
FREEDOM OF INFORMATION TODAY

A literature review

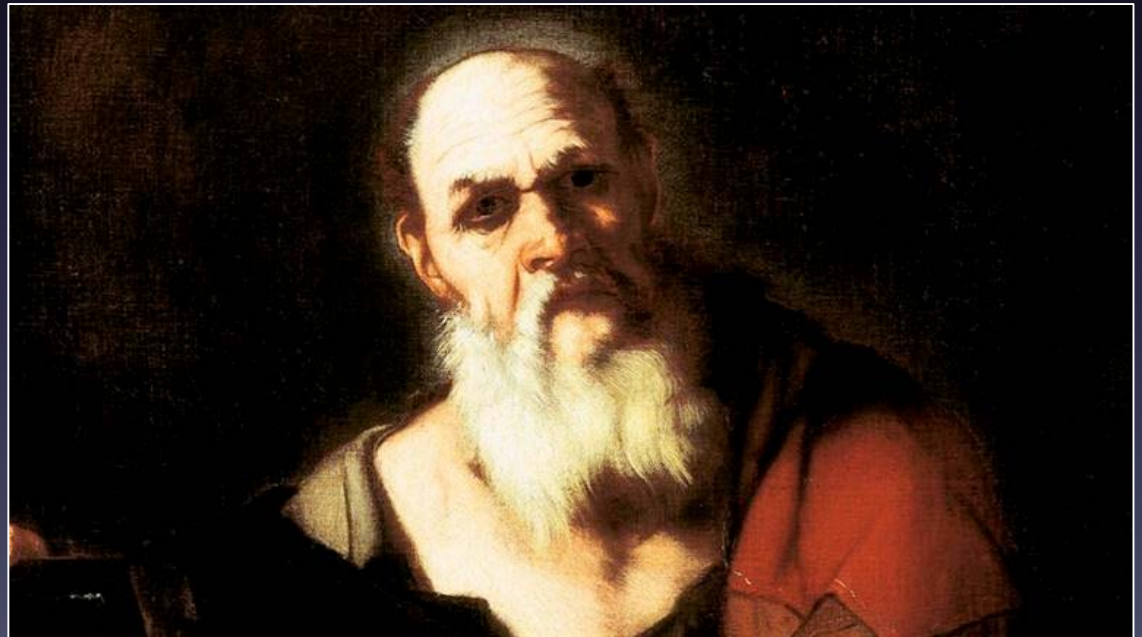


JEANZ Conference 2015

Greg Treadwell, AUT University

Freedom of information

Socrates demanded the 'liberty to know, to utter, and to argue freely according to conscience, above all liberties' (cited in Pearson, 2014).



Freedom of information

Almost 200 years later, Ralph Nader called a well-informed public the 'lifeblood' of democracy' (p. 1).



Freedom of information – a doctoral project

RQ: How do journalists make sense of the effects of structural pluralism on freedom of information in Aotearoa-New Zealand?

LITERATURE REVIEW:

- Overview of FOI
- Global trends
- NZ context



The open-government paradox



President Peña Nieto

'México está lejos de cumplir con un gobierno abierto.'

(CENCOS, 2015)

'Mexico is far from reaching open government.'

What is FOI?

FOI regimes are legislative mechanisms for ensuring citizens have access, as a 'presumptive right', (Birkinshaw, 2006, p. 188) to information held by their government.

NZ:

OIA 1982

LGOIMA 1987



The three purposes of FOI

1. To provide access for any citizen to the records the state holds on them
2. To improve accountability of government through transparency
3. To improve and increase citizen participation in government

