



## Public Administration and Constitutional Affairs

### Oral evidence: The Cabinet Office Freedom of Information Clearing House, HC 505

Tuesday 26 October 2021

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Jackie Doyle-Price; Rachel Hopkins; Mr David Jones; John McDonnell; David Mundell; Tom Randall; Lloyd Russell-Moyle; Karin Smyth; John Stevenson.

Questions 1 - 60

### Witnesses

I: Martin Rosenbaum, formerly BBC; George Greenwood, data journalist at *The Times*, and *The Sunday Times*; and Jenna Corderoy, openDemocracy FOI specialist journalist.

II: Dr Ben Worthy, FOI academic, Birkbeck, University of London; Dr Mária Žuffová, FOI academic, European University Institute; and Gavin Freeguard, formerly Institute for Government.

Written evidence from witnesses:

- [George Greenwood](#)
- [Martin Rosenbaum](#)
- [Dr Ben Worthy](#)
- [openDemocracy](#)
- [Jenna Corderoy](#)
- [Dr Mária Žuffová](#)

### Examination of witnesses

Witnesses: Martin Rosenbaum, George Greenwood and Jenna Corderoy.

**Chair:** Good morning and welcome to the Public Administration and Constitutional Affairs Committee. This morning the Committee is holding



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the first oral evidence session relating to the Cabinet Office Freedom of Information Clearing House inquiry. The Committee is very much looking forward to hearing from our witnesses and what they have to say today.

Could I ask our first panel to introduce themselves for the record, starting with Jenna Corderoy?

**Jenna Corderoy:** Good morning, my name is Jenna Corderoy and I am a reporter for Open Democracy.

**George Greenwood:** Good morning, my name is George Greenwood; I am a reporter at *The Times* newspapers. I specialise in data and freedom of information.

**Martin Rosenbaum:** I am Martin Rosenbaum. I was the BBC's leading specialist in FOI for 16 years. I have recently left the BBC but I maintain a specialism in this topic.

Q1 **Chair:** Mr Rosenbaum, the Freedom of Information Act has now been in force for over 15 years and was heralded at the time as a landmark piece of transparency legislation. What role does the FOI system play in your work and how important is it for that work?

**Martin Rosenbaum:** FOI has been important for quite a lot of journalism and certainly the kind of journalism that I have been doing. I have to say that the experience of FOI since it came into force is a mixture of being very productive and also very frustrating, because it is slow and cumbersome and you encounter a lot of obstruction. However, it does give you the legal right to get information out of a public authority that otherwise you would not get.

To give one recent example of some work by my former colleagues at the BBC in the past couple of weeks, which illustrates the public interest benefits of FOI, there was a BBC story about the deadline of six months for common-assault action to be taken by the police and the impact that has in cases of domestic abuse. The BBC revealed that the number of cases that were timing out under that has been increasing over the past few years. Then last week Priti Patel announced that she is going to change the law on that. That is an example of how the Government have responded to information that journalists have obtained in the public interest due to FOI. Otherwise, that would not have happened.

On the other hand, very often you find you go through a frustrating process where Government Departments or public authorities fail to give you the information that they should. You appeal to the Information Commissioner or a tribunal and six months down the line, or 12 months or even 18 months or more, you end up getting the information. So sometimes it works and sometimes it does not.

Q2 **Chair:** George Greenwood, what role does the FOI system play in your work and with what importance do you regard it?



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**George Greenwood:** It is absolutely crucial for investigative reporting. As Martin has alluded to, you get information that you just can't get in any other way. The importance of this, as was set out in the original Bill paper for the Freedom of Information Act, is it improves government. Often those in the Government do not talk to each other, often issues are not at the top of the agenda, and information under FOIA can really highlight serious abuses, serious issues of corruption, serious issues of state failure or regulatory failure that there is no other way of getting at, because leaks tend to be partial at best, and sometimes the Departments do not publish this stuff in open records.

To give you an example from my own work this year, we found serious and systematic failures by police forces to handle child sexual exploitation 10 years after the Rotherham scandal was supposed to highlight this. We went into detail about how many children were going missing, from data from FOIA and from internal police intelligence reports that were showing serious shortcomings in sharing very basic data about victims. All this information would not be on the public record if it was not for FOIA.

Q3 **Chair:** Can I pose the same question to Jenna Corderoy? How do you use the FOI system in your work and with what importance do you regard it?

**Jenna Corderoy:** First, I would like to say thank you to the Committee for holding this inquiry; it is very much appreciated. FOI is incredibly important. I need it as an investigative journalist to get documents and data to support what I am writing. But it is not only important to me; it is important to the public. It allows people to hold those in power to account and to scrutinise how public authorities are spending taxpayers' money. The FOI does not discriminate.

What is lovely about the Act is that no matter who you are, what you do, where you live, everyone has the right to information. That right is enshrined in legislation but unfortunately I find it is being severely undermined by Government Departments, including the Cabinet Office and its Clearing House. The Cabinet Office is fuelling a culture of secrecy by ignoring requesters and refusing requests that are clearly in the public interest and not responding to FOIs on time or internal reviews on time. It is simply not respecting the law.

Open Democracy has raised legitimate concerns about this in our two reports, "Art of Darkness" and "Access Denied", which was published on Monday by Lucas Amin. When we did raise these legitimate concerns about FOI, the Cabinet Office—which is in charge of FOI policy—tried to discredit us, dismissing our findings as nonsense. Unfortunately, it is not recognising the problem and I hope what comes out of this inquiry is that it listens to what I and my fellow journalists have been saying for years.

Q4 **Chair:** Thank you. Jenna, specifically on that and elaborating on what you have initially described, in April 2021 a tribunal found against the Cabinet Office, concerning the release of a round-robin list in a case brought by your organisation, among others. What was it that made your



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organisation and the Information Commissioner decide to bring the case before a tribunal?

**Jenna Corderoy:** It might be helpful to rewind slightly and to describe what I was trying to get from the Cabinet Office in the first place. In August 2018, I put in a request to get hold of the Clearing House round-robin list. This is a document that is circulated. It contains copies of requests and includes details, like the requesters' names, which Government Departments have received these requests, and the Clearing House advice on how Government Departments should respond to such requests. These lists contain the names of journalists, campaigners, academics and so on.

The Cabinet Office rejected my FOI request. I then appealed in the form of an internal review and it took it eight months to process that. That goes beyond the 20 to 40 days of processing internal reviews. I appealed to the information rights commissioner, who agreed that the information should be released to me, particularly the Clearing House advice. The Cabinet Office decided to appeal that and it was quite willing to go to the tribunal to stop the publication of these vital documents, so the Cabinet Office appealed.

At that point, I could have withdrawn and let the Information Commissioner defend its decision but I felt it was right that I see this through and explain in front of a judge why we needed such documents. Just before the tribunal, the Cabinet Office released some information on the gov.uk website. It also provided me with some documents, apart from some redactions, and provided me with some of the round-robin list containing the Clearing House advice.

I could have withdrawn and stopped there, but again I felt it was important to go in front of a tribunal. As I was going to the tribunal, it became very clear on the day of the tribunal that the Cabinet Office had made a series of errors and misled us over the nature of these round-robin documents. It became very clear how badly it handled my FOI requests in the first place. We got the judgment and the judge ruled that the Information Commissioner's decision was correct. I would like to highlight that it took three years to get to this point. That is ridiculous. That is not a properly functioning FOI system. Sorry, I went on a bit there.

**Q5 Chair:** That is all right. We are going to elaborate on these issues as we go through the session. Your written submission raised questions about the propriety of the Clearing House's co-ordinating role. Could you briefly elaborate on those concerns?

**Jenna Corderoy:** Yes. For me, there are quite a lot of concerns with the Clearing House. I will list a few. The Clearing House sits within the Cabinet Office and the Cabinet Office rarely grants FOI requests in full. In my experience it hardly meets the 20-working-day deadline. If it cannot handle its own requests properly and has a tendency to lean towards



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secrecy, how can it possibly be in a position to advise other Government Departments? Already things are leaning towards rejecting requests.

Other concerns are that there is still a lack of transparency over the Clearing House. I still do not know how many people are in this unit. I do not know what its expertise is, because it gives advice on a whole range of requests, ranging from health to justice to economics. You cannot simply be a specialist in all those areas. I do not know what happens when the Government Departments disagree with Clearing House advice. I do not know what the processes are. That is still not transparent.

I am concerned that, if requests are flagged to the Clearing House, the requester does not know. Of course, with these round-robin lists, they include the name of the requester. I don't think that requesters know that their names could possibly be circulated across Whitehall. There could be data protection implications there.

For me as well, I do not think the Clearing House or the Cabinet Office keep full and accurate statistics of how many requests are flagged to it. There is some evidence that I have come across where I do not think all the advice that the Clearing House does give to other Government Departments is fully written down.

