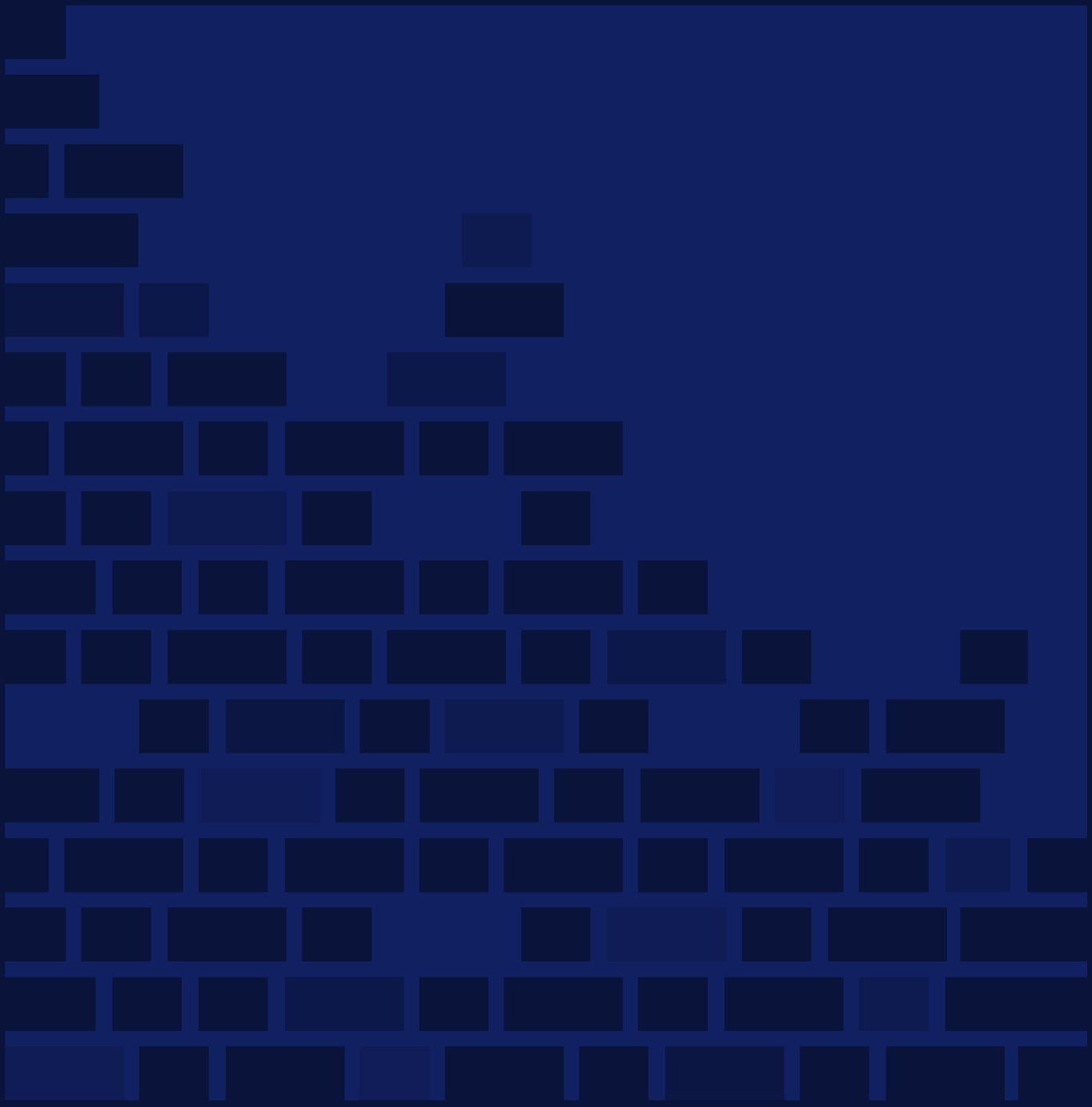
openDemocracy
free thinking for the world

Access Denied:

the UK government attack on Freedom of Information

Lucas Amin



Access Denied:

the UK government attack on Freedom of Information

openDemocracy is an independent global media platform covering world affairs, ideas and culture, which seeks to challenge power and encourage democratic debate across the world.

Access Denied (October 2021) was researched and written by Lucas Amin, edited by Peter Geoghegan and designed by Lizzy Burt. openDemocracy's Jenna Corderoy provided further editorial input. The generous support of the Legal Education Foundation made it possible.

We owe a further debt of gratitude to Katherine Gundersen at the Campaign for Freedom of Information, Dr Sam Raphael at UK Unredacted, based at the University of Westminster, and Dr Ben Worthy at Birkbeck College, University of London.

Contents

Executive summary	4
Key findings	5
Recommendations	9
FOI outcomes in 2020	10
FOI timeliness in 2020	11
The Information Commissioner's Office in 2020-21	13
Parliamentary inquiry into the Clearing House and the Cabinet Office	14
Case studies:	
Probing the misuse of public funds to conduct political research	18
Unpicking the secret NHS deals with private hospitals	20
Revealing the surveillance of FOI requesters and green campaigners	23
Digging deeper into the policing of the Sarah Everard vigil	27
Challenging state-sanctioned violence against children	29
Annex 1: Savanta ComRes opinion polling on FOI and transparency	33
Annex 2: openDemocracy survey of website visitors' opinions on FOI and transparency	35

Executive summary

Secrecy is now a signature of Boris Johnson's rule. The prime minister's government has openly flouted the transparency rules which underpin accountability in British democracy. openDemocracy readers will know, for example, of:

- Unlawful delays to publishing contracts worth billions of pounds (some of which were awarded to companies linked to Tory ministers and donors)
- Ministers' use of Gmail and WhatsApp – rather than official channels – to conduct business with the private sector
- NHS England's failure to publish any monthly spending data since March 2020 – a clear breach of Treasury guidance.

The Freedom of Information (FOI) Act is a useful tool in times like these, principally because it gives the public a legally enforceable right to question the government, to receive answers and to challenge its failure to publish information.

This helps journalists, campaigners, academics and others to cut through government spin and conduct research and investigations that serve the public interest. That's how it's supposed to work, anyway.

In practice, the government is waging a secret war against FOI. And it is winning. This report takes readers behind the 'front lines' of some very bureaucratic battles for information. It aims to illustrate how underhand tactics and legislative loopholes are used and abused to deprive the public of its right to know.

We examine these issues in five in-depth case studies that reveal the Kafkaesque manoeuvring of British institutions to preserve secrecy. Access has been denied to requests for information with profound political, economic and moral relevance: from secret deals struck during the COVID-19 crisis to the authorised use of violence against children in prison.

These case studies are the backbone of the report. They are prefaced by a discussion of 2020 – a challenging year for FOI compliance and much else – alongside reflections on the Information Commissioner's Office (ICO) performance during the pandemic. The report also contains new findings on the Clearing House, the "Orwellian" unit in the Cabinet Office that is now the subject of an inquiry.

openDemocracy's eight key findings – detailed overleaf – are essential reading for anyone concerned for the future of British democracy. This includes, of course, members of the voting public and the MPs who represent them.

Indeed, a public opinion poll of 2,075 people conducted by Savanta ComRes for openDemocracy found that 73% of respondents believe government transparency is important for the health of the UK's democracy. Interestingly, Conservative voters (83%) are more likely to see transparency as important than Labour voters (76%).

openDemocracy hopes that the incoming information commissioner, John Edwards, will digest this study. The ICO's passive enforcement approach has long emboldened non-compliant public bodies, particularly with regard to 'stonewalling'. The ICO's posture must change under Edwards if FOI is to have a meaningful future.

We also hope that it will give the prime minister and his party a moment to reflect on the importance of FOI transparency to the long-term national interest. FOI, after all, is enacted in legislation and breaches of the Act undermine a political ideal of immeasurable value: the rule of law.

Key findings

1 2020 was the worst year on record for Freedom of Information Act transparency

Official statistics published by the Cabinet Office show that just 41% of FOI requests to central government departments and agencies were granted in full in 2020 - the lowest proportion since records began in 2005. Meanwhile, the government issued late responses to 13% of requests - the highest proportion since 2009.

The Cabinet Office, Foreign, Commonwealth and Development Office (FCDO), and the Department for International Trade (DIT) have the worst records. These three departments were bottom of the charts for both the percentage of requests granted in full and the percentage of late responses. Their persistent breaches of the statute undermined the rule of the law in Britain and could have led to regulatory enforcement.

But the regulator, the ICO, did not place any of the departments under formal monitoring, even though each had apparently breached its policy on timely responses. There were additional compliance issues regarding stonewalling, the 'public interest loophole', and a failure to provide advice assistance to requesters, which are discussed below.

2 The Cabinet Office is blocking requests from MPs about its use of public money to conduct political research

A court case against the Cabinet Office has revealed that public money was used to conduct party political opinion polling on issues such as "EU Exit" and "attitudes to the UK union" in 2020. Misusing public funds to do political work is a serious problem, because it removes the level playing field on which political parties must compete in a democracy.

Yet FOI requests to the Cabinet Office for details of publicly funded polling that may have served political agendas have been doggedly resisted. This raises questions about what the Cabinet Office may wish to conceal.

In 2020, David Davis MP asked for details of official research, conducted by polling companies with taxpayer money on behalf of the Cabinet Office, which may have been used to give the government a "political advantage". The Cabinet Office initially refused the request under an exemption for information relating to policy formulation, before changing its defence at the eleventh hour to claim that answering the request would take longer than the 24 hours which are allotted under the Act.

This last-minute switch was "most unsatisfactory", according to the ICO, but also technically within the rules. The ICO informed Davis that his appeal had failed on April Fool's Day 2021, which sent him back to square one eight months after he made his initial request.

The Cabinet Office has also resisted the release of a request for opinion polling on "Scottish attitudes to the union" for over two years. The request was first made by Tommy Sheppard MP in 2019. In June this year, a judge in the First Tier Information Tribunal ordered the Cabinet Office to disclose the polling. The Cabinet Office applied to appeal the decision but was rejected by both the first and upper tiers of the tribunal in July and September, respectively. Yet, at the time of writing, the Cabinet Office has still not handed over the requested information.

3 The "Orwellian" Clearing House accused of blacklisting journalists monitors requests with "high political sensitivity"

This report contains new information about the Clearing House, a secretive unit run by the Cabinet Office which monitors requests made by journalists and campaigners. Clearing House policy documents reveal that it processes requests with "high political sensitivity" and those with "significant wider interest" - allowing it to function as a centralised early warning system for public interest disclosures under FOI.

The report also reveals that the Clearing House can contribute to the appeals, ICO complaints, and Information Tribunal proceedings of referring departments. This is alarming - the appeals process is where the majority of complex requests, including those with a strong public interest, are settled. The involvement of a secretive, central government unit in these cases raises clear concerns.

