

Title: Impact Assessment on extending the coverage of Freedom of Information Act 2000 Lead department or agency: Ministry of Justice Other departments or agencies: Information Commissioner's Office	Impact Assessment (IA)
	IA No: MOJ 046
	Date: 21/01/2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
Contact for enquiries:	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Section 6 of the Freedom of Information Act 2000 (FOIA) brings within the scope of the Act companies wholly owned by the Crown or one public authority. However, companies wholly owned by two or more public authorities fall outside the scope of section 6. This is considered to be illogical and inconsistent with the intentions of the Act. Government intervention is required in order to extend the scope of the FOIA to cover companies wholly owned by two or more public authorities.

What are the policy objectives and the intended effects?

The policy objectives underlying the FOIA include:

- Encouraging greater openness, transparency and accountability
- Enabling greater scrutiny over the delivery of public services
- Meeting the public demand for greater access to official information about services that affect them

The intended effect is to ensure that companies wholly owned by more than one public authority are brought within the scope of the FOIA, and as a result, are subject to the same scrutiny as companies wholly owned by one public authority and become more open, transparent and accountable.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing: retain the current coverage of the FOIA (base case)

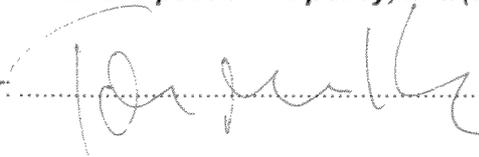
Option 1: Include companies wholly owned by more than one public authority within the scope of the FOIA

Option 1 is the preferred option as it is expected that this would lead to greater openness, transparency and accountability. In addition, it resolves a potential inconsistency in the Act whereby some companies wholly owned by public authorities are not within the scope of the Act.

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 Implementation 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:  Date: 21/01/2011

Summary: Analysis and Evidence

Policy Option 1

Description: To include the bodies listed in paragraph 17 within the scope of the Freedom of Information Act (2000)

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

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				

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

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

There will be some transitional and ongoing costs to companies brought within scope of the FOI Act. The number of companies wholly owned by two or more public authorities is unknown, as is the number of requests that will be received, and so it has not been possible to estimate these costs. There will be ongoing costs to Information Commissioner's Office ("ICO") from an increased number of appeals and enforcing proper application of FOIA. There will also be costs to the Information Tribunal and higher courts and to wider public sector from additional follow-up FOIA requests.

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

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 companies wholly owned by more than one public authority, which will benefit society. Increased public access to information could lead to greater scrutiny, increased awareness and greater confidence in those companies brought within scope. Organisations currently within the scope of the FOIA may receive fewer requests (if these are instead directed to the companies being brought within scope), although the net impact is unclear.

Key assumptions/sensitivities/risks

Discount rate (%)

- It is not possible to ascertain how many companies would fall within the FOIA as a result of an amendment to section 6. Nor is it possible to predict, with any certainty, the volume of requests that each organisation being brought within scope would receive, which may change over time, perhaps significantly. These volumes drive the impacts considered, which have not been monetised.
- The net impact of the proposal on the volume of FOI requests made to bodies already within the scope of the FOIA is not clear and has not been monetised.

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

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England, Wales, Northern Ireland		
From what date will the policy be implemented?			April 2012		
Which organisation(s) will enforce the policy?			Information Commissioner's Office, TS, HMCS		
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?			Yes		
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

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties	Yes	12
Economic impacts		
Competition	Yes	12
Small firms	Yes	12
Environmental impacts		
Greenhouse gas assessment	No	12
Wider environmental issues	No	12
Social impacts		
Health and well-being	No	12
Human rights	No	12
Justice system	Yes	12
Rural proofing	No	13
Sustainable development	Yes	13

Evidence Base (for summary sheets) – Notes

References

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)

+ Add another row

Evidence Base

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										
Total annual costs										
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 options for extending the scope of the Freedom of Information Act 2000 (“FOIA”) to companies wholly owned by more than one public authority and the impact of such an extension on those companies.
- 1.2 Section 6 of the FOIA defines ‘publicly-owned companies’ that are classed as public authorities subject to the right for information for the purposes of the Act. The current wording of section 6 is ambiguous and has generally been interpreted to mean that only companies wholly owned by one public authority, rather than more than one, are subject to the Act. The Ministry of Justice proposes removing this anomaly and bringing companies wholly owned by more than one public authority within the scope 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.
- 1.4 Since coming into force in 2005, the Freedom of Information Act is now widely used across central and local government¹ and the wider public sector. The Government considers that it is now time to consider companies not currently covered by the Act to improve the openness, transparency and accountability of those companies.
- 1.5 The primary objective of the FOIA is to increase the openness, transparency and accountability of public authorities and companies wholly owned by public authorities. 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.

