in our initial impact assessment which was sent to ACPO, FOS and UCAS as part of the consultation in 2009 and no comments were received on them. We estimate that it takes one member of staff around two weeks on average to set up a publication scheme, around one week to train staff to respond to requests, and around two days to establish a system to respond to requests. Based on average earnings figures¹¹, it is estimated that each organisation brought in-scope would incur transition costs of approximately £2,000. This may vary on a case by case basis, depending on the approach of each organisation.

2.14 Total transition costs are estimated to be approximately £6,000, in 2010 prices¹². It is assumed that these would be incurred in 2011/12. However, ACPO, FOS and UCAS have been aware they will be subject to a section 5 order since March 2010 and have already begun preparing for inclusion.

Ongoing costs

2.15 It is assumed that all ongoing costs would be incurred from 2011/12 onwards because the policy will be implemented from October 2011.

Costs to organisations exercising functions of a public nature

2.16 In addition to one-off transition costs, ACPO, FOS and UCAS will also incur ongoing costs relating to receiving and responding to requests.

2.17 The Ministry of Justice currently publishes FOI statistics on a range of monitored public bodies¹³. In order to estimate the volume of requests ACPO, FOS and UCAS would receive these bodies have been classified according to the volume of requests received¹⁴. Those bodies that may expect to receive greater than 1,000 FOI requests each year have been classified as 'high' volume; those bodies that may expect to receive between 100 and less than 1,000 FOI requests each year have been classified as 'medium' volume; and those bodies that may expect to receive less than 100 FOI requests each year have been classified as 'low' volume.

2.18 Following discussion with the bodies themselves and based on judgement formed by MoJ officials bearing in mind the potential level of public interest in nature of each body concerned we expect ACPO and UCAS to receive a high volume of requests annually and FOS to receive a medium volume of requests annually. In recent discussions ACPO have indicated that they consider this to be a reasonable estimate and FOS believe they will receive no more than 250 requests per annum. UCAS consider that they would receive substantial volumes of requests annually, possibly at an amount greater than that of departments of state, in part due to the recent changes to fees charged by Universities. Accordingly we have adjusted our estimate of the volume of information requests UCAS would received from a medium to a high volume. However, whilst MoJ officials agree that the volume of requests received will be high, we do not consider that the volume of requests will be

¹¹ ONS data 'Annual Survey on hours and earnings', gross weekly earnings (April 2010 data) uplifted to by 21.2% to account for national and insurance and superannuation costs, in 2010 prices.

¹² Based on a unit cost of approx £2,100

¹³ A total of 43 central government bodies are monitored including all government departments.

¹⁴ These figures have been calculated by taking the average number of FOIA requests for other monitored bodies in the Freedom of Information Act (2000) 2009 annual statistics on implementation in central government statistics, other than Departments of State and the Health and Safety Executive. Figures used did not include those for Departments of State or the Health and Safety Executive as these are not considered to be representative of bodies such as ACPO, FOS and UCAS.

significantly higher than monitored bodies, given the volumes of requests received by the varying monitored bodies and the existing coverage of higher education institutions.

- 2.19 Frontier Economics estimate that an FOI request takes 7.5 hours on average to process and internal reviews takes 30.6 hours on average to process.¹⁵ This is the only time estimate available on the average time taken to process requests and internal reviews. Multiplying this average processing time by the volume of requests received, and then by average earnings¹⁶ produces an indicative estimate of annual cost per organisation being brought into scope. Estimates have been produced for bodies that might expect to receive 'high' 'medium' and 'low' volumes, as shown in Table 2 below. The costs to each organisation would be dependent largely on the number of requests made, as outlined above. This will be dependent on the extent of public interest and nature of the organisation.

