

## British Politicians Plot A Charter for Cover-Ups - A Return to Secrecy

By [Campaign for Freedom of Information](#)  
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*The Government's decision to launch a review of the Freedom of Information Act was widely condemned when it was announced back in July as likely to lead to "more secrecy, more mistakes and bad decisions". It is effectively a review by government officials that provides the excuse to water down current transparency laws to create a charter for cover-ups and sees a return to an era of secrecy.*

The unexpected move to set up a review of the law emerged just hours after a FoI request revealed how British pilots were involved in Syrian air strikes – a fact the Prime Minister and other high ranking officials had kept from the public.

Scepticism has grown that it will be biased, given that one of the commissioners, former Labour Foreign Secretary Jack Straw, is an outspoken critic of how the Act is enforced. After all, it was the freedom of information allowed in the UK, not just the act itself that saw Jack Straw miss out on a peerage recently because he was under investigation over [cash-for-access](#) claims.



Tony Blair, who introduced the Act, later described it as one of his "biggest regrets". Of course he would say that given what the act has done.

Labour's deputy leader MP Tom Watson said: "It is quite clear this isn't a review, it's a process to roll back the Freedom of Information Act. This is an Act which should be extended to cover more public bodies, yet the Government is going to weaken it by making changes that will render it virtually useless for people who believe in greater accountability."

David Banisar of Article 19, a human rights organisation that champions freedom of information, criticised the move. "The Government's proposals will lead to more secrecy, less accountability, and a more insular and unresponsive Government. It is moving the law from the right to know to the right to no information."

The content of the letter to David Cameron clearly spells out the damning issues that the review has in mind, that it effectively challenges not just transparency of government but also of democracy itself more widely.

Amongst other things, the government is also proposing that there should be a £100 charge for appealing to the First-tier Tribunal against an Information Commissioner decision. An oral hearing would cost an additional £500. Appeals are currently free.

The nature, timing, the commission itself and speed of the review is suspicious at best, at worst, the public's right to know is under clear threat from a government that does not believe in accountability or democratic values.

Address for response c/o

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The Rt Hon David Cameron MP  
Prime Minister  
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21 September 2015

Dear Prime Minister,

We are writing to express our serious concern about the government's approach to the Freedom of Information (FOI) Act and in particular about the Commission on Freedom of Information and the proposal to introduce fees for tribunal appeals under the Act.

It is clear from the Commission's terms of reference that its purpose is to consider new restrictions to the Act. The Commission's brief is to review the Act to consider: whether there is an appropriate balance between openness and the need to protect sensitive information; whether the 'safe space' for policy development and implementation is adequately recognised and whether changes are needed to reduce the Act's 'burden' on public authorities. The ministerial announcement of the Commission's formation stressed the need to protect the government's 'private space' for policy-making. There is no indication that the Commission is expected to consider how the right of access might need to be improved.

The Commission's five members consist of two former home secretaries, Jack Straw and Lord Howard of Lympne (Michael Howard), a former permanent secretary, Lord Burns, a former independent reviewer of terrorism legislation, Lord Carlile of Berriew (Alex Carlile) and the chair of a regulatory body subject to FOI, Dame Patricia Hodgson. A government perspective on the Act's operation will be well represented on the Commission itself.

One of the Commission's members, Jack Straw, has repeatedly maintained that the Act provides too great a level of disclosure. Mr Straw has argued that the FOI exemption for the formulation of government policy should not be subject to the Act's public interest test. Such information would then automatically be withheld in all circumstances even where no harm from disclosure was likely or the public interest clearly justified openness. Mr Straw has also suggested that the Supreme Court exceeded its powers in ruling that the ministerial veto cannot be used to overturn a court or tribunal decision under the Act unless strict conditions are satisfied. He has argued that there should be charges for FOI requests

and that it should be significantly easier for public authorities to refuse requests on cost grounds. Mr Straw's publicly expressed views cover all the main issues within the Commission's terms of reference. Speaking in the Commons shortly before the Commission's appointment, the Justice Secretary, Michael Gove, expressly cited Mr Straw's views with approval saying that he had been 'very clear about the defects in the way in which the Act has operated'.

Another member of the Commission is Ofcom's chair, Dame Patricia Hodgson. In 2012, when she was its deputy Chair, Ofcom stated that 'there is no doubt' that the FOI Act has had a 'chilling effect' on the recording of information by public authorities. One of the Commission's priorities is likely to be to consider whether there has been such an effect — and whether the right of access should be restricted to prevent it. Ofcom has also called for it to be made easier for authorities to refuse requests on cost grounds and for the time limits for responding to requests to be increased.