**Chair:** Thank you. We are going to explore these themes as we go through the session.

Q6 **David Mundell:** I am going to ask everyone this question, starting with you, Mr Greenwood. The Government have previously claimed that the Clearing House helps to ensure consistent approaches to similar information requests across Government. Have your FOI requests been dealt with in a consistent manner? If not, can you let us know how they have been treated differently?

**George Greenwood:** There are two issues there—first, how my own data has been handled by the Clearing House, and then my experience in terms of cross-governmental FOIs. Clearly, I am being identified to the Clearing House in a way that does not appear to be in line with the requirements under the Act that requests be treated applicant-blind. They have a nickname for me: I am called “the ever-active Mr Greenwood” because I send a lot of requests.

**David Mundell:** There are worse nicknames than that.

**George Greenwood:** What is bad is “the FOI terrorist”, who was a guy who worked mostly in the States, which the FBI call him, so there are worse ones.

The problem with that is, if that is their approach to me, it does suggest that I am being identified in terms of my requests. That does create an inherent risk that those are being treated differently. I do not have documents showing how my requests are being handled, mainly because the Government refuse to give them to me. I have repeatedly asked the



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Cabinet Office and other Departments for meta requests—that is, requests about how my requests are handled—and they have rejected them almost uniformly under section 36.

I am currently in a number of Information Commissioner battles with the Cabinet Office for how they dealt with an FOI request for correspondence between Michael Gove and one of his donor-backed PPE contracts. They have blanketly refused to give me any of the information about how that was handled by specialist advisers, by Ministers or anything like that.

Likewise, I have been in an 18-month freedom of information battle with the Cabinet Office for how they drafted a blog about an “Insight” investigation around how the Government handled coronavirus. I made a request for the information in April last year. That was rejected. I made a meta request for how that request was handled. That was rejected. I then made a request for how they came to come to the conclusion that they could blanketly reject that request. They then deemed me a vexatious requester, because apparently me trying to find out how the FOI system works makes me trying to abuse the process. I then asked for how they deemed me to be a vexatious requester, and they called me vexatious again. It is just Kafkaesque.

Across government as well, the concerns about the Clearing House are that this information is being shared about me, and that they are co-ordinating responses not based on public interest but based on what is convenient at the time. Again, I don’t have evidence of that because they will not give it to me. It is a concern that the Clearing House is not operating as an advice body but it is effectively a body that will clear items and give advice but it is not clear on what basis that advice is given. It is not clear what political input goes into that. A year ago, I asked for guidance on this from the Cabinet Office and it is still with the ICO because they have blocked it pretty much in full.

**Q7 David Mundell:** Pre-Clearing House or separate from the Clearing House, was it your experience that different Departments did give different responses?

**George Greenwood:** This would be something called a round-robin request. Say you want to know how many sexual assaults took place on Civil Service grounds last year. I might go to every Government Department and ask for that. You often find the responses are quite similar. On the one hand, that is not necessarily a problem. If the Clearing House is working properly, they might say, “Yes, every Department should hold this. Every Department can provide a response in a certain way and this is the information we have across Government”, and provide it. That co-ordination function, as a co-ordination function, is not a problem. The question is whether there is a central decision, “Should we reject this or should we approve this?”

One of my requests was for something known as information asset registers. It is a list of Government databases. Every Government



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Department has a list of databases it maintains and I wanted the name of all of them across Government. I have seen from disclosures from Open Democracy that the Clearing House advised to reject that request for each Department. So I had to appeal each one and say, "No, there is no reason that you cannot give it to me under the Act." So I eventually got hold of them, but the initial Clearing House advice was to reject. We don't know on what basis that was; we don't have any of the documents around that. It makes the whole thing very, very opaque.

**Q8 David Mundell:** Had you ever encountered different advice being given in relation to the same request going in to different Departments?

**George Greenwood:** In terms of the disclosures, there are the limited Clearing House disclosures that Open Democracy has got hold of and I have been able to look at my requests in there. I have not seen one Department being told one thing and one being told another; no.

**Q9 David Mundell:** Jenna, do you want to respond to the same question?

**Jenna Corderoy:** Yes, I do have an issue with the terms "consistency" and "co-ordinating". I do think this is more about control. I think the Clearing House's function is to control what information can be released and what can be withheld. On George's request about information asset registers, I managed to get hold of the advice that the Clearing House gave. Their advice was to reject it because they believed that the request had no discernible purpose. How can they be in the position to make that judgment call?

With consistency, if I send a round-robin request to all Government Departments, the chances are that, if one request is refused, they all tend to be. For example, I recently submitted a request to each Government Department and every single one of them was rejected. I submitted further requests on how each Government Department came to that decision and some responses—those that were not refused—indicated that the Clearing House was a part of this process. That is not communicated to the requester whatsoever. When we try to get hold of internal documents about how decisions are made, our requests are deemed vexatious or are refused on multiple grounds. They are just trying to avoid scrutiny.

**Q10 David Mundell:** Mr Rosenbaum?

**Martin Rosenbaum:** I think there is a lot that is hidden by this term "consistency". While it may occasionally be about ensuring that Government Departments are responding to requests of the kind that George indicated on the same basis, I think what the Clearing House is really worried about much more of the time is stopping some Government Departments from releasing information of the kind that other Government Departments—particularly the Cabinet Office—do not want released. Actually, I think some of the time inconsistency would be better, in the sense that at least those Government Departments that are



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perfectly happy to release certain kinds of information should be free and willing to do so.

I have spoken to FOI officers in various Government Departments over the years who are quite cross to find that they have been instructed by the Clearing House not to release certain items of information, which that Department itself would be perfectly happy to release on the basis of its own considerations. It is because of some other concern from some other Department or the Cabinet Office itself that it has been instructed not to release it. That is the fundamental underlying issue here about consistency, which is quite problematic.

**Q11 Ronnie Cowan:** I have to admit to being probably more confused than I was at the beginning of this conversation. We keep referring to “the Clearing House” and “they”. I have got no idea who “they” are. I don’t know if they are elected Members, Whitehall, Millbank. Do we know, or should I put in an FOI to find out who “they” actually are?

**Chair:** Who would like to take that question first? Jenna, do you want to kick off?

**Ronnie Cowan:** Who are these mysterious people?

**Jenna Corderoy:** I was going to point to George because I think he has something amusing to say.

**George Greenwood:** Well, we don’t know. This is the problem. In November last year I put in a request asking for very, very basic details about the Clearing House—what is their budget, how many staff do they have and what guidance they issue to new starters. Things like that. Are they seconded or are they full members of staff? I got a sort of nothing response and they rejected the guidance. So again, it is with the Information Commissioner. It has been with them for 11 months to rule that they actually have to respond.

We are trying to find this out but the Cabinet Office just rejects our FOIs. We still don’t know how much money is spent on them, how many staff there are or anything like that. We do not know. We do not know what the reporting structure is. We do not know whether a Minister is responsible for it or not. Is it a separate unit to the FOI team or is it a function of the Cabinet Office FOI team? We just do not know because the Government will not tell us.

**Martin Rosenbaum:** Could I add one more piece of detail to that? In previous years—going back some time—FOI was the responsibility of the Ministry of Justice rather than the Cabinet Office. At that time the Clearing House function was in the MoJ. When there was a Justice Select Committee inquiry into FOI a few years back, the MoJ told that Committee that the number of staff in the Clearing House had substantially diminished because, it said, Government Departments were better at dealing with FOIs themselves; it did not need to have so many staff in the Clearing House giving them guidance as it used to.



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What has probably happened is that that has gone into reverse and we are seeing much more of a centralisation compared to the period a few years ago, when we were seeing things decentralised and Government Departments being given a bit more latitude.

**Ronnie Cowan:** I am still none the wiser, but thanks very much.

**Chair:** Thank you; we will endeavour to find out.

Q12 **John McDonnell:** Martin, can I ask you a few questions about sensitive cases and, Jenna and George, if you could come in as well on that? As you know, one of the reasons the Cabinet Office has given for the Clearing House is to assist in the processing of what it describes as particularly sensitive cases: national security and personal data. In your experience, are these treated differently from less sensitive cases and if so, how?

Can I add a further question as well? Are you aware of instances or have you been involved in requests where politically sensitive data is being withheld due to what you would consider an unwarranted justification?

**Martin Rosenbaum:** The way the Clearing House looks at is that particularly sensitive cases go well beyond, for example, national security. One of my concerns about the Clearing House, and the way that it operates, is the very wide definition of requests that have to be referred to it. For example, I am reading out now from the referral criteria for the Clearing House. Government Departments are expected to refer cases involving “high profile policy” initiatives or cases where there is an, “Expectation there will be significant wider interest in the topic of the request at the time”. With virtually everything—hopefully of the kind that we as journalists are doing—we would expect there to be significant wider interest in these topics. They are treating many, many requests as so sensitive that they have got to get involved, rather than just ones that genuinely might be very sensitive.