Problem under consideration

- 1.6 Section 6 of the FOIA brings within the scope of the Act companies wholly owned by one public authority. However, companies wholly owned by two or more public authorities fall outside the scope of section 6. This is considered to be inconsistent with the intentions of the Act.

Economic Rationale for intervention

- 1.7 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).
- 1.8 Intervention in this case would be justified primarily on the grounds of correcting a potential failure in an existing government intervention. The intention of the FOIA was to cover companies wholly owned by public authorities. Amending section 6 will bring legislation into line with this original intention.
- 1.9 There are also a further set of equity and efficiency impacts associated with the proposal. Extending the coverage of the FOIA would give the public greater access to official information about services that affect them, ensuring greater public scrutiny over those companies and potentially greater public confidence in the functions they perform or public services they provide. This may generate direct economic welfare benefits. There may be further economic

¹ Freedom of Information Act 2000 – Annual Statistics on implementation in central government, Ministry of Justice publication

welfare benefits if as a result, companies operate more closely in line with the preferences of society.

- 1.10 The proposal may also generate efficiency benefits if the increased scrutiny provided by the FOIA leads to those companies being brought into scope operating more efficiently. However, as the proposal is likely to increase the administrative burdens placed on the affected companies, the proposal will generate some associated efficiency costs. The proposal would be justified if the benefits outlined above outweigh the cost of these administrative burdens.

Affected stakeholder groups, organisations and sectors

- 1.11 Extending the scope of the FOIA would primarily impact on those companies which would become subject to the FOIA. There is limited data on the number of companies wholly owned by two or more public authorities and therefore it has not possible to determine all the companies that would be affected by amending section 6.

- 1.12 However, enquiries were made in each of the sectors detailed in Parts II to V of Schedule 1 to FOIA². These enquiries were mainly concentrated on the Local Government sector, which seemed most likely to contain companies wholly owned by two or more public authorities. This research indicated that approximately 120 bodies in the local authority sector would be impacted by a section 6 amendment by virtue of being wholly owned by one or more local authority.

- 1.13 Examples of the types of bodies impacted include:

- **Manchester Airport Group:** owned by the ten local authorities of Greater Manchester (the Council of the City of Manchester own 55% and the remaining 9 local authorities own 5% each)
- **Gloucestershire Airport:** jointly owned by Gloucester City and Cheltenham Borough Councils, who each have a 50% shareholding and appoint 3 Non-Executive Directors to its Board
- **Connexions Nottinghamshire Limited:** jointly owned by Nottingham City Council and Nottinghamshire County Council.
- **Coventry and Solihull Waste Disposal Company:** owned two thirds by Coventry City Council and one third by Solihull MBC
- **Tamar Bridge and Torpoint Ferry Joint Committees – Joint Venture:** the operation, maintenance and control of the Tamar Bridge and Torpoint Ferry are carried out by the Tamar Bridge and Torpoint Ferry Joint Committee on behalf of Plymouth City Council and Cornwall Council.
- **Care Homes:** it is likely that there are a number of care homes owned by more than one public authority
- **Gunnersbury Park:** owned by Hounslow and Ealing Borough Councils
- **Eastern Shires Purchasing Organisation (ESPO):** owned by Leicestershire, Cambridgeshire, Lincolnshire, Norfolk and Warwickshire county councils, as well as Leicester and Peterborough city authorities

- 1.14 In addition to the companies that would be affected by an extension of the FOIA, the following groups would also be affected by the proposals:

- **Private citizens:** would be able to make FOIA requests to the companies 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 may apply.
- **Journalists:** would be able to make FOIA requests to the companies 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 may apply.
- **Businesses:** would be able to make FOIA requests to the companies 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

² Part II – Local Government; Part III – The National Health Service; Part IV – Maintained Schools and Other Educational Institutions; Part V - Police

case, to have that information communicated to them subject to any exemptions that may apply.

