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Our ref: 343729

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Dear Maurice,

FREEDOM OF INFORMATION ACT

Thank you for meeting me on 28 March, and for your letter of 16 May about the Government's response to Post Legislative Scrutiny (PLS) of the Freedom of Information Act (FOIA).

The Government's continued commitment to FOIA was made clear in our response to PLS. I would like to reassure you that we are not seeking to restrict people's rights of access to information under FOIA in general, but to focus on the small minority of requests which are disproportionately burdensome. The options for burden reduction in the PLS response, summarised in your letter, present a number of different approaches to burden reduction. Each option has advantages and disadvantages, and we are currently assessing these before putting proposals out to public consultation later in the summer. I am grateful for your views on the options for reform, which will be taken into account as our proposals are developed.

I agree with you that recent case law in relation to vexatious requests offers reassurance on the ability of section 14(1) to offer protection against such requests. We intend to offer additional guidance through a revised section 45 Code of Practice which will include guidance about the application of section 14. This will take account of recent Tribunal decisions. Section 14 is an important tool in preventing the inappropriate or disproportionate use of FOIA, and we are factoring it into the development of proposals for burden reduction.

You will be aware that the possibility of introducing Tribunal charges is not an issue being considered in isolation only in the information rights context. In the current economic climate, the general policy is that users who can afford fees should make a fair contribution towards the cost of courts and tribunals. We will take your arguments

against the introduction of charges into account as we consider this issue further. To ensure that those unable to afford fees are not denied access to justice, a number of fee remission systems currently operate in courts and tribunals. We recently consulted on a single HMCTS wide¹ system of remissions. We will be publishing the Government response shortly with a view to rolling out the new scheme. For more information please see <https://consult.justice.gov.uk/>.

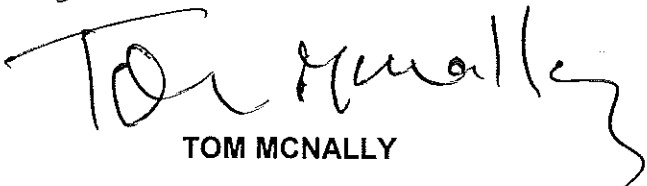
In relation to the first of the other issues referred to in your letter, it is unacceptable for any public authority to take longer than necessary to answer a FOIA request or internal review. While we do not consider problems about timeliness to be sufficiently widespread to necessitate legislative change, the inclusion of provisions in the section 45 Code of Practice will enable the Information Commissioner to issue practice directions where public authorities do not comply. I would also encourage public authorities to be transparent about their compliance with FOIA.

On extending FOIA to contractors, our approach seeks to strike a balance between transparency and the need to minimise regulatory burdens on business. Transparency in relation to outsourced services is of key importance and I recognise fully the challenge it poses to FOIA. That is why we will monitor the success of our proposed approach and should it not yield the necessary level of openness, we will consider what other steps might be taken. Indeed, we will need to monitor the results of all steps being taken following PLS to ensure the effective operation of FOIA, including those in relation to deadlines.

Finally, in relation to the interaction between FOIA and the wider Transparency Agenda; our response to PLS was clear that no matter the many benefits of an effective proactive publication regime, it is no substitute for an effective reactive disclosure system. Therefore FOIA, together with the Environmental Information Regulations and subject access provisions of the Data Protection Act, will continue to have a key role in ensuring public sector accountability. Indeed, the link between FOIA and the Transparency Agenda will become closer with the imminent commencement of the datasets provisions in section 102 of the Protection of Freedoms Act which will provide the public with a means of driving more directly the publication and re-use of datasets.

As you know, I am a longstanding and enthusiastic supporter of FOIA and fully recognise the many benefits it has brought. While it is important that the costs it imposes are proportionate, we will not introduce measures which reduce costs in a way which has an excessive impact on transparency.

I look forward to discussing the development of FOIA policy with you in the future.

Yours Sincerely,

TOM McNALLY

¹ Excluding First Tier Tribunal (Immigration and Asylum Chamber), which has a separate remissions system.