



# **Independent Review of the impact of the Freedom of Information Act**

**A REPORT PREPARED FOR THE DEPARTMENT FOR CONSTITUTIONAL  
AFFAIRS**

October 2006



# Independent Review of the impact of the Freedom of Information Act

|  |    |
|--|----|
| Executive summary.....   | 1  |
| 1 Introduction .....   | 13 |
| 2 Understanding the costs of delivery.....                             | 17 |
| 3 Assessing the options for change.....                                | 39 |
| Annexe 1: Calculating the central government cost of FoI .....         | 57 |
| Annexe 2: Calculating the cost of FoI to the wider public sector ..... | 63 |

## Independent Review of the impact of the Freedom of Information Act

|  |    |
|--|----|
| Figure 1: The FoI process.....   | 18 |
| Figure 2: Costs of the different stages of work for the average request .....  | 21 |
| Figure 3: Proportion of FoI requests per stage of work.....  | 22 |
| Figure 4: Average cost of requests that involve Ministers .....  | 23 |
| Figure 5: Distribution of total volume and cost of requests in each cost bracket                                       | 24 |
| Figure 6: Comparison of average time spent on initial requests and internal reviews .....                              | 26 |
| Figure 7: Comparison of average cost of initial requests and internal reviews ....                                     | 27 |
| Figure 8: Time taken on requests from serial requestors in the one week sample .....                                   | 28 |
| Figure 9: Cost of requests from serial requestors in the one week sample.....  | 29 |
| Figure 10: Estimated volume and cost of FoI requests in the wider public sector for police and local authorities ..... | 34 |
| Figure 11: Local authority requestors.....   | 35 |
| Figure 12: Strategic Health Authority requestors .....   | 36 |
| Figure 13: Higher Education Institution requestors .....   | 36 |
| Table 1: Impact of the options for change on volumes and costs using the actual costs of delivery .....                | 5  |
| Table 2: Combined impact of the options for change on volumes and costs using the actual costs of delivery .....       | 6  |
| Table 3: Impact of the options for change on volumes and costs using £25 per hour .....                                | 7  |
| Table 4: The cost of FoI in Central Government .....   | 19 |
| Table 5: Estimated annual number of initial FoI requests from journalists and their cost .....                         | 30 |
| Table 6: Estimated annual number of journalist cases and their cost .....  | 37 |
| Table 7: The volume impact of including reading, consideration and consultation time.....                              | 41 |

|   |    |
|---|----|
| Table 8: The cost impact of including reading, consideration and consultation time.....               | 42 |
| Table 9: Volume impact of aggregating non-similar requests.....                                       | 45 |
| Table 10: Cost impact of aggregating non-similar requests .....                                       | 46 |
| Table 11: Assumptions used to apply Irish experience to the UK .....                                  | 49 |
| Table 12: Volume and cost implications of charging a fee for FoI .....                                | 50 |
| Table 13: The volume impact of reducing the appropriate limit .....                                   | 52 |
| Table 14: Impact of options on volumes and delivery costs (actual cost of £34 and £26 per hour) ..... | 54 |
| Table 15: Impact of the options on volumes and delivery costs (current cost of £25 per hour) .....    | 55 |



## Executive summary

Frontier Economics were commissioned by the Department for Constitutional Affairs to carry out a review of the operation of the Freedom of Information Act (FoI). The terms of reference for the review set out two issues to be examined in detail:

- the cost of delivering FoI across central government and the wider public sector, alongside an assessment of the key cost drivers of FoI; and
- an examination of options for changes to the current fee regime for FoI.

This report sets out the key findings from the study in relation to both of these issues.

### THE COSTS OF DELIVERING FOI

After the initial surge of requests in 2005 it is anticipated that central government's volumes will settle at around 34,000 FoI requests annually. Of those requests which are resolvable around 35% are likely to involve consideration of the application of exemptions. Annually, requests to central government generate approximately 2,700 internal reviews, 700 appeals to the Information Commissioner and 15 to the Information Tribunal.

The total cost across central government of dealing with FoI requests is £24.4 million per year. £8.6 million of this is the cost of officials' time in dealing with initial FoI requests. The remainder is made up of overhead costs, the cost of processing internal reviews, appeals to the ICO and the Information Tribunal and the annual cost of the FoI work of both the ICO and the Tribunal. Although the ICO and the Tribunal are funded by central government they have cross sector jurisdiction not confined to central government.

The wider public sector receives at least 87,000 FoI requests annually, more than twice the number handled by central government. The total cost of dealing with these requests is estimated to be around £11.1 million per year. Local authorities are estimated to have the highest volume of FoI requests outside central government, receiving around 60,000 per year at a cost of £8 million.

It should be noted that the costs above represent the full costs of dealing with requests for information. They do not reflect the additional costs of implementing the FoI Act. Public bodies incurred costs in responding to information requests prior to the introduction of the Act, and these would need to be subtracted in order to arrive at the true additional costs of the FoI Act. Information was not systematically collected across the public sector on the costs of responding to requests for information prior to the Act's introduction.

### Key cost drivers

The average (**hourly**) cost of officials' time in responding to FoI requests within central government is £34, which is substantially higher than the figure of £25 stated in the current fees regulations. For central government, the average cost of officials' time for an initial FoI request is approximately £254. On average, FoI requests in central government take 7.5 hours to deal with.

The most expensive stage of work for the average central government request is the time spent consulting Ministers or board level officials, which costs an average of £67 per request. The time spent considering the request costs a further £41 on average and searching for information and reading costs a further £34 each. Of these activities, only searching time is currently included in the cost calculation to determine whether the cost of a request is likely to exceed the appropriate cost limit.

The average cost of central government requests that involve a Minister tend to be substantially higher, costing £241 more than the average cost of a request. This is because requests involving Ministers require five and a half more hours work than those that do not involve a Minister.

A key issue in terms of the cost of dealing with FoI is the number of very expensive requests that occur. Approximately 5% of central government requests cost more than £1,000, but account for 45% of the combined costs of officials' and ministers' time in dealing with initial requests. These requests tend to take almost seven times longer than average to complete. They involve 50 hours of work on average relative to 7.5 hours for all central government requests. They tend to involve substantially greater proportions of time spent on reading, consideration and consultation than is the case for all other central government requests. In contrast, 61% of requests cost less than £100 to deliver and account for less than 10% of total costs.

An additional substantial driver of cost is the internal review process and the ICO appeals process. Individuals that request information under the FoI Act are entitled to ask for an internal review if that information is withheld from them (or if they consider that the authority has otherwise failed to comply with the Act). There is no cost to the individual of initiating the review but internal reviews are expensive for government departments. On average, an internal reviews costs £1,208 compared to £254 for an initial request, almost five times as much.

Although this option has not been considered in this report, since it would require primary legislation, it may be worthwhile considering the merits of introducing a charge for the internal review and appeals process. For example, a charge could be introduced which was only payable where the requestor's appeal was unsuccessful.

## Types of requestor

The work has identified five key categories of FoI requestor:

- journalists;
- MPs;
- campaign groups;
- researchers; and
- private individuals.

Each of these groups tend to contain a mixture of one-off requestors and serial requestors. Serial requestors are those individuals who tend to be experienced users of the Act. Requests from serial requestors to central government take over three hours longer on average than those made by one-off requestors (mainly private individuals). In particular, they require a higher proportion of time to be spent on consideration and consultation than requests from one-off users.

Journalists make up a significant proportion of the serial requestors identified. Requests from journalists tend to be more complex and consequently more expensive. They account for around 10% of initial FoI requests made to central government and 20% of the costs of officials' time in dealing with the requests. This equates to around £1.6 million in total in any given year. Journalists are also more likely to request an internal review. They account for between 450 and 660 internal reviews at a cost of between £500,000 and £830,000 (16% to 26% of the total cost of internal reviews in central government).

Journalists are also one of the most significant categories of serial requestor in the wider public sector. They account for between 10% and 23% of initial FoI requests and between 20% and 45% of the costs of officials' time depending on the particular wider public sector organisation. Overall, this equates to around £1.4 million per year.

In total, therefore, across central government and the wider public sector, journalists account for at least £3.9 million, or 16% of the total costs of FoI delivery.

### ***Requests that are not “in the spirit of the Act”***

A key issue identified by almost all stakeholders was requests received by departments that were not in the spirit of the Act. They are a mixture of frivolous requests, disproportionately burdensome requests and requests that are explicitly designed to test the compliance of the Act. A number of examples are provided below.

- A request for the total amount spent on Ferrero Rocher chocolates in UK embassies.
- A request from a vintage lorry spotter to 387 local authorities for the registration numbers of all vintage lorries held in their stock.
- A request for information on a sweater given to President George Bush by No.10.
- Multiple requests from a long time correspondent of the CPS about allegations of criminality against him, having already been told that the CPS was not the authority to answer such questions.
- A request for the number of eligible bachelors in the Hampshire Constabulary between the ages of 35 and 49, their e-mail addresses, salary details and pension values received from requestor “I like men in uniform”.
- A request for the number of statistics of reported sex with sheep and any other animal in Wales for 2003 and, if possible, since records began.

- A request stating “I want to have an affair – how can I make it constitutional?”
- Repeated requests from a commercial company for IT and telephone contracts made across government. The requestor claims the information goes out of date quickly so makes requests every month to most departments.
- A request for all background papers relating to the handling of a specific request.

## OPTIONS FOR CHANGE

The review was asked to consider the impact of four options:

- including reading time, consideration time and consultation time in the calculation of whether responding to a request is likely to exceed the ‘appropriate limit’;
- aggregating non-similar requests made by any legal person (or persons apparently acting in concert) for the purposes of calculating whether responding to a request is likely to exceed the ‘appropriate limit’;
- reducing the appropriate limit thresholds from their current levels of £600 for central government and Parliament and £450 for other public authorities; and
- introducing a flat rate fee for FoI requests.

The table below sets out the impact of each option (if it were introduced in isolation) on the volumes and delivery costs for both central government and the wider public sector. To understand the economic impact of each option the table sets out the impact the options would have if the cost reflective rates of £34 per hour for central government and £26 per hour for the wider public sector are used to calculate the cost of dealing with requests.

|   | Central Government |                                      | Wider Public Sector |                                      |
|---|--------------------|--------------------------------------|---------------------|--------------------------------------|
|   | Volume reduction   | Reduction in cost of officials' time | Volume reduction    | Reduction in cost of officials' time |
| Including reading, consideration and consultation time                                    | 2,692<br>(8%)      | £4.7m<br>(54%)                       | 5,492<br>(6%)       | £5.0m<br>(48%)                       |
| Aggregating non-similar requests (see footnote below)                                     | 3,598<br>(11%)     | £0.9m<br>(11%)                       | 8,414<br>(10%)      | £1.2m<br>(10%)                       |
| Introducing a flat rate fee   | 15,915<br>(47%)    | £3.8m<br>(44%)                       | 34,077<br>(39%)     | £3.9m<br>(38%)                       |
| Reducing the appropriate limit threshold to £400 (central) and £300 (wider public sector) | 128<br>(0.4%)      | £0.8m<br>(9%)                        | 1,331<br>(1.5%)     | £2.1m<br>(20%)                       |

Table 1: Impact of the options for change on volumes and costs using the actual costs of delivery

*(Note the volume and cost impacts in the table relate to the impact of introducing each option on its own. The volume and cost figures are not additive across the options.)*

*The estimated cost savings related to aggregation are conservative: they have been based on the average cost of all FoI requests rather than the cost of serial requests.*

Table 1 shows that allowing reading, consideration and consultation time to count towards the appropriate limit, alongside aggregation, is likely to have the greatest impact on reducing the most expensive requests while at the same time preserving the right of the majority of requestors to information.

Including reading, consideration and consultation time could reduce the cost of officials' time in central government by 54%, and could be anticipated to have a substantial impact on the other costs associated with FoI – particularly the costs of the internal review and appeal process. This option would result in the exclusion of nearly all of the top 5% of most expensive cases.

On its own, a flat rate fee is likely to have the most substantial impact on reducing the volume of requests. However, it is likely that a large proportion of requests deterred by a flat rate fee would be the less costly one off requests from members of the public. It is highly unlikely that the most expensive cases would be deterred by a flat rate fee. This is demonstrated by the fact that a flat rate fee would have a smaller impact on costs than would counting reading consideration and consultation time, even though a flat rate fee would reduce volumes by 47% (central government) compared to an 8% reduction for reading consideration and consultation time.

Table 2 shows the combined impact of the options on the volumes and delivery costs for both central government and the wider public sector. The estimates of the volume and value of requests that could be excluded under each option are calculated using the hourly rate of £34 for central government and £26 for the wider public sector. This reflects the actual costs of FoI delivery.

|  | Central Government |                                      | Wider Public Sector |                                      |
|--|--------------------|--------------------------------------|---------------------|--------------------------------------|
|  | Volume reduction   | Reduction in cost of officials' time | Volume reduction    | Reduction in cost of officials' time |
| Requests excluded by including reading, consideration and consultation time and aggregating non-similar requests | 13%                | 60%                                  | 11%                 | 54%                                  |
| Requests excluded on the basis of a flat rate fee  | 45%                | 18%                                  | 37%                 | 21%                                  |
| <b>Combined effect of all of the above</b>   | <b>58%</b>         | <b>78%</b>                           | <b>48%</b>          | <b>75%</b>                           |

Table 2: Combined impact of the options for change on volumes and costs using the actual costs of delivery

Table 2 shows that the combined impact of aggregation and including reading, consultation and consideration times would be to reduce volumes of requests by 13% and costs by 60%. If a fee were to be introduced in addition, it would reduce volumes of requests by a further 45%, but costs by just 18%. This illustrates that introducing a fee would largely impact on the low cost one-off requests from the public. If all the options were introduced, volumes would reduce by 58% and costs would reduce by 78%.

To illustrate the impact of the options were the current rate of £25 per hour to be retained Table 3 sets out the volume impact the options would have if the current rate of £25 per hour is used to calculate whether requests exceed the appropriate limit. The cost impact of each option is calculated using the actual hourly rates of £34 (central government) and £26 (wider public sector).

|   | Central Government |                                      | Wider Public Sector |                                      |
|---|--------------------|--------------------------------------|---------------------|--------------------------------------|
|   | Volume reduction   | Reduction in cost of officials' time | Volume reduction    | Reduction in cost of officials' time |
| Including reading, consideration and consultation time                                    | 1,346<br>(4%)      | £3.2m<br>(37%)                       | 5,991<br>(7%)       | £5.0m<br>(49%)                       |
| Aggregating non-similar requests  | 2,817<br>(8%)      | £0.7m<br>(8%)                        | 7,315<br>(8%)       | £1.0m<br>(8%)                        |
| Introducing a flat rate fee   | 15,915<br>(47%)    | £3.8m<br>(44%)                       | 34,077<br>(39%)     | £3.9m<br>(38%)                       |
| Reducing the appropriate limit threshold to £400 (central) and £300 (wider public sector) | 385<br>(1%)        | £0.9m<br>(11%)                       | 1,831<br>(2%)       | £2.1m<br>(21%)                       |

Table 3: Impact of the options for change on volumes and costs using £25 per hour

*(Note the volume and cost impacts in the table relate to the impact of introducing each option on its own. The volume and cost figures are not additive across the options.)*

The table shows that allowing reading, consideration and consultation time to count towards the appropriate limit, alongside aggregation, is likely to have the greatest impact on reducing the most expensive requests while at the same time preserving the right of the majority of requestors to free information.

