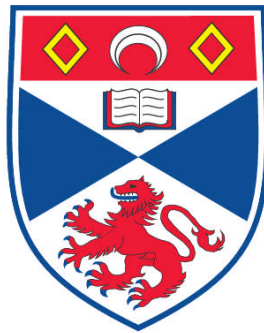# RELATIONS THAT UNITE AND DIVIDE: A STUDY OF FREEDOM OF INFORMATION LEGISLATION AND TRANSPARENCY IN SCOTLAND

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Relations that Unite and Divide: A Study of Freedom of Information Legislation and Transparency in Scotland

Gemma John

Words 80,828

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15	30105011485	24/01/2005	21/02/2005	21/02/2005	Request for full copy of PFI Contract.	Information withheld on CLO advice.	Commercial in confidence - Section 36
16	10605011511	31/01/2005	28/02/2005	25/02/2005	Sleep Lab Report.	All information released	
17	10605021530	02/02/2005	02/03/2005	28/02/2005	Surgical mortality figures.	Partial release only	
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19	10105021514	08/02/2005	08/03/2005	28/02/2005	Surgical Mortality Rates.	Partial release only	
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21	10305021525	09/02/2005	09/03/2005	09/03/2005	Cleaning Services.	All information released	
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25	30305021528	17/02/2005	17/03/2005	08/03/2005	Information on the length of time the lifts have been out of order and the turnover of consultants at St Johns in the last 2 years.	All information released	
26	30305021527	17/02/2005	17/03/2005	16/03/2005	Information on way complaint was handled by WLHD.	All information released	
27	10305021532	18/02/2005	18/03/2005	14/03/2005	Information provided to LUHD by SMC – similar to request 10305021521	All information released	
28	10305021595	23/02/2005	23/03/2005	23/03/2005	Request for minutes of meeting held on 17/2.	All available information released	
29	10305021534	23/02/2005	23/03/2005	23/03/2005	Job Evaluation Panel Information.	All information released	
30	10605021594	23/02/2005	23/03/2005	23/03/2005	MRSA Information for DCN	All information released	
31	10305021533	25/02/2005	25/03/2005	23/03/2005	MRSA Deaths.	All held information released, not al information held by the Board.	
32	10305021535	25/02/2005	25/03/2005	22/03/2005	Cost of Board Away Days.	All information released	
33	30305021592	21/02/2005	21/03/2005	18/03/2005	Payroll and Pension Information.	All information released	
34	30105031590	01/03/2005	30/03/2005	29/03/2005	Andrology Minutes and Incidental reports.	All information released	
35	10605031558	04/03/2005	31/03/2005	30/03/2005	Request for accounts information.	Partial release only/release as becomes available.	
36	10105031598	04/03/2005		08/03/2005	Patient transfers from St. Johns	All information released	
37	10605031560	07/03/2005	05/04/2005	04/04/2005	No of domestic employed in all Lothian Hospitals in the past 10 years.	All available information released	
38	30305031591	14/03/2005	12/04/2005	23/03/2005	Job Evaluation Information for PC Support Officer at St Johns.	All information released	
39	10605031597	14/03/2005	12/04/2005	12/04/2005	Minutes of Meetings re Service Changes. Jdesc for Consultants in Obs & Gynae. Policy Document on Chilldrens Services.	All information released	
40	30105031593	15/03/2005	13/04/2005	13/04/2005	Guidance on staff parking.	All information held released	

Frontispiece. An example of a small section of a Scottish Public Authority 'disclosure log'. A disclosure log is a list of all the requests for information that an authority has received, and information that it has given out or retained in response

Contents

Abstract

This research (the first long-term ethnographic study of FOI in Britain) investigates concepts at the heart of FOI—transparency, trust, secrecy, truth, private, public, power and agency. Eighteen months participant observation fieldwork, alongside policy-makers, practitioners, and end-users facilitated in-depth, study of the radical subject-object transformations that FOI requires, and the aesthetics that underpin it.

The introduction of FOI entailed a 'culture change'—from a culture of secrecy to one of disclosure—driven, in Scotland, by the Scottish Information Commissioner through conferences. These were an opportunity for practitioners to come into new knowledge about the Act, their shared knowledge dissolving the divisions between them. But new divisions then opened between practitioners and colleagues; culture change being in the replication of a form of a relationship that previously lay between government and citizens.