What that introduces into the process is partly the kind of obstruction, in a way, from the Cabinet Office that we have talked about already, but it certainly introduces a tremendous amount of delay into the process. Cases are going backwards and forwards between the Department and the Cabinet Office and it is taking a lot longer to get information, which for journalists is always a major problem.

The consequence is that, as I say, you can get information six months, 12 months, 18 months or 24 months down the road, when it is much less relevant, probably, than if it had been released earlier on in this process. There is a delay built into the process. All sorts of cases that are not genuinely really sensitive, get brought into this way of operating that perhaps only should operate in cases that genuinely are particularly sensitive. Does that answer the question?

Q13 **John McDonnell:** Have you examples of unwarranted justifications?



**Martin Rosenbaum:** Yes. A case that I wrote about not long before I left the BBC was to do with an OBE that had been given to a businessman who had been accused of overcharging the NHS for the supply of medicines. When this guy got the OBE I thought, "Why on earth has he got the OBE?" I put in requests to the Cabinet Office to try to find out what the basis was. Eventually what was revealed was that the civil servants who had been doing the vetting for this person had not done their internet searches properly and had not discovered the stories about this guy overcharging the NHS for medicines, or being accused of it, even though one of them had been on the front page of *The Times*. These complaints about him had not been discovered.

But it took me two years to get that information because the Cabinet Office refused to give it to me; the Information Commissioner then ruled in my favour; and the Cabinet Office then appealed to the tribunal, so it went all the way to a tribunal case. The tribunal ruled, correctly in my view, that it was in the public interest that this information should be out there, so that the public would know why this guy got an OBE and the fact that there were failings within the honours process. That is something that should be scrutinised so that the people involved can learn lessons about how to do these things better in the future.

That is one example of information that was certainly a bit embarrassing to the Government at the time. The whole process of delay and delay and delay and obstruction and obstruction and obstruction means that it is two years before the information comes out. They would say that the honours system is a sensitive topic—that you need to deal with these cases in a sensitive way. But I would also say that on a topic like this it is in the public interest that the public are aware of failings in the vetting process in the honours system.

Q14 **John McDonnell:** Jenna, do you have any comments on the use of sensitivity by the Clearing House?

**Jenna Corderoy:** Yes. I will deal with sensitive cases and then I will go on to politically sensitive requests. So-called sensitive requests are definitely treated differently from less sensitive cases. What happens is that when these types of requests are flagged to the Clearing House, it will take a very long time for the Clearing House to advise the Government Department on what to do. If the Government Department does not agree with the Clearing House, there is this back and forth that takes time and the requester will not receive a response within the statutory 20-working-day deadline.

I want to highlight one particular case. When I delved into it, I felt sickened at the end. Jason Evans, who has been campaigning around the infected blood scandal, has been doing a highly important job. He tried to seek documents from the Treasury about litigation undertaken by haemophiliacs infected by HIV in the early 1990s. What he did was write an FOI request. He sent it to the Treasury. The Treasury then sent that FOI request on to the Clearing House. We have the documents. The



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Treasury wanted to release the information; it was keen to release the information, but the Clearing House kept saying no. They kept suggesting all these excuses for why this campaigner could not have information—quite dated information, but still information in the public interest. This back and forth took five months. That goes way beyond the statutory deadline and I just find that completely unacceptable. We have written about it on Open Democracy's website. That is not a properly functioning FOI system and it is not fair to the requester either.

I have definitely had experiences where perhaps politically sensitive requests for information have been withheld from me, completely unwarranted. I suppose me trying to access information about the Cabinet Office Clearing House could be deemed politically sensitive. I had more requests about the Clearing House. I know that the Clearing House circulated a document on FOI guidance on Covid-19 FOI requests. I put a request in asking for a copy of that document. They have said no and they keep on refusing that. Now I have to go to the Information Commissioner's Office to try to get hold of that document.

I think the Cabinet Office fear negative coverage about this. When we originally broke the story on the Clearing House last November, it attracted a lot of controversy and a lot of media coverage. In February there was an open letter signed by lots of editors of newspapers, asking what is happening in this Clearing House, what is happening with the Cabinet Office and the treatment of FOI requests. When that letter was published, the Cabinet Office published a blog post, essentially attacking our journalism and trying to discredit us.

What I did, naturally, is to put an FOI request in to the Cabinet Office to get hold of those communications behind the drafting of that blog post. I think it was logical and reasonable to do so because I wanted to scrutinise who made those calls to put out that blog post. Sorry, no, it was a colleague who put that request in. That request was rejected. He submitted an internal review. That has been rejected. I think it is a clear example of the Cabinet Office trying to avoid scrutiny. They just fear negative coverage.

Another example, if I may. In July I submitted an FOI request to the Cabinet Office, asking for correspondence and communications held by Sue Gray and Michael Gove in regard to PACAC's inquiry into Greensill. I made this request because I wanted to delve into why Michael Gove offered to appear in her place. I have not received a response to that request. It was sent in July. I think it has been purposely delayed because they are trying to take the sting out of any potentially embarrassing disclosure.

**John McDonnell:** We have our own theories on that one, which we will come back to on another date.

**Jenna Corderoy:** Please drop me a line.



Q15 **John McDonnell:** George, could I come to you?

**George Greenwood:** I will focus on the delay experience before you even get to the regulatory level, which I think is likely to be due to the Clearing House. As Jenna has said, we don't know. We are not told when we make a request, "This is being moved on". If you chase them and send a few emails, they might say, "This is awaiting clearance," which I assume is the Clearing House. Under the rules, 20 working days can be extended to 40 working days for a response if a public interest test needs to be conducted on a request.

Whenever I ask anything even remotely politically sensitive from a central Government Department, it will use that. That makes it two months before I get a response, not one. One of my requests to the Cabinet Office took five or six of these 20-working-day extensions, which is in complete breach of FOI rules. Then, of course, you get to the internal review stage and there is no statutory limit to that and that takes a lot longer.

The issue with the Clearing House is that we don't know what internal rules there are in terms of timeliness, how long they are willing to accept things being delayed. It just makes the process take a lot, lot longer. In a journalism sense, you cannot do quick hits with FOIA in the same way as you might once have been able to do. You have to assume that what you are going to get is going to take a year to get. It does limit certain kinds of stories from central Government. Through bureaucratic refusal, they are able to prevent you from reporting this stuff. In a democracy the whole point of the Freedom of Information Act is to improve government, to make decision-making better because all the information is out there. With these sorts of delays—which I can only assume the Clearing House is partly responsible for due to clearance processes—it makes the whole thing take a lot longer and undermines our rights to information.

Q16 **John McDonnell:** We are trying to test the justification for the existence and operation of the Clearing House. One of the justifications that has been given to us is that there is a need for a specialist team to administer complex FOI requests. In these cases—the point that you have mentioned, George—a public interest test is required to balance the sensitivity of the information against the right to access information.

To start with Jenna first, have any of your FOI requests been of this nature? If so, did the Cabinet Office notify you that it was being handled in this way? How did the treatment of that request differ?

**Jenna Corderoy:** I am sorry, I cannot think of any examples that spring to mind at the moment, but with the notification—well, I know my requests have been flagged to the Cabinet Office. I have been doing this for such a long time and I have never been informed by any Government Department or the Cabinet Office that my requests could be flagged to the Clearing House and/or circulated across Whitehall. I was never informed about that. When I saw the round-robin list for the first time,



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frankly, I was appalled. It is not communicated to the requester at all. Can I think more on the first part of that question? I might have to submit some further written submissions on that one.

Q17 **John McDonnell:** That is fine. It is just that very simple thing of: have they flagged up to you that this is a matter of public interest and, therefore, it is handled in a different way and you are notified of that? You have never had that?

**Jenna Corderoy:** No.

Q18 **John McDonnell:** George, can I come to you on that?

**George Greenwood:** Sometimes, if I keep chasing on a long-delayed response, they will tell me it is awaiting clearance processes but the Cabinet Office Clearing House or other Departments are not involved. It is not said whether it is going to special advisers or Ministers or senior civil servants to look at. All we are told is that a public interest test is being conducted. Usually, but not always, they will tell you which exemption they are looking at. But it tends to be that you are blind on this side about what those processes are, and when you try to find out how those processes are being used, those requests are blocked for various reasons. It takes a very long time to find out—if they are being deemed as sensitive—how that process works.

Q19 **John McDonnell:** Martin, could I come to you on that?

**Martin Rosenbaum:** Yes. I don't think you are ever told anything officially about the processes through which your request is being handled. As I said earlier, sometimes I have private conversations with FOI officers who say, "This one has gone to the Clearing House." You may be told things off the record, but you are never told anything officially about the process involved and the reasons for delays.