The hourly rate of £25 per hour is below the actual hourly cost of FoI delivery. This means that in this scenario including reading, consideration and consultation time reduces the cost of officials' time in central government by 37% compared to 54% when an hourly rate of £34 is used. However, this scenario could still result in the exclusion of the majority of the top 5% of most expensive cases.

Each of the options is discussed in greater detail below.

### Reading, consultation and consideration

In almost every central government department there are a relatively small volume of requests that contribute disproportionately to the costs of delivering FoI. These requests tend to be driven either by large volumes of reading material, or by the need for extensive consultation (time spent in consultation outside the public authority to determine the applicability of exemptions and/or

the balance of the public interest) or consideration (time spent considering the response to the request under the FoI Act to determine the applicability of exemptions and/or the balance of the public interest).

On average, these activities count for 70% of the cost of central government officials' time in dealing with initial FoI requests. However, the regulations currently do not allow these activities to count towards the cost calculation to determine whether the appropriate limit has been exceeded.

From an economic perspective, there is a clear benefit in including these activities in the calculation, so that the appropriate limit is fully reflective of the costs of officials' time in delivering FoI requests. If reading, consultation and consideration time were to be included this could lead to a substantial reduction in the costs of delivering FoI. Specifically, the cost of officials' time in dealing with FoI requests could be reduced by 54% and the most expensive 5% of cases could be almost entirely excluded.

If this option is to be adopted, a key issue will be determining an appropriate methodology for the calculation of reading, consideration and consultation time that allows for a consistent approach across practitioners. This is important, because estimates of costs will need to be determined prior to the work being undertaken, so that a decision can be reached as to whether the costs of compliance would exceed the appropriate limit. If practitioners do not take a systematic approach, there is likely to be a potentially substantial increase in requests for internal review and appeals to the ICO, with a consequent substantial increase in costs.

Careful consideration will need to be given as to how best to calculate the factors to be counted towards the cost threshold. The measures will need to be administratively simple and should not in effect provide an absolute exemption to practitioners. For reading time, one possible approach is a standard charge per page. It has not been possible to calculate the impact of such an approach quantitatively. This is because information on the numbers of pages per request is not held centrally. However, interviews with practitioners suggest that a charge per page of between £1 and £2 would be appropriate and would, in most cases be reflective of the costs of reading through the material in question.

For consideration and consultation it is more difficult to identify a similar type of ready reckoner, as there is no standard metric to which a charge could be applied. However, one possible option that could balance the competing requirements of consistency, administrative simplicity and fairness is to develop a series of graduated standard charges for consideration and consultation. The charge could only be used to count towards the threshold for those requests deemed likely to require consideration and/or consultation. Moreover, the charge could be graduated to reflect:

- differences in the type of consultation required; and
- differences in the number of bodies for which consultation is required.

An additional issue is that the average cost per hour of delivering FoI in central government is £34. However, under the current FoI fees regulations all costs

must be calculated using the same cost per hour of £25. For consideration and consultation in particular, an average cost of £25 per hour substantially underestimates the costs of responding to the request. This is because consideration and consultation time typically involve substantial inputs from senior civil servants and often also require ministerial or board level involvement.

Consequently, the review would recommend that there is a need to consider changing the cost per hour figure used in the calculations to one that is reflective of the actual costs of delivering FoI.

### **Aggregating non-similar requests**

There are a small number of serial users of the Act who account for a substantial proportion of the overall costs of delivering FoI (serial requestors account for 14% of requests by volume and 26% by value.) Requests made by these users tend to cost substantially more than standard requests and take up substantial levels of senior resource. A key issue is that currently non-similar requests from these requestors cannot be aggregated to count towards the appropriate limit.

Table 1 above suggests that aggregating non-similar requests could substantially reduce the costs of delivering FoI. The key issue that has been identified in implementing this option is the concern that requestors will game the system through behavioural changes that substantially reduce the volume and cost impacts set out above. Requestors can currently game the system with respect to aggregating similar requests. This option could potentially increase the susceptibility to gaming, as under the Act, individuals do not have to prove their identities in order to make a request. Consequently, an individual could either change the timing of requests so they fall outside the 60 day period, or make requests from numerous different email accounts in order to circumvent the aggregation requirements.

### **Fees**

Under the FoI Act it is possible to introduce a flat fee for responding to FoI requests. On its own, a flat rate fee is likely to reduce the volume of requests by between 40% and 50%. However, it is likely that a large proportion of requests deterred by a flat rate fee would be the less costly one-off requests from members of the public. It is highly unlikely that the most expensive requestors would be deterred by a flat rate fee.

A key issue raised by stakeholders was how to implement a payment scheme for FoI in organisations that do not otherwise have a requirement to collect small sums of money on a regular basis. This issue has been identified as applying primarily to central government departments, as public bodies in the wider public sector tend to have facilities in place to deal with small payments.

There is no quantitative information available on the costs of collecting a fee. However, discussions with central government stakeholders suggested that the costs are likely to be between £30 and £100 per fee collected. This suggests that if a fee of £15 were implemented, in departments where no system is in place to

collect small sums, a loss of between £15 and £85 would be made on every fee collected. This suggests that the primary role of a fee would be in deterring requestors from making FoI requests.

To understand the impact of this deterrent it is necessary to compare the costs and benefits of responding to FoI requests. From an economic perspective efficiency could be improved if a fee deterred a request where the cost of responding to the request outweighed the benefits.

The benefits of FoI can be broken into three elements: the private benefit to an individual of the information they receive; the public benefit of that information being made available; and the aggregate benefits that derive from a more open and transparent decision making process.

If a fee in the range of £15 leads to substantial reductions in volumes of requests, this suggests that the private value of those information requests may be low relative to their costs. This is because if people fail to pay the fee they may be indicating that they value the information they request at less than the fee required (£15), while each central government request costs approximately £250 on average to provide.

However, this does not necessarily imply that there is an efficiency gain as the public value of the information and the public good value of FoI have not been taken into account. Discussions with stakeholders have also revealed concerns about the fairness of introducing a fee. Some stakeholders have said there may be particular groups of individuals who legitimately wish to access information but who may not be able to afford the fee.

An alternative could be to look to introduce a more targeted fee aimed at recovering the costs of dealing with persistent and experienced requestors. These types of requestors tend in the majority of cases to be requestors who require information for commercial use: either journalists or businesses wishing to gather information about procurement options in order to create a commercial database.

Responding to requests from these requestors tends to cost substantially more than dealing with requests from more casual requestors. A fee for this type of user could overcome some of the concerns expressed above with respect to a flat rate fee for all users. However, this option is potentially susceptible to gaming, as under the Act, individuals do not have to prove their identities or the purpose of their request in order to make a request.

### **Reducing the appropriate limit threshold**

The final option for consideration is a reduction in the appropriate limit from its current level of £600 and £450. The rationale for such a reduction could be a view that the current level does not provide an appropriate balance between the right to access information and the need of public authorities to continue to carry out their other duties.

The impact of this option largely depends upon the level the threshold is set to. Table 1 above is based on a one third reduction in the threshold to £400 (central government) and £300 (wider public sector) respectively. As can be seen, this has a relatively limited impact on volumes, with an extra 128 requests exceeding the central government threshold and an extra 1,331 (1.5%) exceeding the wider public sector threshold.

## ENSURING THE ACT WORKS EFFECTIVELY

Discussions with stakeholders have identified a number of practices that could be addressed in order to ensure that the Act is operated as effectively and efficiently as possible.

- **Understanding requirements under the Act.** A theme that emerged from discussions was that practitioners may be responding to requests even in situations where they are not required to do so under the Act. A number of examples were provided where requests were answered even where the appropriate limit had clearly been exceeded. Similarly it is not clear that all practitioners are making full use of the provisions in relation to aggregation and vexatious requests. If the options for change discussed above are to be implemented and are to be effective, it will be important to ensure that practitioners are aware of the changes in the regulations and implement them.

**Simultaneous release.** Discussions with stakeholders have indicated that public bodies are expected to operate a policy of simultaneous release, such that information released under the FoI Act is made publicly available through the body's website or other means. There should be greater proactivity and consistency in the approach to FoI publication. This should reduce the costs to public authorities of having to deal with the same requests, and should make it easier for requestors to access the information they require. Moreover, if a driver of demand for commercial requestors is the exclusivity of the information they receive, then implementing such an approach consistently could lessen the value of the information received and lead to a reduction in the volume of requests. Greater proactive release of information should also be encouraged.



# 1 Introduction

## 1.1 BACKGROUND AND REMIT

The Freedom of Information Act 2000 came into force on January 1, 2005. The Act gives individuals the right in law to be told whether or not public authorities hold the information requested and if they do to have that information communicated to them.

The Government committed to review the fee regime for Freedom of Information (FoI) after the first 12-18 months of its operation. In August 2006 Frontier Economics was commissioned to carry out an independent review of the operation of the FoI Act. The terms of reference for the review set out four key objectives:

- to assess the cost of processing FoI requests across the public sector;
- to include an assessment of the pressure points in respect of the different activities that need to be undertaken in processing a request and the different levels of engagement required (e.g. senior management involvement);
- to model a system for assessing the impact of processing FoI requests in the wider public sector, (i.e. in local government, police etc); and
- to analyse how different options for amending the FoI fee regime would impact on the costs of operating FoI across the different parts of the public sector.

The terms of reference identified four options for amending the fee regime for consideration:

- **Option 1:** the introduction of a flat fee for FoI requests;
- **Option 2:** allowing the aggregation of non-similar requests from the same requester for the purposes of assessing whether the costs of responding to the request were below the appropriate limit;
- **Option 3:** including reading, consideration and consultation time for the purposes of assessing whether the costs of responding to the request were below the appropriate limit; and
- **Option 4:** lowering the current appropriate limit thresholds of £600 for central government and £450 for other public bodies.

## 1.2 APPROACH TO CARRYING OUT THE REVIEW

The analysis of the costs of delivering FoI and the options for changes to the fee regime has been based on two sources of information:

- existing quantitative information on the operation of the Act across central government and the wider public sector; and
- in-depth interviews with a range of FoI practitioners and stakeholders across central government and the wider public sector.

The review has drawn together a wide range of information from these sources in order to reach conclusions on the costs and options for change. Given the short timescale for the work it has not been possible to undertake any primary data gathering.

The primary sources of quantitative information the review has relied on are:

- a one week sample of FoI requests across central government. The DCA coordinated an exercise where a one week sample of requests were tracked by departments of state and some other central government bodies through from start to completion and the time required to answer the requests was recorded for all relevant officials;
- information collected from central monitoring of the implementation of the Act across central government;
- databases from a number of departments recording information on the FoI requests received;
- data from the DCA Clearing House;
- a study on the costs of delivering FoI across local authorities;
- a study on the costs of delivering FoI across Strategic Health Authorities;
- data from the Association of Chief Police Officers (ACPO) on the costs of delivering FoI across the police forces in England and Wales; and
- a study on the costs of delivering FoI across Higher Education Institutions.

To supplement the quantitative information approximately 30 interviews were carried out with FoI practitioners and stakeholders across central government and the wider public sector.

The findings of the review set out the costs and cost drivers of delivering FoI across central government and the wider public sector. They also provide an assessment of the likely impact of introducing the four options for change either individually or in combination. However, the review has deliberately not made any recommendations regarding which, if any, of the options should be adopted. Recommendations have been made where the review has identified opportunities for improving the operation of the Act or where additional options for change could be considered.

### 1.3 REPORT STRUCTURE

The remainder of this report sets out the key findings in relation to the costs and operation of the Act and the potential impact of the options for changes to the fee regime. Specifically:

- chapter two sets out an overview of the costs of delivering FoI, an analysis of the key cost drivers and an assessment of the types of requestor using the Act and the costs that they impose; and
- chapter three sets out an analysis of the impact of the options for change on likely volumes of requests and costs of delivery. It highlights any practical issues with the implementation of the options and, where possible, identifies the types of requestors most likely to be affected.



## 2 Understanding the costs of delivery

One of the key objectives set out in the terms of reference was to assess the cost of processing Freedom of Information (FoI) requests across the public sector and to include an assessment of the pressure points in respect to processing requests.

The Review has estimated the cost of the FoI Act and provided an analysis of the key cost drivers and pressures. Analysis has been based on a range of sources including the one week sample of FoI requests collected by the DCA in January 2006, departmental data, information from wider public sector organisations and interviews with FoI practitioners and stakeholders.

This section sets out the findings from this work in more detail. It also provides a series of recommendations for changes to the operation of the Act.

### 2.1 DELIVERY OF FOI

FoI requests are received by central government and by a wide range of other public bodies. When received, requests tend to be logged on to a monitoring system and are then allocated to an individual in the relevant part of the organisation. Requests may go through a number of stages of work including locating the information, reading through it, considering the response to the request, consulting and drafting. If a request to a central government department hits one of the Clearing House triggers then the Clearing House may become involved in the process.

The outcome of the request is communicated to the requestor within a specified period of 20 working days in most cases. Only for cases where a qualified exemption is being considered may the time limit for a response be extended. Information requested can be withheld in full or in part because it is covered by one or more exemptions, because the request is considered vexatious, or because complying with the request would cost more than the appropriate limit (£600 for central Government, £450 for the rest of the public sector).

If the requestor thinks that the public authority has failed to comply with the Act he or she may seek an internal review by the authority of its actions. If the requestor is still not satisfied the requestor may complain to the Information Commissioner, and subsequently appeal to the Information Tribunal. Most internal reviews occur because the authority has withheld the information requested. The decision to withhold the information can be either upheld or overturned in part or in full at internal review and at the subsequent appeal stages.

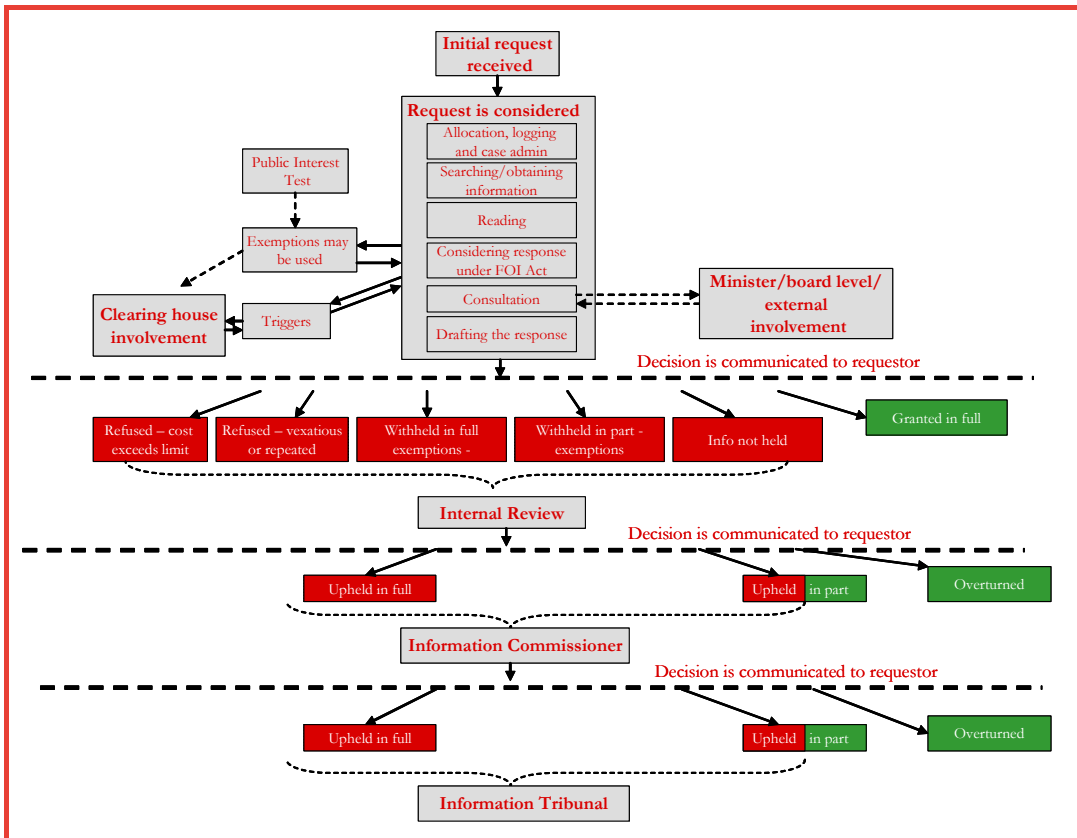


Figure 1: The FoI process

## 2.2 THE CENTRAL GOVERNMENT COSTS OF DELIVERING FOI

This section of the report sets out the analysis that has been carried out to understand the cost of FoI within central government.