In their replicated form, individual practitioners disappeared—were made 'transparent'—only to reappear on being differentiated, leaving them acutely aware of the personal relations this fissure disclosed, and throwing into sharp question a theory of people's division as indicative of their 'secrecy'. Transparency, here, depended on whether people were divided or combined—acting in their own capacity, or that of the organization.

While making personal relations absent from new disclosures was necessary for FOI compliance, this concealment hid a complex network of relations, and turned knowledge into 'information'. Yet the division between information and knowledge was not crisp: end-users continued to read practitioners' personal relations in disclosed information, thus relations were both absent from and implied in the information released.

Whether information was public (and accessible) depended on the undifferentiated status of those who created, handled, or were the subjects of, information. As people came into new knowledge, invoking their divided or common footing, they alternated between appearing 'private' or 'public'—person or thing—a division *between* individuals reflecting a division *within* each of them.

Preface
Setting the Scene

The Freedom of Information Act

This is a study of the Freedom of Information (Scotland) Act 2002 ('FOISA'). Freedom of Information ('FOI') was introduced in Scotland in 2005, giving people anywhere in the world the right to obtain recorded information held by a Scottish Public Authority. FOISA came into force in Scotland at the same time as the UK Freedom of Information Act 2000 ('FOIA'). There are, in general, few differences between the two laws, except that FOISA is said to be a much stronger Act. Ministers of the Scottish Parliament ('MSPs'), interest groups, public authorities, end-users and Scottish Government policy-makers, taking a draft of FOIA, crafted their own Act to place a stronger emphasis on the disclosure of official information; FOISA states that information should not be disclosed only if it generates *substantial* prejudice among the public (as compared with 'prejudice' in FOIA)[1]. The enactment of FOISA was prompted by the 1999 consultation document 'An Open Scotland' in which Jim Wallace, then Deputy First Minister, wrote:

> 'Openness is central to a modern, mature and democratic society and serves to strengthen government and empower people'

Openness was one of the core principles of the new devolved Scottish Parliament, and FOI was a key component of the Liberal Democrat-Labour partnership agreement establishing the principles for Scotland's 1997 coalition government.

Hutton, Butler and the Iraq War

FOISA was enacted against a backdrop of events marking unprecedented levels of public interest in and access to government information. Lord Hutton's investigation into the circumstances surrounding the death of the UN weapons inspector, Dr. David Kelly, in 2003 followed by Lord Butler's Inquiry in 2004 into the intelligence used to justify the war against Iraq revealed an unprecedentedly high level of public demand for official information, information which never before (and possibly since) would have made it into the public domain. Both Inquiries were conducted prior to the enactment of FOI in Britain in 2005. As soon as FOI came in, it was perhaps predictably put to use to find the facts surrounding the decision by then Attorney General, Lord Goldsmith, to support the legality of the use of military force in Iraq. An unprecedented level of public distrust at this time appeared to be the result of a Blair Government

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[1] Source: http://www.itspublicknowledge.info/Law/FOISA-EIRsLinks/FOISA_FOIAComparative.asp

notorious for its spin. In the eyes of Government, it seemed this issue of distrust might be resolved through encouraging Government and public officials to provide information that the public considered withheld, through promoting and enforcing openness and transparency. Access to information brings with it decisions that must be made over whether information is public or private, and involves striking a balance between risk and responsibility, secrecy and truth.

This flurry of activity served to highlight issues that were, in any event, coming to a head concerning access to information and the right to know, and threw into question the existing relationship between citizens and government. Such issues were tempting ground for an anthropologist with an interest in social relations, and more particularly, the flow of knowledge between people, and people and institutions. While the seeds of FOI were sewn in the 1980s, long before the Hutton Inquiry, Butler Inquiry and the Iraq War, the widespread demand for transparency in government, coupled with decisions that had to be made over what was public and what was private, in the context of FOI, spawned questions such as: How are decisions over what can be disclosed and what should remain private to be made? How does the public handle information that is released under FOI? What issues arise concerning trust in the information received, or in the people giving it?

For an anthropologist, FOISA was a gateway to exploring issues of access, claims, and difference or division. It could be used as a magnifying glass put up against these issues in our own society and *now* appeared the right time to be exploring them with a view to seeing FOISA unravel from the very beginning—from prior to its coming into force in 2005 to several years into the new regime.

