

Rt Hon Lord Falconer of Thoroton QC
Department for Constitutional Affairs
Selborne House
54 Victoria Street
London
SW1E 6QW

11 December 2006

THE GOVERNMENT'S PROPOSED CHANGES TO FREEDOM OF INFORMATION

I am writing to express the BBC's strong opposition to the proposed changes to the freedom of information regulations, which the government has indicated that it is minded to introduce.

The BBC believes these proposals would dramatically curtail the ability of BBC journalists and others to put into the public domain material which merits disclosure in the public interest. In this way the proposed changes would actually obstruct the aim of increasing openness and transparency in public life that lies behind the government's introduction of FOI. That would be unfortunate.

The first proposal - to allow reading, consideration and consultation time to count towards the cost limit for FOI answers - would have the greatest impact. If implemented, it would curtail those FOI requests which are most important and of widest public interest. This is because it is generally these requests that are subject to the greatest amount of consideration and consultation. It is unlikely to affect the mundane, easily answered requests. But requests on topics of significant and extensive public interest tend to be considered at length by numerous officials and ministers, and could easily exceed the proposed cost limit if time spent on this could also be taken into account.

The proposal would also give public authorities an incentive to employ particularly lengthy consideration and consultation processes for sensitive requests, so as to maximise the chance of refusing them by exceeding the cost limit. In the case of some public authorities this could become a crucial loophole. Perversely inefficient authorities with wasteful processes will be better able to

avoid difficult disclosures than decisive and efficient ones. I cannot believe it is the government's intention to reward inefficiency in this way.

The second proposal - to allow the aggregation of all requests made by any legal person to one public authority within sixty working days – would have bizarre and unacceptable consequences.

As currently suggested it would mean that if one BBC journalist puts one or more requests to a public authority which come close to the cost limit (and implementation of the first proposal increases the chance that just one request will do so) then no other BBC journalist could put an FOI request to that authority about anything at all for the next three months. Other media organisations would clearly be affected in a similar way.

This seems to subvert the original intentions of the freedom of information legislation.

As of course you know, the BBC is in a virtually unique position as both a media organisation whose journalists submit large numbers of FOI requests and also as a public authority which receives large numbers.

We believe that FOI has strengthened the BBC's ability to achieve the objective of delivering greater accountability and transparency to licence fee payers. While our experience of handling requests has been challenging it has also been rewarding. From our perspective as an authority receiving many requests we see absolutely no need for the measures that are being proposed.

I therefore hope that the government will think again and withdraw these proposals.

The BBC also believes that any plans to change such important regulations should be subject to a full consultation exercise with a formal consultation document indicating the government's reasoning and a definite deadline for responses.

Mark Byford