### 2.2.1 Overall cost

After the initial surge of requests in 2005 it is anticipated that central government’s volumes will settle around 34,000 FoI requests annually<sup>1</sup>. Of those requests which are resolvable, around 35% are likely to involve consideration of the application of exemptions. There are 2,672<sup>2</sup> internal reviews, 700 appeals to

<sup>1</sup> Volume estimates are modelled for Q2 2005 to Q1 2006.

<sup>2</sup> This estimate for the number of central government Internal Reviews is greater than the numbers reported in published central government FoI monitoring statistics. This is because this estimate includes all types of internal review, while monitoring statistics only report “substantive” internal reviews (i.e. where the issue being reviewed is the core decision on whether or not to release information).

the Information Commissioner<sup>3</sup> and 15 to the Information Tribunal<sup>4</sup> per year. The total cost across central government of dealing with FoI requests is £24.4 million per year<sup>5</sup>. In terms of time input, FoI accounts for approximately 300-400<sup>6</sup> full time equivalent civil servants. The time spent by Ministers on FoI is the equivalent of one Minister spending the majority of their time on FoI work.

As shown in Table 4, the cost of handling FoI requests by central government departments can be divided into those borne by the departments themselves, those borne by the DCA Clearing House and those that relate to the Information Commissioner or the Information Tribunal.

| Departments | Clearing House | Information Commissioner | Information Tribunal |
|-------------|----------------|--------------------------|----------------------|
| £17,970,000 | £850,000       | £5,000,000               | £550,000             |

Table 4: The cost of FoI in Central Government

Source: Frontier Analysis

Of the total central government cost of FoI, £18 million (75%) is borne by individual departments. It costs £5 million (20%) to fund the Information Commissioner, £850,000 (3%) to fund the DCA Clearing House (including FoI policy officials) and the remaining £550,000 (2%) is the administrative cost of running the Information Tribunal.

## 2.2.2 Key cost drivers

This section analyses the key cost drivers of FoI requests based on FoI requests received in a one week period in January 2006. The characteristics of each request, the process the request went through and the time spent by officials dealing with it were logged for the lifetime of each of the 525 initial requests and 28 requests for internal reviews received in the 1 week period<sup>7</sup>.

<sup>3</sup> During 2006, the ICO has received approximately 220 appeal cases per month. The assumption has been made that around 30% of these appeal cases relate to central government. This is approximately the same as the share of central government requests out of all requests.

<sup>4</sup> During 2005-06, the Information Tribunal reported 44 cases. Assuming again, a 30% share of all Information Tribunal cases being attributable to central government leads to an estimate of approximately 15 Tribunal cases per year.

<sup>5</sup> For details of the assumptions used to generate this figure see Annexe 1.

<sup>6</sup> Departments spend around 334,000 hours on FoI requests and internal reviews (the equivalent of 206 full time employees working 1,620 hours a year). They also spend around £2.3 million on Information Commissioner cases, Information Tribunals and very high cost cases. At an average salary of £30,000, this is equivalent to a further 76 full time employees. In addition, there are 18 individuals working on FoI policy at the Clearing House, 96.8 officials at the Information Commissioner's Office and 5 officials at the Information Tribunal.

<sup>7</sup> A number of assumptions have been applied to the sample to generate the timing and costing figures. These are detailed in Annexe 1.

From this sample, the average cost of an officials' time for initial FOI request received by a government department was found to be £254<sup>8</sup>. The cost of any given request is driven by the different stages of work involved and by the level of seniority of the staff employed in those pieces of work. Requests were found to involve up to 7 different stages of work:

- logging the request and case administration;
- searching/obtaining the information;
- reading time<sup>9</sup>;
- consideration time<sup>10</sup>;
- consultation with external bodies<sup>11</sup>;
- consultation with board level officials/Ministers; and
- drafting of response and sign off.

Figure 2 shows that the most expensive stage of work for the average request is the time spent consulting Ministers or Board Level Officials. This costs an average of £67 per request. The time spent considering the request costs a further £41 on average with searching for and reading through the information costing a further £68.

---

<sup>8</sup> The average cost of dealing with an initial request has been estimated using the one week costing exercise co-ordinated by the DCA. The methodology used to calculate the average cost involves taking the time recorded by officials of each grade on each request and multiplying it by the hourly rate applied to civil servants at each grade rate. The methodology is explained in more detail in Annexe 1. The average time spent dealing with a FOI request is seven and a half hours. This generates an average hourly cost of £34 an hour.

<sup>9</sup> Time spent reading the document(s).

<sup>10</sup> Time spent considering the response to the request under the FOI Act/EIRs to determine the applicability of exemptions and/or the balance of the public interest.

<sup>11</sup> Time spent consulting outside of the public authority to determine the applicability of exemptions and/or the balance of the public interest.



Figure 2: Costs of the different stages of work for the average request

Source: One week sample of FoI requests from January 2006

Currently only the time spent determining whether the information is held and locating, retrieving and extracting it can be counted towards the cost threshold of £600. On average, this only accounts for around 13% of the cost of a request.

The consultation of board level officials or Ministers is the most expensive component of the request process for a number of reasons. The officials involved in that stage of the process tend to be more senior and therefore more expensive. Around 27% of the time spent on this activity is for staff at Grade 7 or above. This compares to 21% across the other activities (reading and consideration time also involve similar amounts of senior level input).

However as Figure 3 shows, only 19% of requests actually involve consulting the Minister or board officials<sup>12</sup>.

<sup>12</sup> The figure shows that 99% of requests involve logging and case administration. The other 1% of requests is likely to have involved logging and case administration. This may not have been recorded accurately for these requests in the data.

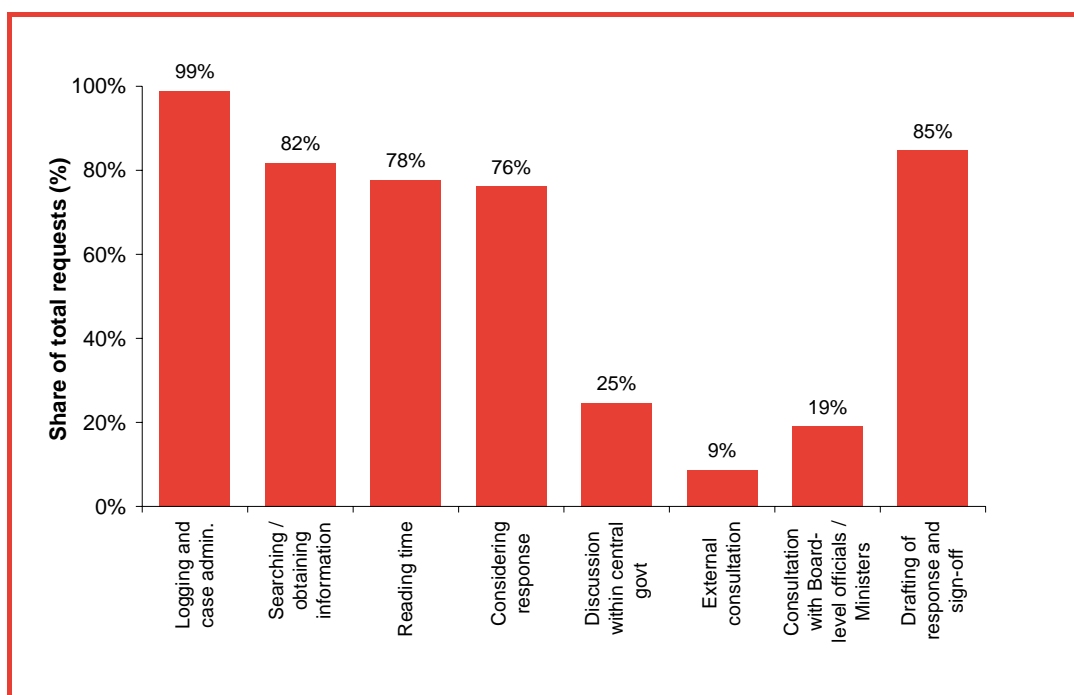


Figure 3: Proportion of FoI requests per stage of work

Source: One week sample of FoI requests from January 2006

If those requests that involve consulting a Minister are analysed in isolation, the average cost of that part of the process is found to be £174<sup>13</sup> compared to £67 across all requests. This is because the amount of time spent on these activities is around 40 minutes for those requests that involve Ministerial input relative to an average of 12 minutes across all requests.

Figure 4 shows that the average cost of requests that involve a Minister is £495. This is £271 (120%) higher than those that do not involve Ministers. This is because they involve five and a half more hours work than those that do not involve a Minister.

<sup>13</sup> This is calculated by considering only the time spent consulting with Ministers for those requests that were reported to have involved a Minister.

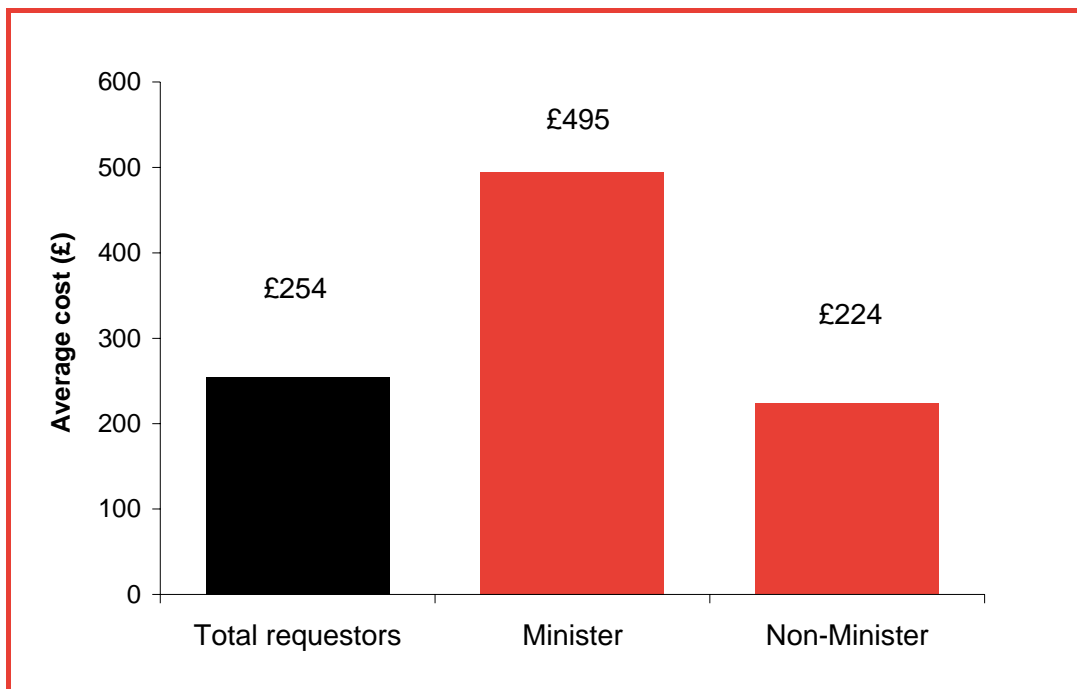


Figure 4: Average cost of requests that involve Ministers

Source: One week sample of FoI requests from January 2006

A very important driver of the cost of dealing with FoI is the number of very expensive requests that occur. These are requests that cost more than £1,000 of officials' time. Figure 5 shows that although only 5% of requests cost more than £1,000 of officials' time they account for 45% of total costs. These requests tend to take seven times longer than average. They involve 50 hours of work on average relative to 7.5 for all requests. They also tend to involve greater proportions of time spent on reading, consideration and consultation than is the case for all requests.

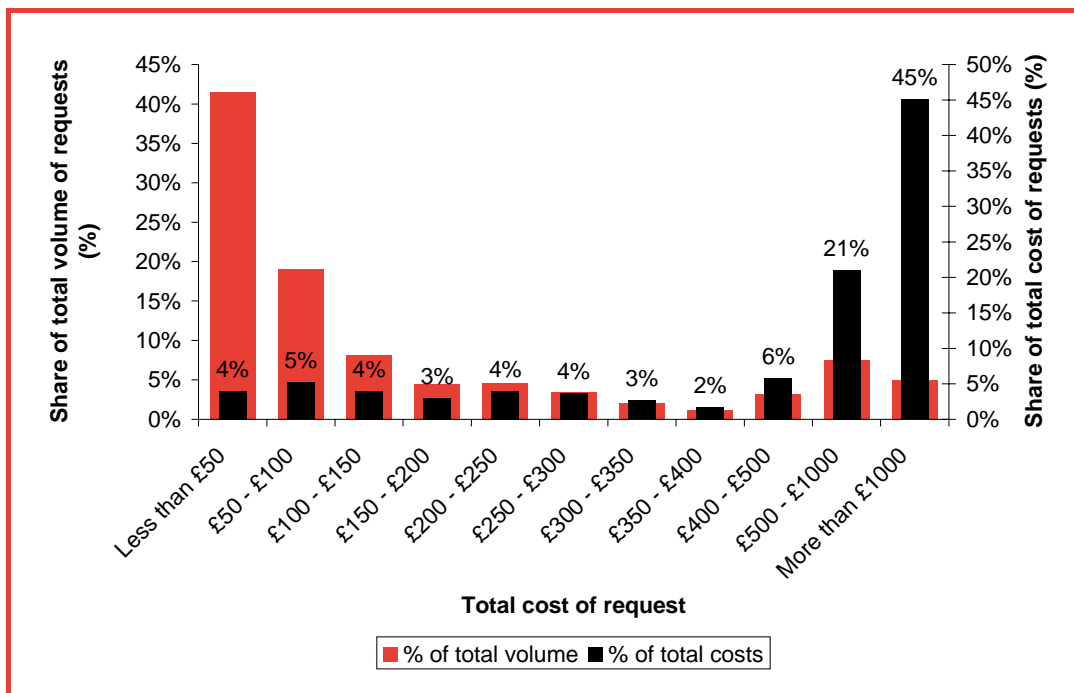


Figure 5: Distribution of total volume and cost of requests in each cost bracket

Source: One week sample of FoI requests from January 2006

Two examples of expensive requests in the one week sample provide interesting illustrations of two of the most commonly cited reasons for requests taking a lot of time to process:

- a large volume of material is requested (e.g. all material held on a particular subject since 2000); and/or
- the material requested requires significant consideration and consultation time.