What I would say, in terms of the question you asked about whether there is a need for a specific expertise, which is sometimes used to justify the Clearing House, I think the FOI expertise exists in Government Departments as much as it exists in the Clearing House itself. In some ways that kind of argument is quite demeaning to the professional expertise of many decent FOI officers, good FOI officers, professional FOI officers, in Government Departments. Certainly, if you are talking about issues like national security, the MoD is as well aware of those as the Cabinet Office is. According to policy specialisms, Government Departments have that and know that, so I don't buy that as a justification for the Clearing House.

My three main concerns about the Clearing House are the delay that it introduces into the system, the way in which it obstructs Departments that are perfectly happy to release information and the way that it undermines the applicant-blind nature of the process. Those are my three concerns. I don't think any of the justifications given for how it operates



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go a significant way towards countermanding those very big disadvantages that it creates in the system.

**Q20 Mr David Jones:** A question for all three of you, starting with Mr Rosenbaum. Drawing on your past experiences, do you have evidence of any of your FOI requests being administered in a way that is not compliant with the principle of applicant-blind handling? If so, was your role as a journalist used to identify you and your work, and what was the impact on the handling of the case?

**Martin Rosenbaum:** I have absolutely got evidence that my role as a journalist was noted by people who are handling requests. What the impact was on the handling of the case—which is the final question you asked there—is obviously much more difficult to assess.

I have been through the same process that George was referring to, of putting in meta requests about cases where I think my request has been handled particularly badly, or subject access requests under the Data Protection Act, and have obtained information about how some of my requests have been handled. It says things like, “This request comes from Martin Rosenbaum, a BBC journalist” or other stuff about my journalist activities, particular pieces of journalism I have been involved in and so on. So absolutely my role as a journalist is being flagged up to people who are then processing this request.

What are the consequences? That is harder for me on the outside to assess. I am absolutely sure that it introduces more delay into the system. I would expect that people are more cautious about what they release when they know or believe that the requester is a journalist, but I cannot say for sure how any particular request of mine has been treated differently as a result.

It is worrying. One of the things that has worried me most about the Cabinet Office’s approach to all of this is that if you look at the internal guidance that the Cabinet Office gives on how to deal with FOI requests—I referred to this in my written evidence to the Committee—it says, “Be careful what you release if you don’t want to be in tomorrow’s newspapers”. Now, there is no legal exemption under the FOI Act that says in section something-or-other, “You don’t have to release this because it might be in the newspapers the next day”. It is a criterion that should be completely irrelevant.

There is a criterion about what is in the overall public interest for information to be released, and information should be released whether or not it is being asked for by journalists who might, therefore, end up publicising it and writing about it. It is a very worrying and problematic issue, but on the outside it is very difficult to assess how far the impact goes.

**George Greenwood:** I put a subject access request in to the Cabinet Office, which was six months late. Eventually they disclosed to me how



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my records were handled. "This request was deemed sensitive because the customer is a journalist, George Greenwood, requesting inspection reports for reservoirs". This was after the Toddbrook Reservoir collapse and I had written a story about overdue maintenance work previously.

There was another one that was around sexual assaults in the Civil Service: "Please be aware Mr Greenwood is a journalist". Then there is the "ever-active" term. This is how the requests are being referred up to the Clearing House and it may be the reason why they are being referred. Again, we do not have the guidance or the internal records for a lot of these requests to be able to say that.

What I will say, in terms of the impact, is that you can certainly talk about it in terms of risk. How FOI works in practice, there are processes. As I know is going on in government at the moment, there is a big conversation around use of private email, private correspondence, even just the old-fashioned chat. The risk is that if the identity of journalists is being flagged in big neon lights around requests, you do worry about a quiet word being had with an FOI officer, "Can we avoid this? Can we delay this?" I don't have proof of that, but the fact that our names are on these requests— This is the point of the applicant-blind principle—it means this stuff is made much harder to happen.

If they know that I am a journalist working on a topic, if they know that I have written on the upcoming AQUIND decision, for example, and I make more requests around the process behind the approval or rejection of the AQUIND process—which is the interconnector going on the south coast—I do worry that my name gets flagged up and suddenly there is further delay and there is an incentive not to respond. I cannot prove that but that is the risk that this kind of approach introduces into the system.

**Q21 Mr David Jones:** You referred earlier to your having been described as the "ever-active Mr Greenwood". Who referred to you that way?

**George Greenwood:** It was an email from, I think, a BEIS FOI officer to the Clearing House and it was around a request around expenses for setting up home working environments. It is in my evidence, the full section.

**Mr David Jones:** That came to the Clearing House rather than from the Clearing House, that description?

**George Greenwood:** Yes, that is correct.

**Q22 Mr David Jones:** Ms Corderoy, the same question.

**Jenna Corderoy:** Yes, I think this current system does undermine the applicant-blindness principle in several ways. First, the circulation of these round-robin lists that have the names of the requesters violates the principle. The sharing of requesters' names: it should not be flagged across Whitehall that a certain someone has made a request. Secondly, in past guidance, Government Departments have been urged to get



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advice from the Clearing House on requests from media, MPs and organised campaign groups. I have that in my written evidence.

Like George and Martin, I have sent subject access requests to many Government Departments and got disclosures. I have come across documents that mention my profession when they have been dealing with my FOI requests. I know that one Department—I think it was the Department for International Trade; I will have to check—flagged my profession to the Clearing House. It has happened to another Open Democracy colleague as well.

Going back to the point that Martin has raised, it is difficult to try to see whether your requests have been handled differently because of your profession, because they are not exactly going to say in an email, are they, “I am treating this differently because this is from a journalist”? They are going to do it verbally, so it is really difficult to get hold of that proof. But I think this is a system that has been set up to monitor requests from journalists.

**Mr David Jones:** Thank you for that. Could you drop us a line if you get a reply about the Sue Gray thing?

**Chair:** Thank you; that will be extremely helpful to the Committee’s work.

Q23 **Ronnie Cowan:** To take it slightly further—to start with Jenna and then go to everyone else as well—it should be a straightforward question. Have you found examples in your work where the Clearing House has directed Departments how to respond to an FOI request?

**Jenna Corderoy:** Multiple times. In my written evidence I have a link to the round-robin list that I have managed to get. There are columns within these very lengthy documents on how Clearing House has asked Government Departments to respond. A lot of the times they ask to see drafts of FOI responses. According to my analysis that makes up about 50%. In the advice column it says to think about rejecting this on cost grounds, or other exemptions as well. That is all in my written evidence and I do flag some of my requests that have gone through that system.

Q24 **Ronnie Cowan:** Is this because the Department has then gone to the Clearing House and asked for further information, or has the Clearing House stepped into the process?

**Jenna Corderoy:** The Clearing House circulates advice on how Government Departments should respond to requests.

**Ronnie Cowan:** To specific requests?

**Jenna Corderoy:** Yes, specific requests, round-robin requests. I know with sensitive requests that goes through a different system. They are not put on a round-robin list but they are done, I suppose, separately. It is a bit complicated but it is all in my written evidence.



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Q25 **Ronnie Cowan:** A round-robin request is if I make a request across multiple Departments?

**Jenna Corderoy:** Yes.

Q26 **Ronnie Cowan:** If I make a request of one Department, the Foreign Office, does it go to the Clearing House and say, "How do we handle this?" or has the Clearing House been flagged up to the fact that I made that FOI to the Foreign Office in the first place?

**Jenna Corderoy:** The Foreign and Commonwealth Office, if it judges it to be sensitive, that would be flagged to the Clearing House, yes.

Q27 Ronnie Cowan: Martin?

**Martin Rosenbaum:** The answer to your question is yes. I can recall one case, for example, when the Department for Education was willing to release information to me and it was instructed by the Clearing House not to release the information. This all came out because I eventually appealed to the ICO and the ICO instructed that the information should be released, so it was released. That is one example of the Clearing House trying to stop the release of information that Departments are happy to release.

Q28 **Ronnie Cowan:** When the ICO indicated that that information should be released, was part of that information the fact that it had been blocked in the first place?

**Martin Rosenbaum:** No. This was information about a certain aspect of schooling. The Department was happy to release it. The Clearing House did not want it released, but this fact later came out. That was not evident to me at all at the time that that was the reason why it had not been released. That was something that only came out later in the process.

Q29 **Ronnie Cowan:** George?

**George Greenwood:** As referenced earlier, there was a request for the list of databases that Departments hold and the Clearing House advised Departments that my request had no discernible purpose and should be rejected.

Q30 **John Stevenson:** Martin, we have talked a lot this morning about delays to the release of information from the Clearing House and various Departments. Two questions. First, what have been the key grounds for stopping information coming out? Secondly, delays in the release of information and material to you as journalists—what impact has that had on your job and the wider public debate?

**George Greenwood:** Delays are a massive issue for journalists because obviously we are dealing in time-sensitive information, and whether or not information is newsworthy depends on its timing.