An Anthropologist's Approach

As an anthropologist doing 'anthropology at home', and one who lives and grew up in the contemporary Britain she describes and analyses, my approach to the study of FOISA, access to information, trust, transparency, private and public will, of course, be somewhat self-reflexive. That is, this thesis not only contains concerns and insights that I leave behind me and are about 'the field', rather the contemporary concerns and practices that it addresses, the insights that it offers, apply equally to my own practices and concerns as an anthropologist and as a person. Like the FOI practitioners I describe, I too in writing this thesis must make decisions over what should and should not be disclosed (in other words between public and private).

We, you and I, are making decisions over public and private every day. We are also deciding what and what not to trust, as citizens, professionals, relatives. In this respect we share the same concerns as those who use and enforce FOISA. FOI highlights concepts such as trust and transparency and contrasts information that is deemed public with that which is deemed private. What do these notions reveal about us, our thoughts, our practices and our behaviour as modern subjects engaged in modern ways? It is these questions, among others, that this thesis will address.

It is perhaps unusual to take legislation as a subject of anthropological study, if nothing else because the effects of legislation are difficult to trace. They are everywhere—in this case, dispersed throughout Scotland: in the changed behaviour of public authority employees, in the actions that follow on from the information that is released to citizens, and in the questions and predicaments that the legislation raises for policy-makers.

Methodologically, I traced the impacts of FOISA by participating in and observing the day to day work that this Act creates: with public authority employees responsible for handling FOI requests as they respond to and organize those requests, with end-users as they construct and submit requests, with Scottish Government policy-makers as they evaluate various organizations' quarterly reports on the impact of FOISA. Through participant observation fieldwork such as this, I collected stories. This qualitative data, in the form of case-studies, or more precisely a collection of moments, is contained here and forms the bulk of the thesis and informs my analysis of FOISA. The fact that my thesis is largely made up of stories about people and what they say and do, and that these inform my analysis, of necessity gives the work a narrative style.

Different moments, each of which constitutes part of a single case-study—about a hospital, council or group of people—are drawn on in different chapters. This means that the same people, buildings and topics will come up in different chapters, since although part of the same case-study, I will be focussing on a different moment, drawing out and extending a different aspect of the case-study, or providing more detail of one particular moment. In some cases, a conversation or happening that started in one chapter is taken up or referred to in the next. This repetition of moments and case-studies is to extend and develop a key insight made in relation to a particular observation. Moments are in themselves particular. The context in which they were perceived and gathered, and in effect play themselves out, means that each is distinct and unique. Sometimes the same moment reveals several insights and is used in different parts of the work to illustrate each of those varying insights. What may appear at first sight as repetition, or lack of variation in source material, or even laziness on my part is, in fact, a reflection of the uniqueness of moments and the fact that sometimes no two moments will do the same work for the purposes of revealing and explaining particular insights.

A Note on Words

Before I introduce the layout of the thesis and a chapter-by-chapter summary, it is perhaps worth offering a few words on descriptive terms. That is, an introduction to the language of the Act that I use throughout this thesis—in case-study descriptions, analysis, the introduction and conclusion. This in some ways becomes *my* language. Other terms and phrases will be highlighted in boxes and explored as they arise.

What is a Practitioner?

This is a term used to describe public authority employees engaged in a specialist activity, irrelevant of whether this activity is in health care, Freedom of Information, sports and so forth. It refers to the putting of specialist knowledge into practice.

What is an Officer?

Individuals responsible for enforcing FOI within their authority and handling and responding to FOI requests were generally referred to as FOI Officers.

What is an Applicant?

An applicant is the official (or legal) term used to describe people who request information from a public authority under the Act.

Who is the Scottish Information Commissioner ('SIC')?

The Scottish Information Commissioner promotes and enforces FOI in Scotland. He has an Office (the Office of the Scottish Information Commissioner, or 'OSIC', and a team of 21 staff who work for him, an investigation and policy team, a records manager and an operations team.

What is meant by the terms Public and Private?

'Public' means both information that is in the public domain and information that is available to the public under FOI legislation but is not yet in the public domain. 'Private' means information that is not in the public domain and is not to be made available to the public, either because it falls within specific rules under FOI or because it is outwith FOI.