### 2.3 EXAMPLES OF EXPENSIVE REQUESTS IN THE ONE WEEK SAMPLE

A request received by the Department for Work and Pensions that related to approval dates and training received by Doctors. The request took many hours of officials' time and involved consultation with a contractor which could not readily be quantified. This is because much of the information requested was supplied by external organisations.

A request to the Department for Trade and Industry relating to unpublished reports, analyses and statistics on the impact of reductions in carbon emissions on the economy. The request took more than 20 hours of officials' time to complete.

Two of the least expensive requests in the one week sample provide an interesting contrast<sup>14</sup>.

### 2.4 INEXPENSIVE REQUESTS IN THE SAMPLE

A request received by the Department for Transport related to the driving test pass rate nationally and by test centre. The request took around 45 minutes to process. About half of the time spent was spent drafting a response. The remaining time was taken to log the request, deal with request administration and read through the information.

The Department for Education and Skills received a request related to the number of pregnancies in women under the age of 16 between 2003 and 2006 and specifically how many of these were currently in Suffolk. The information requested was granted in full. About an hour and a half was spent on this request. About half of that time was spent drafting. The remaining time was spent logging, searching and considering the request.

#### 2.4.1 Internal reviews

Individuals that request information under the FoI Act are entitled to ask for an internal review if they think that the authority has not complied with the Act. There is no cost to the individual of initiating the review but internal reviews are very expensive for government departments. On average, the cost of officials' time on an internal review is £1,208 compared to £254 for an initial request, almost five times as much.

Relative to initial requests, internal reviews typically involve a much greater amount of time on average to be spent on consideration, consultation with board level officials and Ministers and drafting<sup>15</sup>.

---

<sup>14</sup> Requests of this type may have been received prior to the introduction of FoI and the information may be publicly available.

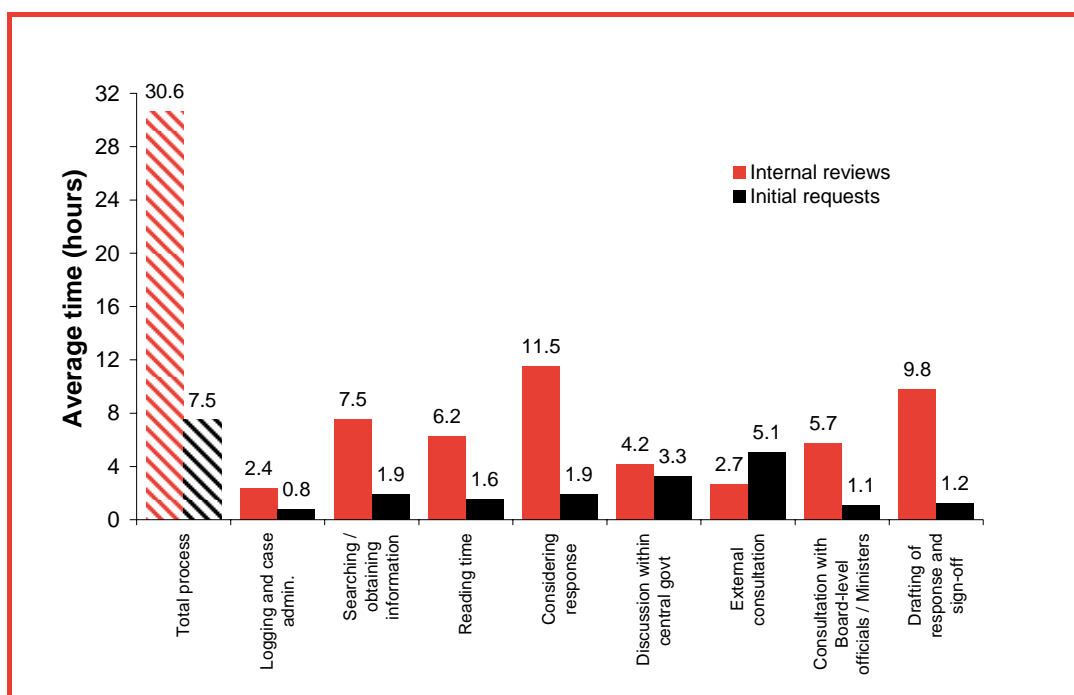


Figure 6: Comparison of average time spent on initial requests and internal reviews

Source: One week sample of FoI requests from January 2006

The average costs of consideration and consultation are also significantly higher for internal reviews. The average cost of consideration for an internal review is around 7 times greater than for an initial request; the average cost of consultation is almost 6 times greater<sup>16</sup>.

<sup>15</sup> Figure 6 compares the average time taken across the different stages of the FoI process for an initial request and an internal review. The average time is 30.6 hours for internal reviews compared to 7.5 hours for initial requests. Note that the remaining bars in this figure do not add to 30.6 hours and 7.5 hours. They show the average time taken for each stage of the process for requests that involved that stage of the process, rather than the average across all requests.

<sup>16</sup> Figure 7 shows the average cost of the whole FoI process for an average FoI request. This is £1,208 for an internal review and £254 for an initial request. The remaining bars in this figure show the breakdown of this cost for each stage of the process.

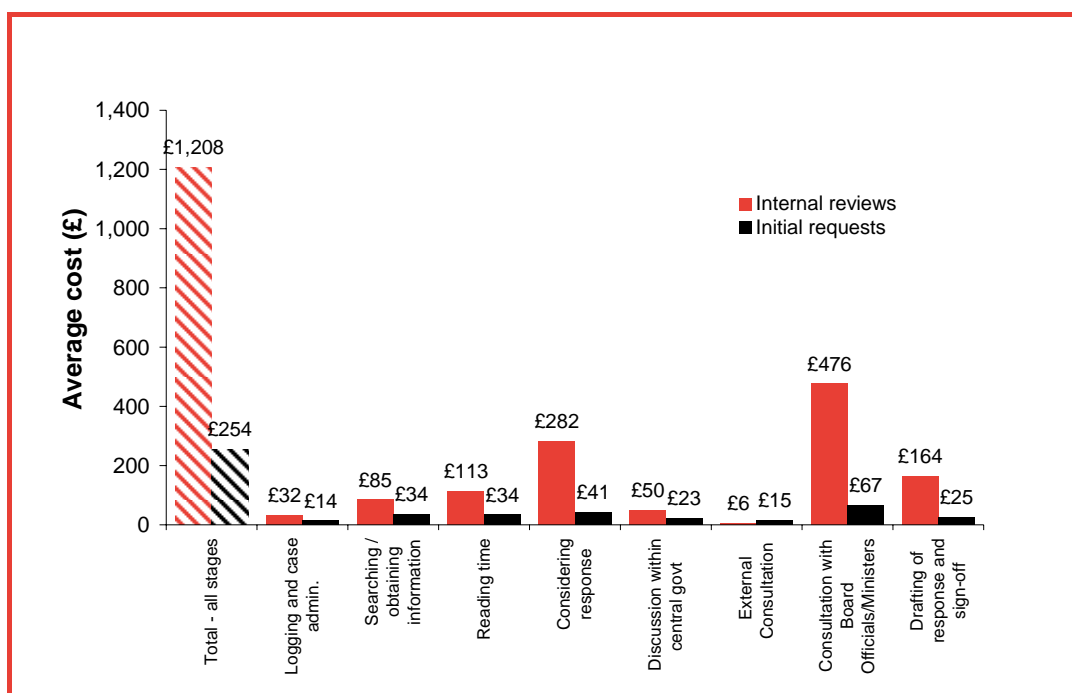


Figure 7: Comparison of average cost of initial requests and internal reviews

Source: One week sample of FoI requests from January 2006

Given the significant amounts of time spent considering and consulting on internal reviews, they involve more senior level time than initial requests. Around 55% of time recorded on internal reviews is that of Senior Executive Officers, Grade 7 or Grade 5 or higher level officials. Only 36% of the time recorded on initial requests is attributed to these grades. In particular, the input of Grade 5 officials goes from 4% of total time recorded on initial requests to 7% on internal reviews.

## 2.4.2 Requestor characteristics

There are five main categories of FoI requestor that can be identified within the one week sample of central government. They are:

- journalists;
- MPs;
- campaign groups;
- researchers; and
- private individuals.

Within each of these categories it is possible to make a further split into serial requestors and one-off requestors. Serial requestors account for a significant proportion of FoI requests made to central government particularly in the first four categories identified above.

As shown in Figure 8, requests from serial requestors take over 3 hours longer on average than those made by one-off requestors. In particular, they require a higher proportion of time to be spent on consideration and consultation than requests from one-off users.

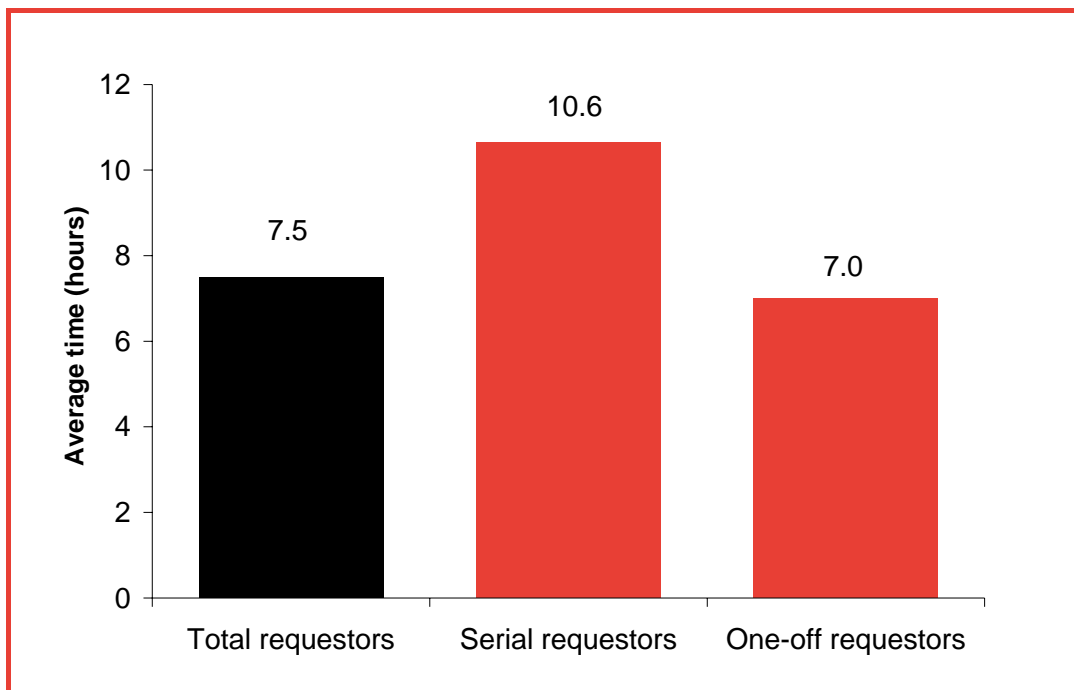


Figure 8: Time taken on requests from serial requestors in the one week sample

Source: One week sample of FoI requests from January 2006

Figure 9 shows the average cost of requests from serial requestors and one-off requestors in the one week sample. Requests from serial requestors cost around £270 more than those from one-off requestors.

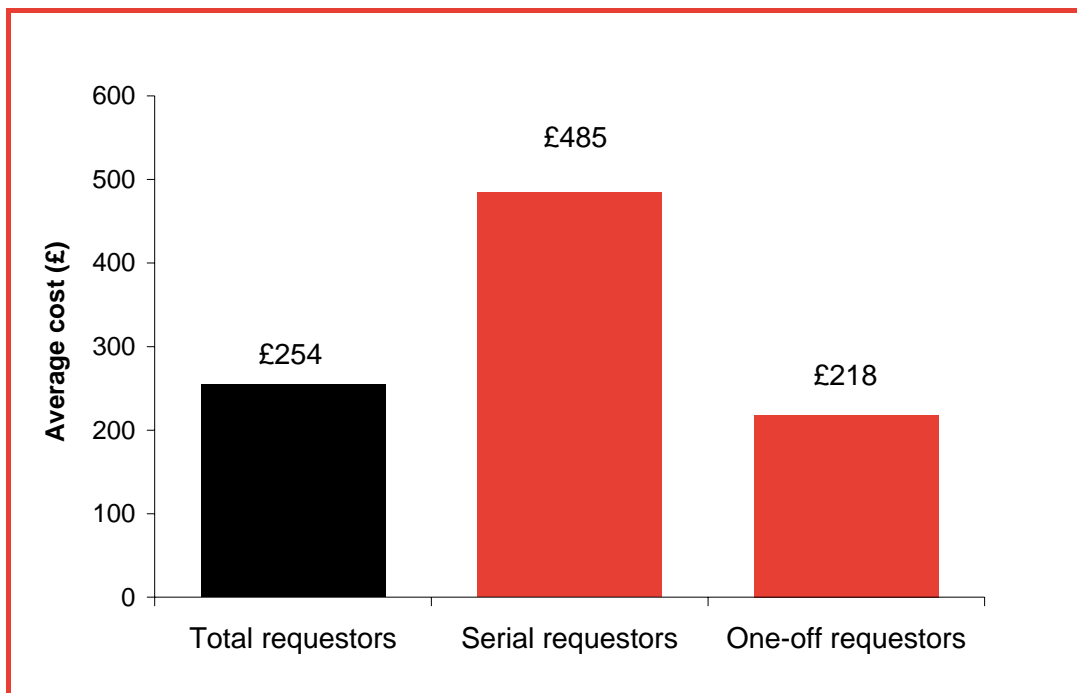


Figure 9: Cost of requests from serial requestors in the one week sample

Source: One week sample of FoI requests from January 2006

Journalists are one of the most significant categories of serial requestor. They are found to account for around 10% of initial FoI requests made to Central Government and around 20%<sup>17</sup> of the cost of these requests. This equates to around £1.6 million in total in any given year.

<sup>17</sup> This figure is an estimate based on the cost of requests contained within the one week sample.

| Organisation                 | Estimated number of initial requests per year <sup>18</sup> | Estimated total costs per year <sup>19</sup> |
|------------------------------|---|--|
| BBC                          | 750 to 2,000  | £300,000 to £1,000,000                       |
| The Guardian                 | 500 to 700  | £250,000 to £350,000                         |
| Evening Standard             | 300 to 400  | £150,000 to £200,000                         |
| Mail on Sunday               | 50 to 100   | £25,000 to £50,000                           |
| The Sunday Times             | 50 to 100   | £25,000 to £50,000                           |
| Other identified journalists | 300 to 400  | £150,000 to £200,000                         |
| <b>Total</b>                 | <b>2,250 to 4,100</b>                                       | <b>£1,050,000 to £2,450,000</b>              |

Table 5: Estimated annual number of initial FoI requests from journalists and their cost

Source: One week sample of FoI requests from January 2006

Journalists are also found to account for between 450 and 660 internal reviews at a cost of between £500,000 and £830,000, which is between 16% and 26% of the cost of internal reviews.

<sup>18</sup> The estimated number of requests received from each organisation is calculated by taking the volume of requests received from each organisation in the one week sample. This is adjusted so that it is reflective of an average week's volumes. Finally, the weekly volumes are grossed up to be reflective of volumes received across the year by multiplying by 50 (the number of working weeks in the year). Since the volume of requests is based on a sample of requests, a range estimate of the volume is provided to reflect the uncertainty inherent in statistical exercises of this nature.

The numbers from this exercise are supported by evidence from one of the larger government departments for which requestor information was available and by information about requests that go to the Clearing House.