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To give you one example, one of my close colleagues at the BBC had put in a request for information. It was about the faults in the Ministry of Justice IT system. I don't know if you remember this. It must have been about three or four years ago when the MoJ IT system collapsed and lots of courts were affected. It was a major problem for about two weeks or so. We wanted to get the report of why that had happened, the investigation, the review and what should be done about it to make sure it did not happen in future and so on.

Eventually, two years later, we did get that report. It was a case that had to go to a tribunal as well, so it was resisted all the way along the line by the MoJ, I am absolutely sure with the input of the Cabinet Office because with any case like that the Cabinet Office Clearing House would have had input into it. Eventually, after the tribunal ruled that it is in the public interest that the investigation into what went wrong should be published, it was released and it identified certain flaws.

But to be honest, by the time we got the information two years later, it is no longer newsworthy and there was not a news story about that; whereas, if the information had come out at the time, I think there would have been a lot of attention on what the flaws in the MoJ's IT system were, why they happened and what the problems were with the external contractor, which was actually a lot to do with it. Attention would have been focused on scrutiny and how this could be improved and so on.

The truth of the matter is there are probably people in the MoJ sitting there thinking, "Great; we resisted that for two years. When the BBC got it nobody reported it". That is probably the result that they want to achieve, frankly, but I do not think that is in the public interest. I am sure it is a case that the Clearing House was involved in. That is the kind of thing that happens as a consequence of the sorts of delays that we are talking about.

**Q31** **Ronnie Cowan:** George, particularly about the grounds that the Clearing House or the Departments use to bat away applications for information.

**George Greenwood:** In my experience a lot of it is blanket redactions. Under FOI what you should do, if there is information in a document or a series of documents that is genuinely sensitive, is you should release everything and then redact the rest. In my experience, a lot of the time when you get a response back they just blanket it and say, "No, this is subject to Section 36", which is basically around interrupting public administration and things like that. Then you have to fight to slowly unredact these documents over a series of months by making a series of appeals. The problem is that that again introduces delays into the system.

There are also issues around cost limit. Often Departments will make ridiculous claims about how much it is going to cost to release the information, and therefore you have to go through the appeals process



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and say, "No, no. You have to search one email account. It is not going to take you that much time."

There is also the issue of public interest tests. In FOI there are two types of exemptions—absolute security bodies, where it is quite hard to get information out—but in most commonly used exemptions, there has to be a public interest test. That is, "This might have a minor negative effect but there is a much bigger positive public interest effect of publishing it." Almost inevitably—and especially with the Cabinet Office for their own requests—the public interest is often brought down in non-disclosure.

For some of these cases it is correspondence between a Government Minister and his direct donor over a PPE deal. I don't know what the FOI people have been smoking in the Cabinet Office to come to the conclusion that it is not in the public interest, but it must be pretty strong stuff.

**Jenna Corderoy:** Like George, I do get hit with the Cabinet Office and other Government Departments needing extra time to deal with judging where the public interest lies. They should only be doing that in exceptional circumstances and certainly not keeping on extending that deadline until a year has passed, essentially. I want to stress that delays are incredibly bad and there are no repercussions for the Cabinet Office. Delays mean that I cannot get hold of vital information that I need to inform my readers as to what is going on.

It does not extend to just journalists but politicians as well. When politicians put in FOI requests and are met with delays, it means that they cannot get hold of documents or data that is going to help their constituencies or the causes that they really support. In our report that we brought out on Monday, we highlighted the case of David Davis and Tommy Sheppard about trying to get hold of information over polling by the Government. These delays do not just affect me; they affect everyone.

Q32 **Jackie Doyle-Price:** My questions are about the transparency of the system because that is as important a part of a healthy FOI regime as anything else. I want to start with some questions to get a feel for your direct experience. Perhaps I may start with you, Martin. When FOI cases that you submitted were granted 20-day extensions, how often were you notified and were you ever provided with a justification for the delay?

**Martin Rosenbaum:** The answer to that is yes, usually. You do not always get notified. Sometimes you have to ask, "Why has my request not been answered?" They come back and say, "Actually, we are giving it a 20-day extension." I would say most of the time you do get notified. The problem is that some of these extensions then get extended and extended and extended. Jenna and George have described this. You get another email another 20 days later saying, "We've decided to extend it by another 20 days" and then another 20 days and so on.



It is a problem with the law that the law allows this process to carry on for, in terms of the law, as long as is reasonable. There is no fixed time limit. The Information Commissioner really needs to crack down on this much, much more than she has done so far. One of the things that I have put in my written evidence is lots of quotes from the Information Commissioner's decision notices condemning the Cabinet Office, which are focused on as being delays that are unnecessarily excessive, completely unjustified and so on. Rather than just put these things in decisions, the Information Commissioner—and I think this is a job for the new Information Commissioner who is coming in soon—needs to crack down much harder and, I would say, issue an enforcement notice against the Cabinet Office to change the way that they behave and stop this business of grossly excessive delays that are happening all too often and all too frequently these days.

**Q33 Jackie Doyle-Price:** Jenna, the same question to you. When your FOI requests have been subject to a 20-day delay, are you notified and are you given reasons as to why?

**Jenna Corderoy:** Yes, I generally receive an email to say, "We need extra time to deal with your request, because it engages this exemption and we need further time to deal with the public interest." I would echo what Martin has just said. That is exploited by Government Departments and I do think the incoming Information Commissioner does need to seriously look at this.

**Q34 Jackie Doyle-Price:** It does feel like a tool for impeding transparency, it has to be said. How about you, George?

**George Greenwood:** I usually get this email that says, "We are delaying it." On one occasion I received five of these emails from the Cabinet Office saying, "Another 20 days, please." The problem is that because, as Martin said, these delays are not statutory, you get into a situation where on some requests you don't get a response to your FOI. You have to go to the ICO to get them to force a response. They then take more time to consider it. You have to go to the ICO to make them give a response. They then refuse the request after that and then at internal review you have to go to the ICO again.

The way the system is currently structured, if the Government Department just refuses to play ball you might have to make three separate commissioner complaints, which could take somewhere between a year and two years to get a response. Because these are not statutory timelines, because they are "reasonable", you have to basically get the enforcement to get Departments to do it. They are currently buried in a backlog of 2,000 cases. There has not been funding to clear this or any sort of big Government impetus to make the ICO work. That makes this whole delay process much more difficult to get around.

**Q35 Jackie Doyle-Price:** When the Cabinet Office said that you were vexatious, did they give a reason why?



**George Greenwood:** They were claiming that I was attempting to abuse processes—that I should be complaining to the ICO rather than trying to obtain the records through a meta request. The problem with that is that the ICO will never get these documents when it makes an appeal. The appeal looks at the substance of a request. It does not look at the internal handling correspondence around that request. All that the Cabinet Office would give them would be a document that sets out, “This is why I made the decision.”

If they were going to a Government special adviser or a Minister saying, “Do you want us to try to block this?” “Yes, can you try to delay this,” all that internal correspondence could have showed abuse of process. None of that would go to the ICO. The problem is that they are pretending that this is somehow a ridiculous request, rather than a very reasonable attempt to assess whether processes are properly being followed.

Again, with vexatiousness, it is usually only people who have been rude or aggressive. I am a broadsheet newspaper journalist. I use the FOI for public interest reporting. Surely, that would discount me immediately from this stuff but they still try and use it.

**Q36 Jackie Doyle-Price:** As Members of Parliament, it often feels like we are being blocked but one of the tools that is often used is for letters to be circulated around Departments. Is that something that you have come across, and if so, how often—if you put in an FOI request and are advised it does not belong to that Department or it is transferred?

**George Greenwood:** Do you mean if I make a request to a Department and they say, “Sorry, we don’t hold this” and refer me on to someone else?

**Jackie Doyle-Price:** Yes.

**George Greenwood:** Generally, in those cases, my experience is that you get a response saying, “We don’t hold this information. You could try this Department and make a new request.” But that is another delay in the system. If a Department does not hold that information there is no legal right for the Government to immediately transfer it internally. Often it is just left for you to make a new request elsewhere.

But actually, on sensitive cases that can be a real problem because the Government will just wait the full 20 working days rather than emailing you on day one saying, “Sorry, it is not us” and then pass you on to another Department that may do the same.

**Q37 Jackie Doyle-Price:** Martin, is that your experience too?

**Martin Rosenbaum:** Yes, but I think maybe some praise is called for because sometimes Government Departments come back to you and say, “Look, you might think we hold this information but this isn’t our responsibility and the body you ought to be asking this information from is such and such.” Maybe because I did not understand how the system



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worked I asked the wrong organisation, and it is useful to be told the right organisation. As long as they do that promptly rather than dragging it out, fair enough, that is the way the system should operate. Ask the right organisation for the right information.

Sometimes you find FOI teams are very helpful and constructive about directing you in the right direction to get the information you want.