Emails obtained by openDemocracy also show that the Clearing House does not simply advise departments on their responses – it plays a hands-on role that includes approving draft responses to FOI requests. It has done this with respect to requests about the Grenfell tragedy and the infected blood scandal. In one case, the Cabinet Office director general of propriety and ethics said that ministers would be "very sore" about disclosing information, and that she favoured releasing information "in a managed way (as we tried to do with Chilcot)".

The Public Administration and Constitutional Affairs Committee is currently investigating the Clearing House, and openDemocracy, alongside many other civil society groups, has submitted evidence.

4 The British Museum, the oil giant BP, and the private security firm Welund collaborated to monitor the activities of an FOI requester

A web of surveillance was woven around FOI requester and green campaigner Dr Chris Garrard by the British Museum, BP and Welund, a corporate intelligence company founded by an ex-MI6 agent that specialises in "monitoring and identifying politically-based threats to businesses". Disclosures show that the monitoring of requesters extends far beyond the Clearing House.

Internal communications by British Museum staff reveal that FOI requests and the corresponding draft responses were shared with the museum's head of press and marketing and five other departments. Garrard is identified by name and as "an anti-BP activist" in these emails, which undermines FOI's applicant-blind principle (that all requests should be treated equally regardless of their author). These issues – the review of drafts by parties concerned with reputational risk above transparency and the identification of requesters - are the same ones that make the Clearing House problematic.

Further disclosures obtained under FOI also reveal that the private sector has shared information with the museum. British Museum documents show that BP provided intelligence to the museum about planned protests over BP sponsorship, which Garrard has been involved in, over a three-year period. Internal BP emails show that the company receives regular updates about Garrard from the private security firm Welund.

Welund staff have police and military intelligence backgrounds and the company teaches the oil industry how to understand "the activist threat". Garrard is now pursuing his case further by using his right to information under the Data Protection Act.

Garrard is only the latest activist to be surveilled by BP. This report also presents new evidence that shows the oil company collaborated with Warwick University to monitor MA student Connor Woodman in person, online and via CCTV as he attempted to access the university's library and archival material owned by BP.

5 Stonewalling, a brutally effective tactic for evading FOI, is increasingly prevalent

Stonewalling - originally a marriage counselling term - is a point-blank refusal to communicate in any way with another party. It is a brutally effective tactic for evading FOI requests because without a formal refusal, requesters cannot make a substantive appeal. They are left in legal limbo.

NHS England has stonewalled a request for copies of invoices submitted by private companies which received billions of pounds under secret contracts. Sid Ryan, a researcher at the Centre for Health and the Public Interest think tank, made the request due to concerns that most of the private hospital beds requisitioned by the NHS for its COVID-19 response had lain empty during the first wave of the pandemic. Private hospitals may have received 'money for nothing', in effect. But NHS England, which was legally obliged to grant or deny Ryan's request within 20 days, did not respond at all - it stonewalled him.

Between 2016 and 2020, the number of public bodies found guilty of stonewalling by the ICO increased from 51 to 116, according to research by openDemocracy. NHS England was found guilty of stonewalling 40 times in the same period - more than any other public body outside Whitehall.

There are no official statistics on stonewalling and very little research has been conducted in the UK but the practice is likely to be more common than previously understood. A survey of 386 FOI users by openDemocracy found that 48% of them had previously been stonewalled.

Ryan made a formal complaint to the ICO, which eventually compelled NHS England to issue a response. One hundred and three working days after he submitted his request - more than five times the statutory time limit for responding to a request - NHS England wrote to Ryan, refusing his request in full. He has now entered the appeals process. The case study illustrates how easy it is for authorities to delay the outcome of sensitive requests.

6 Government departments are cynically exploiting a legal loophole to deny timely access to information in the name of the "public interest"

The statutory limit for responding to FOI requests is 20 working days. But this can be extended if an authority needs to consider the public interest in disclosure. And no matter how long the authority takes to supposedly consider this public interest, the response is recorded as on time.

There were 2,435 "permitted extensions" of this type in 2020. Some may have been genuine but the anecdotal experience of journalists and campaigners suggests that many cases are illegitimate abuses. This report illustrates how the Home Office delayed a response to openDemocracy's Jenna Corderoy to mitigate political risk.

The request was for Home Secretary Priti Patel's correspondence with Metropolitan Police Commissioner Cressida Dick regarding the controversial and aggressive policing of the vigil for Sarah Everard. Everard had been walking home alone at night when she was abducted and murdered by a serving police officer. At the vigil, police were filmed "snatching women" and pinning them to the floor - leading to calls for Dick's resignation.

The Home Office took almost four months to consider the public interest in disclosure, but its refusal notice contained just half a page of generic argument about why it was in the public interest to withhold the information. It appears the delay was choreographed to let the moment quietly pass, and prevent Corderoy from either writing a story about the refusal or beginning the appeals process (which could eventually force disclosure).

The use of permitted extensions is concentrated in six departments, including the Home Office. But the most prolific users, or abusers, of this loophole are the Foreign, Commonwealth and Development Office and the Department of International Trade, which both used the extension to delay responses to one in five FOI requests they received in 2020.

7 Government departments are failing to comply with a legal requirement to work constructively with requesters

The FOI Act requires public bodies to provide "advice and assistance" to requesters. But in 2020, departments failed to do so nine times out of ten. Statistics show that central government departments and agencies provided advice and assistance to only 10% of the 29,788 requests that were not granted in full.

This report illustrates how the Ministry of Justice (MoJ) refused a request on the use of "pain-inducing restraints" on children in prison. Pain-inducing restraints are considered to be a form of child abuse. Some have even led to the deaths of children in custody. Gareth Myatt, a 15-year-old mixed-race boy, was four-foot ten-inches tall when he was held in an asphyxiating stress position called the 'seated double embrace' by three employees of G4S. Myatt's last words before losing consciousness and later dying were: "I can't breathe."

Children's campaigner Carolyne Willow requested a copy of the recorded reasons why pain-inducing restraints were used 260 times in 2018. But the MoJ said it could not prepare the data in less than 85 hours, more than the 24 hours allotted by the Act, and therefore it was not obliged to provide it at all. Willow argued that the MoJ's own safeguarding policy stated that the data should be nationally collected and analysed. But she could not persuade the MoJ, ICO or tribunal to engage with this argument since it was considered out of scope.

The MoJ technically won the dispute but its victory only highlights the dysfunctional implementation of FOI, the adversarial attitudes of public bodies and the superficial interpretation of "advice and assistance". The safety of children in detention, meanwhile, remains shrouded in secrecy.

8 The FOI regulator is overworked, underfunded and failing badly on enforcement

John Edwards, who will shortly take up his post as the new information commissioner (head of the ICO), faces many challenges on his first day in the office. Chief among them will be persuading the government to fund his organisation's FOI work, and improving the regulator's lacklustre enforcement.

In 2020-21, the commissioner's casework team resolved just 4,000 complaints - the lowest number in more than a decade. This meant the ICO's backlog of unfinished casework grew by 56% to 1,911 complaints. The number of cases which took longer than six months to resolve increased by more than 100%, and now stands at almost one-third of total cases. Meanwhile, the ICO took no enforcement action, yet again, against any central government bodies.

The slowdown in casework was a result of the pandemic but delays to requesters' complaints have been increasing since 2016 and are drastically reducing the usefulness of FOI. An obvious solution to this problem is to increase the ICO's FOI funding. In real terms, the ICO's FOI budget has shrunk by 29% over the past ten years - while its workload has grown.

There is a concern, however, that this underfunding is part of an orchestrated enfeebling of the regulator, which helps the government to evade accountability and weaponise secrecy to its advantage.

Recommendations

The government should:

Empower the ICO

- Ensure the ICO's requests for budget allocations are met in full. This should include a 'shot in the arm' to help it tackle the backlog of cases which built up during the pandemic.
- Make the ICO accountable to, and funded by, Parliament in order to ensure it has the autonomy afforded to other regulators and oversight bodies.
- Give the ICO greater budgetary freedom so that it may use income generated through data protection fees to top up its FOI enforcement budget.

Improve compliance across the public sector

- Remove the public interest provisions which allow authorities to extend their response timeframes indefinitely.
- Tackle stonewalling by introducing an administrative silence rule whereby a failure to respond to a request within a specified time period is considered a de-facto refusal, which could lead the ICO to order disclosure of the requested information.
- Encourage public bodies to invest in hiring and training information rights professionals to provide high-quality, legally compliant FOI services.
- Dissolve the Clearing House and recognise that access to information serves the long-term national interest and should be protected from the political calculus of governing parties.

The ICO should:

Take a new approach to enforcement

- Consult with civil society to develop and implement clear and concrete thresholds for monitoring and enforcement. This should include devising ways of measuring and responding to patterns of non-compliance regarding stonewalling, extensive delays and use of the public interest loophole.
- Publish quarterly updates of all monitoring and enforcement activities, including the name of the authority, the reason for monitoring/enforcement, the action taken and copies of relevant documents created and/or received from the authority.

Tackle stonewalling

- Respond to stonewalling complaints by using enforcement notices to order authorities to respond to all overdue requests immediately.
- Publish guidance for requesters that explains what stonewalling - or administrative silence - is, and what requesters can expect the ICO to do about it.

FOI outcomes in 2020

Official statistics published by the Cabinet Office show that 2020 was the worst year in history for transparency under the Freedom of Information Act[1]. Just 41% of requests to central government departments and agencies were granted in full - the lowest proportion since records began. The lowest previous percentage of requests granted in full was 43% in 2019.

The newly created Foreign, Commonwealth and Development Office (FCDO) granted only 17% of requests in full - the lowest percentage by any government department on record. Five other departments granted fewer than 30% of requests in full.

Table 1: government departments which granted less than 30% of FOI requests in full in 2020

Department	% requests granted in full
Foreign, Commonwealth and Development Office	17%
Cabinet Office	23%
Department for International Trade	26%
Department for Digital, Culture, Media and Sport	26%
Department of Health and Social Care	27%
Department for Environment, Food and Rural Affairs	28%

Across all departments and agencies, 38% of requests were withheld in full - down 1% from 2019. The Cabinet Office continued to reject more requests than any other department (54%), with the Department for Health and Social Care (DHSC) close behind on 50% and the Ministry of Justice on 47%.

No secrets please, we're Scottish (and Welsh)

The Scotland Office and Wales Office had the lowest rate of refusals among all departments - withholding just 7% and 9% of requests in full, respectively. They also enjoyed the highest rates of disclosure - granting 79% and 85%, respectively, of all requests in full. The Northern Ireland Office was less impressive but still maintained an above-average rate of disclosure (45% granted in full) and below-average refusal rate (29% withheld in full).