<sup>19</sup> The lower bound estimate of the value of requests is calculated by taking the lower bound volume estimate and multiplying it by the lower bound of a 95% confidence interval around the average cost of a serial requestor. The upper bound estimate is calculated by taking the upper bound volume estimate and multiplying it by the upper bound of a 95% confidence interval around the average cost of a serial requestor.

A sub-set of serial requestors are known as vexatious requestors. Vexatious requestors tend to make repeated requests for information with the aim of disrupting the work of an organisation or harassing the individuals within it. They appear to be a particular issue for some specific government departments. The Legal Secretariat to the Law Officers and the Treasury Solicitor's Department appear to be particularly affected.

## 2.5 VEXATIOUS REQUESTORS

The Legal Secretariat to the Law Officers (LSLO) receives a number of requests from vexatious litigants. Whilst relatively small in number, these requests are extremely burdensome. The individuals making the requests often have already been deemed vexatious by the court.

However, as they are not deemed vexatious for the purposes of the FoI Act, they use the Act to pursue matters they are prohibited by court order from pursuing by litigation. LSLO must deal with each request on its merits even though the requestor may have been deemed vexatious by the court.

At present the FoI Act allows individual requests to be treated as vexatious but not the requestor. This appears to cause difficulties for some departments that receive requests from individuals that have already been deemed vexatious by the court but for the purposes of any individual request must be treated the same as everybody else.

### **RECOMMENDATION: CONSIDERATION SHOULD BE GIVEN TO CHANGING THE WORDING OF SECTION 14 OF THE FOI ACT FROM VEXATIOUS 'REQUEST' TO VEXATIOUS 'REQUESTOR'**

#### *Requests that are not "in the spirit of the Act"*

A key issue identified by almost all stakeholders was requests received by departments that were not in the spirit of the Act. They are a mixture of frivolous requests, disproportionately burdensome requests and requests that are explicitly designed to test the compliance of the Act. A number of examples are provided below.

- A request for the total amount spent on Ferrero Rocher chocolates in UK embassies.
- A request from a vintage lorry spotter to 387 local authorities for the registration numbers of all vintage lorries held in their stock.
- A request for information on a sweater given to President George Bush by No.10.
- Multiple requests from a long time correspondent of the CPS about allegations of criminality against him, having already been told that the CPS was not the authority to answer such questions.

- A request for the number of eligible bachelors in the Hampshire Constabulary between the ages of 35 and 49, their e-mail addresses, salary details and pension values received from requestor “I like men in uniform”.
- A request for the number of statistics of reported sex with sheep and any other animal in Wales for 2003 and, if possible, since records began.
- A request stating “I want to have an affair – how can I make it constitutional?”
- Repeated requests from a commercial company for IT and telephone contracts made across government. The requestor claims the information goes out of date quickly so makes requests every month to most departments.
- A request for all background papers relating to the handling of a specific request.

## 2.6 WIDER PUBLIC SECTOR

This section sets out the analysis that has been carried out to understand the overall cost of FoI outside of central government. It focuses on two parts of the wider public sector:

- local authorities; and
- the police.

As an illustration of what is happening in the health and education sectors, this section also examines the cost of FoI for:

- Strategic Health Authorities; and
- Higher Education Institutions.

The information available outside of central government on FoI requests is more limited in nature<sup>20</sup>. Where possible this section examines the key cost drivers of FoI, the characteristics of FoI requestors and highlights issues with the current system.

---

<sup>20</sup> It has not been possible to collect detailed information on the time spent on FoI requests and their cost for the wider public sector. The following sources of information have been used to provide indications. (1) Freedom of Information (FoI) Survey Results 2005, Results from the JISC/UUK/SCOP FoI Survey based on 76 returns received by 14th November 2005. (2) Freedom of Information Act 2000, NHS Strategic Health Authorities, September 2005, Zanele Hlatshwayo, on behalf of South East London Strategic Health Authority. (3) DCA exercise to estimate the cost of implementing the Freedom of Information Act within local government in England. (4) Freedom of Information Act 2000: The first six months - The experience of local authorities in England, 30 September 2005, I&DeA. (5) Freedom of Information in the first 16 months The FoI practitioner's perspective Delegate Survey Report from Fourth Annual Information Conference for the Public Sector: FoI Live 2006, 15 August 2006, I&DeA. Information from ACPO.

## 2.6.1 Overall cost

The wider public sector bodies considered in this analysis receive around 87,000 FoI requests annually, more than twice the number handled by central government. The total cost of dealing with these requests is estimated to be around £11.1 million per year<sup>21</sup>.

Figure 10 provides a breakdown of the volumes and cost of FoI requests received by each of the wider public sector bodies that have been considered<sup>22</sup>. Local authorities have the highest volume of FoI requests outside central government, receiving around 60,000<sup>23</sup> per year at an estimated cost of £8 million. The police collectively receive around 20,000 requests at an estimated cost of £3 million and Strategic Health Authorities and Higher Education Institutions together receive around 2,000 requests at an estimated total cost of just over £240,000<sup>24</sup>.

---

<sup>21</sup> This figure provides an estimate of the cost of requests received by local authorities and the police. It also provides estimates for Strategic Health Authorities and Higher Education Institutions. Strategic Health Authorities and Higher Education Institutions make up only a small proportion of the total health and education sectors. For details of the assumptions used to generate the costing figure see Annexe 2.

<sup>22</sup> Detailed information on the wider public sector is not available. This is our best estimate of the volume and value of wider public sector requests based on the available information.

<sup>23</sup> This has been adjusted down from the IDeA number to reflect the initial spike in FoI requests.

<sup>24</sup> The estimates of the cost of requests to local authorities, the police, Strategic Health Authorities and Higher Education Institutions have been calculated by multiplying the average cost of a FoI request to those sectors by the volume of requests they receive. As there is currently no reliable source of information available on the (average) costs associated with FoI requests in wider public sector, an estimate has been derived using the one week costing exercise co-ordinated by the DCA for central government. A number of adjustments have been made to this sample to make it more reflective of the cost to wider public sector bodies. The methodology used is set out in more detail in Annexe 2. A similar methodology has been applied for internal reviews.

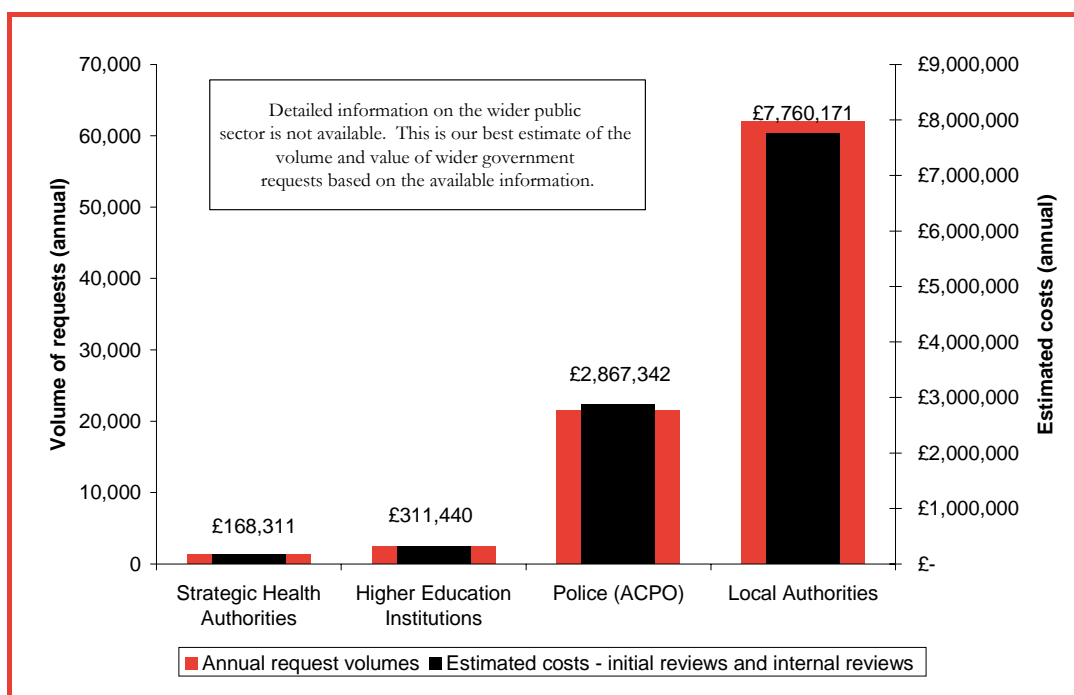


Figure 10: Estimated volume and cost of FoI requests in the wider public sector for police and local authorities

Source: One week sample of FoI requests from January 2006, Information from IDeA survey of local authorities, Information from JISC survey of Higher Education Institutions, Information from ACPO and Information from Survey of Strategic Health Authorities

## 2.6.2 Key cost drivers

There is limited information available on the key cost drivers of FoI requests outside of central government.

Based on conversations that have taken place with FoI officials within local authorities, the police and strategic health authorities, it is likely that the cost of requests is driven by similar factors to those in operation in central government. With the exception, of course, that Ministerial time would not be involved.

It is also likely that requests would tend to be slightly less complex on average than those received by central government.

## 2.6.3 Requestor characteristics

There are six main categories of FoI requestor that can be identified outside of central government:

- journalists;
- elected representatives;
- campaign groups;
- businesses;
- researchers; and
- private individuals.

The proportion of requests received from each group differs for different wider public sector organisations.

As shown in Figure 11, local authorities receive around 60% of their requests from private individuals and 20% from businesses. A further 10% of requests are from journalists.

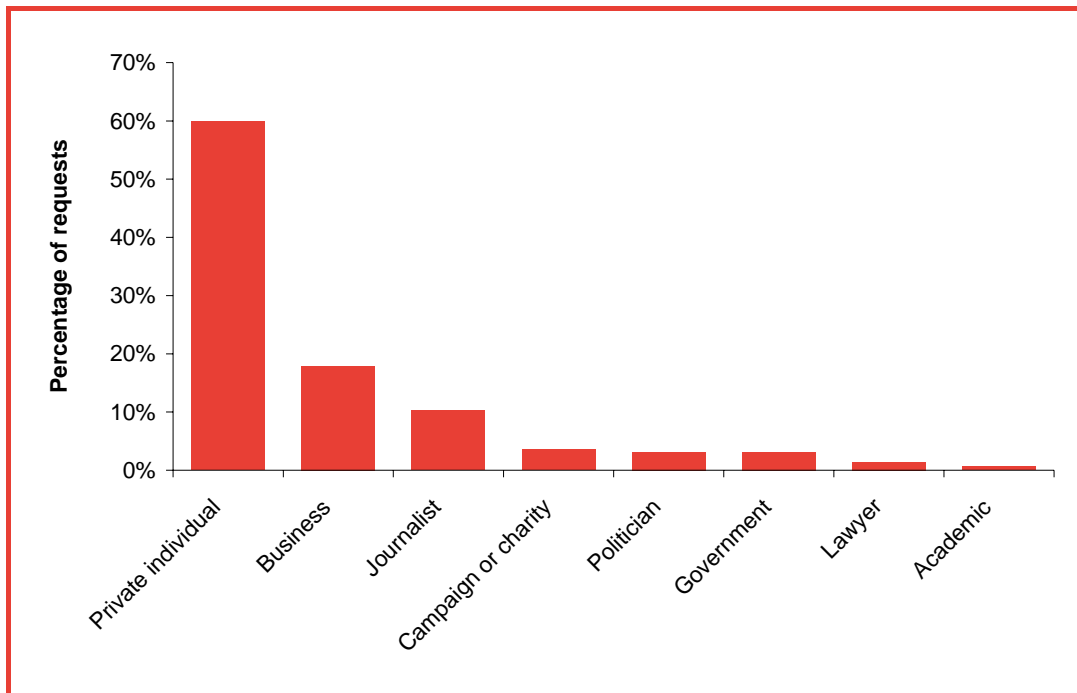


Figure 11: Local authority requestors

Source: *Freedom of Information in the first 16 months The Fol practitioner's perspective Delegate Survey Report from Fourth Annual Information Conference for the Public Sector: Fol Live 2006, 15 August 2006*

As Figure 12 shows, Strategic Health Authorities receive around 45% of their requests from the general public, 20% from businesses and around 10% from journalists.

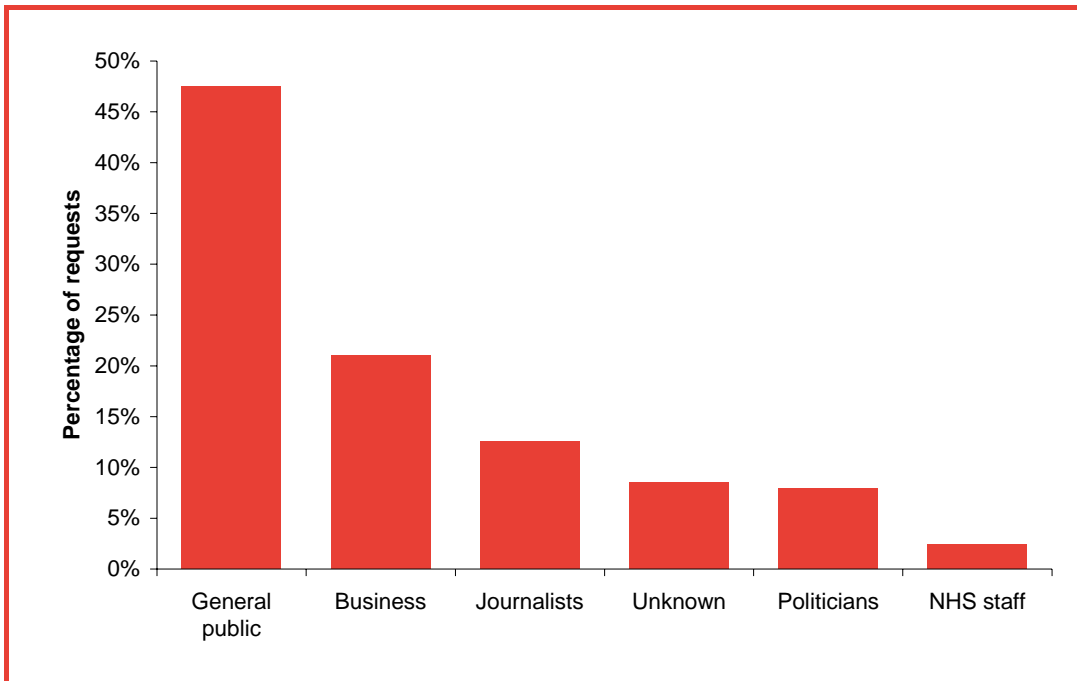


Figure 12: Strategic Health Authority requestors

Source: Requests received by Strategic Health Authorities from 1 January-31 August

Higher Education Institutions receive over 20% of their requests from journalists, 15% from their own students and 10% from businesses.