Table 1: Volume of requests and average annual cost of processing FOI requests and internal reviews

Volume of requests expected (category)	Approximate average cost to organisation of FOI requests and IR's (in 2010 prices)
Low	£4,000
Medium	£31,000
High	£258,000

- 2.20 These estimates are a best estimate based on the information available. The actual costs faced may vary from the average for similar bodies, and over time, depending on the approach of each organisation and level of public interest.
- 2.21 The total ongoing costs to ACPO, FOS and UCAS of responding to FOIA requests and any IR's is expected to be £0.5m annually, in 2010 prices.
- 2.22 Bodies brought within the FOIA will also have to respond to complaints made to the Information Commissioners Office (ICO) and any further appeals. Only a limited number of cases reach these stages but costs can be relatively high as these processes require additional resources and often legal advice and / or legal representation. These costs have not been quantified and will vary depending on the stage reached and complexity of the case.
- 2.23 In addition to the cost of dealing directly with requests, organisations brought within the scope of the FOIA may face other associated costs. One result may be increased public scrutiny and pressure for organisations brought within the scope of the FOIA to practise better data management. This may include costs from reviewing and/or updating IT and administrative systems. Furthermore, organisations may incur costs through changing their behaviour as a result of coming within the scope of the FOIA by proactively publishing information, publishing a log of requests and responses or by adopting behaviour and undertaking actions that would be more defensible in public, including possibly being more risk averse. These costs have not been quantified. Again, these are likely to differ according to the adopted approach of each body.
- 2.24 Bodies brought within the scope of the Act may also incur costs as they may have additional obligations under the Data Protection Act 1998 (DPA) in relation to subject access requests. Bodies that are subject to the FOIA may incur costs as they may have to search wider to look for information pursuant to subject access request than they would under the DPA alone. The DPA covers electronic data and manual (non-electronic data) in certain filing and record keeping systems. Bodies covered by the FOIA would search wider than under the DPA as the FOIA covers non-electronic data regardless of how the filing or record keeping system containing the data is organised. These costs have not been quantified.

Costs to other bodies who are already within the scope of the FOIA

- 2.25 These proposals may also result in additional requests being made to bodies already covered by the FOIA. If information received from bodies brought within the scope of the Act leads to follow up requests directed at bodies currently within scope, these bodies could incur the costs of responding to an increased number of requests. The impact on the volume of requests received by bodies already within scope is unclear but is expected to be minimal.

¹⁵ <http://webarchive.nationalarchives.gov.uk/http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

¹⁶ , ONS data, 'Annual Survey on Hours and Earnings', gross weekly earnings (April 2010 data) uplifted to by 21.2% to account for national and insurance and superannuation costs, in 2010 prices.

Costs to Information Commissioner's Office ("ICO")

- 2.26 The Information Commissioner would continue to enforce the proper application of the FOIA and ensure that the bodies that come within it comply. The Information Commissioner is the independent regulator of the FOIA and may make decision notices about an organisation that they would need to comply with. Since the Information Commissioner would be required to ensure that more bodies are complying with the FOIA if more bodies are brought within the scope of the Act, it would incur additional costs.
- 2.27 In 2009, there were 206 appeals made to the ICO relating to the refusal of information requests by monitored bodies¹⁷. Since the volume of information requests is expected to rise, there would be increased costs to the Information Commissioner's Office (ICO) in assessing any additional appeals made. Of the requests received by central government departments and other monitored bodies in 2009 only 0.5%¹⁸ were appealed to the ICO¹⁹. For this reason, the additional costs to the ICO as a result of the proposal are expected to be minimal.
- 2.28 There are currently over 100,000 bodies covered by the FOIA and in comparison only three bodies will be brought within the FOIA as a result of a section 5 order. This also suggests any impact would be minimal.