Hidden at arm's-length

The Charity Commission, Office for Standards in Education, Children's Services and Skills (OFSTED) and Her Majesty's Revenue and Customs (HMRC) had the lowest disclosure rates among the 18 arm's-length bodies and agencies monitored by the Cabinet Office.

1 https://www.gov.uk/government/statistics/freedom-of-information-statistics-annual-2020

FOI timeliness in 2020

In 2020, 13% of all requests to central government departments and agencies were not responded to within the statutory limit of 20 working days - the highest level since 2009. In total, 41 central government departments and agencies missed the statutory deadline for replying to requests 5,811 times in 2020. No data is centrally collated for the remaining 120,000 authorities that are subject to the Act, which means no-one knows how these bodies performed.

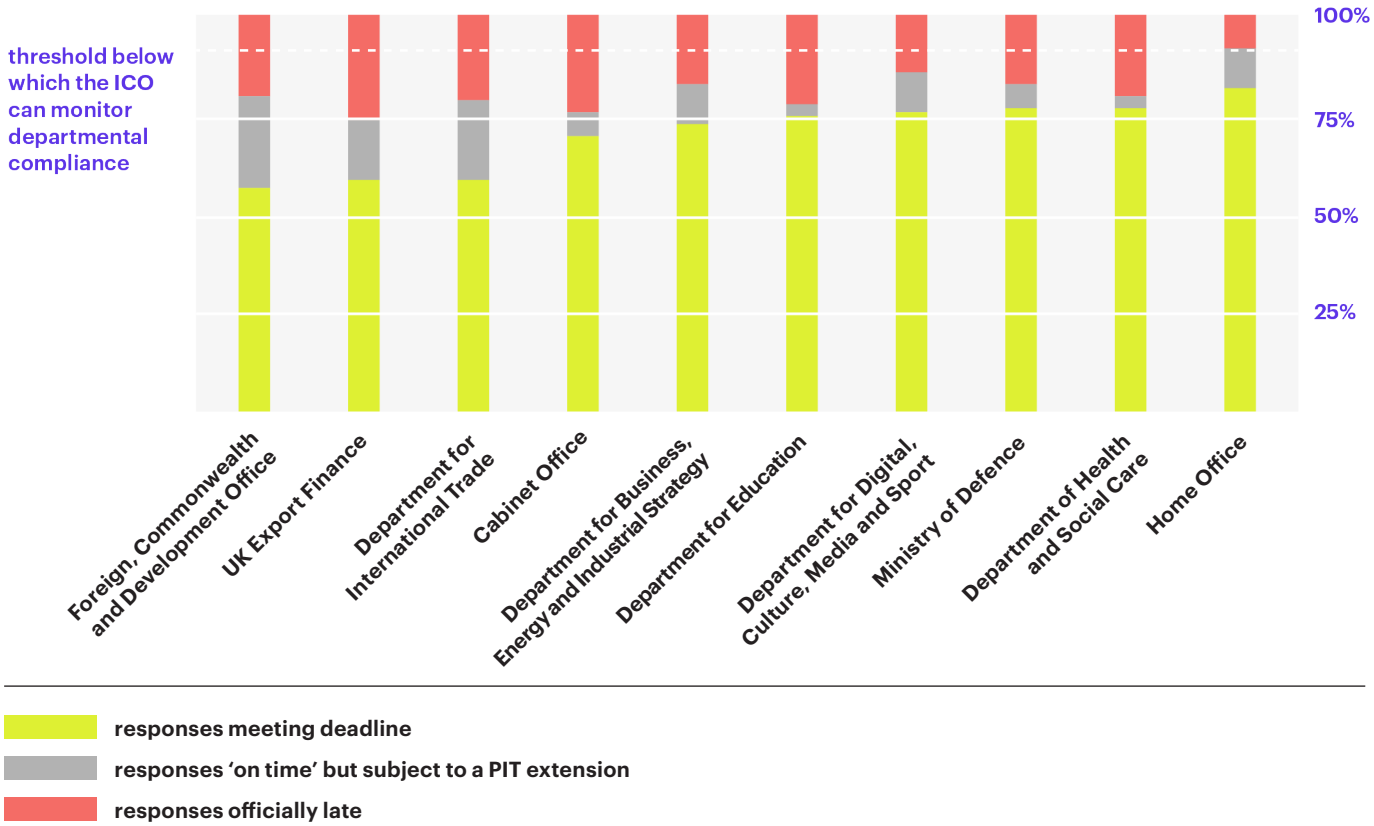
Normally, public bodies that fail to respond to 90% of requests on time can be monitored by the ICO. Nine government departments fell foul of this threshold in 2020 - while the Home Office squeaked over the line with 91%. However, none of these departments were monitored.

In March 2020, Elizabeth Denham, the information commissioner, announced she would not penalise authorities that "prioritised other areas" of work during the pandemic. It was inevitable that the transition to lockdown and home-working, which disrupted offices across the country (including the ICO's), would lead to a drop in FOI response rates. But the ICO's public announcement of a pause on enforcement could have been seen by some public bodies as an excuse to drag their heels.

The 20-day limit for responding to requests is set out in legislation - it is not a policy that can be modified. Moreover, access to information during a public health crisis is vitally important. The absence of official information creates a climate for misinformation, such as conspiracy theories, to flourish.

Perhaps the ICO recognised this when, in April, Denham's office said it expected public bodies to establish "recovery plans" to address their compliance issues. It also said it *may* "unpause formal monitoring and regulatory action that was in train before the crisis".

Fig 2: FOI timeliness and use of Public Interest Test extensions in 10 government departments with lowest timeliness compliance rates



Lies, damn lies, and "public interest" statistics

The true number of late responses is higher than the 13% that official statistics suggest. This is because authorities can push back deadlines for responding to requests, indefinitely, if they need time to consider the public interest. These responses, no matter how late they arrive, are still considered 'in time' by the Cabinet Office.

Public bodies use this "permitted extension" to delay responses to sensitive requests – not to consider the complex balance of public interests. The evidence for this is in refusal notices which arrive months after the statutory deadline has passed and say little or nothing about the specific public interest of the request. A case study about the policing of the Sarah Everard vigil [on page 27] illustrates how bureaucracies can weaponise the public interest to serve secrecy.

Six per cent of all requests were delayed using the 'public interest loophole' in 2020, which suggests the true number of late responses was 19%. The statutory deadline was therefore missed on 8,246 occasions by the 41 monitored central government bodies – an average of more than 200 times by each body.

Truss issues

Once the 'public interest loophole' is allowed for, the data reveals that four bodies replied to requests within the time limit prescribed by the Act less than 70% of the time. These bodies included the FCDO – with a staggering 56% of timely responses – and the Cabinet Office with 69%.

Both the Department for International Trade (DIT) and UK Export Finance (UKEF) provided timely responses just 58% of the time. The DIT and UKEF were also overseen by Liz Truss at the time, who is now secretary of state at the FCDO.

The FCDO, Cabinet Office and DIT shared not only the worst response rates in central government, they also granted fewer requests in full than any other monitored bodies in 2020 (see page 10).

The Information Commissioner's Office in 2020-21

2020-21 was a troubling year for the ICO. The commissioner's casework team resolved just 4,000 complaints - the lowest number in more than a decade. This meant the ICO's backlog of unfinished casework grew by 56% to 1,911 complaints. Meanwhile, the number of cases which took longer than six months to resolve increased by more than 100%, and now stands at almost one-third of total cases[2].

These delays were largely due to the impact of COVID-19, which caused major disruptions to the ICO's regular working practices. It also migrated its casework onto a new system that allows for easier home working. But the consequence is that all requesters now face longer delays while the ICO tackles the backlog of complaints it accumulated during the pandemic. Moreover, as previous openDemocracy research has shown, delays at the ICO have been steadily increasing since 2016[3].

An obvious solution to this problem is to increase the ICO's FOI funding. But the ICO's budget has not seen meaningful growth in more than a decade. In real terms, over the past ten years, the ICO's FOI budget has shrunk by 29%[4]. It currently stands at around £4m per year.

As an organisational priority, FOI is increasingly marginal to the ICO. It is primarily funded by organisations paying the data protection fee, and its income for its data protection work has more than quadrupled over the past decade. This year it was worth £63m - more than 15 times what it received for FOI. But the two revenue streams are ring-fenced which prevents the regulator from topping-up its FOI budget with data protection income.

Enforcement

In 2020-21 the ICO took enforcement action against four public authorities (three police forces and a London borough). This may not sound like much but it was more than the ICO managed in the preceding ten years.

Yet unfortunately it is too little, and too late. The ICO oversees the compliance of more than 120,000 public bodies. Successful regulation is premised on the idea that authorities respect the rule of law and anticipate punishment for non-compliance.

But the ICO's anaemic enforcement has failed to convey that message for almost 15 years. Four practice recommendations, which are not binding, issued to local bodies, will not change the perception that the ICO is a soft touch.

In November, the newly appointed information commissioner, John Edwards, will take up his post. Edwards has a rare opportunity to cultivate a robust approach to enforcement, and to engage afresh with journalists and civil society groups who are jaded by a business-as-usual approach to public bodies' persistent failure to uphold information rights.

2 https://ico.org.uk/media/about-the-ico/documents/2620166/hc-354-information-commissioners-ara-2020-21.pdf (page 44)

3 https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy

4 Bank of England inflation calculator states that £4.5m (ICObudget for 2011-20) is worth £5.6m in 2020. Today's budget is approximately £4m. https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator]

Parliamentary inquiry into the Clearing House and the Cabinet Office

In the summer of 2021, the Public Administration and Constitutional Affairs Committee (PACAC) announced that it was launching an inquiry into the Cabinet Office's "compliance with" and "implementation of" the FOI Act, as well as the "role and operation of the Cabinet Office Freedom of Information Clearing House".

The inquiry was launched following openDemocracy's reporting on the Clearing House[5], an open letter calling for an inquiry which was signed by the editors of the Daily Mirror, The Daily Telegraph, the Financial Times, The Guardian, openDemocracy, The Times and The Sunday Times[6], and openDemocracy's victory against the Cabinet Office at the Information Tribunal[7]. openDemocracy believes it is in the interests of both British journalism and democracy that the Clearing House is being investigated.

The Clearing House sits within the Cabinet Office and centrally monitors incoming FOI requests across Whitehall made by journalists and campaigners. openDemocracy has asked PACAC to investigate concerns that journalists are being blacklisted, and that their personal data is being unlawfully shared.

This report contains several new findings about the Clearing House, which have also been submitted with the PACAC inquiry.

An early warning system for requests with "high political sensitivity"

Government departments can refer requests to the Clearing House for 19 different reasons. These include the fact that requests have "high political sensitivity" or relate to "ministers/very senior officials (past and present)", and where there is "expectation there will be significant wider interest in the topic".