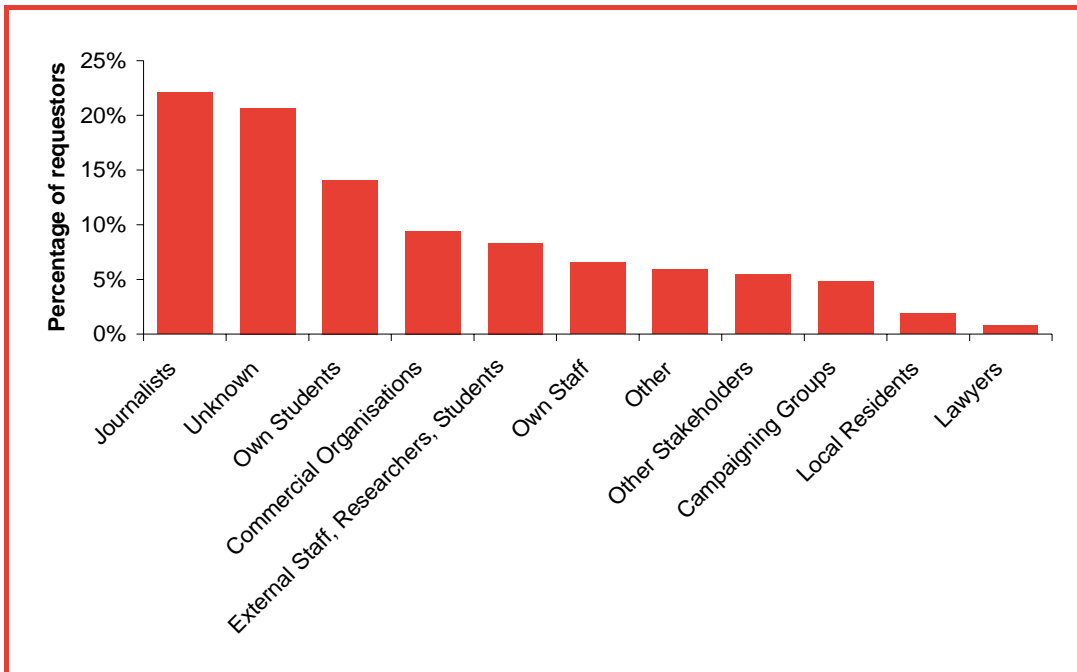


Figure 13: Higher Education Institution requestors

Source: Freedom of Information (FoI) Survey Results 2005, Results from the JISC/UUK/SCOP FoI Survey based on 76 returns received by 14th November 2005

As for central government, journalists are also one of the most significant categories of serial requestor in the wider public sector. They are found to account for between 10% and 23% of initial FoI requests made to wider public sector organisations and between 20% and 45% of costs. This equates to £1.4 million in total in any given year. Journalists are also found to account for around 20% of internal reviews at a cost of £140,000.

|   | <b>Estimated number of initial requests per year</b> | <b>Share of total cases</b> | <b>Estimated total costs per year</b> |
|---|--|-----------------------------|---------------------------------------|
| Local Authorities   | 6,206  | 10%                         | £740,000                              |
| Police  | 4,951  | 23%                         | £591,000                              |
| Higher Education Institutions (as an illustration for the education sector) | 550  | 22%                         | £66,000                               |
| Strategic Health Authorities (as an illustration for the health sector)     | 166  | 13%                         | £20,000                               |
| <b>Total (excluding Internal Reviews)</b>                                   | <b>11,873</b>  | <b>14%</b>                  | <b>£1,400,000</b>                     |
| Internal reviews  | 589  | 21%                         | £140,000                              |
| <b>Total (including internal reviews)</b>                                   | <b>12,462</b>  | <b>14%</b>                  | <b>£1,600,000</b>                     |

Table 6: Estimated annual number of journalist cases and their cost

*Source: One week sample of FoI requests from January 2006, Clearing House Monitoring data, Information from IDEa survey of local authorities, Information from JISC survey of Higher Education Institutions, Information from ACPO and Information from Survey of Strategic Health Authorities*

## 2.7 SUMMARY

The Freedom of Information Act is estimated to cost approximately £35.5 million annually. Around £24.4 million of this cost can be attributed to the cost of dealing with requests under the Act within central government. The remaining £11.1 million is related to the cost of dealing with requests under the Act outside central government.

Reading, consideration and consultation time are substantial drivers of cost, accounting for 70% of the cost of a request on average. Currently only the time

spent determining whether the information is held and locating, retrieving and extracting the information be counted towards the initial threshold.

Around 19% of central government requests involve consulting a Minister or board level official. These requests are significantly more expensive than those requests that do not involve such consultation. For example, a request involving a Minister costs £495 on average relative to £224 for requests not involving Ministers. Currently, Ministerial or board level official time is not fully accounted for in estimating the cost of a request relative to the threshold.

Individuals that request information under the FoI Act are entitled to ask for an internal review if the information is withheld from them. Internal reviews are very expensive; on average central government reviews cost £1,208, which is more than five times the amount of an initial request.

There are a small number of requestors that are found to add disproportionately to the cost of delivery. Requests from serial requestors are found to cost significantly more than requests from one-off requestors. Journalists are one of the most significant categories of serial requestors. Journalists are estimated to make up around 10% of the volume of central government requests and 21% of their cost.

### 3 Assessing the options for change

One of the key tasks set out in the terms of reference for the Review was to assess potential options for changes to the FoI charging regime. Specifically, the review was asked to consider the impact of four options:

- including reading time, consideration time and consultation time in the calculation of whether responding to a request is likely to exceed the ‘appropriate limit’; and
- aggregating non-similar requests made by any legal person (or persons apparently acting in concert) for the purposes of calculating whether responding to a request is likely to exceed the ‘appropriate limit’.
- reducing the appropriate limit thresholds from their current levels of £600 for central government and Parliament and £450 for other public authorities; and
- introducing a flat rate fee for FoI requests.

In examining the impact of the four options, the Review has considered their impact upon the likely volumes of FoI requests, the costs of delivering FoI and the types of request/requestor most likely to be affected by the options.

Analysis of the impact of each option has been based on data provided by public bodies and qualitative information gained through examination of the operation of FoI regimes and detailed interviews with a range of FoI practitioners and stakeholders across government.

The remainder of this chapter sets out detailed analysis of each option and a brief summary and recommendations.

#### 3.1 INCLUDING READING, CONSIDERATION AND CONSULTATION TIME IN THE COST CALCULATION

##### 3.1.1 Background

During the passage of the FoI Act through Parliament, the Government undertook that the majority of costs for complying with FoI requests would be met by the public sector. However, it is also recognised that the right to access information needs to be balanced by the need for public authorities to continue to carry out their other duties.

For this reason, the FoI Act allows for public authorities to decline to comply with certain requests for information on the grounds of cost where these requests would be particularly expensive. Specifically, public authorities may refuse to answer requests for information if the cost of complying would exceed the "appropriate limit" prescribed in the Regulations. Currently, the "appropriate limit", is set at:

- £600 for central government and Parliament; and
- £450 for other public authorities, including local authorities, police, the health service and education.

The regulations set out the elements of cost that may be included when calculating whether responding to a request is likely to exceed the appropriate limit. The costs are limited to those that an authority reasonably expects to incur in:

- determining whether it holds the information requested;
- locating the information or documents containing the information;
- retrieving such information or documents; and
- extracting the information from the document containing it (including editing or redacting information).

Additionally, the regulations state that in order to achieve consistency, all public authorities should use the same hourly rate when estimating staff-time costs, regardless of the actual costs. The hourly rate is set at £25 per hour.

From the analysis in the previous chapter, it is clear that the current regulations exclude a number of core activities that contribute substantially to the costs of dealing with FoI requests. In particular, reading time, consultation time and consideration time are currently excluded from any calculation of whether responding to a request would exceed the appropriate limit.

Only 5% of requests are currently refused on the grounds of cost. These requests are not necessarily the most burdensome. Public authorities are able to refuse to answer requests for information if the cost of complying would exceed the appropriate limit. In calculating whether the appropriate limit is exceeded the costs that can be taken into account are determining whether the information requested is held and locating, retrieving and extracting the information.

### 3.1.2 Volume and cost analysis

The impact of including reading<sup>25</sup>, consideration<sup>26</sup> and consultation<sup>27</sup> time in the appropriate limit calculations has been calculated for central and wider public sector using data collected from a one week sample of FoI requests.

The volume impact is set out in Table 7 below. For central government, this shows that under the current arrangements approximately 1,600 (5%) of requests are refused on the grounds that they exceed the appropriate limit. If reading, consideration and consultation time were to be included in the calculation a further 2,700 (8%) of requests would exceed the appropriate limit<sup>28</sup>. Including

---

<sup>25</sup> Reading – time spent reading document.

<sup>26</sup> Consideration – time spent considering the response under the FoI Act/EIRs to determine applicability of exemptions and/or the balance of the public interest.

<sup>27</sup> Consultation – time spent carrying out necessary consultation outside the public authority to determine applicability of exemptions and/or the balance of the public interest.

<sup>28</sup> This is calculated using the actual hourly cost of £34 per hour for delivering FoI. If £25 per hour is used to determine which requests should exceed the threshold instead around 1,346 (4%) of requests would exceed the appropriate limit (£34 an hour continues to be used to estimate the cost impact of excluding these requests).

consideration and consultation time has a substantially larger effect than reading time.

For the wider public sector, approximately 4,200 (5%) requests are excluded on the basis that they exceed the appropriate limit under the current arrangements. Including reading, consideration and consultation would likely result in an additional 5,500 (6%) requests exceeding the limit<sup>29</sup>. Again, including consideration and consultation time has a greater impact than reading time.

|                     | <b>Annual volume of requests</b> | <b>Requests excluded under current arrangements</b> | <b>Additional requests excluded if reading consultation and consideration time included</b> |
|---------------------|----------------------------------|---|---|
| Central government  | 33,644<br>(100%)                 | 1,602<br>(5%)                                       | 2,692<br>(8%)   |
| Wider public sector | 87,366<br>(100%)                 | 4,160<br>(5%)                                       | 5,492<br>(6%)   |

Table 7: The volume impact of including reading, consideration and consultation time

Source: Frontier Economics analysis of DCA data

The cost impact of including reading consideration and consultation time is set out in Table 8 below. Total costs in the table below relate to the costs of officials' time in responding to FoI initial requests. This shows that including reading, consideration and consultation in the calculation could reduce the costs of delivering FoI by £4.7 million (54%)<sup>30</sup> for central government and by £5.0 million (48%)<sup>31</sup> for the wider public sector. The key driver of this reduction is the inclusion of consideration and consultation time.

<sup>29</sup> This is calculated using the actual average hourly cost of £26 per hour for delivering FoI in the wider public sector. Although the average hourly rate for a FoI request is £26 per hour, some grades of staff are costed at less than £26 per hour and others are costed at more than £26 per hour. If a rate of £25 per hour is used to determine which requests should exceed the threshold across the board around 5,991 (7%) of requests would exceed the appropriate limit. Additional requests are excluded because they involve a lot of lower grade officials time, which was previously costed at less than £25 per hour. £34 an hour continues to be used to estimate the cost impact of excluding these requests.

<sup>30</sup> Central government costs would reduce by 37% if requests are excluded on the basis of a £25 per hour rate. £34 an hour continues to be used to estimate the cost impact of excluding these requests.

<sup>31</sup> Wider public sector costs would reduce by 49% if requests are excluded on the basis of a £25 per hour rate. A greater proportion of requests are excluded using the £25 per hour rate for the reasons outlined in footnote 15. £26 an hour continues to be used to estimate the cost impact of excluding these requests.

|                     | <b>Annual cost of initial requests (£ million)</b> | <b>Costs excluded under current arrangements (£ million)</b> | <b>Additional costs excluded if reading, consideration and consultation taken into account (£ million)</b> |
|---------------------|--|--|--|
| Central government  | £8.5<br>(100%)                                     | £0.5<br>(6%)   | £4.7<br>(54%)  |
| Wider public sector | £10.4<br>(100%)                                    | £0.7<br>(6%)   | £5.0<br>(48%)  |

Table 8: The cost impact of including reading, consideration and consultation time

Source: Frontier Economics

The volume and cost analysis shows that including reading, consideration and consultation time is likely to lead to a substantial increase in the number of FoI requests that exceed the threshold. The requests that exceed the threshold tend to be amongst the most costly, and consequently this change would result in a reduction in the costs of officials' time of over 45%.

The quantitative analysis set out above largely accords with the qualitative information developed through interviews with practitioners. A consistent theme that emerged through the interviews is that there exists, in almost every department, a relatively small volume of requests that contribute disproportionately to the costs of delivering FoI. As was set out in the previous chapter, the most expensive requests tend to be driven either by large volumes of reading material, or by the need for extensive consultation or consideration.

A key issue in the analysis set out above is that the volume and cost impacts have been calculated using the actual costs of responding to the requests (approximately £34 per hour on average for central government). However, under the FoI regulations all costs must be calculated using the same cost per hour of £25. For consideration and consultation in central government in particular, an average cost of £25 per hour substantially under-estimates the costs of responding to the request. This is because consideration and consultation time typically involves substantial inputs from senior civil servants and often also requires ministerial or board level involvement.

Consequently, the review would recommend that there is a need to consider changing the cost per hour figure used in the calculations to one that is reflective of the actual costs of delivering FoI.

**RECOMMENDATION: THE COST PER HOUR FIGURE USED TO CALCULATE THE APPROPRIATE LIMIT SHOULD BE REFLECTIVE OF THE ACTUAL COSTS OF DELIVERING FOI**

### 3.1.3 Practical implementation issues

If this option is to be adopted, a key issue will be determining an appropriate methodology for the calculation of reading, consideration and consultation time that allows for a consistent approach across practitioners. This is important, because estimates of costs will need to be determined prior to the work being undertaken, so that a decision can be reached as to whether the costs of compliance would exceed the appropriate limit. If practitioners do not take a systematic approach, there is likely to be a potentially substantial increase in requests for internal review and appeals to the ICO, with a consequent substantial increase in costs.

Careful consideration will need to be given as to how best to calculate the factors to be counted towards the cost threshold. The measures will need to be administratively simple and should not in effect provide an absolute exemption to practitioners. For reading time, one possible approach is a standard charge per page. It has not been possible to calculate the impact of such an approach quantitatively. This is because information on the numbers of pages per request is not held centrally. However, interviews with practitioners suggest that a charge per page of between £1 and £2 would be appropriate and would, in most cases be reflective of the costs of reading through the material in question.

For consideration and consultation it is more difficult to identify a similar type of ready reckoner, as there is no standard metric to which a charge could be applied. However, one possible option that could balance the competing requirements of consistency, administrative simplicity and fairness is to develop a series of graduated standard charges for consideration and consultation. The charge could only be used to count towards the threshold for those requests deemed likely to require consideration and/or consultation. Moreover, the charge could be graduated to reflect:

- differences in the type of consultation required; and
- differences in the number of bodies for which consultation is required.

**RECOMMENDATION: IF READING, CONSULTATION AND CONSIDERATION TIME IS TO BE INCLUDED, A METHODOLOGY SHOULD BE ADOPTED THAT ALLOWS FOR A CONSISTENT APPROACH TO COST CALCULATION**

## 3.2 AGGREGATING NON-SIMILAR REQUESTS MADE BY ANY LEGAL PERSON

### 3.2.1 Background

Under the current regulations it is possible that in certain situations the costs of answering more than one request can be added together or aggregated for the purposes of estimating whether the appropriate limit would be exceeded in

relation to any one of those requests. The Regulations state that requests can only be aggregated in the following circumstances:

- two or more requests for information must have been made to the same public authority;
- they must be either from the same legal person, or from 'different persons who appear to the public authority to be acting in concert or in pursuance of a campaign' (section 12(4)(b) of the FoI Act);
- the requests must relate to the same or similar information; and
- they must have been received by the public authority within a space of 60 consecutive working days.

The guidance also state that this provision is intended primarily to prevent individuals or organisations circumventing the appropriate limit by splitting a request into smaller parts.

As can be seen from the analysis in the previous chapter there are a small number of repeat users of the Act. Requests made by these users tend to cost substantially more than standard requests and take up substantial levels of senior resource. While requests from these requestors cannot currently be aggregated, one option the review has been asked to consider is the impact of changing the regulations on aggregation to allow non-similar requests from the same requestor to be aggregated.