This might also be a good place to distinguish between a few words that will come up often and have important meanings: data, information and knowledge.

What is data?

This is a term that I use to describe information in its raw state, as collected and before any analysis is done or any context is placed on it. An example might be as simple as the fact that a set of traffic lights is showing red. On its own this is a mere fact. To the uninitiated it means nothing, but to those of use who are road users, it means something very important. That is because it has had context added to it. At that point it ceases to be merely data.

What is information?

This term I use to describe data that has been analysed or contextualised in some way to give it meaning. In the example above, a road user seeing a red light in front of them receives information, in this case the instruction to stop.

What is knowledge?

Knowledge is information that has had further layers of context added to it. To extend the above example, I might know that a particular set of traffic lights stays on red for a longer time than normal and also know that a traffic policeman is often parked around the corner. Although I might become impatient at the slowness of the lights, I know that there will be consequences to jumping them. This is knowledge, gained by adding further layers of context to information.

Introducing the Thesis: Layout and Approach

This thesis is made up of eight chapters: an introduction, six core chapters and a conclusion. Although the six core chapters stand alone, there are also connections between them, each following on from and providing context for the next. After introducing the Act in chapter one, each subsequent chapter addresses either of a pair of opposites or a pair of conjugates, most of which give their names to the chapters: public and private, subjects and objects (in the chapter on culture change); secrecy and truth; power and agency; transparency and trust. The paired notions in each chapter are ones that public authority employees, end-users and policy and decision-makers regularly employed in their descriptions of what FOISA was about and what it would achieve. These notions, in other words, form the core of FOI rhetoric in Scotland. I approach each chapter, and the notions that they address, from two perspectives. The first is to explore these concepts as they are discussed in official documents and rhetoric in relation to FOISA. The second approach is to explore how these notions are thought about and acted on by people

in the field. In the appendix is a guide to FOISA, legal terms, and how the Act is used, and also picture examples and illustrative figures pertaining to this section and to other sections of the thesis.

Chapter-by-Chapter Summary

Chapter One: The Right To Know

In this chapter, I offer a brief history of FOI in Britain and elsewhere. (In the thesis appendix I outline some necessary, and noteworthy, technical details—an overview of what the legislation covers, what it entails and how people use it). I set the contemporary scene and offer a glimpse of the context in which FOI was enacted. I provide an initial assessment of FOISA, thoughts from an anthropologist, which in turn frames and introduces core points made in the main body of the thesis. This assessment offers a taste of what an anthropologist might see in FOISA, the questions that FOISA raises and the interest provoked by the climate in which it was enacted, and why this study is particularly timely. I discuss my methodological approach and the ethical issues such an investigation and its documentation entails.

I also provide a theoretical 'took-kit'. This is where the bulk of the theory, on which I draw throughout the thesis, lies. I will refer to the theory mentioned here as part of and in support of the analysis in each chapter. Worth noting, however, is that among those on whose work I draw, and that I acknowledge in this section, there will be a handful of writers to whom I particularly and repeatedly turn throughout the thesis, whom I acknowledge here.

Chapter Two: Public and Private

In Chapter two, I examine the relationship between Public and Private that lies at the heart of FOISA. While FOISA provides access to information, it also has provisions for the retention of information where it is deemed 'personal'. But decisions over what constitutes personal information are often difficult to make. There is a tendency for practitioners to consider information about individuals as always being personal, on the grounds that individuals are disclosed through the disclosure of such information. I argue that public and private are relational, and in constant flux. Given this, people and organizations, and the information they hold, could be considered public *or* private depending on the relational context of a particular situation. As such, a division between people who stand in a public position and those who stand in a private one reflects a division within people themselves as they appear either public or private in their relations with others. I draw on some of the decisions that the SIC has made over public and private, and look at his reasoning. A particular case is that concerning National Services Scotland ('NSS') and Donald—a researcher at the Scottish Parliament who sought information from NSS that he was refused. I also introduce a case-study to which I return later in the thesis concerning Duncan, at Lochhead Council, who has difficulties persuading colleagues to release information they deem private.