Hidden within the excessively broad formulation of the 19 referral criteria is a malign subtext: they allow referring departments to effectively submit any request which might receive media attention and therefore lead to criticism of the government. There is no other credible administrative rationale for such broadly formulated criteria.

These broad referral criteria allow the Clearing House to function as an early warning system in the same way a press office might. The government now has central access to FOI requests that might damage its reputation and can take action to mitigate and manage them.

The referral criteria also reveal that the Clearing House has oversight of, and can input into, the internal reviews, ICO complaints and tribunal cases of referring departments. This shows that the Cabinet Office is not only monitoring and centralising responses to FOI requests, but also extending its influence into the appeals process.

This is alarming - because the appeals process is where the majority of complex requests, including those with a strong public interest, are settled. It is unclear what administrative value or expertise the Clearing House could contribute to the appeals process of Whitehall bodies' FOI cases. But the usefulness of access to this pipeline of potentially embarrassing disclosures is clear, from the government's risk-management perspective.

5 https://www.opendemocracy.net/en/freedom-of-information/uk-government-running-orwellian-unit-to-block-release-of-sensitive-information/ ; https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy

6 https://www.opendemocracy.net/en/freedom-of-information/fleet-street-editors-demand-urgent-action-to-protect-freedom-of-information/

7 https://www.opendemocracy.net/en/freedom-of-information/foi-clearing-house-michael-gove-cabinet-office-opendemocracy-wins-court-case-uk-government/

Offering advice, or clearing drafts?

The Cabinet Office claims that the Clearing House simply provides advice to referring departments[8]. But internal correspondence between the Clearing House and Whitehall departments, seen by openDemocracy, suggests the Clearing House performs a more hands-on role that involves clearing draft responses.

For example, in emails to the Ministry of Housing, Communities and Local Government regarding several FOI requests about the Grenfell tragedy, the Clearing House stated: "We're happy with these draft responses," "We're content with these draft responses apart from [redacted]," and "We would like to see drafts for all responses please."[9] This language implies that the Clearing House has the authority to approve or deny draft FOI responses.

In another case, in emails to the Treasury regarding requests about the infected blood scandal, the Clearing House states it is "happy to clear your draft responses. We are currently doing the same for [Department of Health]". openDemocracy has encountered numerous similar cases, some of which lead to the failure of public authorities to meet the statutory deadline of 20 working days in which to provide their response.

The Clearing House, as its name suggests, appears to *clear* FOI responses - and not only offer advice. Indeed, a job advertisement for a position in the Clearing House states that the role includes "forwarding drafts for clearance, reverting to departments with advice and *negotiating redrafted responses*"[10].

Example: Martin Fletcher

A request by the freelance journalist Martin Fletcher, working for The Times in this instance, was forwarded by the Department of Transport (DfT) to the Clearing House. A prefacing email states: "Please find attached a draft FOI response... I'd be grateful for clearance to allow us to meet our deadline of the 28th Feb."

On 28 February 2020, a DfT employee wrote again to the Clearing House and stated: "Sorry to chase but any news on this one? If we cannot obtain clearance today, we could always [Public Interest Test] extend again for a few days. Grateful for confirmation."

The request was refused and Fletcher made a complaint to the ICO. The DfT then liaised with the Clearing House over its submissions to the ICO. An email of 20 October 2020 states: "Please find attached a draft ICO response and accompanying documents which engages the [redacted] exemptions... Can you please arrange for CO and [redacted] to clear this by cop Friday 23rd October to allow us to meet the ICO's deadline."

The approval of the Clearing House was sought again when the ICO caseworker reverted with follow-up questions. Another email of 24 November states: "The ICO case officer has come back with some follow-up questions (first attachment) and our policy officials have drafted a reply (second attachment)... I'd be grateful for Cabinet Office and [redacted] clearance of our reply to the ICO."

Fletcher's case demonstrates how the Clearing House appears to have impeded the ability of the DfT to meet the statutory deadline.

8 https://committees.parliament.uk/publications/5093/documents/50425/default/

9 https://drive.google.com/drive/u/1/folders/1oxi1dj3xUg_wMExPsFAUEBSuSQT81O52

10 https://cabinetofficejobs.tal.net/candidate/so/pm/1/pl/16/opp/4942-4942-Multiple-B1-roles-PBT-Office-Manager-FOI-Clearing-House-Adviser/en-GB

Providing expertise, or exercising authority?

There is good reason to question why the Clearing House should provide any advice at all to government departments. It does not understand the information architecture of referring departments the way each department's own staff do. Nor does its three-person team possess the equivalent departmental expertise on the (wide-ranging) subjects of requests - which might vary from issues regarding the NHS, to defence procurement, to the private prison system.

There is little, if anything, the Clearing House can offer from a technical point of view that departments couldn't do themselves in-house. What the Clearing House does have, however, is political authority. This allows it to intervene in cases and instruct departments according to a logic that prioritises the mitigation of reputational risk. This also effectively gives referring departments permission to avoid complying with their statutory duties under the Act.

Example: Jason Evans

One FOI request by the infected blood campaigner Jason Evans is particularly revealing. Evans' request to the Treasury for a historical document was referred to the Clearing House. The Treasury told the Clearing House that it was "keen to release the information".

However, numerous times and over a number of months, Cabinet Office staff urged against immediate disclosure. The Clearing House cautioned the Treasury to "bear in mind whether releasing information might prejudice the course of the inquiry. We would like to see draft responses." The Cabinet Office, which runs the Clearing House, is also the sponsor of the Infected Blood Inquiry.

Almost three months after Evans' request, the head of the Clearing House, Eirian Walsh Atkins, wrote that, "The information is very much of its time, and is unpalatable when viewed alongside the Inquiry and the very many letters I know you will have read from infected parties."

The following week the Cabinet Office's director general of propriety and ethics, Sue Gray, wrote: "Personally I would favour the Inquiry releasing the information in a managed way (as we tried to do with Chilcot)... The HMT team will need to do a lot of consultation with former Ministers who I suspect will be very sore about this. Much better to do as part of a release with the Inquiry."

The involvement of the Cabinet Office director general of propriety and ethics raises a further important question: who exactly has access to and influence over the deliberations of the Clearing House? To what extent are special advisers and ministers privy to FOI requests?

The Cabinet Office FOI compliance record

Evaluations of the Clearing House and its governmental function must take account of the FOI compliance record of its parent department, the Cabinet Office.

- Between 2016 and 2020 the Cabinet Office granted the fewest (26%) and withheld the most (60%) requests across all of Whitehall.
- The Cabinet Office was found guilty in ICO decision notices of stonewalling requesters – providing no response whatsoever including a refusal – 40 times during the same period. Only the Home Office and the Ministry of Justice had worse records.
- The Cabinet Office has even stonewalled the ICO with regularity. Some 30% of all ICO information notices in the past two years were sent to the Cabinet Office after it failed to provide the commissioner with information she needed to conduct investigations.

This record, which is comfortably the worst in Whitehall, speaks volumes about the Cabinet Office's attitude to FOI.

The Cabinet Office is also the policy sponsor of the ICO's FOI work, and, in light of its compliance record and the operation of the Clearing House, there are serious concerns regarding its policy intentions for FOI. Increasingly, it appears that the enfeebling of the ICO is a choice made by the government, which helps it evade accountability and weaponise secrecy to its advantage.

The ICO's FOI budget is allocated annually by the government, which makes it vulnerable to political pressure. And, indeed, the ICO has been sorely underfunded over the past decade. As outlined above, the ICO budget has been cut in real terms by 29% over the past decade, which has obviously hampered its efficiency.

An alternative governance structure – in which the ICO reports to and receives funding from Parliament – may be more appropriate for a regulator. This approach is taken elsewhere – by the National Audit Office, the Parliamentary and Health Service Ombudsman, and the Scottish Information Commissioner – to insulate oversight bodies from political pressure.

Previous committees, including the Committee on Constitutional Affairs (2006)[11] and the Public Administration Committee (2014)[12] have made recommendations to this effect.

11 https://publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/110/11002.htm

12 https://publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/110/11009.htm

Case study:
Probing the misuse of public funds to conduct political research

In early 2020 the Cabinet Office awarded a contract without tender to Public First, a company whose executives are associates of Michael Gove and friends of Dominic Cummings. The contract was for opinion polling about the government's response to the pandemic, but a few months later, the contract was expanded to include qualitative research on party political issues such as "EU Exit" and "attitudes to the UK union"[13].

A senior civil servant explained, in a private email later disclosed to a court, why this was problematic: "tory party research agency tests tory party narrative on public money"[14].

Misusing public funds to conduct political research is a serious problem, because it removes the level playing field on which political parties must compete in a democracy. Gove, who was chancellor of the Duchy of Lancaster at the time, denied wrongdoing, but he also failed to show up in Parliament to answer questions about the contract. Labour and the Scottish National Party have called for a public inquiry – to no avail[15].

FOI requests to the Cabinet Office for the details of publicly funded opinion polling that may have served a political agenda have been doggedly resisted. Such requests have been filed by members of the Conservative Party and Scottish National Party, reflecting the political significance of the issue. Although the Cabinet Office has avoided making any disclosures up to this point, it appears that at least some information will soon be released.

A concern across Westminster

The potential misuse of public money to conduct opinion polling has been a worry for some time in different corners of Westminster. In 2019, the Scottish National Party MP Tommy Sheppard made an FOI request to the Cabinet Office for Ipsos MORI polling on "Scottish attitudes to the union". The request was refused and Sheppard entered into a lengthy appeals process.

In 2020, following the Cabinet Office's massive spending increase on opinion polling during the pandemic, the Public Accounts Committee (PAC) wrote to the Cabinet Office: "We should know more about how this money was spent and what benefit polling has delivered to taxpayers."[16]

David Davis

David Davis, the Conservative MP and former secretary of state at the Department for Exiting the European Union (DExEU), also had concerns about the Cabinet Office's opinion polling. It appeared to him that "the government has effectively used large amounts of taxpayers' money to obtain information which may give it a political advantage".

In July 2020, Davis made an FOI request that asked how much the Cabinet Office had spent in 2020 on opinion polling. He also asked what questions had been asked, and what results generated, in the course of this polling. The story of this request highlights long-standing problems with the Cabinet Office's compliance with FOI, and raises questions about what it may wish to conceal.

The Cabinet Office responded to a request from Davis on 1 September – four working days after the statutory deadline for replying had passed. The response was not only late, it was also a full refusal. But this should not have been surprising, given that the Cabinet Office breached the 20-working-day statutory limit in one quarter of all cases in 2020. It also refused 54% of requests in full – more than any other government department.