2. Costs and benefits

2.1 This Impact Assessment identifies 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.

Option 0: "Do Nothing" (base case)

- 2.2 Under the "do-nothing" option Section 6 would not be amended to cover companies wholly owned by more than one public authority.
- 2.3 In 2009, monitored central government bodies received a total of 40,548 non-routine FOIA and Environmental Information Regulation ("EIR") requests³. Departments of State received 59% of these requests while other monitored bodies received the remaining 41%⁴.
- 2.4 If no action is taken some bodies that are wholly owned by public authorities would continue to be exempt from FOI requests. These bodies may attract public criticism for not being open, transparent and accountable. 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 and that other bodies already covered by FOIA may receive a higher volume of requests as they will receive requests about those companies not currently covered.
- 2.5 The "do-nothing" option is compared against itself and therefore its costs and benefits are necessarily zero, as is its net present value (NPV)⁵.

Option 1: Amend section 6 to cover companies wholly owned by more than one public authority

Description

- 2.6 This option is to amend section 6 of the FOIA to cover companies wholly owned by more than one public authority rather than just those wholly owned by one public authority.
- 2.7 Those companies brought within the scope of the FOIA would 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.
- 2.8 It is difficult to ascertain how many companies would come within the scope of the Act following an amendment to section 6. However, our research based on the sectors detailed in Parts II to V of Schedule 1 of the FOIA⁶ has indicated the following:
- **Part II** – Local Government: approximately 120 bodies brought within scope
 - **Part III** – The National Health Service: no examples identified
 - **Part IV** – Maintained Schools and Other Educational Institutions: no examples identified. Many universities wholly own companies in their own right but these companies are already covered.
 - **Part V** – Police: some safety camera partnerships would fall within the FOIA as a result of a section 6 amendment for example where they are owned by a local authority and police authority. However, no other examples have been identified.
- 2.9 Some examples of the companies identified are included in the 'affected stakeholder groups, companies and sectors' section above. Of the companies identified it is clear that there is a

³ Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, executive summary, p.4

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

⁵ 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.

⁶ Part I – General, covers central government bodies. Companies wholly owned by the Crown are within scope under section 6 and this would include companies owned by more than one government department. Therefore, Part I is not considered as part of the Impact Assessment.

variety of companies that vary greatly in size and the nature of their work. Some companies such as Manchester Airport Group are large companies and we would expect them to receive a greater volume of FOI requests than smaller companies such as Connexions Nottinghamshire.

Costs of Option 1

Transitional costs

Costs to companies wholly owned by more than one public authority

- 2.10 The companies brought within the scope of the FOIA would be required to ensure they have in place suitable processes to log, allocate and respond to requests for information. These companies would also have to ensure that all staff responsible for dealing with requests receive appropriate training. These companies would also need to ensure that they have the appropriate appeals processes in place if requesters are not content with the responses they receive.
- 2.11 In addition, companies 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:
- specify classes of information which the public authority publishes or intends to publish;
 - specify the manner in which information of each class is, or is intended to be, published; and
 - specify whether the material is, or is intended to be, available to the public free of charge or on payment.
- 2.12 As outlined above, the number of companies being brought within the scope of the FOIA is unclear. Further, the volume of FOI requests received by each organisation is uncertain and likely to vary over time, perhaps significantly. However, in order to estimate the average transition cost each organisation may incur, the following indicative scenario is presented.
- 2.13 If 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, then based on average earnings figures⁷, it is estimated that each organisation brought in-scope might incur transition costs of approximately £2,000. This may vary on a case by case basis, depending on the approach of each organisation.

Ongoing costs

Costs to companies wholly owned by more than one public authority

- 2.14 In addition to one-off transition costs, companies brought into the scope of the FOIA will also incur ongoing costs relating to receiving and responding to requests. The overall volume of companies being brought into scope is unclear. Further, as outlined above, the number of requests received by each organisation is unclear and is likely to vary over time. For this reason, it has not been possible to estimate ongoing costs incurred per organisation.
- 2.15 However, an indicative scenario has again been developed based on the limited relevant information available. Table 1 indicates the volume of requests that some of the identified companies may receive, based on the potential level of public interest and the size of each organisation. Those bodies that may expect to receive greater than 1,000 FOIA requests each year have been classified as 'high' volume; those bodies that may expect to receive between 100 and less than 1,000 FOIA requests each year have been classified as 'medium' volume; and those bodies that may expect to receive less than 100 FOIA requests each year have been classified as 'low' volume. These estimates should be viewed as indicative only.