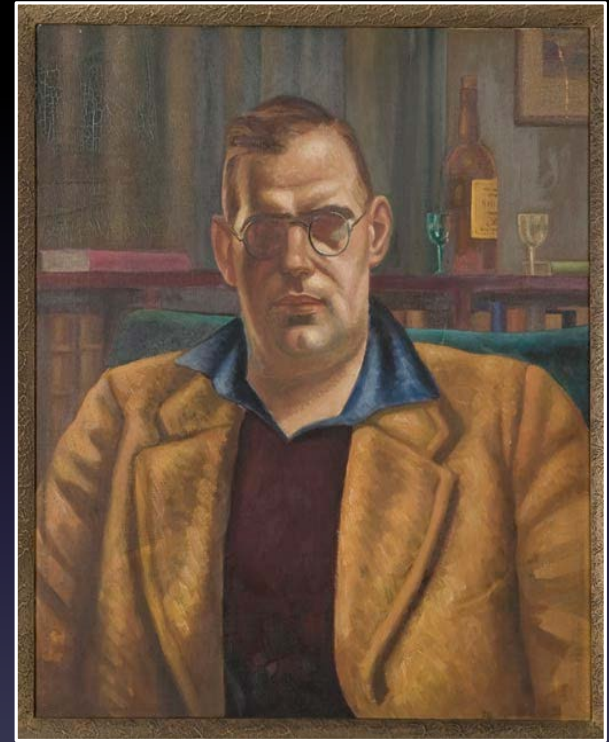


The three purposes of FOI

The Committee on Official Information:

The case for openness rests on the 'democratic principles of encouraging participation in public affairs and ensuring the accountability of those in office; it also derives from concern for the interests of individuals'.

(Danks, 1980, p. 13).



Alan Danks

The origins of FOI



1766 Sweden

Anders Chydenius (1729-1803)

Influenced by John Locke et al but also the Imperial Censorate of the Tang Dynasty, 7th - 10th century (Steinberg, 1997, p. 2).

The origins of FOI

1966 USA

1982 NZ & Australia

1983 Canada

2005 UK



2015 Paraguay became the **104th** country to pass right-to-information laws



Democracy's need for FOI

FOI is now inseparable from theories of elitist, pluralist, legal, representative and deliberative democracy (Held, 2006).

Lidberg (2006) considers FOI rests on three 'pillars' of democracy theory:

- Political representation
 - Political accountability
 - The role of the media as a 'fourth estate'
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Democracy's need for FOI

Monitory democracy

The Life and Death of Democracy
John Keane (2011)



- a variety of 'post-parliamentary' politics defined by the rapid growth of many different kinds of extra-parliamentary, power-scrutinising mechanisms
 - 'Within and outside states, independent monitors of power begin to have tangible effects' (pp. 212-213).
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How to undermine FOI

Sounds great but ...

'It is important to remember that the FOIA is a unique statute, since its spirit encourages government officials to display an "obedience to the unenforceable."'

Ralph Nader (1970, p. 2)

How to undermine FOI

Window dressing

- mandatory prerequisites to trade or international finance deals (Roberts, 2006, p. 109)
- Tools of oppression of journalists: eg, *Zimbabwean Access to Information and Protection of Privacy Act*.



How to undermine FOI



Cook Islands News editor John Woods:

'We believe, and argue, that the public has every right to know what Cabinet decides, what deals it does and what funds it spends.
(2010, p. 18)

How to undermine FOI

The war on openness

- Within weeks of 9/11 the US government became significantly less open
 - Despite promises of openness, Obama's record on FOI is worse than George Bush's (Moos, 2012)
 - Tony Blair: FOIA was his 'stupidest' mistake (Blair, 2010)
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How to undermine FOI

Structural pluralism: the 'privatised sector'

- A grey area for FOI
 - SOEs, private prisons, contactors to the state, charter schools
 - 'As authority has shifted to quasi-governmental or private organizations, the ambit of [FOI laws] has shrunk' (Roberts, 2001, pp. 2-3).
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How to undermine FOI

Administrative discretion

Echoing Nader, Roberts (2006) wrote: 'Whether a freedom of information law succeeds in securing the right to information depends heavily on the predispositions of the political executives and officials who are required to administer it' (p. 176).

Eg, NZ Government's 'no surprises' policy

FOI in Aotearoa-NZ

The Official Information Act 1982

The Local Government Official Meetings and Information Act 1987

Celebrated as a world leader in liberal FOI regimes.