13 https://www.bbc.co.uk/news/uk-scotland-scotland-politics-57584932

14 https://goodlawproject.org/update/yesterday-in-court/

15 https://www.scotsman.com/news/politics/nicola-sturgeon-says-michael-gove-use-of-taxpayers-money-for-polling-a-scandal-after-high-court-unlawful-ruling-3284435

16 https://www.thetimes.co.uk/article/no-10-faces-challenge-from-commons-public-accounts-committee-over-rising-cost-of-opinion-polls-kqrlj3g85

The Cabinet Office also claimed that information about the questions and results of the polling was exempt because it related to "the government's ongoing, evolving policy stance" on "various issues". Under section 35(1)(a) of the FOI Act, information can be exempted from disclosure if it relates to "the formulation or development of government policy".

Davis immediately asked the Cabinet Office to conduct an internal review of its decision (the first stage of the appeals process). In support of his request, he cited section 35(2)(a) of the Act, which states that statistical information that informs policy decisions which have been taken cannot be exempted for reasons of "policy formulation".

Three weeks later, the Cabinet Office confirmed it was upholding its original decision in full. This may have been disappointing but, once again, it was not surprising. Analysis by openDemocracy shows that the Cabinet Office upheld its original decisions in 95% of cases between 2016 and 2020[17].

A complaint to the commissioner

On 1 October, Davis complained to the ICO in line with the FOI complaints process. The ICO told Davis it would treat his complaint as priority, and then wrote to the Cabinet Office seeking "detailed submissions" in support of its refusal. But the Cabinet Office delayed its response until 21 December, more than 11 weeks after Davis filed his complaint.

The submissions also contained a nasty surprise for Davis. The Cabinet Office was no longer using the policy formulation exemption but instead relying on a new defence: section 12. This states that authorities can refuse requests if they estimate that complying would require more than 24 hours of work.

The Cabinet Office told the ICO that it ran its polling in a "very decentralised" manner. One team had run "more than 170 polls on COVID-19 together with around 50 polls on EU exit, the economy and national security, with just a single polling provider". It argued that extracting this information alone would take 36 hours – longer than the Act allows.

The ICO said it was "most unsatisfactory" that the Cabinet Office had changed the basis of its refusal at the eleventh hour. But the Cabinet Office's actions were within the rules and the ICO agreed that section 12 should apply.

No further forward... yet

The ICO explained all of this to Davis on 1 April 2021 – April Fool's Day – more than eight months after he made his initial request. Had the Cabinet Office responded immediately with a section 12 refusal, as it should have, Davis would have saved a great deal of time – seven months to be precise – and a fair amount of effort, which he might have invested in a fresh request.

Davis told openDemocracy: "This is public data paid for with public money. And the public has a right to know what informed the biggest curbs on their freedom that many of them will ever see. The Cabinet Office have obfuscated and delayed, and then deployed excuses shifting from it being too expensive to collate, to then saying the data is still being used to inform policy."

He added: "When Whitehall is this desperate to avoid publishing the information, the question has to be asked what decisions are they trying to prevent the public from knowing about? Is it, for example, that most of the decisions on Covid were based on polling data, not science?"

In June this year, the First Tier Information Tribunal made a ruling on Tommy Sheppard's 2019 request for polling on attitudes to the union, done by Ipsos MORI for the Cabinet Office. The tribunal ordered a full disclosure, but the Cabinet Office, undeterred, applied to the tribunal for the right to appeal, which was rejected.

Rather than concede defeat, the Cabinet Office applied again, to the upper tier of the tribunal, for the right to appeal. It was rejected a second time, on 8 September 2021. The sitting judge stated he was "driven to the conclusion that what the Applicant really wants to do is re-run the first appeal... because it strongly disagrees with the conclusions and judgment properly made by the First Tier Tribunal".

At the time of writing (on 4 October) the Cabinet Office was yet to release the information requested by Sheppard. It has run out of road to appeal, however, and a disclosure is surely imminent. The greater concern that public money is being used for political ends remains, however.

17 https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy

Case study: Unpicking the secret NHS deals with private hospitals

In the early days of the pandemic, as the public applauded NHS workers from their doorsteps, the government was hastily signing off healthcare contracts worth billions of pounds in total secrecy. Matt Hancock, the health secretary at the time, would later argue he was simply trying to "save lives" and didn't have the time to do paperwork – but his approach was ruled "unlawful" by the High Court[18].

A string of scandals revealed that many contracts had gone to unqualified and inexperienced suppliers, while others had gone to ministers' friends and Tory donors. Yet today – 18 months after the pandemic took hold in Britain – the knotty details of many covid contracts remain unknown.

Sid Ryan, a researcher at the Centre for Health and the Public Interest (CHPI), has tried to use FOI to prise open the details of contracts between NHS England and the private healthcare sector. But NHS England has stonewalled Ryan to evade his requests. This cynical but effective tactic has been regularly used by NHS England for more than five years but the ICO is yet to take enforcement action.

Secret deals

When the UK entered its first lockdown, in March 2020, the government block-booked the beds and equipment of every private hospital in the country to support its COVID-19 response. This amounted to around 8,000 beds held by 26 companies.

This was not an unreasonable measure to take at the beginning of an unprecedented crisis. Yet concerns quickly emerged: what exactly was the NHS paying these companies for? How much was it costing the taxpayer? Did this offer value for money? These questions are yet to be answered.

The full details of the contracts signed with the 26 companies – including how much they were paid – remain secret. The DHSC stated in response to parliamentary questions that at least £175m a month was paid for access to the private beds over an eight-month period[19] – but the Financial Times[20] and Guardian[21] have cited estimates of between £400m to £540m per month.

NHS England's spending data should show how much was spent each month with each private provider. But, in a breach of Treasury guidance[22], the organisation has not published any spending reports since the start of the pandemic[23].

Meanwhile, NHS England has refused to say what percentage of the 8,000 requisitioned beds were actually occupied – even though it collects this data every day[24]. The DHSC also failed to answer a written parliamentary question on its estimate of "spare capacity" in the hospitals[25]. But internal NHS documents leaked to the Health Service Journal suggest that between June and September 2020 only one third of private beds were in use[26].

18 https://www.bbc.co.uk/news/uk-politics-56145490

19 https://questions-statements.parliament.uk/written-questions/detail/2020-11-23/119274

20 https://www.ft.com/content/61fe9a49-514a-487f-a0c2-3e1f1e2aae3b

21 https://www.theguardian.com/society/2020/jun/18/treasury-blocks-plan-for-private-hospitals-to-tackle-nhs-backlog

22 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/662333/guidance_for_arms_length_bodies.pdf

23 https://www.england.nhs.uk/publication/payments-over-25k-reports-2020/

24 https://www.theguardian.com/society/2020/jun/18/treasury-blocks-plan-for-private-hospitals-to-tackle-nhs-backlog

25 https://questions-statements.parliament.uk/written-questions/detail/2020-10-08/hl8960

26 https://www.hsj.co.uk/finance-and-efficiency/leaks-reveal-two-thirds-of-private-hospital-capacity-went-unused-by-nhs/7029000.article

Ryan's request

One year after the contracts were inked, on 6 April 2021, Ryan submitted an FOI request for invoices received by NHS England from private providers Circle Health and Spire Healthcare, and payments made to all 26 providers under the contracts.

The public interest of the request is obviously enormous. NHS England has spent billions of pounds with private companies for little discernible benefit. It has also failed to publish the contracts, usage statistics and spending data that would permit some accountability. Disclosure would reveal exactly who got paid how much – and for what.

It is also plainly obvious why NHS England would resist release. The government's pandemic response has been blighted by the award of dodgy contracts and – if a deal is a bad one – disclosure would trigger another wave of negative press coverage.

This is why the Freedom of Information Act is enacted in legislation. It is supposed to be immune to the whims and wishes of politicians and officials, and to deliver transparency in the public interest according to a process laid down in law.

The system is far from perfect – as this report shows – but it has worked successfully to some degree since the Act became law in 2005. But the cunning tactics used by NHS England in response to Ryan's request have short-circuited the appeal process and highlighted a glaring weakness in the legislation.

Stonewalled

As described in this report, the FOI Act requires public bodies to either grant or refuse requests for information, but refusals must cite a legally accepted reason for withholding information. For example, information that breaches national security or violates someone's privacy is protected from disclosure.

A refusal can then be appealed – first internally to the public body itself and then to the ICO, which can investigate public bodies' responses and, if necessary, order them to release information.

In Ryan's case, however, instead of either granting or refusing the request, NHS England simply did not respond at all. But without a refusal, Ryan could not appeal. This left him in legal limbo: without the information he sought, and without a right to appeal.

openDemocracy calls this tactic 'stonewalling'. It is a term borrowed from marriage counselling that describes a point-blank refusal to communicate in any way with another party.

Stonewalling is increasing rapidly across the public sector. ICO decisions about stonewalling increased by 70% between 2016 and 2020, according to an analysis by openDemocracy. The number of public bodies found guilty of stonewalling requesters more than doubled from 51 to 116 in that time[27].

Yet these cases are likely to be the tip of the iceberg because only a tiny proportion of requests – around 1% – actually lead to ICO complaints and only around one quarter of these are written up in decision notices. In most cases of stonewalling, there is no public evidence that it actually happened.

Cabinet Office statistics, the only central, public record of FOI requests made to government departments and arm's-length bodies, do not record instances of stonewalling. However, research by openDemocracy suggests it may be even more prevalent than previously understood. In a survey of 386 FOI requesters conducted by openDemocracy, 48% said they had been stonewalled in the past, with 27% reporting it in the past 12 months.

27 https://www.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy

The role of the ICO

NHS England's failure to respond to Ryan within 20 working days was an obvious breach of the Act. It was also not the first, or the second, or the third. The ICO found NHS England guilty of stonewalling in 40 separate cases between 2016 and 2020.

Knowing that NHS England was routinely stonewalling requesters, the ICO could have issued a practice recommendation to address compliance problems, or an enforcement notice that instructed it to respond to every outstanding request within 20 days. Yet despite the clear evidence of a systematic and long-term pattern of non-compliance, it took no enforcement action.

Thirty-eight working days after he had submitted his request, Ryan had not received a substantive response from NHS England. His only option was to complain to the ICO.

On 23 June, after receiving Ryan's complaint, the ICO wrote to NHS England and asked it to respond. But NHS England, apparently unmoved, continued to stonewall Ryan. Two months later, the ICO issued a decision notice[28] to legally compel a response, and two weeks after this it was finally issued.

The process took many hours of administration and 103 working days in all – more than five times the statutory limit set out in the Act. But NHS England's response – as is almost always the case in stonewalled requests – was a full refusal. Ryan must now enter the appeals process again, this time to challenge the validity of the refusal. He has submitted an internal review request, and will almost certainly need to complain again to the ICO, a process which could easily take another 12 months.