⁷ ONS data on gross weekly earnings (2009 data) uplifted to by 21.2% to account for national and insurance and superannuation costs, and adjusted to 2010/11 price levels using HM Treasury's GDP deflator.

Table 1: Companies brought within the scope of the FOI Act and volume of requests expected

Companies brought within the scope of the FOI Act	Volume of requests expected (category)
Connexions Nottinghamshire Limited	Low
Coventry and Solihull Waste Disposal Company	Low
Tamar Bridge and Torpoint Ferry Joint Committees – Joint Venture	Low
Care Homes	Low
Gunnersbury Park	Low
Eastern Shires Purchasing Organisation (ESPO):	Low
Gloucestershire Airport	Medium
Manchester Airport Group	High

2.16 The Ministry of Justice currently publishes FOIA statistics on a range of monitored public bodies. These bodies have been classified according to the volume of FOIA requests received.⁸ Frontier Economics estimate that an FOIA request takes 7.5 hours on average to process and internal reviews takes 30.6 hours on average to process.⁹ Multiplying this average processing time by the volume of requests received, and then by average earnings¹⁰ produces an indicative estimate of annual cost per organisation being brought into scope. Estimates have been produced for companies 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, including, for example whether they are national or local companies.

Table 2: Indicative volume of requests and average annual cost of processing FOIA requests and internal reviews

Volume of requests received	Indicative average annual cost to organisation of FOIA requests (2010/11 prices)
Low	£4,000
Medium	£29,000
High	£245,000

2.17 These estimates should be viewed as indicative only. The actual costs faced are likely to vary on a case by case basis, and over time, depending on the approach of each organisation.

2.18 In addition to the cost of dealing directly with requests, companies being brought within the scope of the FOIA may face other associated costs. One result of the proposal may be increased public scrutiny and pressure for companies 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, companies 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 the adopted approach of each individual organisation.

2.19 It is possible that the costs of the FOIA incurred by the companies brought within scope of the FOIA will be passed onto consumers of the services those companies provide. However, the

⁸ 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 the bodies that would be brought within the FOIA by amending section 6.

⁹ <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

¹⁰ , ONS data on gross weekly earnings (2009 data) uplifted to by 21.2% to account for national and insurance and superannuation costs, and adjusted to 2010/11 price levels using HM Treasury’s GDP deflator.

nature of many these bodies is such that many operate on a not for profit basis or are already funded by a public authority and therefore will not pass on their costs. In addition, the benefits to consumers including greater confidence in these companies, increase scrutiny and increased efficiency are considered to outweigh these costs.

Costs to other bodies who are already within the scope of the FOI Act

2.20 These proposals may also result in additional requests being made to bodies already covered by the FOIA. If information received from companies wholly owned by more than one public authority 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.

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

2.21 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 companies are complying with the FOIA, it would incur additional costs.

2.22 In 2009, there were 206 appeals made to the ICO relating to the refusal of information requests by monitored bodies¹¹. 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 FOIA requests received by central government departments and other monitored bodies in 2009 only 0.5%¹² were appealed to the ICO. For this reason, the additional costs to the ICO as a result of the proposal are expected to be minimal.

2.23 There are currently over 100,000 bodies covered by the FOIA and in comparison relatively few bodies will be brought within the FOIA as a result of a section 6 amendment. This also suggests any impact would be minimal.

Costs to HM Courts and Tribunals Service

2.24 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.

2.25 However, there are currently over 100,000 bodies covered by the FOIA and in comparison relatively few bodies will be brought within the FOIA as a result of a section 6 amendment. This suggests any impact would be minimal.

2.26 Further, following appeals to the Information Tribunal further appeals can be made to the Upper Tribunal (Administrative Appeals Chamber) and then subsequently, on a point of law only, through High Court, then Court of Appeal and then to the Supreme Court. There may be additional costs to HMCTS if a higher volume of appeals go to the courts although very few cases reach this stage. It is anticipated that this would affect only a small volume of cases and any associated costs are expected to be minimal.

