

# **Social and Legal Issues in Informatics**

MSc Management – IS and Services Science

## **Freedom of Information**

Giovanna Di Marzo Serugendo

Giovanna.Dimarzo@unige.ch, room B 235, 022 379 00 72

(Some slides provided by Roger Johnson, Birkbeck College,  
University of London, UK)

# Freedom of Information Act

- What is its purpose?

- US

- ✓ <http://video.pbs.org/video/1481788965/>
    - <http://www.viddler.com/explore/DueProcess/videos/19/>
    - ✓ <http://www.youtube.com/watch?v=mWzeAomhQjU>

- UK

- <http://vimeo.com/8333506>
    - <http://www.videojug.com/interview/freedom-of-information-defined-2>

# Freedom of Information

- Rules that guarantee access to data held by the state/public authority.
- Establish legal process by which requests may be made for government-held information (free or minimal cost) – exceptions.
- Governments are bound to publish and promote openness
- Over 85 countries around the world have implemented some form of such legislation.
- Sweden's Freedom of the Press Act of 1766 is the oldest.
- Generally do not cover information held by private sector
  - Problem: information held by the private sector cannot be accessed as a legal right. Now private sector is performing many functions which were previously the domain of public sector. As a result, a lot of information is now with the private sector, but it cannot be forced to disclose information.

# Provisions

- Gives “right to know” which is right of access to information held by public sector bodies – known as “public authorities”
- A public authority is an organisation substantially dependent on public funds, including universities (UK)

# Freedom of Information Acts

- US – FOIA 1966
  - <http://www.gwu.edu/~nsarchiv/nsa/foia/special.html>
- UK – FoI Act – 2000
  - <http://www.legislation.gov.uk/ukpga/2000/36/contents>
- EU
  - Regulation 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents
  - [http://ec.europa.eu/transparency/revision/index\\_fr.htm](http://ec.europa.eu/transparency/revision/index_fr.htm)
- CH
  - Law on principle of freedom of information
  - Transparency Law 2006

# Swiss Federal Act on the Principle of Freedom of Information in Public Administration

- Ensuring access to **Official Documents** held by:
  - the Federal Administration
  - public and private bodies (outside of the Federal Administration) insofar as they pass acts or hand down decisions on Administrative Procedures
  - the Parliamentary Services
- Does not apply to official documents from:
  - Swiss National Bank, Swiss Federal Banking Commission
  - Civil / Criminal proceedings;
  - International legal and administrative assistance proceedings;
  - International dispute settlement proceedings;
  - Constitutional and administrative judiciary proceedings
- Special provision
  - Secret information
- <http://www.edoeb.admin.ch/org/00828/index.html?lang=en>

# Swiss Federal Act on the Principle of Freedom of Information in Public Administration

- An **Official Document** is any information:
  - Which has been recorded, regardless of the medium; **and**
  - Which is retained by the authority which issued the document or to which it has been communicated; **and**
  - which concerns the execution of a public function.
- Does not apply to:
  - documents which:
    - are used by an authority in a commercial capacity;
    - have not been issued; or
    - are intended for personal use.

# Swiss Federal Act on the Principle of Freedom of Information in Public Administration

- **Rights of access** - Principle of Freedom of Information
  - Every person shall have the right to inspect official documents and to obtain information about the contents of official documents.
  - The documents may be inspected *in situ* or a copy thereof may be requested. Legislation governing copyright shall be reserved.
  - Where an official document has already been published by the Federal Government, in paper or electronic format, the provisions pursuant to (1) and (2) above shall be deemed to have been fulfilled.



# Swiss Federal Act on the Principle of Freedom of Information in Public Administration

- **Exceptions** : The access to an official document:
  - significantly impair the free opinion-forming and decision-making processes of an authority which is subject to this Act, or of another legislative, administrative or judicial body;
  - affect the execution of specific measures taken by an authority in conformity with its objectives;
  - be likely to compromise the domestic and international security of Switzerland;.
  - be likely to affect the interests of Switzerland in matters of foreign policy and international relations;

# Swiss Federal Act on the Principle of Freedom of Information in Public Administration

- **Exceptions** : The access to an official document:
  - be likely to affect relations between the Federal Government and the cantons or inter-cantonal relations;
  - be likely to affect the economic or monetary interests of Switzerland;
  - reveal professional, business or manufacturing secrets; or
  - result in the release of information provided voluntarily by a third party to an authority which undertook to maintain secrecy with regard thereto.
- The right of access shall be limited, deferred or denied, should said access to an official document prejudice the privacy of a third party, unless exceptionally outweighed by public interest.