Chapter Three: Culture Change

Chapter three offers an overview of what culture change entails according to official rhetoric and the intentions of FOISA, including what is expected of public authorities and organizations or persons working for or in conjunction with them. It addresses the varied manner in which individuals on the ground respond to the expectation placed on them to disclose information that they hold and, as a result, the changed way in which people come to perceive themselves, their actions, and their relations with others. It is the social relations at work in this process that participants appear to fail to recognise. Or rather, the social relations that were prevalent in chapter two seem to disappear here, or to be made absent.

In this chapter, I draw on four separate case-studies. The first concerns a case-study that I return to again in later chapters, that of NHS Glendale in which I consider Colin and Samantha who are its principle FOI Officers and their responses and thoughts on disclosure. The second concerns the conferences and meetings that, for FOI practitioners, formed a key part of getting to grips with FOISA. These conferences provided people with an essential means of meeting other FOI practitioners with whom they would share their experiences of FOISA. In the third and fourth case-studies, I look at the thoughts and attitudes to FOI of Morag, a Records Manager for Glendale University, and revisit Duncan at Lochhead. While the practitioners concerned have different job titles, they are each responsible for making sure their authority (which is often vast with hundreds of employees), comply with the new legislation.

Chapter Four: Secrecy and Truth

A change from a culture of secrecy to one of transparency underpins FOISA. This chapter brings together the findings of the first two chapters: that people 'know' through their relations with other people (chapter two); and that people know in the absence of these relations (chapter three). When these two ways of knowing come together, not only do people know differently, but people also have different perceptions of each other's behaviour. Thus 'secrecy' is described from two different perspectives, or sides—that of FOI practitioners handling and responding to FOI requests and that of applicants whose story is told in the words of practitioners and in the letters they write and complaints they lodge with the FOI authorities. It is in putting together two different sides of the same story, that of practitioner and that of applicants, that two ways of knowledge are made visible. It is as a result of the *failure* to see the social relations on which knowledge here depends (one way of knowing) that applicants perceive secrecy where there is no secrecy (leaving public authority practitioners bewildered and confused). On the other hand, knowing relationally (the other way of knowing) gives rise to different versions of the truth. The contradiction between these two different versions of the truth can also be read as secrecy.

This chapter draws on two case-studies, that of Samantha and Colin once again, at NHS Glendale, and that of George, an applicant and resident of the small town of Edenside. While Samantha and Colin have difficulties persuading FOI applicants that they have no information to provide and are not being secretive, George described insists that *I* have information that I refuse to, or at least cannot, share with him—I too, as a researcher, am thought of as secretive.

Chapter Five: Power and Agency

FOI campaigners, and policy-makers, considered power to be a key reason why public officials were 'secretive' and sought to withhold information from others—to sustain their own power and deny others agency. The axiomatic relationship between knowledge and power is one that has been much documented. That is, power and agency are that which people do or do not have as a result of the knowledge that they either have or are denied—but as we see from the previous chapter, people are not always secretive when they are thought to be so. Power here itself is relational, since it depends on the knowledge that people *perceive* others to have, and the relationship between them. In this sense it could be argued that no person or organization, intrinsically, 'has' power.

The French philosopher Michel Foucault argues power is an outcome of people's assumption that there is a truth *to know*, and consequently they search for it. On the basis that power is not locatable in any one person or place, Foucault traces the relationships between statements, persons, things to explore how power flows through them. But it is not Foucault's approach to power that I seek to reinforce in this chapter, rather to challenge his outlook. It is through challenging Foucault's notion of social relations as that which only connects discrete entities together in a chain through which I challenge his view of power. I draw on Marilyn Strathern's (2006) notion of the relation that is made up of two parts—a relation through which entities are mutually constituted, and a relation that connects. Acknowledging the dual characteristic of the relation makes the relation the focal point, rather than the individual him or herself as at the beginning and end of this relationship. This alters our perception of power.

In this chapter I draw on two different case-studies. The first concerns NHS Glendale, and Colin and Samantha's difficulties with applicants who think that they are being denied information, this time looking at the applicants' view that Samantha and Colin are exercising their power to conceal information. The second concerns Bankside Council, and introduces Robert and Iain who together developed a framework for the implementation of FOISA at Bankside. Robert and Iain suffer from a brief confrontation with the SIC, as a result of which they, for a time, lack power.