**Q38 Jackie Doyle-Price:** I will not embarrass anyone by asking which Departments are helpful. Jenna, have you had the experience of things being referred?

**Jenna Corderoy:** Yes, I have definitely encountered FOI officers who have been very helpful who have said they don't hold the information. The Foreign and Commonwealth Office are very good at this. I will sometimes send a request in but they immediately get back to me and say, "This is potentially too broad and it could engage costs. Could you perhaps consider narrowing this down?" I love that.

But it is when I tend to encounter lots of delays, and not being told why there are delays—but I echo what George and Martin have said.

**Q39 Jackie Doyle-Price:** In terms of improving the system, would it be better to have more dialogue with the person making the request if it is wrong rather than a shunt back? What are your wider thoughts on what could be done to improve the system? I will start with Jenna this time.

**Jenna Corderoy:** I think FOI needs a huge reform, particularly in central Government Departments. Just a few thoughts about that. If I was just to concentrate on the Clearing House in the Cabinet Office, I would say they need to publish more documents about how this operates. They should not just reject requests like George's, about the structure and the budget and so on. These are basic public interest questions. We need to get a sense of how many requests are flagged and what guidance has been circulating. We need that information to make the system more transparent. I feel right now, with the Cabinet Office especially, it is just massively failing FOI.

**George Greenwood:** There are two main issues for me. Broadly, the more information a Department can give me in rejecting a request, the better. That means I can either go back and get a new request or go to another Department. One of the big problems is that Departments do not give enough advice and assistance, which is a statutory requirement, to say, "Can you reduce the scope of this? We hold this list of documents; which would you like?" The best FOI officers do that and that is very helpful.

More generally, first is eliminating the delays. This may have to be a statutory basis where the Department is given its 20 working days and maybe has one extension and then it goes to the ICO, because at that point it has been given enough of a chance. Partly it is just the ICO. It is in a very frustrating place. It has a backlog of 2,000 cases. We are



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looking at six-month delays. To be fair to some of the officers there, they are trying to expedite some really important cases but it is just under an avalanche of cases, and Departments, I fear, are using this. They reject requests because they know it will take the ICO six months to come around and intervene.

I don't know if that is a funding issue or a cultural issue at the ICO, but one of the ICO's fundamental democratic responsibilities is to make sure FOI is enforced properly, and at the moment, with the backlog it has got, it is just not able to do that as well as, in a democracy, we hope it would.

**Q40 Jackie Doyle-Price:** Martin, final word to you.

**Martin Rosenbaum:** Regarding your question about more interaction between a requester and FOI officers, certainly when FOI works best is when there is that more interaction and people can put in requests that are feasible, sensible, practical and get the information they want and so on.

In terms of your broader question about what should be done, I have already said we need more action from the ICO to crack down and we need a legal change to stop Government Departments or any other public authority just using the public interest test extension any number of times. That should be blocked.

With the Cabinet Office specifically, we need a change in the culture of the Cabinet Office that makes it much less secretive, much less unwilling to be open about information, and so that it does not tell its own staff things like, "Be cautious about what you reveal because it might be in the papers" as we have seen in one of their own training slides. That kind of culture within the Cabinet Office has to be changed radically. That is obviously quite a big ask but it is really the direction in which we do need to go.

More practically, perhaps, on a slightly shorter-term thing, in terms of the Clearing House, I think we could do with a lot more statistics about how the Clearing House operates. As a matter of routine, it could publish how many cases are referred to the Clearing House by each Government Department, and how long the Clearing House considers them for before referring them back to the Government Department. Then we could see what the delay is that is being added to the system by the Clearing House.

If we had more statistics about the number of cases that go to the Clearing House, and the time that it takes over them, that would help us get more transparency into the system and see how this organisation is working. That is certainly something that I would hope that the Committee would call for.

**Q41 Mr David Jones:** Mr Rosenbaum, on your point about the need for a change of culture in the Cabinet Office, I remember that a few years ago



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you wrote an article in which you quoted Tony Blair as calling himself a naïve, foolish, irresponsible nincompoop for introducing the Freedom of Information Act in the first place. Isn't the truth of the matter that, by doing so, the then Government opened Pandora's box and successive Governments of different stripes have been doing their best to close it ever since, but failing?

**Martin Rosenbaum:** I am really glad that you have such a good memory for my articles. Absolutely, there is some truth in that. It is inevitable that FOI is going to be annoying and embarrassing some of the time for public authorities, because it is going to force them to reveal information that sometimes they will find difficult and they don't want to be released. If FOI isn't annoying some of the time to Prime Ministers, it is not really doing its job. That is what it exists for.

What I would say is that a Government who are capable of seeing these things in the round would nevertheless accept that this is sometimes going to be problematic. There is a public interest in greater openness and a public interest in the information that all three of us have been talking about during this evidence session, being out there in broad general terms. That is something that we should accept.

**Chair:** Thank you. In conclusion, I thank our three witnesses of the first panel this morning for sharing their experience and insight. We are very grateful to you. If there is anything you neglected to mention that you would like to inform us of further, please do write and we will receive that gratefully, as we have done your written submissions already. Thank you for your attendance.

### Examination of witnesses

Witnesses: Dr Worthy, Dr Žuffová and Gavin Freeguard.

[This evidence was taken by video conference]

**Chair:** By wonders of modern technology, populating the screen in front of me are the panel members of our second panel. As with the first, I am going to ask them to introduce themselves for the record, please, starting with Gavin Freeguard.

**Gavin Freeguard:** Good morning. I am Gavin Freeguard. I am a freelance data policy and research consultant. Until fairly recently I was programme director for Data and Digital Government at the Institute for Government think-tank, where I am still an associate. During that time, I led on work analysing Government data, including the freedom of information statistics.

**Dr Worthy:** Hello. I am Ben Worthy. I am a senior lecturer in politics at Birkbeck College and I am the author of a book "The Politics of Freedom of Information".



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**Dr Žuffová:** Good morning. My name is Mária Žuffová. I am a post-doctoral researcher at the European University Institute and FOI is one of my main research interests.

Q42 **Chair:** Thank you. An opening question to Dr Worthy, please. Could you explain to us what role the Cabinet Office—and in particular the Clearing House—has upon the administration of Freedom of Information? Perhaps you might give a brief overview of the Clearing House and how its function has changed over time.

**Dr Worthy:** First, the Cabinet Office has had a very long history of being involved with freedom of information. In fact, it was in charge of the precursor of the Freedom of Information Act, which was John Major's code of access long ago in the 1990s. It was also the place where the Freedom of Information White Paper originally came from in 1997 and 1998. Since then, it has been involved in various capacities, not least since 2015 when it moved from the MoJ to the Cabinet Office.

In terms of the Clearing House, your previous witnesses did a very good job of talking about the problem between the public role and the possible private role that takes place. The public role, as they said, is about co-ordinating and bringing consistency and expertise across central Government but it has changed in form, in terms of structure over time. My sense, when I researched it back in 2006 and then again when we did interviews across Whitehall in 2009 and 2010, was that the Clearing House was designed to be self-limiting and wither away.

As Martin said, we did get an impression when we did interviews in 2010 that it had much less influence—that it had taken a back seat and a more pastoral role. However, obviously it has changed again. I saw in the evidence from the Cabinet Office that it no longer exists as a Clearing House in the form that it used to.

To be honest, when I saw these issues coming up in 2019 with Jenna's request, I was surprised that it still existed. This is where we get to the difficulty of the more private part, where it seems that at certain points it has moved in this grey area between co-ordinating and monitoring both requests and requesters. It is in that difficult area between whether it is giving advice or issuing directives. I think that is the crux of the problem that your previous witnesses were dealing with too.

**Chair:** Thank you. That is a very nice summary. I am grateful for that.

Q43 **David Mundell:** Mr Freeguard, could you provide an overview of the general trend in FOI performance?

**Gavin Freeguard:** Certainly. Just by way of background, every quarter there is a statistical release from the Cabinet Office that gives us some key information around the volume of requests being received, the timeliness in which they are answering them and also the outcomes of those requests.



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To summarise each of those briefly. If we look at the volume, until 2009 central Government Departments were getting around 5,000 requests a quarter in total. Since 2013 those Departments have had more like 8,000 to 9,000 requests per quarter. If you look at the other Government bodies, some key public bodies like the National Archives and the Health and Safety Executive are included in those releases as well. They tended to receive about 3,000 or 4,000 a quarter for most of the life of the Freedom of Information Act.

If we then go to timeliness. As you have already heard, in answering an FOI request and to be counted as on time, the Government Departments have 20 days to respond or to seek an extension. In 2017 the Information Commissioner set a benchmark that he expected 90% of requests to be answered on time. Since that benchmark came in—it was previously 85%—around six to eight Departments tend to fall below it each quarter.