By stonewalling Ryan, NHS England made him use the appeals process twice. First about the fact it didn't respond and second about the nature of its refusal. FOI regimes in many other countries protect requesters from stonewalling – or 'administrative silence' – by deeming a failure to respond as a de-facto refusal.

A rule like this would have allowed Ryan, after a period of silence from NHS England, to ask the ICO to rule on whether information should be released at the same time he was complaining about the lack of a response. This is an excellent defence against stonewalling and institutional delays, but the UK lacks this provision, which makes the system vulnerable to these cynical tactics.

Ryan's story also raises questions about the ICO's enforcement approach: the regulator ruled against NHS England 40 times between 2016 and 2020. How much more evidence is required before stronger action is warranted?

> "When you get to your 15th weekly phone call chasing an update on your request and still don't have any idea what's going on it's very hard to believe that this stonewalling is unintentional. Even more so when NHSE seems comfortable ignoring the ICO too. The fact that the response you do eventually get is a copy-paste job I could have written in an afternoon when I was an FOI officer is just the cherry on the cake.
>
> "I don't know why the ICO lets them get away with it. It's mind-boggling that an authority can just decide to stop publishing basic financial records covering nearly £200bn of public money, and even worse that they can just dodge their FOI obligations with the only consequence being a mild rebuke from the commissioner. What's the point in a legal right to information if the authority can just ignore you and the regulator in the hopes you'll get bored and go away?"
>
> **Sid Ryan, researcher at the Centre for Health and the Public Interest**

28 https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4017857/ic-109532-z2g9.pdf

Case study:
Revealing the surveillance of FOI requesters and green campaigners

Last year openDemocracy revealed that the Clearing House, an "Orwellian" unit within the Cabinet Office, monitors "sensitive" FOI requests made by journalists and campaigners. There are legitimate concerns that the Clearing House may be blacklisting requesters and a parliamentary inquiry is now under way.

But this case study shows that the monitoring of FOI requesters also takes place far beyond central government. The British Museum, the oil company BP and the private security firm Welund have all played a part in monitoring the activities of "prolific FOI requester" and environmental campaigner Dr Chris Garrard.

This raises fresh concerns about the way access to information is restricted in cultural and academic institutions, and the unauthorised collection and sharing of personal data.

Chris Garrard

Dr Garrard, a softly spoken musician and composer with a doctorate from Oxford University, is a longtime campaigner against the sponsorship of the arts by oil companies. His organisation, Culture Unstained, is calling for an end to 'art-washing' - in which oil companies finance culture to promote their own interests and launder their reputations.

Garrard has used FOI extensively to document what he calls the "corrupting influence" of BP within museums and galleries such as the Tate, the British Museum and the Science Museum. He is the author of an investigative report, based largely on FOI disclosures, which found that BP has leveraged its role as a sponsor to access high-level politicians and that, contrary to public statements, the oil company is given the opportunity to sign off on programming decisions[29].

Garrard has also participated in numerous creative and peaceful protests at major British galleries, such as BP Must Fall, three days of creative action at the British Museum.

Getting personal

Late last year, Garrard noticed that the quality of his FOI responses had declined. He suspected that his requests were being monitored, and decided to investigate by making Subject Access Requests (SARs) under the Data Protection Act.

SARs allow individuals to access copies of their personal data - information that "relates to" them - which is held by both public and private organisations. This can include email correspondence about them and their FOI requests.

The responses to Garrard's SARs, when read alongside previous FOI releases, reveal that Garrard has been caught up in a web of surveillance created by the British Museum, BP and the private security firm Welund.

The museum's SAR disclosures show that draft FOI responses to Garrard are shared with the museum's head of press and marketing, attached with notes such as "you will recall that Dr Garrard is an anti-BP activist".

These exchanges appear to justify Garrard's concerns over monitoring, for two reasons. Firstly, Garrard may wonder why the press and marketing head is reviewing drafts of FOI responses. This is highly unlikely to be part of protocol.

29 https://www.artnotoil.org.uk/sites/default/files/BPs%20Corrupting%20Influence.pdf.pdf

Secondly, Garrard is identified by name and as an "anti-BP activist". This undermines FOI's applicant-blind principle, which holds that all requests must be treated equally regardless of their author. These issues – the reviewing of drafts by parties with ulterior motives and the identification of requesters – are precisely the same ones which make the Clearing House a threat to transparency.

Into the web: BP, Project ARGUS and Welund

The disclosures show that Garrard's requests have been circulated to senior staff in six different departments across the British Museum. There is no evidence that the museum directly informed BP, but the two have been known to collaborate closely in response to protests.

Documents released under FOI show that, in 2015, BP hosted security briefings – in collaboration with the Metropolitan Police and the National Counter Terrorism Security Office – for its "cultural partners", which included the British Museum, the National Portrait Gallery and the Science Museum. This work was codenamed Project ARGUS.

The British Museum has also previously confirmed to Garrard that it "received information from BP relating to potential protests at the Museum" over a three-year period[30].

This led Garrard to question how BP was generating its intelligence, and to submit an SAR to BP itself. The company's response – issued in February 2021 – reveals that BP receives regular updates about Garrard's activities from the private security firm Welund.

Welund specialises in "monitoring and analysing threats from domestic and international campaign groups". The company was founded in 2007 by former soldier and diplomat Peter Orwin.

Orwin earned a Military Cross in 1966 for ambushing eleven "dissident tribesmen" on behalf of Britain's colonial powers in Aden. A 22-year-old Orwin fired machine guns, threw grenades and directed mortar at "the enemy" – killing one and wounding seven – "with complete disregard for his own safety"[31].

Little is known about Welund's methods, but members of its team have backgrounds in "police and military intelligence agencies". One executive recently briefed the oil industry on "understanding the activist threat"[32].

Garrard sought to understand the extent to which the British Museum, BP and Welund may have collected and shared his personal information. But when he submitted an SAR to Welund, the company told him it held none of his personal data – even though BP disclosures clearly show inbound emails from Welund about Garrard.

Garrard also believes the British Museum's disclosures are incomplete. For example, the museum's information and compliance manager sent a total of 25 emails about Garrard's FOI requests to 11 members of staff. But there is not a single reply to these emails included in the disclosure. Did no-one reply? Or could it be that these replies – and other information – was withheld?

Appeals against BP, Welund and the British Museum are now under way. Garrard has made further SARs to both public and private bodies. Some have not replied at all – including the oil company Shell – in clear breach of the law.

Others, such as the Science Museum and oil company Equinor, have provided limited disclosures. Internal Equinor emails state that Garrard is a "prolific FOI requester" and "author of many freedom of information requests", but it is unclear how the oil company knows this.

"It's very murky," Garrard told openDemocracy. "The reality is that, behind the scenes, BP are trying to get intel on people who are legitimately criticising them," he added. "It is disturbing for people to be dedicating time, energy and resources looking into what you're saying and what you might be doing in this way."

30 https://www.artnotoil.org.uk/sites/default/files/BPs%20Corrupting%20Influence.pdf.pdf

31 https://www.thegazette.co.uk/London/issue/44191/supplement/13194/data.pdf

32 http://www.tipro.org/UserFiles/VERTICAL_TARGET_January_25_2018.pdf

BP and Welund did not respond to questions from openDemocracy about the surveillance of campaigners.

A spokesperson for the British Museum told openDemocracy: “Nothing has been shared with BP about specific campaigners or campaign groups. It’s possible that some references may have been included in a larger summary, such as a round-up of press clips after announcement or opening of an exhibition in which BP is the sponsor.”

The spokesperson said that the museum has standard FOI policies in place, adding: “If ever we do notify an external third party about an FOI, our policy is to do so on an anonymised basis.” They also confirmed that BP has a current sponsorship in place with the museum - but refused to say how much money it received from the company, saying it was “commercially sensitive”.

Connor Woodman

The University of Warwick worked in concert with the oil company BP to surveil one of its own students, Connor Woodman. Woodman, an undergraduate student at the time, was using the university’s library to research the history of the university in support of an application for an MA. He was successful and would later write his MA thesis on the same subject.

Woodman was also an activist with Fossil Free Warwick – an environmental direct action campaign group that successfully pressured the university to divest from fossil fuels. It then began a campaign which targeted BP’s presence on Warwick’s campus. Around the same time as his Warwick research, Woodman was also trying to access the BP Archive (located on the university campus) to learn more about the 1953 nationalisation of the Anglo-Iranian Oil Company, which later became BP.

It appears that Woodman’s activism led the university to regard him with suspicion and place him under several forms of surveillance. Emails released under FOI and the Data Protection Act show that Woodman was watched in person, on CCTV and on social media as he attempted to access both the BP Archive and Warwick University’s Modern Records Centre (MRC). BP’s intelligence, security and crisis management department was looped into this monitoring.

The emails, although partially redacted, reveal that the university and the oil company collaborated on a security strategy and exchanged information about Woodman’s movements and research intentions. He is not accused of breaking any civil or criminal laws or violating university rules in any of the documents.

“May be perfectly innocent… but thought I’d let you know”

One email from Warwick, dated July 2015, states: “Just to let you know we’ve had Connor Woodman in the Modern Records Centre yesterday making enquiries about BP and their opening hours. He is one of the Fossil Fuel campaigners, I think? … May be perfectly innocent and wanting to access BP archives but thought I’d let you know.”

Warwick’s MRC is “the main British repository for national archives of trade unions and employers’ organisations, and also has strong collections relating to pressure groups and fringe political parties”. The BP Archive is housed in the same building, but is managed by BP, not the university.

In response to Woodman’s presence, Warwick “put a security officer in place”, and the head of the university’s security services, Mark Kennell, then notified an employee of BP’s intelligence, security and crisis management division. Kennell wrote: “The [REDACTED] were twitchy earlier. These repeated visits are spooking them.” The BP staffer replied: “Thanks Mark, I was talking this through with them yesterday. Let’s make sure we keep in touch.”

"Opportunity to use your new CCTV!"

One month later, the MRC contacted BP again. One email states: "Don't want you to go into lockdown but thought I'd warn you one of those students who came in last time asking lots of questions about BP etc has just come in... Connor - I can't remember his surname but [REDACTED] got details. He's booked to come in here Wed 19th August. We will be vigilant - opportunity to use your new CCTV!"

The BP Archive then briefed its security division. A staff member wrote that Woodman "appeared in the MRC today", and that staff had "recognised him from the Facebook picture we have of the anti-fossil fuel group of Warwick students". The email also stated Woodman was observed "trying to look through our windows" and that "he has not accessed our database and therefore made no real effort to follow normal procedures if he genuinely wishes to access the BP archive".

"Very discreet security only please"

Two months later the BP Archive reported that "Connor has booked himself in to work at the MRC on Wednesday. Not implying that this is anything but legitimate, but just wanted to keep you advised of the information just passed to me by the MRC."