Chapter Six: Transparency and Trust

Transparency and trust are core values behind the enacting of FOISA. Of course, in as much that transparency is also the flip side of secrecy, parallels can be drawn between the findings in this chapter and chapter four on secrecy and truth —that is, it is the concealment of the relations on which knowledge depends that in the case-studies leads to perceptions of secrecy and also to non-transparency. Thus calls for transparency are calls for the disclosure of information that is thought of as concealed.

Much has been written on transparency and trust, separately, and in conjunction with the evaluation of different FOI laws around the globe. In particular, the recently published book *Transparency: The Key to Better Governance?* (Hood and Heald 2006) provides insight into different scholars', thoughts on transparency in relation to FOI, all of them prominent in this field of research. Treating transparency heuristically, I ask what transparency looks like in relation to FOISA, and the impact it has on trust. I principally argue that, in their efforts to resolve the differences perceived to exist between them, and to comply with FOISA, people seek to obtain the same knowledge through liaising, conversing and making contact with others, for example, at large FOIA meetings and conferences. It is through resolving the divisions between them, that individuals make *themselves* disappear, or transparent, and the *relationship* between them transparent also. Given the absence of relations through which people are themselves constituted, trust between people appears redundant—an excess of sorts. But treating transparency heuristically, means transparency here in the form of 'transparent persons' throws into question a theory of transparency 'as revelation' on which most theory on transparency is centred. That is, rather than the divisions between people being explained in terms of people's non-transparency, might they be explained in terms of their divided interests and as yet non-conformity?

In this chapter I draw on two case-studies, or rather a string of moments detailing the way in which FOI practitioners liaise, converse and make contact at meetings and conferences in order to share their experiences of FOISA, and obtain official and unofficial guidance. The second case-study concerns that of McBride ferries, which has experienced some difficulties with FOISA, vexatious requesters and the SIC himself.

I now turn to my first chapter: The Right to Know.

1
The Right to Know

The Freedom of Information (Scotland) Act 2002

The Freedom of Information (Scotland) Act 2002 ('FOISA') came into force in Scotland in 2005 at the same time as the UK Freedom of Information Act 2000 ('FOI') that covers England, Wales and Northern Ireland. FOISA states:

> 'A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority'

> (FOISA, First Principle)

Each FOI law, to varying degrees, provides people with a right of access to information that public bodies (in each jurisdiction) hold. In Scotland, the legislation is said to be particularly strong because information has to cause substantial prejudice (rather than just prejudice) before it can be withheld from those who have requested it. FOI in Scotland was enacted at a time when the newly devolved Scottish Parliament was findings its feet. FOI was seen as a means of establishing an open and transparent Scottish Government, and was one of the key principles that underpinned the 1999 Liberal Democrat-Labour Partnership Agreement, which established the grounds for Scotland's (then) coalition government.

As an anthropologist studying FOISA, I contribute to (and challenge) a developing field of research within on organizations, 'ways of knowing', and Scotland. I also build on and provide fresh insight into contemporary research on FOI legislation and the issues that FOI raises, largely explored to date within Political Science. It is some of these fields of research that I touch on in the following paragraphs.

Shared Interests, Divided Origins: A Theoretical 'Tool Kit'

Freedom of Information

To date, no social anthropologist has conducted research on FOI in Scotland, and very few have taken FOI legislation in Britain or elsewhere as a research topic. With the exception of Michael Powell (2003), an American social anthropologist who recently conducted fieldwork research on FOI legislation in Poland, scholars seem to touch on FOI by way of their interest in concepts with which it is associated, such as transparency (Marcus and Powell 2003), trust (O'Neill 2002), and government secrecy (although non-FOI related) (Lattas 1998; Tefft 1980).