Costs to HM Courts and Tribunals Service (HMCTS)

- 2.29 If a person wanted to appeal a decision of the ICO, that person would have to make an appeal to the First-Tier Tribunal (information rights). There may be additional costs if a higher volume of appeals go to the Information Tribunal.
- 2.30 However, there are currently over 100,000 bodies covered by the FOIA and in comparison only three bodies are to be brought within the FOIA as a result of a section 5 order. This suggests any impact would be minimal.
- 2.31 Further, following appeals to the Information Tribunal further appeals can be made to the Upper Tribunal (Administrative Appeals Chamber) and then subsequently, to the Court of Appeal and then to the Supreme Court. There may be additional costs to HMTCS if a higher volume of appeals go to the courts or tribunals although very few cases reach this stage. It is anticipated that this would affect only a small volume of cases and any additional associated costs are expected to be minimal.
- 2.32 The First-Tier Tribunal (information rights) and Upper Tribunal (Administrative Appeals Chamber) do not currently charge fees hence any increase in costs would not be met by an increase in fees.

Costs to those that use the services provided by ACPO, FOS and UCAS

- 2.33 Users of the services provided by the bodies brought within scope of the FOIA may also incur costs. It may be the case that the additional costs of complying with and implementing the FOIA may be passed on by some of the proposed bodies to those individuals and organisations that fund them (e.g. UCAS may increase their charges to users to cover the cost of responding to FOI requests). It is not possible to estimate who would incur additional costs and the magnitude of these costs as it is not clear whether ACPO, FOS or UCAS would pass on these costs and whether they would require additional funding sources to cover their increased costs. Any costs passed to service users are expected to be minimal, particularly as the costs of complying with FOIA are expected to be minimal, compared to the overall operating costs of these bodies, and have not been quantified.

Costs to requesters

- 2.34 There are no charges for making an FOI request but those making a request may incur costs such as the costs of time taken to make the request and costs of communicating the request (e.g. postage). In specific circumstances a public authority can request a fee to answer a request where

¹⁷ Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, table 8, p.28

¹⁸ Figures taken from the 2009 Annual Statistics on implementation in central government report on the Freedom of Information Act 2000 available at <http://www.justice.gov.uk/publications/freedomofinformationquarterly.htm>.

¹⁹ Statistics are only available for ICO appeals against central government departments. This figure is indicative only and is unlikely to be representative of the potential volume of ICO appeals against ACPO, FOS and UCAS.

the request exceeds the cost limit for replying to a request²⁰ but this is unusual and therefore this impact is expected to be minimal.

Benefits of Option 1

Transitional benefits

2.35 No transitional benefits have been identified.

Ongoing Benefits

Benefits to society

2.36 Extending the coverage of the FOIA to ACPO, FOS and UCAS will give the public a legally enforceable right to access to information as provided for by the FOIA. This is expected to provide greater access to official information about services that affect the public and that there is a public interest in, ensuring greater public scrutiny (including from private individuals, journalists and businesses) over those bodies that exercise functions of a public nature who are brought within scope. As a result, the public may gain greater confidence in the functions these bodies exercise or public services they provide and public debate may be better informed. This may generate direct 'economic welfare' benefits for society. There may be further 'economic welfare' benefits if, as a result of being brought within the Act, an organisation operates in ways which are more defensible to public scrutiny and which accord more closely to the preferences of society.

2.37 The inclusion of ACPO, FOS and UCAS within the FOIA is expected to increase their accountability, transparency and openness for the following reasons:

- the FOIA will provide the public with an enforceable right of access to information held by ACPO, FOS and UCAS. As a result a decision by ACPO, FOS and UCAS can be challenged to the ICO (and further up the appeals process) if they do not inform requestors whether they hold information that is requested or if they do not disclose that information;
- inclusion within the FOIA is likely to mean more people make requests for information from ACPO, FOS and UCAS as it provides a right to access to information that is familiar to the public that is widely used²¹;
- under the FOIA ACPO, FOS and UCAS will be required to adopt and maintain a publication scheme;
- the FOIA was intended to increase transparency in the public sector and the coalition agreement recognises that extending the scope of the FOIA will increase transparency.