# Swiss Transparency Law 2006

Jul 2, 2009 - 08:09



## Transparency law unknown and underused



The law was introduced to make the workings of government more transparent (Keystone)

**A Swiss law governing the freedom of information is relatively unknown among the public and should be promoted to become effective, the authors of a study say.**

Speaking this week they said there have been just 565 requests for access to unreleased official information since the law on transparency was introduced in 2006.

The figure pales in comparison to Britain, which has around 100,000 requests a year using similar legislation, and the United States, where there are millions.

### RELATED STORIES

- [Swiss worried about web privacy](#)
- [Transparency rules with limited impact](#)

Use is even low among the media, typically the most interested in exercising such rights, according to the study into the application and effectiveness of the law.

While its introduction has been considered successful for bringing to an end an era of confidentiality in government, more needs to be done to raise awareness of its potential among the public.

The authors also found that there was an inconsistency in the way different cantons responded to requests for information.

A series of recommendations will be presented to the cabinet to improve its use, including employing more staff to handle requests and limiting the potential costs involved in drawn out cases.

- [http://www.swissinfo.ch/eng/Home/Archive/Transparency\\_law\\_unknown\\_and\\_underused.html?cid=7485624](http://www.swissinfo.ch/eng/Home/Archive/Transparency_law_unknown_and_underused.html?cid=7485624)

# CH - LIPAD

- **Loi sur l'information du public, l'accès aux documents et la protection des données personnelles (LIPAD)**
  - [http://www.ge.ch/legislation/rsg/f/rsg\\_a2\\_08.html](http://www.ge.ch/legislation/rsg/f/rsg_a2_08.html)
- **Préposé à la protection des données et à la transparence (PFPDT)**
  - Federal  
<http://www.edoeb.admin.ch/dokumentation/00444/01010/index.html?lang=fr>
  - Geneva  
<http://www.ge.ch/ppdt/>

# Transparency

- Definition
  - Open access to processes and internal decision of an organisation
- Access to:
  - Official Documents
  - Organisational process (what is produced and how it has been produced)
  - Accounting and Budget

# UK - Freedom of Information

- Public pressure for greater openness by UK Government
- Demand for access to Government information led to:
  - Freedom of Information Act 2000
    - See history of Fol in the UK
      - <http://www.cfoi.org.uk/foihistory.html>
  - Environmental Information Regulations 2004 (based on an EU directive of 2003)
    - Derived from a European Directive: right of access to information about the environment held by public bodies.

# UK – Public Authority

- Central government and government departments
- Local authorities
- Hospitals, doctors' surgeries, dentists, pharmacists and opticians
- State schools, colleges and universities
- Police forces and prison services.

# What Information is Available?

- Every public authority must make some information available as a matter of routine through a **publication scheme**.
- Universities' Model Publication Scheme
- Information that is included in such a scheme must be made available to the public.
- A publication scheme is both **a public commitment to make certain information available and a guide to how that information can be obtained**.



# How do I Get to It?

- Information can be requested by letter or email
- Information must be provided in 20 days or an explanation given of why it will take longer
- You can be charged (modestly) for the information

# FoI Case

## NEWS Open Secrets

### Westland cabinet minutes released

Post categories: Cabinet, Westland

Martin Rosenbaum | 12:01 UK time, Tuesday, 12 October 2010

Comments (11)

The government has for the first time been forced to release the [minutes \[92KB PDF\]](#) of a cabinet meeting in response to a freedom of information request.

These are the minutes of the controversial meeting in January 1986 in which Michael Heseltine suddenly resigned as defence secretary during discussion of the future of the struggling Westland helicopter company. He walked out in protest at how Margaret Thatcher insisted on controlling ministerial statements on the issue.

His dramatic resignation followed an increasingly tense and open cabinet split between Mr Heseltine and Mrs Thatcher.

He objected to a proposed rescue deal for Westland from the American firm Sikorsky, backing a European consortium instead.



- <http://www.bbc.co.uk/blogs/opensecrets/> ... ..