Since the start of 2020 there are some Departments—in particular the Foreign Office, the Department for Education, BEIS and the MoD—that have fallen below that benchmark and, in fact, often fallen below 80%, let alone 90%. There is some correlation perhaps with volume of requests that particular Departments receive, but the Home Office is one of the Departments with the most requests and it tends to exceed the 90% in nearly every quarter.

Then we come to the outcomes of these requests. In the very early days of the Act, after 2005, in response to around 20% or one-fifth of FOI requests, all information would be withheld in full from the requester and about 12% would be partially withheld. That increases over time and, by the time that we get to the last few years, 40% of requests tend to be met with a full withholding of information and around 15% are being partially withheld. That means that nearly three out of every five resolvable FOI requests are not being answered in full.

**Q44 David Mundell:** What would you say, if any, is the difference in performance that has occurred since the move of FOI from the MoJ to the Cabinet Office in terms of that administration?

**Gavin Freeguard:** It is not obvious that there has been a huge difference. MoJ may have become a little bit more timely since dispensing with those responsibilities but it is not obvious from the data that we see that there has been a particular change in the published statistics.

**Q45 David Mundell:** Dr Worthy, do you have any views in that regard?

**Dr Worthy:** The only thing to add is—as one academic put it—it is important to bear in mind that FOI regimes, over a longer time period, have a natural cycle of enthusiasm, pessimism and hostility that they go through. I think that is reflected in how you see the statistics around timeliness but most importantly around the amount of requests resulting in release.



Q46 **Ronnie Cowan:** Dr Žuffová, your research reflects the perspective of FOI requests for a time period before concerns about the Clearing House itself became public. What were the main concerns among journalists of the FOI process at that time?

**Dr Žuffová:** Thank you very much, again, for inviting me to give testimony today. Yes, my research was in 2019. I conducted a survey and interviews with both journalists and our civil society representatives and the findings of my research basically echo what has been said in the previous panel. It is perhaps important to acknowledge that most of our survey respondents, 84%, agreed that FOI legislation is absolutely instrumental for their work. 57% of respondents stated that FOI is the main information source for their stories and, in short, identified four main concerns.

First, as already discussed, was the length of statutory time limits, which journalists found unsuitable for their practice as, by the time they receive responses from public authorities, their stories might just lose momentum. Second was the unresponsiveness of public authorities—basically, administrative inertia when a public authority does not respond to an enquiry at all. Third was the rejection rate, which they complained was very high. Especially they were concerned about wide application of the exemption on cost grounds. As was mentioned in the first panel, some felt that they were being treated differently from other groups of FOI requesters. Of course, I am happy to elaborate on any of these concerns in detail if needed.

Q47 **Ronnie Cowan:** Is there a difference in journalists engaging with central Government and, therefore, through the Clearing House and engaging with local government?

**Dr Žuffová:** To be honest, as my research focused mostly on central Government, I do not have so much information about their experience with local government. However, while the Institute for Government has reported a growing trend of refusals in central Government, my society did a study on FOI compliance in local government and the picture is generally more positive, both in terms of responding inside a statutory time limit and granting requested information in full, but I cannot say from my own research as I focused on central Government.

Q48 **John Stevenson:** Dr Žuffová, carrying on from my colleague's questions, in your research, what impression have you got from journalists about their faith in the integrity of the process?

**Dr Žuffová:** In general, I would say that journalists and civic activists were not satisfied with how FOI functioned. As I mentioned, there were many reasons behind this; some of them I have already mentioned. Another one was that—despite the fact that this should not be the case—28% of my survey respondents said that public authorities were enquiring about the reasons behind the request, asking about the motives and what they need the information for. There was a lot of distrust and scepticism.



I would probably not say that they had lost faith in the integrity of the process, as it might be a strong generalisation stretched to the 164 participants I surveyed, but definitely some of them felt that way. This relationship towards public authorities was, indeed, marred by suspicion.

**Q49 Jackie Doyle-Price:** My first question is to Gavin Freeguard. To what extent is the Cabinet Office an exemplar in terms of culture and performance with regards to FOI? I can see you smiling already. Or to what extent is it underperforming? Just your headline observations.

**Gavin Freeguard:** It is probably an exemplar in setting a bad example to a lot of Government Departments, rather than a good one. If you look at departmental level—I am just talking about the withholding of information since the start of 2017—there are 10 or 11 Departments that have withheld information in response to more than half the requests that they have received, and Cabinet Office is one of those. In that sense it is indicative of a wider negative trend, but it is definitely one of those Departments that is withholding quite a lot of information.

When it comes to timeliness, obviously Covid has had a bit of an impact on some of the responses since the beginning of 2020. If you look back to 2019, in the 10 quarters where statistics have been published since the start of 2019, Cabinet Office has missed the 90% timeliness threshold on nine of those occasions. It looks like it may be starting to improve over the last couple of quarters. Obviously, we need to take longer to see whether that does feed through. On timeliness and outcomes, not one of the best performers by some distance.

**Q50 Jackie Doyle-Price:** Do you think that is symptomatic of a cultural issue within the Cabinet Office or is it just ineptitude and incompetence?

**Gavin Freeguard:** I think it probably speaks more to cultural issues. There is still a lot of reservation across Government—particularly the centre of Government—about releasing information that is not all that sensitive. That it may lead to bad news stories, and there is still an anxiety and a long-standing cultural secrecy that leads through to that.

It is also worth mentioning, in defence of the Cabinet Office, obviously there are exemptions under the FOI Act that allow Departments to refuse to release information. If you look at the ones the Cabinet Office uses more frequently than others, it has quite an even spread—more so than other Departments—across the range of exemptions. It uses personal information quite a lot, which a lot of Departments have as their main reason for exemption, but it does also use the formulation of Government policy quite a bit, which you might expect a little bit of, given the nature of its work. Again, it is possible that there is an overuse of those exemptions going on as well.

If you compare it to some of the other Departments that might consider themselves to have sensitive information, the Foreign Office tends to withhold quite a lot of information and will make more use of



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international relations exemptions. If you look at the Ministry of Defence, I think it is one of the better Departments in terms of releasing information in full in response to more than half of the requests it receives each quarter.

**Q51 Jackie Doyle-Price:** That is interesting. Are you aware of whether the Cabinet Office uses the Clearing House to process its requests regularly?

**Gavin Freeguard:** As one of the previous panel said, unfortunately that is not something that we see any statistics on. It would be extremely helpful for understanding how the system works if it was to publish something on that.

**Q52 Jackie Doyle-Price:** Dr Worthy, the same questions. How far is it an exemplar Department or otherwise? Do you have any intelligence on whether it is using the Clearing House? What do you think about the culture of how the Cabinet Office approaches this whole area?

**Dr Worthy:** I would just echo what Gavin said. There are elements of a reasoning that the Cabinet Office is very close to lots of sensitive decision-making. When we were doing our research, the example of the Ministry of Defence stood out as an institution that people expected to be secretive but performed very well in disclosures. I don't know anything about the Clearing House beyond what has been discussed here.

I wanted to pick up on the point about exemplar because that is very important. When we were doing our research, one of the things we discovered was how different Departments behaved with FOI based upon signals from very senior officials and Ministers at the top. Both politicians and institutions send signals across the rest of Government. I was very struck in speaking to somebody in local government who was quite despondent about Tony Blair's comment. He said that Tony Blair's comment undermined the entirety of the law. The poor performance of an institution is not just about that Department, but also the signals that it sends to the other Government bodies about how they should regard FOI and think about it. That is one of the more hidden effects of what some of the poor performance can have.

**Q53 Jackie Doyle-Price:** It is interesting that you have both highlighted the MoD. It is almost as if the fact that there is such a strong tradition of secrecy alters the way that it approaches these things. The starting point—there could be regulation—is the need for openness. That again comes down to culture. Do you think that has more to do with the officer culture and the fact it has the services there rather than the politicians? Dr Worthy, do you think politicians can give a steer to strengthen that?

**Dr Worthy:** I think leadership is one of the keys to freedom of information, both at Department level and also at very senior levels. The enthusiasm or the lack of enthusiasm of senior politicians towards transparency and openness has a huge influence on how others regard it. We had a succession of Prime Ministers who complained publicly about the Freedom of Information Act: that it was counterproductive and that it



was being misused. There is no evidence for any of these things that have been said but this had a clearly negative effect. Whereas other Prime Ministers—Gordon Brown I would flag up and David Cameron for some time—were enthusiastic about transparency. People I spoke to within Government said how much this helped them in their everyday work.

**Jackie Doyle-Price:** That is interesting. Gavin Freeguard, any observations on that?

**Gavin Freeguard:** To underline Ben's point, especially since around 2007 and particularly 2010 there has been quite a big push for openness and transparency more generally in government. Things like open data has changed the culture in parts of government, if not completely getting to the root of some of it. On that open data point, it is important as well to make quite an important distinction because there certainly was a time after 2010 when Lord Maude—then Minister for the Cabinet Office—said on a few occasions that more open data means that we might be able to do away with FOI altogether because everything will be published. That is not and should not be the case. The two things perform slightly different functions but they are very important different functions. Open data is something that Departments choose to put out proactively—there is a sort of rhythm—whereas FOI is much more reactive, which allows requesters, journalists, civil society, individual members of the public, parliamentarians to get at particular bits of information. So, it is really important that we maintain that distinction.