2.38 ACPO, FOS and UCAS are being brought within the FOIA because the Secretary of State considers that they exercise functions of a public nature. The public should therefore have a general right of access to information held by them in relation to those functions, subject to any exemptions that apply.

2.39 This proposal does not necessarily indicate that there is a problem of public trust within these organisations. However, there have been a number of calls to bring these bodies within the FOIA including:

- Several parliamentary questions asking about ACPO, FOS and UCAS and their inclusion in the FOIA²²
- A tabled amendment to the Policing and Crime Bill to include ACPO within the FOIA to increase transparency in policing²³;
- ACPO, FOS and UCAS were all bodies suggested for inclusion in responses to the 2007 consultation 'Freedom of Information Act 2000: designation of additional public authorities';

²⁰ As set out in section 12 of the Freedom of Information Act 2000. The provisions regarding the charging of fees are set out in section 13.

²¹ The biannual Information Rights Tracker Survey carried out by MoJ to assess public awareness of and views about information rights indicates high levels of public awareness about the legal right to get hold of information about the work of a public authority (<http://www.justice.gov.uk/publications/statistics-and-data/foi/information-rights-tracker-surveys/index.htm>). In 2009, monitored central government bodies received a total of 40,548 non-routine FOI and EIR requests (Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, p.4).

²² ACPO: HC Deb, 28 February 2011, c87W; HC Deb, 6 September 2010, c3; HL Deb, 14 February 2011, c110W; HC Deb, 31 January 2011, c664W; HL Deb, 7 July 2009, c122W. FOS: HL Deb, 9 February 2011, c64W. UCAS: HL Deb, 14 February 2011, c110W; HL Deb, 3 June 2010, c6W.

²³ HL Deb 3 Nov 2009 cc 180 - 183

- Correspondence with the Ministry of Justice about the inclusion of ACPO, FOS and UCAS within the scope of the Act.

Benefits to bodies brought within scope

2.40 The proposal may also generate efficiency benefits if the increased scrutiny provided by the FOIA leads to those organisations who are brought into scope operating more efficiently. It is expected that as a result of increased public scrutiny the bodies brought within the scope of the Act will themselves become more efficient and effective, for example by reducing duplication, and realise consequential cost savings.

Benefits to bodies already within the scope of the FOIA

2.41 Bringing the bodies outlined above within the scope of the FOIA could reduce the number of requests that bodies already covered by the FOIA receive. This might be the case if FOI requests are directed towards a body brought within scope of the FOIA rather than towards other organisations who are already within scope (e.g. it might be the case that with the coverage of ACPO, requests to the Home Office fall). Some bodies may therefore benefit from a subsequent cost saving. However, the overall impact on the volume of requests received by organisations already within scope is unclear.

Key assumptions and risks:

2.42 Based on the 2006 Frontier Economics report 'Independent Review of the impact of the Freedom of Information Act'²⁴ it is assumed that the time taken to process an FOI request is 7.5 hours. This figure is based on central government departments and includes Ministerial consideration but it is the best estimate available. It is therefore considered that this may be an over-estimate of the time that the proposed publicly-owned companies would take to process an FOI request. Therefore, it is possible that the average costs developed may be overestimates.

2.43 Ministry of Justice statistics for other monitored bodies (monitored bodies that are not Departments of State) show that approximately 1.8% of initial requests go to internal review²⁵. Based on the Frontier Economics report it is assumed that the time taken to process an internal review is 30.6 hours. Again, a margin of uncertainty applies to these figures, which has not been calculated but which might not be insignificant.