A University of Warwick staff member replied: "That is very helpful... CW is certainly very active at the moment and think he should be supervised in your archive."

The following day an email, from an unknown source, but which appears to be BP, stated: "For information - Connor Woodman has made an appointment within the MRC for tomorrow (Wednesday 7th October). As you may be aware, Connor is one of the leading members of the "BP Off Campus" campaign. He will not be entering the BP Archive itself.

"The Library, the BP Archive and Security Services are aware and Security Officers will be posted in and around the area tomorrow morning. There's nothing on social media to suggest there will be any disruption so we shouldn't be overly concerned but I wanted to flag it up to you in any case. We'll continue to monitor the situation to ensure that we are prepared for any undesirable activity."

A University of Warwick staff member then wrote: "Just one up there tomorrow please. Low-key, no hi-viz. Think they should sit inside the BP archive office off the MRC. I can see CW videoing them and asking for comment and then claiming he is being monitored and what are we hiding. Delicate and very discreet security only please."

Woodman told openDemocracy: "This is further evidence that any kind of notion of academic freedom is being increasingly eroded. "There's a political and moral question about whether we want universities that have an interest in dampening dissent. If we want to protect that liberal idea of academic freedom, then we need to think about massive structural reforms to our universities."

A spokesperson for the University of Warwick claimed that the university "does not monitor climate campaigners but will provide security support if requested". They added: "The BP Archive is located in the same building as the Modern Records Centre but is a separate organisation. It is not a University-run facility and access is granted by the BP Archive, who have their own separate staff and security arrangements. Warwick staff have no access to the BP Archives."

Woodman, Garrard, and the Garrard's colleague Jess Worth[33] are among the British activists whom BP has spied on in recent years. The cases suggest there is a concerning gap between the company's public green rhetoric and its internal attitude towards environmental activism.

33 https://newint.org/features/2014/11/01/my-spy

Case study:
Digging deeper into the policing of the Sarah Everard vigil

On 13 March, after the body of Sarah Everard was identified, Reclaim These Streets organised a vigil on Clapham Common - close to where Everard went missing. At the time, Everard's killer was suspected to be a serving member of the police, and this later proved to be true when Police Constable Wayne Couzens pleaded guilty to her murder.

The vigil, however, was prohibited by the Metropolitan Police due to Covid policy, and Reclaim These Streets was forced to cancel the event after losing a last-minute appeal in court. Yet hundreds of people - mostly women - turned up anyway and after several hours, as darkness fell, the Met began a "more physical police intervention"[34].

Time magazine reported stories of "police snatching women at the bandstand" and of women pinned to the ground by multiple officers[35]. The optics for the Met were terrible - given the circumstances of Everard's death - and the commissioner, Cressida Dick, faced calls to resign.

The home secretary, Priti Patel, was then quizzed in Parliament over whether she had authorised Dick to use the controversial and aggressive police tactics. Patel replied that she had held "extensive discussions" with Dick but did not divulge any details[36].

This was the context in which Jenna Corderoy, an investigative reporter at openDemocracy, made FOI requests for Patel's correspondence both with her staff at the Home Office and with Dick at the Metropolitan Police about the vigil over a two-week period. Yet the Home Office exploited a loophole to delay its response, allowing a sensitive political moment to quietly pass without putting either Dick or Patel under further scrutiny.

A loophole that legitimises delays

The FOI Act states that requests must be responded to "promptly and in any event not later than the twentieth working day following the date of receipt". But public bodies can push back deadlines for responding to requests if they need time to consider the "public interest". These responses, no matter how late they arrive, are still considered 'in time' by the Cabinet Office.

One month later, in April, when a response was due, the Home Office informed Corderoy it was extending its own deadline to consider the public interest. Another month after this, in May, the Home Office told Corderoy, with no suggestion of irony, that "we continue to work at pace on this request".

A frustrated Corderoy then complained to the ICO, which wrote to the Home Office and asked it to respond. The ICO said that if the Home Office failed to respond within ten working days it would issue a formal decision notice to compel its response.

In June, the Home Office failed to reply to four separate emails from Corderoy that asked for an update on the request. It eventually told her the request was still under "active consideration". But the ICO did not issue its promised decision notice.

In July, the All Party Parliamentary Group on Democracy and the Constitution reported that the Metropolitan Police intervention "was unlawful and breached fundamental rights"[37].

A week after the report was published, the Home Office responded to Corderoy. The response was 55 days late - meaning the Home Office had breached the 20-working-day deadline almost three times over. But paradoxically the request was still considered 'in time' because the extension was permitted to consider the public interest.

34 https://www.theguardian.com/uk-news/2021/jul/01/inquiry-condemns-policing-of-sarah-everard-vigil-and-bristol-protests

35 https://time.com/5947168/sarah-everard-police-response/

36 https://www.theguardian.com/politics/live/2021/mar/15/met-chief-cressida-dick-is-officer-of-superlative-achievement-says-minister-politics-live

37 https://www.jonathandjanogly.com/sites/jonathandjanogly.com/files/2021-07/clapham_and_bristol_inquiry_report_0.pdf

The response withheld information under six different exemptions. Four of these were subject to public interest tests, which means that the Home Office had to balance the merits of disclosure against the risks, and conclude where the balance lay.

Conducting these public interest tests was, ostensibly, the reason for a delay of nearly three months. Such a task may indeed have been complex and time consuming – if it had been done at all. But the Home Office's public interest test explanation was half a page long, and filled with generic and general arguments.

The Home Office was obliged to consider the prejudice to the prevention and detection of crime (s31(1)), the needs to maintain "safe spaces" to develop government policy (s35(1)), provide free and frank advice to Ministers (s36(2)(b)(i)), and facilitate a free and frank exchange of views s36(2)(b)(ii)) in the context of policing a vigil for a woman who was murdered by a police officer, during a COVID-19 lockdown.

This cannot be done in half a page.

Serving the "public interest"

Corderoy immediately requested an internal review, on 23 July, of the Home Office decision. This stage of the appeal process is not prescribed in the Act and hence there is no statutory time limit for completing one.

Corderoy then notified the ICO that the Home Office had responded. She also asked the ICO to issue a formal decision so that the delay became a matter of public record. But the ICO's reply stated that "the Commissioner does not consider serving a formal decision notice would serve any strong public interest".

The ICO said it would "record the Home Office's late response and it will form part of our on-going activity to monitor public authorities' compliance with FOI".

Corderoy could only smile at the ICO's response. So, she reflected, it *is* in the public interest to delay, by nearly three months, a response to a request about the police's heavy-handed tactics at a vigil for a woman who was murdered by a police officer. But it is *not* in the public interest for the information rights regulator to issue a formal notice about it.

In 2016, an independent commission on FOI found that "generally the time extension for public interest consideration is unnecessary and simply creates additional uncertainty and bureaucracy around the operation of the Act both for requesters and public authorities".

The commission recommended abolishing the provision and replacing it with a one-time extension of 20 days for complex cases. But this recommendation, like so many others, was ignored.

There were 2,435 "permitted extensions" to consider the public interest in 2020. Some may have been genuine – most were probably not. Yet government statistics show that Corderoy's request – along with 2,434 others – was responded to "on time".

Surely FOI is not supposed to work this way.

> "The public has a right to know who authorised police violence against women, at a vigil protesting for a woman murdered by a serving member of the force. But the Home Office simply will not respond to my FOI requests on a timely basis, and appears to be misusing the legislation to subvert a legitimate request. The meaning of the public interest has been turned on its head.
>
> "The whole process has been extremely frustrating. It seems increasingly clear that the government is willing to bend the rules to breaking point if it prevents the scrutiny of ministers.
>
> "And my faith in the ability of the ICO to enforce the law on powerful government departments is waning."
>
> **Jenna Corderoy, investigative reporter at openDemocracy**

Case study: Challenging state-sanctioned violence against children

Gareth Myatt was 15 years old and four-foot ten-inches tall when he was sent to a child prison run by G4S called Rainsbrook Secure Training Centre in Northamptonshire. According to his youth offending team worker, he was "a vulnerable young man because of his size, low self-esteem, and also his confusion over his ethnic identity"[38].

On Myatt's third day at Rainsbrook, three prison officers put him in a "seated double embrace". It was an asphyxiating stress position sanctioned for use on children by the Home Office. Myatt, a mixed-race child, told the officers he couldn't breathe. Documents released in legal proceedings reveal what happened next.

This "undersized, underweight" boy "was restrained for an excessive period of time... he was small in stature and was easily overpowered by three adults... he said he couldn't breathe... he said that he was going to shit himself; he defecated; he became motionless, irresponsive, unable to support his own body weight and was supported with his eyes shut, but [the officers] continued to restrain him".

Gareth Myatt was pronounced dead on arrival at hospital, in April 2004. The nicknames of G4S restraint instructors at Rainsbrook were revealed during his inquest, and included "Crusher, Mauler, Muncher, Clubber, Rowdy, Lightning and Breaker".

Later that year at Hassockfield, a now-closed child prison which was run by Serco, four officers unlawfully restrained 14-year-old Adam Rickwood through use of a "nose distraction" - a technique designed to cause severe pain to a child's nose. Hours later, in extreme distress, Rickwood made a ligature from his trainer laces and hanged himself using a curtain rail. In a note to his solicitor, Rickwood said he had asked officers: "What gives them the right to hit a 14-year-old child in the nose?"

The seated double embrace and the nose distraction were later outlawed, but new pain-inducing restraints were approved for use in children's prisons. The 'mandibular angle' - where pressure is applied to a nerve on the jawbone - and the 'wrist flexion' are two of four techniques that persist today.

Carolyne Willow

Carolyne Willow, a children's rights campaigner and social worker, was deeply moved by the deaths of Rickwood and Myatt. She interviewed their mothers, and later wrote a book calling for the closure of child prisons[39]. Willow has used FOI since 2005 to challenge the use of violence against children in prison. She has won many battles for information and used disclosures to successfully campaign for change.

Willow discovered, for example, that children were routinely strip-searched more than 20,000 times a year. Less than 1% of searches led to a "find" - with tobacco the most commonly found item - and the policy was later changed[40].

Yet Willow's recent efforts to probe the use of pain-inducing restraints have been less fruitful. In May 2019, she asked the Ministry of Justice (MoJ) under FOI for the "recorded reasons" why pain-inducing restraints were used on children during the year 2017-18. But the MoJ refused, claiming it would take longer than the 24-hour maximum allowed for by the Act.

38 https://policy.bristoluniversitypress.co.uk/children-behind-bars

39 ibid

40 https://www.theguardian.com/society/2013/mar/03/43000-strip-searches-children

Willow then began an appeals process that would finish 18 months later at the Information Tribunal. She never received the information she sought. Paradoxically, it appears that the MoJ was able to refuse the request because it was not centrally collecting the requested data in line with its own safeguarding policy. Yet the MoJ did not address this or consult with Willow, while the ICO and tribunal considered the matter out of scope.