An independent Commission is expected to reach its views based on the evidence presented to it rather than the pre-existing views of its members. Indeed, in appointing members to such a body we would expect the government to expressly avoid those who appear to have already reached and expressed firm views. It has done the opposite. The government does not appear to intend the Commission to carry out an independent and open minded inquiry. Such a review cannot provide a proper basis for significant changes to the FOI Act. The short timescale for the Commission's report, which is due by the end of November, further reinforces this impression. At the time of writing, half way towards the Commission's final deadline, it has so far not even invited evidence from the public.

The FOI Act was the subject of comprehensive post-legislative scrutiny by the Justice Committee in 2012 which found that the Act had been 'a significant enhancement of our democracy' and concluded 'We do not believe there has been any general harmful effect at all on the ability to conduct business in the public service, and in our view the additional burdens are outweighed by the benefits'. We question the need for a further review now.

We are also concerned about the government's proposal to introduce fees for appeals against the Information Commissioner's decisions. Under the proposals, an appeal to the First-tier Tribunal on the papers would cost £100 while an oral hearing would cost £600. The introduction of fees for employment tribunal appeals has led to a drastic decrease in the number of cases brought. A similar effect on the number of FOI appeals is likely. Requesters often seek information about matters of public concern, so deterring them from appealing will deny the public information of wider public interest. On the other hand, fees are unlikely to discourage public authorities from challenging pro-disclosure decisions, so the move will lead to an inequality of arms between requesters and authorities. Given that the Ministry of Justice and the Justice Committee have recently begun to review the impact of employment tribunal fees on access to justice we find it remarkable that this proposal should be put forward before the results of their inquiries are even known.

We regard the FOI Act as a vital mechanism of accountability which has transformed the public's rights to information and substantially improved the scrutiny of public authorities. We would deplore any attempt to weaken it.

Yours sincerely,

[See list of nearly 100 organisations](#) which, includes news organisations but more

*importantly dedicated pressure groups and activists seeking more transparency and the scrutinising of areas that government and corporate organisations do not want publicity on, such as; the arms trade, corporate corruption, democracy, unfettered corporate malfeasance, drone killings, environment, censorship, human rights, civil rights, privacy, propaganda and the like.*

Campaign Against Arms Trade, Ann Feltham, Parliamentary Co-ordinator  
Campaign for Freedom of Information, Maurice Frankel, Director  
Campaign for Press & Broadcasting Freedom, Ann Field, Chair  
Centre for Public Scrutiny, Jacqui McKinlay, Executive Director  
Corporate Watch / Corruption Watch, Susan Hawley, Policy Director  
Democratic Audit, Sean Kippin, Managing Editor  
Drone Wars UK, Chris Cole, Director  
Exaro, Mark Watts, Editor in Chief  
Finance Uncovered, Nick Mathiason, Director  
Friends of the Earth, Guy Shrubsole, Campaigner  
Global Witness, Simon Taylor, Co-Founder and Director  
Greenpeace, John Sauven, Executive Director  
Index on Censorship, Jodie Ginsberg, Chief Executive Officer  
Jubilee Debt Campaign, Sarah-Jayne Clifton, Director  
Labour Campaign for Human Rights, Andrew Noakes, Director  
Liberty, Bella Sankey, Policy Director  
Privacy International, Gus Hosein, Executive Director  
Rights Watch (UK), Yasmine Ahmed, Director  
Spinwatch, David Miller, Director  
Transparency International UK, Robert Barrington, Executive Director  
38 Degrees, Blanche Jones, Campaign Director

1 [www.gov.uk/government/speeches/freedom-of-information-new-commission](http://www.gov.uk/government/speeches/freedom-of-information-new-commission)

2 The Rt Hon Jack Straw MP, oral evidence before Justice Committee, Post-Legislative Scrutiny of the Freedom of Information Act, 17 April 2012, Q.344. [www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120417.htm](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120417.htm)

3 BBC Radio 4, Today programme, 14 May 2015. <http://www.theguardian.com/uk-news/2015/may/14/court-exceeded-its-power-in-ordering-publication-of-charles-memos-straw>. The Supreme Court's ruling related to the use of the veto to block the release of Prince Charles' correspondence with ministers in response to a request by the Guardian newspaper

4 Oral evidence to Justice Committee, 17 April 2012, Q.355 & Q.363. [www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120417.htm](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/120417.htm)

5 House of Commons, oral questions, 23.6.15, col. 754, [www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150623/debtext/150623-0001.htm#15062354000032](http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150623/debtext/150623-0001.htm#15062354000032)

6 Ofcom, February 2012, Written evidence to the Justice Committee, Post-legislative Scrutiny of the Freedom of Information Act, Volume 3, Ev w176-177. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/96vw77.htm>

7 [The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals](#)

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