2.44 The following assumptions, based on information from departmental experts on the FOIA²⁶ and MoJ and ONS statistics, have also been made. As above, a margin of uncertainty applies to these figures, which has not been calculated but which might not be insignificant:

- Time taken to set up a publication scheme (2 FTE weeks);
- Time taken to train staff to respond to requests (1 FTE week);
- Time taken to establish a system to respond to requests (2 FTE days);
- We have used gross weekly and gross hourly earnings data from the Office of National Statistics²⁷ and adjusted for superannuation and National Insurance contributions by 21.2% in order to estimate the cost of this time;
- The number of requests expected at each institution has been estimated by using data from similar monitored bodies, taken from the Ministry of Justice's annual reports on the FOIA²⁸.

2.45 The time estimates used in this impact assessment for processing FOI requests and internal reviews are based on the only piece of research carried out on FOI, the Frontier Economics report. This is the best information available and it is not possible for the Ministry of Justice to gather more

²⁴ Independent Review of the impact of the Freedom of Information Act, October 2006 by Frontier Economics. Available at <http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

²⁵ Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, table 6, figures for other monitored bodies, p.24

²⁶ The Ministry of Justice is responsible for Freedom of Information policy and as well as dealing with FOI requests directed towards the department it also assists other bodies within its remit with their information requests. The Central Clearing House was established in 2004 provides expert advice on complex, sensitive, or high profile requests for information; ensures consistency across central government in the handling of certain requests and works to develop, through litigation, the boundaries of the legislation in accordance with government policy. There is therefore significant experience of working with the FOIA and of other bodies experiences of the FOIA.

²⁷ www.statistics.gov.uk, Annual Survey of Hours and Earnings (ASHE) - 2009 Results

²⁸ Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, table 1, p.15

relevant estimates that are not based on central government, without incurring disproportionate cost. The Ministry of Justice will conduct wide ranging research on the costs and benefits of the FOIA as part of its work towards post-legislative scrutiny of the FOIA. This research, which will be submitted to a Parliamentary Select Committee for further consideration, is expected to take several months and will not be completed until the end of 2011. The time estimate set out in the Frontier Economics report are considered reasonable and the processes for any body in processing FOI requests will be broadly similar²⁹.

- 2.46 There is a risk that some of the assumptions obtained from the Frontier Economics report may no longer be valid as this report dates from 2006.
- 2.47 Since we are unable to predict with certainty the number of FOI requests that ACPO, FOS and UCAS would receive, there is a risk that the categories assigned to them may not be appropriate. This would significantly affect the costs to the bodies newly subject to the FOIA.
- 2.48 The volume of requests per category (high, medium and low) is based on figures from bodies monitored for Freedom of Information statistics but does not include Departments of State. However, these bodies may not be representative of the number of requests received by the bodies proposed for inclusion as several are high profile and receive an extremely high volume of requests³⁰. These figures may therefore inflate the estimates of number of requests

Net Impact of Option 1

- 2.49 In terms of monetised costs and benefits there would be an expected net present value of approximately -£4.4 million over a 10 year period starting in 2011/12. However, we expect there would be non-monetised benefits from increased transparency, accountability and openness, leading to greater public confidence, greater scrutiny over the delivery of public services and better informed public debate.

Summary

- 2.50 The coalition government has committed to “extend the scope of the Freedom of Information Act to provide greater transparency”³¹. The rights provided by the Freedom of Information Act provide benefits by providing the public with a legally enforceable general right of access to information held by public authorities. This enables the public to request access to information about how taxpayer’s money is spent, to scrutinise the bodies that provide them with services and hold bodies to account for decisions that affect them.
- 2.51 Following consultation with ACPO, FOS and UCAS the Secretary of State’s view is that these bodies exercise functions of a public nature and therefore they should be brought within the scope of the Act and be subject to the same scrutiny as other public authorities.
- 2.52 Accordingly, Option 1 is the preferred option to bring ACPO, FOS and UCAS within the scope of the Act. The benefits of Option 1 are considered to outweigh the costs.