2.27 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 requestors

2.28 There are no charges for making an FOI request but those making a request would be subject to the administrative and other costs of doing so, including costs of time taken and costs of communicating. In specific circumstances a public authority can request a fee to answer a request where the fee exceeds the cost limit for replying to a request¹³ but this is unusual and therefore this impact is expected to be minimal.

¹¹ Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, table 8, p.28

¹² 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>.

¹³ 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.

Benefits of Option 1

Ongoing Benefits

Society

- 2.29 Extending the coverage of the Freedom of Information Act (2000) will give the public greater access to official information about services that affect them, ensuring greater public scrutiny (including from private individuals, journalists and businesses) over those companies being brought within scope. As a result, the public may gain greater confidence in the functions these companies perform 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, companies operate in ways which are more defensible to public scrutiny and which accord more closely to the preferences of society.
- 2.30 The proposal may also generate efficiency benefits if the increased scrutiny provided by the FOIA leads to those companies being brought into scope to operate more efficiently.
- 2.31 One of the main benefits of intervention in this case would be to correct a failure in an existing government intervention. We believe the intention of the FOIA was to apply to all companies owned by public authorities. Amending section 6 will bring legislation back into line with this original intention.

Companies already within the scope of the FOIA

- 2.32 Bringing companies wholly owned by more than one public authority 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 FOIA requests are directed towards the companies 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 introduction of Manchester Airport Group, requests to the Department for Transport and Manchester City Council fall). Some companies 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 relating to indicative scenarios

- 2.33 Based on the 2006 Frontier Economics report 'Independent Review of the impact of the Freedom of Information Act'¹⁴ it is assumed that the time taken to process an FOIA request is 7.5 hours. This figure is based on central government departments and includes Ministerial consideration. 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 FOIA request. Therefore, it is possible that the average costs developed may be overestimates.
- 2.34 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 review¹⁵. 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.
- 2.35 The following assumptions, based on information from departmental experts on the FOIA 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 Statistics¹⁶ and adjusted for superannuation and National Insurance contributions by 21.2% in order to estimate the cost of this time;

¹⁴ 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>

¹⁵ 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

¹⁶ www.statistics.gov.uk, Annual Survey of Hours and Earnings (ASHE) - 2009 Results

- 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 FOIA¹⁷.

- 2.36 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.
- 2.37 Since we are unable to predict with certainty the number of companies that would be affected by a section 6 amendment or all the bodies themselves that would be impacted any figures on the impact of an amendment are liable to change. The research we have conducted is not extensive and therefore not conclusive regarding the impact on the companies wholly owned by more than one public authority.
- 2.38 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 requests¹⁸. These figures may therefore inflate the estimates of number of requests.

Net Impact of Option 1

- 2.39 It has not been possible to quantify the impacts outlined above, in part as the number of publicly owned companies that will be brought into scope is uncertain, as is the expected volume of FOI requests received.

Summary

- 2.40 The coalition government has committed to "extend the scope of the Freedom of Information Act to provide greater transparency"¹⁹. The rights provided by the Freedom of Information Act provide benefits including allowing the public to request access to information about how taxpayer's money is spent, enabling the public to scrutinise the bodies that provide them with services and hold bodies to account for decisions that affect them.
- 2.41 Accordingly, Option 1 is the preferred option as it means the FOIA would cover companies wholly owned by more than one public authority rather than those wholly owned by just one public authority. There is no reasonable rationale for the distinction and we do not believe it was the intention of the legislation to make such a distinction. The benefits of Option 1 are considered to outweigh the costs.

3. Enforcement and Implementation

- 3.1 We will not consult companies wholly owned by more than one public authority regarding falling within the scope of the FOIA directly. Central data on companies wholly owned by more than one public authority is limited but we will liaise with central government departments and other representative bodies to ensure that those bodies who will fall within the scope of the FOI Act as a result of a section 6 amendment are made aware of their obligations.
- 3.2 We will also ensure that those bodies have sufficient time to prepare for their responsibilities under the FOI Act and any amendment to section 6 will not be commenced immediately.
- 3.3 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.
- 3.4 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 to the Upper Tribunal (Administrative Appeals Chamber) and then subsequently, on a point of law only, through High Court, then Court of Appeal and then to the Supreme Court.