- Distinct for its view that information does not have to be documented
 - Applauded for its affordable and accessible appeal mechanism
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Scholarship

Where is the scholarship on FOI in A-NZ?

- legal studies (eg, Price, 2006)
- policy studies (eg Poot, 1997; White, 2007)
- rights-based approaches to sociology and political science
- and, to a lesser extent, in journalism studies (eg, du Fresne)

Research aim: to strengthen the journalism-studies voice in the narrative

FOI in Aotearoa-NZ

- Much research is comparative (eg, Hazel & Worthy, 2010)
 - NZ is a benchmark in a number of overseas studies (Hazell, 1991; Hazell & Worthy, 2010; Nam, 2012)
 - Very little on journalism's intersection with FOI
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FOI in Aotearoa-NZ

The decline

Research by Price (2006) recorded 'deep ambivalence' on the part of information requesters, some of whom were journalists.

Common stalling tactics:

- transferring requests between agencies;
 - seeking clarification of the request, then treating this as a new request with a fresh 20-working day time limit;
 - insisting they are 'working on it' or 'conducting consultations';
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FOI in Aotearoa-NZ

- claiming that the person processing the request is away or sick or that it is 'on the minister's desk' awaiting final approval
 - waiting for weeks and then refusing the request;
 - losing or simply ignoring requests;
 - dragging the chain when the Ombudsmen become involved; and
 - brazenly not releasing information immediately even after agreeing to do so following an Ombudsman's investigation (2006, pp. 11-12).
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FOI in Aotearoa-NZ

Price's conclusion that New Zealand effectively has two FOI systems:

- one for requesters wanting non-sensitive information who have their requests processed efficiently and without fuss
- another for requesters of sensitive material, which is characterised by a disregard for the spirit of the law.

FOI in Aotearoa-NZ

Nicola White (2007)

- many requests for information are unproblematic
 - real uncertainty exists about the public's right to information
 - the ombudsman's role has been a success
 - processing delays have long been a problem and have not improved
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FOI in Aotearoa-NZ

- large requests are problematic
 - officials need more training
 - the protection of officials' advice from disclosure is still contentious
 - the digital age brings its challenges
 - it may be time (2007) to introduce a pre-emptive, push-model of information release.
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FOI in Aotearoa-NZ

- the 'political-administrative interface' was problematic,
 - large requests face administrative issues which can breed distrust
 - officials often granted themselves time extensions when dealing with requests
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FOI in Aotearoa-NZ

White (cont):

- government systems were at times at odds with electronic data
- officials are reluctant to commit their advice to document
- administration of the act is a burden
- a balance of respect from both sides is missing.

FOI in Aotearoa-NZ

Palmer wrote on the issues raised by the first of two reviews by the NZLC:

- the burden caused by large and broadly defined requests
 - tardiness in responding to requests
 - resistance by agencies outside the core state sector
 - the absence of a co-ordinated approach to supervision, compliance, policy advice and education regarding the Act and other information issues (Palmer, 2007, p. 11)
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FOI in Aotearoa-NZ

State of the law

- Increasingly part of the narrative – needs boosting by journalism studies
 - Twice (1998 & 2012) the NZ Law Commission has reviewed the OIA. Recommended a complete rewrite in 2012.
 - Dirty Politics – ‘37 minutes. Not bad for a pizza delivery’ – G.Robertson (Fisher, 2014)
 - Issues of structural pluralism
 - Early days in shift from ‘pull’ to ‘push’
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FOI in Aotearoa-NZ

White:

‘The system as it works now is eroding trust in the state sector rather than building it... [I]n essence, the ambiguity of the rules leaves people free to judge behaviour against different standards, or to infer motives and conduct from their own perspective.’

FOI in Aotearoa-NZ

To be included:

The chief ombudsman's 2015 inquiry into the behaviour of state agencies . . .

FOI – a literature review

Conclusions:

- While the open-government movement is picking up pace, the scholarship around FOI at a local level, including in NZ, reveals a narrative of frustration and failure *when it really matters*
- Research is required into the day-to-day professional practice of journalists relying on the OIA

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