### 3.2.2 Volume and cost analysis

The impact of aggregating non similar requests for the purpose of the appropriate limit calculations has been calculated for central government and the wider public sector using a combination of data from a central government department and data collected on a one week sample of FoI requests followed for the lifetime of each request. The central government department data on the numbers of requests it receives from serial requestors have been used to develop an estimate of the likely impact of aggregation. This estimate has then been combined with the one week sample data to develop volume and cost estimates.

The volume impact is set out in Table 9 below. For central government, this shows that if aggregation were to be included in the calculation a further 3,600 (11%)<sup>32</sup> of requests would exceed the appropriate limit. For the wider public sector, approximately 8,420 (10%)<sup>33</sup> of requests would exceed the appropriate limit if aggregation were to be included.

---

<sup>32</sup> Approximately 8% of requests could be excluded if an hourly rate of £25 per hour is used to exclude requests rather than an hourly rate of £34. The £34 an hour rate continues to be used to calculate the cost impact of this option.

<sup>33</sup> Approximately 8% of requests could be excluded if an hourly rate of £25 per hour is used to exclude requests rather than an hourly rate of £26. The £26 an hour rate continues to be used to calculate the cost impact of this option.

|                     | <b>Annual volume of requests</b> | <b>Requests excluded under current arrangements</b> | <b>Additional requests excluded if non-similar requests are aggregated</b> |
|---------------------|----------------------------------|---|--|
| Central government  | 33,644<br>(100%)                 | 1,602<br>(5%)                                       | 3,598<br>(11%)   |
| Wider public sector | 87,366<br>(100%)                 | 4,160<br>(5%)                                       | 8,414<br>(10%)   |

Table 9: Volume impact of aggregating non-similar requests

Source: Frontier Economics

The cost impact of including reading consideration and consultation time is set out in Table 10 below. Total costs in the table below relate to the cost of officials' time in responding to FoI initial requests<sup>34</sup>. This shows that including aggregation in the calculation could reduce the costs of delivering FoI by £0.9 million (11%) for central government and by £1.2 million for the wider public sector<sup>35</sup>.

<sup>34</sup> The estimated cost savings are conservative: they have been based on the average cost of all FoI requests rather than the cost of serial requests.

<sup>35</sup> The reduction in cost is £0.7 (8%) million for central government and £1 million (8%) for the wider public sector if an hourly rate of £25 is used. The £34 and £26 per hour rates continue to be used to calculate the cost impacts of this option.

|                     | <b>Annual cost of requests (£ million)</b> | <b>Costs excluded under current arrangements (£ million)</b> | <b>Additional costs excluded if non-similar requests are aggregated (£ million)</b> |
|---------------------|--|--|---|
| Central government  | £8.5<br>(100%)                             | £0.5<br>(5%)   | £0.9<br>(11%)   |
| Wider public sector | £10.4<br>(100%)                            | £0.7<br>(6%)   | £1.2<br>(10%)   |

Table 10: Cost impact of aggregating non-similar requests

Source: Frontier Economics

### 3.2.3 Practical implementation issues

The key issue that has been identified in implementing this option is the concern that requestors will game the system through behavioural changes that substantially reduce the volume and cost impacts set out above. Requestors can currently game the system with respect to aggregating similar requests. This option could potentially increase the susceptibility to gaming, as under the Act, individuals do not have to prove their identities in order to make a request. Consequently, an individual could either change the timing of requests so they fall outside the 60 day period, or make requests from numerous different email accounts in order to circumvent the aggregation requirements.

## 3.3 INTRODUCING A CHARGE FOR FOI

### 3.3.1 Background

Under the FoI Act it is possible to introduce a flat rate fee for responding to FoI requests. The terms of the Act are sufficiently broad to allow a fee both where the requested information is to be disclosed and where it will be withheld on the basis of an exemption. The key restrictions in relation to introducing a fee are that:

- a fee can only be charged after a request has been received, unlike in some other jurisdictions where a fee is required to be paid when a request is made; and
- the fee must be set at such a level that revenues from the fee cannot exceed 10% of the marginal cost of dealing with a FoI request – this is not a requirement of the Act, but is a condition that would need to be met in order to comply with commitments made during the passage of the Bill through Parliament. Given that the average cost of officials' time of dealing with a FoI request is approximately £250, this would provide scope to charge a flat rate fee of up to £25.

Two issues emerged in discussions with stakeholders in relation to the introduction of a fee. The first was whether it would be better to introduce a fee only in cases where the information was to be used for commercial usage. Given that requests from commercial users tend to cost more than the average request it was considered that a charge focused at such users might be appropriate – particularly given that the information obtained would be used commercially. Consequently, the analysis below considers the potential impact of a fee for commercial usage<sup>36</sup>.

The second issue is to do with charging for internal reviews and appeals. The analysis set out in the previous chapter showed that the costs of internal reviews and appeals are substantial and they take up substantial amounts of senior civil service resources, but that such appeals are successful in only a small proportion of cases. Given this, a number of stakeholders have questioned whether it would be appropriate to introduce a fee for internal reviews and appeals. However, introducing a charge for internal reviews or appeals would require primary legislation. Accordingly the analysis below does not consider the impact of introducing a charge for internal reviews and appeals. However, it is recommended that this option should be considered further.

**RECOMMENDATION: CONSIDERATION SHOULD BE GIVEN TO INTRODUCING A CHARGE FOR REQUESTING AN INTERNAL REVIEW AND/OR FOR THE ICO APPEALS PROCESS**

### 3.3.2 Volume and cost analysis

Understanding the impact that introducing a fee would have on future volumes of requests and costs of delivery is difficult. This is because there is no direct empirical evidence on people's willingness to pay for FoI requests. Consequently the analysis below is based on case study evidence from other jurisdictions and regimes, and qualitative information gathered through discussions with stakeholders.

Specifically the analysis has drawn on the following:

- the experience in Ireland of introducing a charge for FoI requests;
- the experience in Ontario of introducing a charge for FoI requests; and
- the experience of the impact of charging under the Data Protection regime.

The following sections set out a brief overview of each case study before presenting their implications for the UK.

---

<sup>36</sup> Commercial users are those requestors who require information for commercial use: examples are journalists or businesses wishing to gather information about procurement options in order to create a commercial database.

### *Ireland*

The Irish Freedom of Information Act was introduced in 1997. An amendment to the Act was made, which led to the introduction of fees in July 2003. Fees were introduced for making a FoI request (€15), Internal reviews (€75) and Appeals to the Information Commissioner (€150). The introduction of fees was accompanied by a number of other changes, which limited the information available through the Act.

Following the introduction of fees, the Information Commissioner reported a 75% decline in the number of FoI-type requests (83% for journalists). However, this is likely to be at the top end of the reduction likely to occur should fees be introduced in this country for the following reasons:

- the Act introduced a number of changes at the same time as the introduction of fees. It is therefore hard to isolate the impact of the €15 fee for making a request;
- the 75% reduction in requests was measured from Q1 2003 to Q1 2004. The volume of requests in Q1 2003 appears to be high, perhaps driven by a spike in requests prior to the introduction of the amendments of the Act. A comparison of Q1 2002 to Q1 2004 indicates that the number of requests fell by 64% (67% for journalists); and
- a comparison of total request volumes using Annual Report data from 2002 to 2005 shows a reduction in requests of 65% for Civil Service Departments and 55% for Local Authorities.

In order to apply this case study to the UK, the following assumptions have therefore been made:

- using the changes in annual request volumes set out in the table below it has been assumed that 75% of the reduction in requests shown in the table above can be attributed to the introduction of the initial €15 fee; and
- to identify the impact on commercial users it has been assumed that such users will only reduce their requests by 75% of the percentage reduction for all requests.

| Public body (Irish)  | Percentage reduction in the Irish case | Assumed reduction for standard UK requests | Assumed reduction for commercial UK requests |
|--|--|--|--|
| Civil Service Departments  | 65%                                    | 49%  | 36%  |
| Local Authorities  | 55%                                    | 41%  | 31%  |
| Health Service Executive   | 50%                                    | 38%  | 28%  |
| Voluntary hospitals, mental health services and other related agencies | 61%                                    | 46%  | 35%  |
| Third Level education bodies   | 57%                                    | 43%  | 32%  |
| Other bodies   | 56%                                    | 42%  | 32%  |

Table 11: Assumptions used to apply Irish experience to the UK

### *Ontario*

The Freedom of Information and Protection of Privacy Act came into effect in 1988 in Ontario. In 1996, fees were introduced as an overall package of rationalisation. The introduction of fees led to a fall of over 20% in the number of requests. However, recently requests have returned to pre-1996 levels.

In order to apply this case study to the UK, the following assumptions have therefore been made:

- a reduction in request volumes of 20%; and
- commercial users will only reduce their requests by 75% of the percentage reduction for all requests (i.e.15%).

### *The Data Protection regime in the UK*

The Data Protection Act provides for a fee of up £10 to be charged for processing a subject access request. Seven departments of State charge a fee to process subject access requests.

Of the 43 non-staff subject access requests received by one department in 2005 and dealt with by a fee, only 6 requestors paid the fee (14%). Those that did not pay the fee either refused to pay the fee or formed the conclusion that they already knew what information was held on them and on that basis decided not to pursue their request.

In order to apply this case study to the UK, it has been assumed that volumes would reduce by 86%.

### *Implications for UK costs and volumes*

Table 12 below shows for each of the three scenarios the impact on costs and volumes of introducing a fee for FoI requests. The table shows that for both standard and commercial<sup>37</sup> requests the introduction of a fee has the potential to lead to significant reductions in volumes of requests. The table also shows that the revenue generated from any fee is likely to be relatively small.

|                               | <b>Volume reduction – standard requests</b> | <b>Volume reduction – commercial requests</b> | <b>Cost reduction</b>  | <b>Revenue Generated (assuming £15 fee)</b> |
|-------------------------------|---|---|------------------------|---|
| <b>Irish experience</b>       |   |   |                        |   |
| Central government            | 14,691<br>(49%)                             | 1,224<br>(36%)                                | £3.8 million<br>(44%)  | £266,000                                    |
| Wider public sector           | 30,530<br>(40%)                             | 3,547<br>(30%)                                | £3.9 million<br>(38%)  | £800,000                                    |
| <b>Ontario experience</b>     |   |   |                        |   |
| Central government            | 6,056<br>(20%)                              | 505<br>(15%)                                  | £1.6 million<br>(18%)  | £406,000                                    |
| Wider public sector           | 15,099<br>(20%)                             | 1,781<br>(15%)                                | £1.9 million<br>(19%)  | £1 million                                  |
| <b>Data Protection regime</b> |   |   |                        |   |
| Central government            | 26,040<br>(86%)                             | N/A   | £6.6 million<br>(77%)  | £114,000                                    |
| Wider public sector           | 64,924<br>(86%)                             | N/A   | £10.1 million<br>(78%) | £337,000                                    |

Table 12: Volume and cost implications of charging a fee for FoI

Based on a detailed examination of each of the three case study scenarios and discussions with stakeholders, the conclusion is that the Irish experience set out above is probably the best indicator of what would happen to UK volumes and costs if a fee were to be introduced. This would suggest a reduction in volumes of requests of approximately 40-50%.

<sup>37</sup> In the analysis requests from journalists have been taken as a proxy for commercial requests. However, the expectation would be that there are larger numbers of commercial requests than those identified above.

However, it is likely that a large proportion of requests deterred by a flat rate fee would be the less costly one off requests from members of the public. It is highly unlikely that the most expensive requestors would be deterred by a flat rate fee.

A key issue raised by stakeholders was how to implement a payment scheme for FoI in organisations that do not otherwise have a requirement to collect small sums of money on a regular basis. This issue has been identified as applying primarily to central government departments, as public bodies in the wider public sector tend to have facilities in place to deal with small payments.

There is no quantitative information available on the costs of collecting a fee. However, discussions with central government stakeholders suggested that the costs are likely to be between £30 and £100 per fee collected. This suggests that if a fee of £15 were implemented, in departments where no system is in place to collect small sums, a loss of between £15 and £85 would be made on every fee collected. This suggests that the primary role of a fee would be in deterring requestors from making FoI requests.

To understand the impact of this deterrent it is necessary to compare the costs and benefits of responding to FoI requests. From an economic perspective efficiency would be improved if a fee deterred a request where the cost of responding to the request outweighed the benefits.

The benefits of FoI can be broken into three elements: the private benefit to an individual of the information they receive; the public benefit of that information being made available; and the aggregate benefits that derive from a more open and transparent decision making process.

If a fee in the range of £15 leads to substantial reductions in volumes of requests, this suggests that the private value of those information requests may be low relative to their costs. This is because if people fail to pay the fee they may be indicating that they value the information they request at less than the fee required (£15) while each central government request costs approximately £250 of officials' time on average to provide.

However, this does not necessarily imply that there is an efficiency gain as the public value of the information and the public good value of FoI have not been taken into account. Discussions with stakeholders have also revealed concerns about the fairness of introducing a fee. Some stakeholders have discussed that there may be particular groups of individuals who legitimately wish to access information but who would not be able to afford the fee.

An alternative could be to look to introduce a more targeted fee aimed at recovering the costs of dealing with persistent and experienced requestors. These types of requestors tend in the majority of cases to be requestors who require information for commercial use: either journalists or businesses wishing to gather information about procurement options in order to create a commercial database.

Responding to requests from these requestors tend to costs substantially more than dealing with requests from more casual requestors. A fee for this type of user could overcome some of the concerns expressed above with respect to a flat rate fee for all users. However, this option is potentially susceptible to gaming, as under the Act, individuals do not have to prove their identities or the purpose of their request in order to make a request.

**RECOMMENDATION: CONSIDERATION SHOULD BE GIVEN TO INTRODUCING A FEE FOR CERTAIN TYPES OF REQUESTORS INSTEAD OF/IN ADDITION TO A FLAT FEE**

### 3.4 LOWERING THE THRESHOLD

The final option for consideration is a reduction in the appropriate limit from its current level of £600 and £450. The rationale for such a reduction could be a view that the current level does not provide an appropriate balance between the right to access information and the need of public authorities to continue to carry out their other duties.

The impact of this option largely depends upon the level the threshold is set at. The table below is based on a one third reduction in the threshold to £400 and £300 respectively. As can be seen, this has a relatively limited impact on volumes, with an extra 128 (0.4%) requests exceeding the central government threshold and an extra 1,331 (1.5%) exceeding the wider public sector threshold<sup>38</sup>.

|                     | Annual volume of requests | Requests excluded under current arrangements | Additional requests excluded if thresholds reduced |
|---------------------|---------------------------|--|--|
| Central government  | 33,644<br>(100%)          | 1,602<br>(5%)                                | 128<br>(0.4%)                                      |
| Wider public sector | 87,366<br>(100%)          | 4,160<br>(5%)                                | 1,331<br>(1.5%)                                    |

Table 13: The volume impact of reducing the appropriate limit

Source: Frontier Economics

<sup>38</sup> The estimate of requests excluded is 1% in central government and 2% in the wider public sector if an hourly rate of £25 is used to determine which requests are over the appropriate limit. The reason that a slightly greater proportion of requests are excluded is due to requests that involve large amounts of less senior staff time. These members of staff have an actual hourly cost of less than £25 per hour, so increasing their rate to £25 per hour increases the number of requests excluded.