Q54 **Mr David Jones:** A question for Dr Žuffová and Dr Worthy. How is access to Government information dealt with in other comparable countries? Are there any examples of best practice that we might consider learning from here in the UK?

**Dr Žuffová:** Unfortunately I would say that there is a more general trend towards a reversal in the level of transparency in liberal democracies in general—even in the countries that are well known for good implementation of FOI laws, in Scandinavian countries as well. I would like to give an example of Danish legislation. Recent amendments to Danish FOI introduced the right of a public authority to reject requests on the basis of estimated disproportionate use of resources. That was set at more than 25 hours of work. Basically, it is very similar to the cost ground exemption in the UK FOI, where the threshold is set for the estimated cost of one person spending three and half working days, I think, determining whether the Department holds the requested information.

However, what is important here is that in Denmark the rule of disproportionate resources should not be used if substantial resources are needed due to poor archiving, so the error is on the side of the public authority because it should have archived in a more comprehensive way.



Also, if the requester has a special interest in the information documents. For instance, journalists from established media as well as researchers from established research institutions are considered by law as having a special interest. In essence, their access to information is broader than that of other groups of FOI requesters. In such cases, journalists might be asked to prove their status and they have to make it clear that they want their FOI requests to be treated in this special regime, but in such a case public authorities will only rarely be able to reject the requests coming from journalists. This might be interesting as one possible solution.

In terms of journalists' experiences in other jurisdictions, it is very similar. A researcher from the US has also shown that public agencies tend to be more vigilant towards journalistic FOI requests and might obstruct or refuse them. Recent research from Ireland by Kneafsey has demonstrated that Irish journalists have a very similar perception of FOI as in the UK. They argue that it is far too easy for public authorities to hide the information if they wish to do so. They also complain about the extent of exemption and the possible misuses.

**Dr Worthy:** As the other witnesses alluded to before, there is no perfect freedom of information regime. If we want to imagine a good one, it would be one that is heavily used from outside, has a very strong appeal system but crucially has a lot of political support from within. That would be the magic formula.

One of the most talked about freedom of information regimes, and often held up as a benchmark, is New Zealand's Official Information Act, which was created in the early 1980s but is now recognised as quite an evolutionary and flexible model. It is a good regime because it has a very wide scope. It covers a lot of bodies. It also has a very wide scope in terms of what it classifies as documents and information. Five years after it was created, it symbolically abolished the ministerial veto to prevent information being released. It does come with a caveat that, even in New Zealand, there have been allegations of political interference, manipulation and conflict and complaints from journalists. That is probably what a good system looks like but no system is perfect.

Q55 **Mr David Jones:** The pattern of behaviour seems to be the same all over the world, frankly, on the part of those who are supposed to be providing the information. Is that fair to say?

**Dr Worthy:** It is probably very difficult to resist the temptation. In our study we looked across, for example, if there was much change in officials' behaviour and there wasn't. A lot of the problem comes from top levels of Government and political interference, where they are most concerned about the effect on political communications and the famous tomorrow's headline problem.

Q56 **Mr David Jones:** Dr Worthy and Dr Žuffová, clearing houses, do other similar systems use clearing houses and do they operate similarly to



ours?

**Dr Worthy:** That is a very good question. I suppose one way of thinking about it is that if they are very good we would not hear about them. There is only one case where there was a very similar issue, which was in Canada in the early 2000s, which was identified by an academic professor, Alasdair Roberts. It seems that there was a group of political appointees in the Privy Council office who were doing very similar things to what we have heard about today: flagging particular requests, offering advice and they had a software system for monitoring requests that were coming across the Government.

In other regimes, some close to home, some elsewhere, you can see political influence and attempts at political influence. There was an investigation by the Scottish Information Commissioner in Scotland in 2018. Again, in Northern Ireland around the Cash for Ash RHI scandal, there were allegations of political interference in requests and blocking. As I just said, you can find examples all over the world but especially in similar regimes like Australia, where there have been allegations time and again of political interference and manipulation—even in some cases where it looks like the regime has been turned inside out and is there to monitor what journalists are doing rather than release information. I think Dr Žuffová can tell the story better than me.

Q57 **Mr David Jones:** Dr Žuffová, can you think of any other system that uses the Clearing House approach?

**Dr Žuffová:** Unfortunately, there is very limited information about similar bodies in the EU member states that would co-ordinate how FOI requests are responded to at the central Government level.

In preparation for this meeting, I contacted some other FOI researchers from other countries in Europe. They were not aware of the existence of bodies fulfilling the function of a clearing house. Nonetheless, they concluded that it is possible that somewhere in central Government one unit might be supposed to deal with a similar task as the Cabinet Office Clearing House. If this is the case, it simply did not attract litigation or wide public discussion so it has stayed hidden from the public sight.

As Dr Worthy mentioned, there is research that suggests that they demonstrated that in some countries ministerial Departments might co-ordinate if they receive requests asking for politically sensitive information or they flag it to communication officers with the Ministry. There is some interference but no evidence of clearing house type bodies.

**Mr David Jones:** At least the British Government acknowledge the existence of the Clearing House so, to that extent, we may be regarded as an exemplar of transparency. Is that fair? Sorry, I suppose that is a fatuous question. Thank you very much.

Q58 **John McDonnell:** Just to pursue that, this might be an equally fatuous question but, Dr Worthy, do we know if other countries withhold



information from the public domain about how their clearing house operation operates or how their operation overall operates?

**Dr Worthy:** The only firm example from Canada was gotten to in a rather similar way to here, which was a combination of leaks and actual requests about the body itself. The point is that the clearing house's existence was officially announced when it was set up with a very particular public remit. Yes, this is often how issues around manipulation emerge, either through leaks or lucky freedom of information requests that reveal it.

This comes to a second problem, which a number of people have alluded to, that sometimes some of this activity isn't accurately recorded either. In 2018, one of the complaints from the Scottish Information Commissioner was that it was hard to come to a conclusion in some cases about what happened because the records themselves did not exist.

**John McDonnell:** We are an exemplar in announcing that we have a Clearing House eventually but not telling anyone how it operates. Not much of an exemplar, is it? Thank you.

Q59 **John Stevenson:** Dr Worthy, you quite clearly highlighted the fact that there is no perfect regime; but in regimes where issues have been identified, what, if anything, has been done to try to rectify them and give reassurance to the public that the regime does work?

**Dr Worthy:** There are a couple of things that Governments can and do do. One thing they can do is order a review, either of the part of the legislation that is problematic or the legislation as a whole. I warn against that sort of thing because you open a Pandora's box there and lots of people suddenly get interested in the law and not necessarily in a positive way.

You may remember that David Cameron had an independent commission into the FOI law, which was very positive about the law. There was a very good piece of post-legislative scrutiny by Parliament back in 2012. This often leads to all sorts of discussions that go in all sorts of directions that are not necessarily good for the law.

The second thing that happens much less often, that I would like to see happening more is that senior politicians extol the virtues of transparency and freedom of information. This sends a very strong signal to everybody that it is a law to be taken seriously and worked with.

The third thing that can be done—and I think the earlier panellists made this case, as did Gavin—is there needs to be transparency about the problem. If people want to know more about numbers of requesters we should know it. For example, we know very little about how FOI is working at local government level, even though we estimate that three in every four FOI requests go to local government, who are coping with budget cuts and other things. If we need to know more about the



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Clearing House we should have more information about it. Publicity about the problem is the third option.

If I am pressed I would say, go for politicians being positive and more data about the problem.

Q60 **John Stevenson:** Are there examples of this from other countries and which ones are they?

**Dr Worthy:** Normally Governments go for reviews. Dr Žuffová flagged up the Danish example, where there were felt to be problems in the law but it led to quite a strong overhaul of the legislation, not all of which was particularly positive for how it functioned. There was a similar overhaul of freedom of information legislation in Ireland as well. Most often politicians go for either the deep review or the big overhaul of the whole legislation itself.

Gordon Brown was one example of a Prime Minister who gave positive speeches about freedom of information when he first became Prime Minister, but there are not that many examples of politicians speaking positively about the law. Perhaps Obama when he was first President and Gordon Brown are just two examples I can think of.

**Chair:** Thank you. I will thank the members of our second panel for a slightly briefer session there but, none the less, we are very much indebted to you for sharing your academic experience with FOIs and comparing your different countries. If there is anything that you feel that you would like to add, which you have not already done by written submission, please do let the Committee know. For the meantime, thank you all for your time today.