3. Enforcement and Implementation

- 3.1 As mentioned above the Information Commissioner would enforce the proper application of the FOIA and ensure that the bodies that come within it comply. The Information Commissioner is the independent regulator of FOI and may issue Decision Notices about an organisation that they would need to comply with.
- 3.2 If a person wanted to appeal a decision of the ICO, that person would have to make an appeal to the First-Tier Tribunal (information rights). Following appeals to the Information Tribunal further appeals can be made on a point of law only to the Upper Tribunal (Administrative Appeals Chamber) and then subsequently the Court of Appeal and the Supreme Court.

²⁹ The only time consideration that is not relevant to non-Central government bodies is considered to be the time allocated for Ministerial consideration. However, other senior officials are likely to be involved in non-Central government requests rather than Ministers.

³⁰ For example, the Health and Safety Executive received 6,531 requests in 2009 which is significantly higher than any Department of State.

³¹ The Coalition: our programme for government

Specific Impact Tests

Equality Impact Assessment

- 4.1 An Equalities Impact Assessment initial screening has been completed and is attached in Annex 2. No adverse equality impact is anticipated and we expect a general positive equality impact as a result of a section 5 order.

Competition Assessment

- 4.2 ACPO, FOS and UCAS are not in competition with any other bodies. UCAS is solely responsible for managing applications to higher education courses in the UK.
- 4.4 There is a potential impact on competition where information is released by regulatory bodies about the bodies that they regulate. For example, if FOS releases more information then this could have implications upon competition between financial service providers. However, commercially sensitive information is exempt from release under the Act, subject to the public interest test, and therefore, it is unlikely that there would be a significant effect on competition.
- 4.5 There may be indirect effects on businesses as FOS is funded by levies and case fees which businesses FOS cover have to pay by law. These charges may be increased as a result of the costs of complying with the FOIA. However, if costs are increased this would affect all bodies and therefore we do not anticipate any impact on competition with increased costs.

Small Firms Impact Test

- 4.6 It is not envisaged that any small firms would be directly impacted by any extension of the Act.
- 4.7 Some small businesses covered by FOS may be affected as they pay levies and case fees to FOS. However, such an impact is expected to be minimal particularly as these costs would be a small proportion of FOS's annual budget.

Carbon Assessment

- 4.8 It is not considered that these proposals would lead to a significant change in carbon emissions. It may be the case that there is greater public scrutiny and transparency which leads to greater green efficiency within organisations.

Environmental Assessment

- 4.9 It is not considered that these proposals would have any other environmental impacts.

Health Impact Assessment

- 4.10 It is not considered that these proposals would have a significant impact on health.

Human Rights

- 4.11 It is not considered that extending the scope of the FOIA will have any Human Rights implications.

Justice Impact Test

- 4.12 The impact on the Justice System has been assessed in the main body of this impact assessment. The ICO would probably receive more appeals as a result of more bodies being brought within the Act. However, only a very small percentage of cases are appealed to the ICO so we do not expect the impact to be significant. The First-Tier Tribunal (information rights), Upper Tribunal (Administrative Appeals Chamber), Court of Appeal and Supreme Court may also see an increased workload when appeals are taken beyond the ICO but again we would expect this to be minimal due to the limited number of cases that reach these stages.

Rural proofing

- 4.13 It is not considered that there would be any specifically rural impacts from the proposals.

Sustainable Development

- 4.14 Extending the FOIA would increase the openness, transparency and accountability of those organisations who exercise functions of a public nature. This should promote good governance due to increased public scrutiny and awareness of the decisions of these organisations, would make organisations more efficient, allows the public to have access to the information about services that affect them and enables better informed public debate.

Privacy Impact Test (an MoJ Specific Impact Test)

- 4.15 Having considered the privacy impact assessment screening questions we believe there will be no significant adverse impacts on privacy.
- 4.16 It is likely that requests for personal information will be received by ACPO, FOS and UCAS either directly or indirectly. However, it is not expected that there will be any privacy impact as a result of additional bodies coming within scope. This is because the Act provides an exemption against release for personal information (Section 40 FOIA). Accordingly, information such as information that is personal data of which the applicant is the data subject and personal data within the definition of data in the Data Protection Act 1998 (paragraphs (a) to (d), section 1(1)) where release would contravene the data protection principles is exempt from release³².