When it is OK to inflict pain on a child

Violence against children is generally illegal and often carries criminal sanctions, but using pain-inducing restraints on children in prison remains permissible. This is, Willow believes, because child prisons are governed by the same principles as adult prisons – "fear, coercion and punishment" – instead of child-appropriate ones.

Today, there remains a gap in public understanding about which pain-inducing restraints are used on children, and why. There is a weighty public interest in understanding this, too, as numerous experts have called for a ban on the practice. An independent inquiry in 2019, to which Willow gave written and oral evidence, found that pain-inducing techniques are a form of abuse which should be legally prohibited[41].

Parliament's Human Rights Committee also advised the government to stop using pain-inducing restraints on children in 2019[42]. Experts from the UN Committee on the Rights of the Child, the UN Committee on Torture, and the Royal College of Paediatrics and Child Health have all condemned the use of pain-inducing restraint.[43]

In 2020, an independent review of pain-inducing techniques, commissioned by the MoJ following legal action by Willow's charity, Article 39, called on the government to strictly limit the use of pain-inducing techniques. These recommendations were accepted by the government but, according to Article 39, a draft set of revised policies published this summer fails to honour these commitments.

Willow's request

Willow disputed the MoJ's refusal of her request for the "recorded reasons" why pain-inducing techniques were used on the grounds that it would take more than 24 hours to prepare a response. She knew that every time that physical force was used against a child, an incident supervisor had to complete a "Use of Force" form which included tick-box options for the "reason(s) why force was used". This was the information she sought to access.

Willow also believed that this Use of Force data was centrally collected by the MoJ. Indeed, a safeguarding policy document states that a "national team" is responsible for reviewing "the use of pain-inducing techniques and injuries to young people or staff" and that, "There will be a higher level of scrutiny and wider information gathering for incidents that involve these issues."

Willow asked herself: if the collected data on pain-inducing restraints included the "reason(s) why force was used", and the data was reviewed by a national team, what could take so long?

The MoJ argued that it did collect, and publish, some data on the reasons why force was used but that this covered two types of restraint: those which were taught under official policy – Minimising and Managing Physical Restraint (MMPR) – and those that were not. Willow was only interested in the MMPR techniques, but the MoJ said the two could not be disaggregated.

The MoJ argued that providing the MMPR data would require giving a "detailed account" of incidents based on the extraction of information from 260 case reports held by seven different institutions for young offenders. This would take around 85 hours.

41 https://www.bbc.co.uk/news/education-47625346

42 https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/91438/government-must-end-use-of-paininducing-restraint-techniques-and-solitary-confinement-of-detained-children/

43 https://researchbriefings.files.parliament.uk/documents/CBP-8557/CBP-8557.pdf

A fruitless appeal

Willow was unconvinced by the MoJ argument and complained to the ICO on 11 September 2019. She wanted the ICO to establish what data was held nationally by the MoJ, and to assess whether her request for the "recorded reasons" could be answered by reference to this data.

Willow's complaint was driven by a reasonable piece of logic: the MoJ must centrally collect specific data on the use of MMPR pain-inducing techniques because its safeguarding policy states that a "national team" is responsible for reviewing "the use of pain-inducing techniques and injuries to young people or staff".

The ICO, however, did not address this in its decision. Neither did it explicitly establish what data was centrally collected on pain-inducing restraints, and whether it could be disaggregated as Willow wished.

Willow appealed the ICO's decision to the Information Tribunal on the same basis. The tribunal found that "the Use of Force Form does record the reasons why force was used and also lists all the techniques used." It also found that this information is submitted every month to a central body.

But, the decision states, "The form does not link the specific techniques to a particular reason... For example, an incident may record 3 reasons for why force was used, and it may list 5 [restraint] techniques, 2 or which were pain-inducing techniques."

To identify the particular reason a specific technique was used, it would be necessary to read each individual form. Willow's appeal was dismissed on this basis by the tribunal on 15 December 2020.

Advice and assistance

The ICO and the Information Tribunal did not address how the ministry could fail to centrally hold the pain-inducing restraints data without breaching its safeguarding policy. The issue was considered out of scope of the FOI process.

The tribunal's decision records that counsel for the MoJ "stated that the MoJ is compliant with the policy, but understandably declined to go into detail because she did not have instructions on the way in which the policy is being complied with". It further explains: "Although, as the Director of Article 39 [stated], the implementation of the policy to avoid future tragic incidents to children in custody is at the core of the charity's aims, it is not within the remit of this tribunal."

This frustrated Willow, who was already exasperated by the MoJ's refusal to engage with her in a meaningful way.

Section 16 of the FOI Act requires authorities to provide advice and assistance to people who have made FOI requests. The purpose of the clause, according to the ICO, is "to ensure that a public authority communicates with an applicant to find out what information they want and how they can obtain it". In principle, this is an extremely useful legal provision and sets out a basis for constructive relations between public bodies and FOI requesters.

But authorities rarely fulfil their obligations. Cabinet Office statistics for 2020 show that central government departments and agencies provided advice and assistance to only 10% of the 29,788 FOI requests that were not granted in full.

Ironically, advice and assistance were provided - or considered to be provided - to Willow in this case. According to the ICO decision notice, the MoJ told Willow: "We advised you to reduce the scope of your request, for example, asking fewer

questions, identifying fewer establishments or enquire about specific types of restraint." Willow did amend her wider FOI request, but the root of the problem – how the MoJ could not centrally hold the data in spite of the commitments in its safeguarding policy – was not addressed.

Willow wanted to know why incarcerated children had been subject to the most serious types of restraint techniques, which were deliberately designed to cause them severe pain. She believes the MoJ was able to refuse the request because it was failing to comply with its own safeguarding policy and human rights obligations. And she is frustrated that it selected this adversarial approach on a subject of such obvious public interest.

> "Given the appalling history of Gareth and Adam's deaths, and widespread unlawful restraint in child prisons, together with repeated pronouncements from successive governments that lessons have been learned and child protection will be prioritised, this FOI saga should never have happened.
>
> "That the MoJ was able to tell the Information Commissioner that it would take 85 hours to assemble the data, which included travel time to child prisons, presumably means I was the first person ever to ask for the recorded reasons officers gave for inflicting severe pain on children. These are techniques which are known to break children's bones, to cause them to scream out in pain and to render them utterly powerless.
>
> "Notwithstanding that the MoJ's own child safeguarding policy promises that these techniques are subject to a high degree of scrutiny by a national team, has no government minister, senior civil servant or safeguarding body ever pressed for this information? It seems even the review of pain-inducing restraint commissioned by the MoJ in 2018 didn't obtain this data, because if it had it would have been sat there ready when I submitted my FOI request the following year.
>
> "The MoJ publishes statistics each year on the use of force. I sincerely hope it has learnt from this FOI process and amended its systems so that those overseeing safeguarding and the protection of children's human rights now monitor the reasons for the use of pain-inducing techniques. Being transparent about the data in future is a vital prerequisite for keeping children safe."
>
> **Carolyne Willow, director, Article 39**

Annex 1: Savanta ComRes opinion polling on FOI and transparency

openDemocracy wanted to demonstrate that transparency and Freedom of Information are of interest to the wider public. To that end, we commissioned polling from Savanta ComRes on government transparency and Freedom of Information. It interviewed 2,075 UK adults aged over 18. This was carried out online between 13 and 15 August 2021.

Firstly, respondents were asked to rate the importance of government transparency on a scale from 0 to 10, where 0 is "not at all important" and 10 is "extremely important".

The answers to the question "How important or unimportant do you consider government transparency for the health of the UK's democracy?" are as follows:

	All
Sum: 0-3	3%
Sum: 4-6	18%
Sum: 7-10	73%
Don't know	6%

- Conservative voters were significantly more likely than Labour voters to say that government transparency was important for the health of the UK's democracy (83% vs 76%).
- Older adults were more likely to see government transparency as important for the health of the UK's democracy, with 84% of those aged over 55 saying it was important, compared to those aged 35-45 (73%) or 18-34 (58%).

Secondly, respondents were asked about the fact that the percentage of requests under Freedom of Information legislation that government departments have refused to answer in full has increased in recent years. (This has risen from around 40% of requests in 2010 to nearly 60% in 2020.) They were asked how concerned, if at all, they were about this.

	All
Very concerned	33%
Somewhat concerned	38%
Not very concerned	15%
Not at all concerned	4%
Don't know	11%
CONCERNED	**71%**
NOT CONCERNED	**18%**

- Seven in ten (71%) said they were concerned about the government not releasing information in a higher proportion of requests, while just one in six (18%) were not concerned.
- Generally speaking, adults of all ages were similarly concerned, but those aged 55+ (75%) were more concerned than those aged 35-54 (69%) and 18-34 (68%).

Savanta ComRes interviewed 2,075 UK adults aged 18+ online between 13 and 15 August 2021. Data were weighted to be demographically representative of UK adults 18+ by age, gender, region, and other socio-economic characteristics including social grade. Savanta ComRes is a member of the British Polling Council and abides by its rules. Full data tables are available on request.

Annex 2: openDemocracy survey of website visitors' opinions on FOI and transparency

openDemocracy also carried out a survey of visitors to our website to gain an understanding of people's attitudes towards government secrecy. Nearly 4,000 people filled out our survey.

It was clear that they were "much less likely" to vote for a party with a record of secrecy.

Are you more or less likely to vote for a party with a record of government secrecy?	Total	Percentage
Much more likely	112	2.9%
More likely	16	0.4%
No difference	35	0.9%
Less likely	341	8.7%
Much less likely	3412	87.1%

Those who completed the survey were asked to submit one word which describes how government secrecy made them feel. "Angry", "cheated", "suspicious" and "betrayed" were the most common words.

Here is a small selection of the comments made by respondents to our survey:

> Ann, from Brentford and Isleworth, said: "When I read accounts of cover-ups and obfuscation it makes me angry and I distrust government ministers, departments and agencies more and more. Which is not good for democracy."
>
> "Government secrecy affects us all adversely every day," said Ian, from Neath.
>
> "We are all personally affected when the government withholds information because it weakens... decision making, which in turn weakens the system on which we all rely," Candy, Dumfries and Galloway.

Other findings of the survey included:

- Out of 3,902 responses, 3,547 (91%) said it was "very important" that governments were open and honest.
- Out of 3,924 responses, 3,914 said the current UK government's approach to transparency was "not at all transparent".
- Out of 3,889 responses, 3,883 said that bodies which oversee government transparency needed to be strengthened.
- Out of 3,912 responses, 3,885 said that private companies delivering public services should be opened up to more transparency.

Full results of our survey are available on request.