¹⁷ Ministry of Justice publication, Freedom of Information Act (2000) 2009 annual statistics on implementation in central government, table 1, p.15

¹⁸ For example, the Health and Safety Executive received 6,531 requests in 2009 which is significantly higher than any Department of State.

¹⁹ The Coalition: our programme for government

4. 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 an amendment to section 6.

Competition Assessment

- 4.2 The majority of bodies that we propose to include within the scope of the Act are not in competition with any other bodies. Many provide services to the public but do not compete with others.
- 4.3 In some ways amending section 6 would enhance competition. Some publicly owned companies currently fall within the Act whereas others do not. These proposals would ensure that all similar bodies should be subject to the equal degree of public scrutiny.
- 4.4 However, some of the companies that would be brought within the scope of the FOIA are in competition with other private companies. In this instance there may be a negative impact on competition because those companies that would be brought within the Act would incur the costs of compliance and their competitors would not. It is not known what the impact will be at this stage. However, we believe that publicly-owned companies should incur these costs as the public should have a right to information about companies owned by public authorities. In addition, the benefits brought about by Freedom of Information including accountability and transparency may lead to efficiency savings and therefore reduced costs. The FOIA contains provisions to protect commercially sensitive data and therefore we do not envisage any great impact on competition in this regard.

Small Firms Impact Test

- 4.5 It is envisaged that any impact on small firms would be minimal as a result of an amendment to section 6. Whilst there would be costs associated with compliance with the FOI Act we would expect requests to be low and therefore the costs to be low also. It is therefore considered that these proposals would affect small firms although any impact is expected to be minimal.

Carbon Assessment

- 4.6 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 companies.

Environmental Assessment

- 4.7 It is not considered that these proposals would have any significant environmental impacts.

Health Impact Assessment

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

Human Rights

- 4.9 It is not considered that extending the scope of the FOIA will have any Human Rights implications. Please refer to the ECHR Memorandum for the Protection of Freedoms Bill

Justice Impact Test

- 4.10 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), High Court, 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

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

Sustainable Development

4.12 Extending the FOIA as proposed would increase the openness, transparency and accountability of those companies owned by more than one public authority. This should promote good governance due to increased public scrutiny and awareness of the decisions of publicly-owned companies, would make publicly-owned companies 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)

4.13 Having considered the privacy impact assessment screening questions we believe there will be no significant adverse impacts on privacy.

4.14 It is likely that requests for personal information will be received by publicly-owned companies brought within scope of the FOIA 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 release²⁰.

²⁰ 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.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

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 2011. The outcome of the review will be used to assess the success of the policy.

Review objective:

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.

Review approach and rationale:

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.

Baseline:

The review will consider the impact of the FOI Act since its implementation in 2005.

Success criteria:

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.

Monitoring information arrangements:

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.

Reasons for not planning a PIR:

n/a

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

Section 6 of the Freedom of Information Act 2000 (FOIA) brings within the scope of the Act companies wholly owned by one public authority. However, companies wholly owned by two or more public authorities fall outside the scope of section 6. This is considered to be illogical and inconsistent with the intentions of the FOIA. Government intervention is required in order to extend the scope of the FOIA to cover companies wholly owned by two or more public authorities.

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
To bring companies wholly owned by two or more public authorities within the scope of the FOIA 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.	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 companies to account for the decisions they make. Companies that are wholly owned by public authorities should be subject to the same scrutiny as other public authorities.

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 companies 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 through an amendment to section 6, this in turn would promote better informed public debate and scrutiny of the decisions of companies wholly-owned by two or more public authorities, 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 additional bodies 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 companies wholly-owned by more than one public authority 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 a neutral equality impact as the right is available to everyone already and there may be no inequalities exposed as a result of increased scrutiny. However, we do not anticipate any adverse impacts.

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 intends to amend section 6 of the Freedom of Information Act 2000 (FOIA) to bring within the scope of the Act companies wholly owned by more than one public authority. Currently, section 6 only covers companies wholly owned by one public authority. We do not anticipate any adverse equality impacts as a result of additional publicly owned companies 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: 07.01.2011