³² These two examples are exemptions that are not subject to the public interest test whereby a balancing exercise is carried out in favour of and against disclosure in the public interest. However, some of the exemptions listed under section 40 are subject to the public interest test.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review:</p> <p>We plan to undertake post-legislative scrutiny of the Freedom of Information Act (FOI Act) as a whole, to see how well the Act is working in practice and whether there are further changes to be made. We do not have a timetable for this review but we plan to commence the review in late 2011. The outcome of the review will be used to assess the success of the policy as the principles underpinning post-legislative scrutiny apply equally to bodies newly subject to the Act as to those already subject to it.</p>
<p>Review objective:</p> <p>A review into the FOI Act will consider the costs and benefits of Freedom of information to see how that Act is operating since coming into force in 2005.</p>
<p>Review approach and rationale:</p> <p>Post-legislative scrutiny is a process for examining how the FOI Act has worked in practice, relative to the benchmarks and objectives identified during the passage of the Bill. A Memorandum will be prepared which will be considered by the relevant Select Committee who will, in turn decide whether it wishes to conduct more detailed inquiries into the Act. The content of the initial Memorandum has not yet been determined, however we are keen to cover the benefits brought by the legislation, how it is working in practice and an assessment of the costs of the operation of the Act.</p>
<p>Baseline:</p> <p>The review will consider the impact of the FOI Act since its implementation in 2005.</p>
<p>Success criteria:</p> <p>Increased transparency, accountability and efficiency. Post-legislative scrutiny is a process for examining how the FOI Act has worked in practice, relative to the benchmarks and objectives identified during the passage of the Bill.</p>
<p>Monitoring information arrangements:</p> <p>Freedom of Information statistics are collected quarterly by the Ministry of Justice in relation to central government bodies. The review will also consider other evidence depending on its scope.</p>
<p>Reasons for not planning a PIR:</p> <p>n/a</p>

Annex 2: Equality Impact Assessment

Equality Impact Assessment Initial Screening – Relevance to Equality Duties

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

The Freedom of Information Act 2000 (FOIA) gives any person the legal right to ask a public authority covered by the Act for recorded information that they hold. However, coverage is limited to bodies listed in Schedule 1 of the FOIA or those who meet the criteria set out in section 6. Government intervention is required in order to extend the scope of the FOIA. Section 5(1)(a) of the FOIA enables the Secretary of State to make an order to extend the coverage of the FOIA to any organisations that appear to him to be exercising functions of a public nature. We will broaden the application of the FOIA using this power and intend to bring ACPO, FOS and UCAS within the scope of the Act because, following consultation with those bodies, the Secretary of State considers that they exercise functions of a public nature.

2. Individual officer(s) & Unit responsible for completing the Equality Impact Assessment:

Catherine Bennion, FOI Policy and Strategy

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
<p>To include ACPO, FOS and UCAS within the FOIA under section 5.</p> <p>To help ensure the continual relevance and effectiveness of FOIA and to meet the public's demands for and government commitment to openness, transparency and accountability.</p>	<p>Extending the coverage of the FOIA will give the public greater access to official information about services that affect them. It will also lead to greater scrutiny over the delivery of public services and hold bodies that exercise functions of a public nature to account for the decisions they make.</p> <p>Organisations that exercise functions of a public nature should be subject to the same scrutiny as other public authorities.</p>

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

There is limited information available about how the Freedom of Information Act affects different groups. However, the biannual Tracker Survey carried out by MoJ to assess public awareness of and views about information rights indicates high levels of public awareness about the legal right to get hold of information about the work of a public authority. The MoJ publishes annual statistics on Freedom of Information requests for certain monitored bodies which shows that relatively high volumes of requests are received by a large variety of bodies. Current data shows a general increase in the volume of requests being received.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