# Grounds for Complaint

## Failure to

- Respond in a timely manner
- Give proper advice and help
- Give information in the form requested
- Explain properly reason for refusing request

# Making a Complaint

## Pursuing a Complaint

- Initially with the public authority
- Secondly with the Information Commissioner

## ICO can:

- Issue a Decision Notice to the Public Authority
- Either party can appeal to the Information Tribunal
- If necessary, refer the matter to the High Court as if it was a Contempt of Court leading potentially to a fine or even imprisonment

# Grounds for Refusing a Request

ICO provides Guidance which can include:

- National security, prejudicial to international relations, commercially sensitive information, confidential information
- Data covered by Data Protection Act or Environmental Information Regulation
- Applicant has reasonable access to the information through another public source
- Contrary to public interest
- Vexatious or repeated requests

# FoI Case

## EU complaints about UK revealed

---

Post categories: EU

Martin Rosenbaum | 08:45 UK time, Monday, 11 October 2010

Comments (5)

---

What does the control of potato cyst nematodes have in common with the protection of chickens kept for meat production, and with methods to calculate accident costs?

The answer is that they are all the subject of EU directives which the European Commission believes the British government is not properly implementing.

Following FOI requests from the BBC, the Cabinet Office has been forced to disclose the list of cases where the Commission has set in motion the first stage of infraction proceedings against the UK - these are the measures taken when the Commission thinks a state is not fulfilling its EU treaty obligations.



Other issues listed include the conditions of transport for live animals, the management of flood risks, the sale of pyrotechnic articles, obstacles to the use and importation of caravans - and erroneous tariff information about certain categories of garlic.

These are cases where the Commission has sent what is called an Article 258 letter (previously Article 226), formally notifying the government of the complaint that it is infringing EU law and seeking a response.

- <http://www.bbc.co.uk/blogs/opensecrets/>

# H1N1 – CDC refuses FoI Request

CDC GUESSTIMATED H1N1 CASES and REFUSED CBS FREEDOM OF INFORMATION ACT REQUEST !

It really is not looking good for the CDC. Eventually after many attempts by CBS the CDC released the test results for the H1N1 cases around the USA. It turns out that the a massive percentage of test results were NOT the H1N1 swine flu. With a lot of cases it wasn't even the regular flu ! As CBS intelligently points out these exaggerated cases and statistics would have had an impact on medical treatments and hospitals resources. NOTICE how the word EPIDEMIC is used several times. A really great reupload from the CBS channel which is here <http://www.youtube.com/user/CBS>

- [http://www.disclose.tv/action/viewvideo/32152/CDC\\_Rejecting\\_FOIA\\_Requests/](http://www.disclose.tv/action/viewvideo/32152/CDC_Rejecting_FOIA_Requests/)

# FoI vs Data Protection Act

- [http://www.ico.gov.uk/for\\_the\\_public/the\\_acts.aspx](http://www.ico.gov.uk/for_the_public/the_acts.aspx)



# Freedom of Information Act

- Summary
  - Provides the citizen with access to information held by public authorities
  - Excludes data subject to the Data Protection Act
  - Availability of information also subject to other limitations (national security, harm, etc)

# What are your rights?

- You sit a university examination. You are told that you have narrowly failed. You feel that there must be a mistake.
- What can you do?

# What should you do?

- You are employing a new staff member and obtain a confidential reference from their previous employers for each applicant.
- You make an appointment and an unsuccessful applicant asks to see the reference from their previous employer.
- Can you supply them a copy of the confidential reference?

# UK - Environment Information Regulations

- Environmental information held by public authorities in the UK
- Six main areas:
  - the state of the elements of the environment, such as air, water, soil, land, fauna (including people)
  - emissions and discharges (gases and fluids), noise, energy, radiation, waste and other such substances
  - measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment
  - reports, cost-benefit and economic analyses
  - the state of human health and safety, contamination of the food chain
  - cultural sites and built structures (as they may be affected by environmental factors)

# UK - Environment Information Regulations

## What's in your backyard?

---

Use our interactive maps to find out more about the environment where you live.

▶ **Go straight to the maps**

Having problems viewing the maps?

▶ **Troubleshooting**

## Find out more about our data

---

You can discover more about how we gather our data and what we use it for from our subject-specific pages:

**Aquifers** ▶

---

Understanding the new aquifer designation maps.

**Bathing water quality** ▶

---

**Environment Agency offices** ▶

---

How do we work?

**Flood maps** ▶

---

What do the flood maps show?

**Flood warning areas** ▶

---

How do we issue flood warnings?

---

- <http://www.environment-agency.gov.uk/homeandleisure/37793.aspx>