### 3.5 ENSURING THE ACT WORKS EFFECTIVELY

In addition to analysing the effect of the four options, discussions with stakeholders have identified a number of practices that could be addressed in order to ensure that the Act is operated as effectively and efficiently as possible.

- **Understanding requirements under the Act.** A theme that emerged from discussions was that practitioners may be responding to requests even in situations where they are not required to do so under the Act. A number of examples were provided where requests were answered even where the appropriate limit had clearly been exceeded. Similarly it is not clear that all practitioners are making full use of the provisions in relation to aggregation and vexatious requests. If the options for change discussed above are to be implemented and are to be effective, it will be important to ensure that practitioners are aware of the changes in the regulations and implement them.
- **Simultaneous release.** Discussions with stakeholders have indicated that public bodies are expected to operate a policy of simultaneous release, such that information released under the FoI Act is made publicly available through the body's website or other means. There should be greater proactivity and consistency in the approach to FoI publication. This should reduce the costs to public authorities of having to deal with the same requests, and should make it easier for requestors to access the information they require. Moreover, if a driver of demand for commercial requestors is the exclusivity of the information they receive, then implementing such an approach consistently could lessen the value of the information received and lead to a reduction in the volume of requests. Greater proactive release of information should also be encouraged.

### 3.6 SUMMARY

This section has examined the implications of each of the four options for changes to the FoI regime. Table 14 below provides a summary of the impact of each of the options on costs and volumes. The estimates of which requests are excluded under each option are based on the actual hourly rates of £34 an hour for central government and £26 per hour for the wider public sector.

|  | Central Government |                                      | Wider Public Sector |                                      |
|--|--------------------|--------------------------------------|---------------------|--------------------------------------|
|  | Volume reduction   | Reduction in cost of officials' time | Volume reduction    | Reduction in cost of officials' time |
| Including reading, consideration and consultation time | 2,692<br>(8%)      | £4.7m<br>(54%)                       | 5,492<br>(6%)       | £5.0m<br>(48%)                       |
| Aggregating non-similar requests                       | 3,598<br>(11%)     | £0.9m<br>(11%)                       | 8,414<br>(10%)      | £1.2m<br>(10%)                       |
| Introducing a flat rate fee                            | 15,915<br>(47%)    | £3.8m<br>(44%)                       | 34,077<br>(39%)     | £3.9m<br>(38%)                       |
| Reducing the appropriate limit threshold               | 128<br>(0.4%)      | £0.8m<br>(9%)                        | 1,331<br>(1.5%)     | £2.1m<br>(20%)                       |

Table 14: Impact of options on volumes and delivery costs (actual cost of £34 and £26 per hour)

Table 15 shows the volume and value of requests that could be excluded if the current hourly rate of £25 per hour is used to determine which requests are excluded but the cost of requests is calculated using the actual hourly rates of £34 (central government) and £26 (wider public sector). The impact of including reading, consideration and consultation is lower in this scenario. However, including these activities is still likely to have the greatest impact on reducing the most expensive requests. The reduction in request volumes is just 4%, yet the cost of requests is reduced by 37%. Moreover, the inclusion of this option continues to result in the exclusion of the majority of the top 5% of most expensive cases.

|   | Central Government |                                      | Wider Public Sector |                                      |
|---|--------------------|--------------------------------------|---------------------|--------------------------------------|
|   | Volume reduction   | Reduction in cost of officials' time | Volume reduction    | Reduction in cost of officials' time |
| Including reading, consideration and consultation                           | 1,346<br>(4%)      | £3.2m<br>(37%)                       | 5,991<br>(7%)       | £5.0m<br>(49%)                       |
| Aggregating non-similar requests  | 2,817<br>(8%)      | £0.7m<br>(8%)                        | 7,315<br>(8%)       | £1.0m<br>(8%)                        |
| Introducing a flat rate fee   | 15,915<br>(47%)    | £3.8m<br>(44%)                       | 34,077<br>(39%)     | £3.9m<br>(38%)                       |
| Reducing the appropriate limit threshold to £400 (central) and £300 (local) | 385<br>(1%)        | £0.9m<br>(11%)                       | 1,831<br>(2%)       | £2.1m<br>(21%)                       |

Table 15: Impact of the options on volumes and delivery costs (current cost of £25 per hour)

*(Note the volume and cost impacts in the table relate to the impact of introducing each option on its own. The volume and cost figures are not additive across the options.)*



## Annexe 1: Calculating the central government cost of FoI

The Freedom of Information (FoI) Act is estimated to cost central government approximately £24.4 million per year. This Annexe sets out the details of this cost estimate and the way in which it has been derived.

The Table below presents a breakdown of the total cost estimate. Each component will be discussed in more detail below.

| Cost item  | Total annual costs (£) |
|--|------------------------|
| <b>Costs to central government departments</b>                     |                        |
| <i>Operating costs outside of central departmental FoI teams</i>   |                        |
| Initial request casework   | £6,157,000             |
| Internal Review casework   | £1,391,000             |
| ICO appeal casework  | £1,694,000             |
| Information Tribunal cases   | £132,000               |
| Allowance for very high burden cases                               | £500,000               |
| <i>Central departmental FoI team budgets and general overheads</i> |                        |
| Operating budgets of central FoI teams - labour costs              | £2,400,000             |
| Operating budgets of central FoI teams - other costs               | £4,000,000             |
| Other overheads (IT, Counsel fees, etc.)                           | £1,750,000             |
| <b>Central costs</b>   |                        |
| DCA Central Clearing House   | £850,000               |
| FoI costs of Information Commissioner                              | £5,000,000             |
| FoI costs of Information Tribunal                                  | £550,000               |
| <b>Grand total</b>   | <b>£24,380,000</b>     |

Estimated total annual costs to central government of handling FoI requests

Source: Frontier analysis

## COSTS TO CENTRAL GOVERNMENT DEPARTMENTS

As shown in the table above, costs to central government departments have two main components:

- the central departmental FoI team budgets and general overheads; and
- operating costs outside of central teams.

The calculation used to estimate costs for each of these areas will be discussed in reverse order below.

### Operating costs outside of central FoI teams

The cost item “Operating costs outside of central FoI teams” covers the costs incurred by departments (outside of the FoI central team) when dealing with initial requests, internal reviews, ICO appeals and Information Tribunal cases<sup>39</sup>.

#### *Initial request casework*

To calculate the cost of initial request casework, an estimate of the average cost of dealing with an initial request has been multiplied by the number of requests that central government departments receive in a year (34,000).

The estimate of the average cost of non-central unit time of dealing with an initial request has been estimated using the one week costing exercise carried out by the DCA. The methodology used to calculate the average cost is set out below.

- The time taken by each grade of official on each initial request in the sample has been estimated (the time input recorded in the sample has been adjusted to reflect the time of all individuals involved in processing the request rather than just the input of the officials recording their input<sup>40</sup>). The time taken by the Central unit has been excluded.
- This time input has been multiplied by the hourly rate applied to civil servants at each grade rate including National Insurance and Pensions. This has been calculated with reference to average salaries paid to officials and assuming 1,620 hours are worked during the year. The hourly rate applied to Ministerial and Private Office time has been assumed to be £300 per hour.

---

<sup>39</sup> Please note that the costs reported in this section only relate to the departments’ costs. Any additional costs occurred by central institutions, such as the DCA Clearing House, the ICO and the Information Tribunal, are reported separately (see next section for details).

<sup>40</sup> Time recorded under the headings of consideration, discussion within central government and consultation with board level officials/Ministers during the one week sample has been doubled. This is because the time recorded by officials during the one week exercise only counts the time they spent dealing with the request. Other individuals, whose time input was not recorded were also involved. A doubling of the time input on discussion and consultation is designed to help reflect this time input.

- Combining the time taken on each request by officials at each grade with the hourly rate for the officials' time gives an estimate of the total cost of each request. The average cost of £183 per initial request (excluding central unit costs)<sup>41</sup> is calculated by taking the average cost across all requests.

Applying the average cost estimate to the annual request volume results in an estimated total cost of approximately £6m per year.

### ***Internal review casework***

A similar approach to that outlined above for initial requests was also carried out to calculate the annual cost of internal reviews.

DCA statistics reveal an annual volume of around 2,600 internal reviews in central government. Based on the one week costing exercise, the average cost (excl. central unit costs) per internal review is approximately £521. This leads to an estimated total cost of approximately £1.4m per year.

### ***ICO appeal casework***

According to its Annual Report 2006, the ICO has received approximately 220 appeal cases per month. The assumption has been made that around 30% of these appeal cases related to central government<sup>42</sup>. To control for the higher costs generally associated with appeal cases, stakeholders recommended the following adjustments be made to the average costs associated with handling initial requests:

- the average handling time of an ICO appeal should be three times the average handling time of an initial request (excluding central FoI team time input);
- the hourly rate of staff working on an appeal should be £10 higher than the average hourly rate of staff working on initial requests to reflect the higher grade profile of the staff involved; and
- an additional one-third of in-house officials' time should be added to reflect departmental lawyers' costs at a Grade 7 salary rate.

Based on the estimated 700 appeals per year and an average cost per appeal of approximately £2,100, the total costs associated with Central Government related ICO appeal cases is £1.7m.

### ***Information Tribunal cases***

During 2005/06 the Information Tribunal reported 44 cases. Assuming again a 30% share of all Information Tribunal cases being attributable to central government, leads to an estimate of 13 Tribunal cases related to Central Government per year. Stakeholders have advised that an estimate of £10,000 per case is appropriate for Tribunal cases. This results in a total cost of approximately £132,000 per year.

---

<sup>41</sup> The average cost of initial FoI requests including central unit costs is £254. This is reported elsewhere in the report.

<sup>42</sup> This is approximately the same as the share of central government requests out of all initial requests.

***Allowance for very high burden cases***

Given the short period of time captured in the one week costing exercise, stakeholders have advised that a further £0.5m allowance be included to control for high burden cases not being captured appropriately within the sample.

**Central departmental FoI team budgets and general overheads**

The cost item “Central departmental FoI team budgets and general overheads” covers the costs incurred by the central FoI team within a department when dealing with initial requests, internal reviews, ICO appeals and Information Tribunal cases.

***Operating budgets of central FoI teams - labour costs***

The central unit cost reported in the one week sample has been used to estimate the average unit cost of initial request and internal review casework for central teams. The same methodology has been used to derive the average central unit cost as set out under the initial request and internal review sections of “Operating costs outside of central FoI teams”.

The estimates of the average central unit cost of dealing with initial requests and internal reviews have been multiplied by the number of requests and reviews that central government departments receive in a year.

***Operating budgets of central FoI teams - other costs***

The DCA collected annual FoI related central unit costs from all departments that participated in the one week costing exercise. These figures, minus the amount calculated for central staff time, provide the estimate of other central unit costs.

***Other overheads (IT, Counsel fees, etc.)***

The DCA collected an estimate of other relevant overheads from all departments that participated in the one week costing exercise. These figures have been used to provide an estimate of the other overheads associated with departmental FoI work.

**CENTRAL COSTS**

In addition to the individual departments, there are three main central institutions dealing with FoI requests: the DCA Clearing House, the Information Commissioner’s Office and the Information Tribunal. As advised by stakeholders, we have based estimates of the cost of these institutions on the projected FoI related expenditures for each institution:

- £850,000 is the projected expenditure of the DCA Clearing House for 2006/07;
- £5m represents the expected grant-in-aid to the Information Commissioner's Office from DCA to cover FoI work in 2006/07<sup>43</sup>; and
- £550,000 represents the Information Tribunal's planned expenditure during 2006/07, adjusted to FoI related work only.

---

<sup>43</sup> The grant in aid in 2005-06 was £5m. This was increased exceptionally to £5,550,000 in 2006-07 to give ICO additional funds to reduce the backlog of cases that had built up in 2005-06.



## Annexe 2: Calculating the cost of FoI to the wider public sector

The Freedom of Information (FoI) Act is estimated to cost wider public sector bodies approximately £11.1 million per year. This Annexe sets out the details of how this total cost estimate has been derived.

The Table below presents a breakdown of the total cost estimate. It contains two main components:

- £10.4 million in costs relating to initial requests; and
- £0.7 million in costs associated with internal reviews.

Each will be discussed in more detail below.

| Cost item                | Total annual costs (£) |
|--------------------------|------------------------|
| Initial request casework | £10,400,000            |
| Internal Review casework | £683,000               |
| <b>Grand total</b>       | <b>£11,100,000</b>     |

Estimated total annual costs to wider public sector of handling FoI requests

Source: Frontier analysis

### INITIAL REQUEST CASEWORK

To calculate the cost of initial request casework in wider public sector authorities, an estimate of the average cost of dealing with an initial request has been multiplied by the number of requests that wider public sector bodies receive in a year (87,000).

There is currently no reliable source of information available on the (average) costs associated with FoI requests in wider public sector. Consequently, the estimate of the average cost of non-central unit time of dealing with an initial request has been estimated using the one week costing exercise carried out by the DCA for central government. A number of adjustments have been made to this sample to make it more reflective of the cost to wider public sector bodies. The methodology used to calculate the average cost is set out below.

- The time taken by each grade of official on each initial request in the sample has been estimated (the time input recorded in the sample has been adjusted to reflect the time of all individuals involved in processing the request rather than just the input of the officials recording their input<sup>44</sup>). The time taken by the Central unit and by Ministers has been excluded.
- This time input has been multiplied by the hourly rate applied to civil servants at each grade rate. This has been calculated with reference to average salaries paid to officials at those years and assuming 1,620 hours are worked during the year.
- Combining the time taken on each request by officials at each grade with the hourly rate for the officials' time gives an estimate of the total cost of each request. The average cost per initial request (excluding central unit costs) is calculated by taking the average cost across all requests.
- 75% of the average cost of central government requests has been taken to be the relevant average to apply to wider public sector requests to reflect their lower complexity.

Applying the derived average cost estimate to the annual request volume results in an estimated total cost of approximately £10.4m per year.

## INTERNAL REVIEW CASEWORK

A similar approach to that outlined above for initial requests was also carried out to calculate the annual cost of internal reviews.

There is currently no overall estimate of internal reviews undertaken by wider public sector bodies per year. Based on the evidence collected, we have derived an estimate of approximately 2,800 internal reviews per year across all wider public sector bodies. This estimate is derived as follows:

- *Local authorities*: Adjusting the internal review volumes reported in the IDeA study for sample size and expected higher volumes during the first quarter of 2005 results in an estimated annual volume of about 1,400 reviews per year;
- *Police*: Information provided by ACPO states that the police receives about 1,300 internal reviews annually;

---

<sup>44</sup> Time recorded under the headings of consideration, discussion within central government and consultation with board level officials/Ministers during the one week sample has been doubled. This is because the time recorded by officials during the one week exercise only counts the time they spent dealing with the request. Other individuals, whose time input was not recorded were also involved. A doubling of the time input on discussion and consultation is designed to help reflect this time input.

- *Higher Education Institutions*: Based on the JISC study we estimate the annual number of internal reviews to equal 60 per year; and
- *Strategic Health Authorities*: Assuming 5% of all initial requests trigger an internal review, leads to an annual volume of 70 internal reviews.

Based on the one week costing exercise, the average cost per internal review is approximately £244. This leads to an estimated total cost of approximately £0.7m per year.





THE FRONTIER ECONOMICS NETWORK

LONDON | COLOGNE | MELBOURNE | SYDNEY

Frontier Economics Ltd 71 High Holborn London WC1V 6DA  
Tel. +44 (0)20 7031 7000 Fax. +44 (0)20 7031 7001 [www.frontier-economics.com](http://www.frontier-economics.com)