The Freedom of Information Act (FOIA) gives any person the legal right to ask a public authority covered by the Act for recorded information that they hold. When, how and whether members of the public choose to exercise this right is up to the individual. In addition, the Act is requester blind so information about requesters that might allow fuller consideration of equality impacts is not available. It is therefore difficult to assess how this proposal could affect different groups of people because it simply seeks to increase the number of bodies that information may be requested from; the extension to additional bodies would not create any new equality impacts. It is worth noting that the Tracker Surveys to assess public awareness of information rights indicates a high level of awareness. In the January 2010 survey

showed 81% of people were aware that they had the “legal right to get hold of information about the work of a public authority”. Such a high level of awareness is not suggestive that large sections of the population are unaware of their right to request information under the FOIA, although we could aim to find out more about why the 19% who were unaware of their rights were in that position.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

The Freedom of Information Act allows any person to request official information from a public authority covered by the Act. If members of the public choose to exercise their rights and request information it would seem reasonable to assume that the disclosure of information would have a positive impact on them. Indeed the aims of freedom of information and transparency in general are to provide taxpayers with information about how their money is spent and to provide information about the services that affect the public. If extended by bringing ACPO, FOS and UCAS within the scope of the FOIA, this in turn would promote better informed public debate and scrutiny of the decisions of organisations that exercise functions of a public nature, so creating an even more positive impact. Even if people chose not to exercise their rights under Freedom of Information, they may still benefit from others doing so, for example, journalists who then report on their findings or from efficiency savings in public authorities as a result of information obtained from requests. This would seem to be a general positive impact rather than delivering benefits for a specific group.

It is also possible that due to the increased public scrutiny as a result of ACPO, FOS and UCAS being included within the Act, that equality of opportunity will increase because people may become more aware of the Act and who it applies to. Further, the bodies included would be scrutinised to a greater degree than at present and so there will be greater pressure on their part to resolve any inequalities that might be exposed.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

No, there is no evidence that additional work would achieve this, although we would expect some increase in equality by extending the Act.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

There is no evidence to suggest that extending the Freedom of Information Act to ACPO, FOS and UCAS will have an adverse equality impact on any groups of people. The right to request access to information held by public authorities provided by the Freedom of Information Act is available to anyone and we simply propose to extend this right to additional bodies.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

Yes, it is possible that the proposed changes will have no equality impact as the right to information is available to everyone.

10. Is a full Equality Impact Assessment Required? **No**

The Freedom of Information Act can be used by any member of the public. When a request for information is received, it is the information requested that is assessed in line with the legislation and not the requester; the FOIA itself is requester blind. There is no requirement to complete a full Equality Impact Assessment here because the proposal is simply to include additional bodies within the scope of the FOIA.

11. If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

The Tracker Survey carried out by MoJ to assess public awareness of and views about information rights could be used to assess any equality impact. MoJ also plans to conduct post-legislative scrutiny of the Freedom of Information Act as a whole which will include consideration of the benefits or otherwise of the legislation, including potential equality impacts.

12. Name of Senior Manager and date approved

The Ministry of Justice is bringing the Association of Chief Police Officers, the Financial Ombudsman Service and the Universities and Colleges Admissions Service within the scope of the Freedom of Information Act because the Secretary of State has found that they appear to exercise functions of a public nature under section 5(1)(a) of the Act. Section 5(1)(a) of the FOIA enables the Secretary of State to make an order to extend the coverage of the FOIA to any organisations that appear to him to be exercising functions of a public nature. We do not anticipate any adverse equality impacts as a result of additional organisations coming within the scope of the Act but it is likely that there will be a general positive equality impact as a result of increased efficiency, transparency and accountability.

Name (must be grade 5 or above): Belinda Lewis

Department: Ministry of Justice

Date: 01.03.11