It is a field of research that is dominated by political scientists, lawyers and scholars in business and records management (Banisar 2006; Birkinshaw 2001; Burt and Taylor 2007; Florini 2007; Hazell 1999; Holsen and Glover 2007; Roberts 2006). Research on FOI in the political sciences and law tends to fall into two main areas: academics fruitfully trace the history and development of FOI legislation in jurisdictions such as America, Canada, and New Zealand where FOI was introduced relatively early on (Banisar 2006; Birkinshaw 2001; Florini 2007; Roberts 2006), and draw attention to its strengths, weaknesses and the response of public organizations. Others focus on the benefits and implications of FOI in jurisdictions where the legislation has yet to be introduced or was passed relatively recently (Burt and Taylor 2007; Neuremberger 1987; Hazell 1999). While some academics take an adversarial stance, for example Birkinshaw (1990, 2006) puts forward FOI legislation and the right to know as a human right, others weigh up the benefits and disbenefits of FOI, gathering statistics on the use to which the legislation is put or the volume of information released (see Piotrowski and Van Ryzin 2007; Glover and Holsen 2007). Such examinations tend to be evaluative (see Hood and Heald 2006), posing questions such as: does FOI mean more information, and more information mean better? Does transparency enhance or reduce trust and efficiency?

Most well-known for his study of FOI legislation around the world, government secrecy and transparency is the academic and lawyer Alasdair Roberts (2004; 2005; 2006a; 2006b). His work holds prominence with and is drawn on by academics within the disciplines of law, political science, and now, anthropology, as well as FOI policy-makers and the Scottish and UK Information Commissioners, as they promote and enforce FOI legislation in Britain. In particular, Roberts' has published work on the UK, US, and Canadian FOI Acts. His extensive knowledge of these Acts enables him to draw comparisons between different FOI laws around the world, their contents and use. In placing each (newly enacted or established) FOI law within the wider comparative and political framework in which it sits, he scrutinizes the weakness and strengths of each law. Roberts is particularly interested in the responses of public institutions to FOI, and the manner in which institutions seem to simply adapt their systems and methods to work around, rather than work with FOI. Indeed, as he notes in his recently published book, *Blacked Out: Government secrecy in an Information Age* (2006):

> '..the struggle for openness is far from over […] politicians and bureaucrats around the world have used [tactics] to preserve government secrecy […] profound changes around in the structure of government—privatization of public services, the rise of powerful international organizations, the growth of tightly knit networks of security agencies—are complicating campaigns for openness'.

A highly regarded specialist in the field of FOI, government related transparency, and government secrecy, I draw on Roberts' work throughout this thesis.

Anthropology of Organizations

The fact that there has been little research conducted by anthropologists on FOI to date seems partly because anthropological methods—primarily participant observation field research—require anthropologists researching FOI to gain access to particular people working for particular organizations, which is often problematic.

While many anthropological field sites are often initially inaccessible, and require an anthropologist to be actively incorporated into a field by those already in it—whether this 'field' constitutes a village or an Act of Parliament—the anthropology of organizations is particularly difficult since it demands access to a closed space; the anthropologist's subject of study lies behind solid, often impenetrable walls. As such, some argue that anthropologists are still busy finding a way in to the study of organizations (Ouroussoff, pers. com.). Most literature on organizations is perhaps for this reason written in the form of a guide to the study (Gellner and Hirsh 2001). It has also been suggested that—on obtaining access—anthropologists are often too close to management, and themselves too familiar with bureaucratic practice, to either realize or question the familiar structures in which they work (Alvesson 1993, Ouroussoff 1993, 2001).

Anthropologists have, according to Corsin Jimenez's (2007) recent publication on the *Anthropology of Organizations*, been studying organizations for over sixty years. Over this time, anthropology in and on organizations has made significant contributions to social and organizational theory. Indeed, in her study of organizations and of government, Wright (1994, 1998) uses new ways of examining corporate structures to further ideas about 'culture' more generally.

Strathern's edited volume on *Audit Culture* (2000b) focuses on issues of accountability and ethics in corporate environments, including Academia. She remarks on the subtle persuasiveness of accountability that people who work in organizations of various kinds unknowingly accommodate. Audit practices, she argues, 'have direct consequences, and, in the view of many, dire ones for intellectual production' (2000b: foreword). In examining these practices, alongside others featured in the volume, Strathern questions and analyses practices that both occur within and extend beyond the 'organization'.

Ways of Knowing

While anthropological methods appear harder to conduct in some places than others, understanding what knowledge is and how it works for different people in different social contexts is often considered at the heart of the discipline of anthropology. As such this study concerns ways of knowing, and in particular, ways of knowing that pivot on the social relationships in which people are enmeshed, and that they make either obvious or absent.

I am not the first to explore ways of knowing. Many anthropologists have taken this up as a subject of study, drawing on their own knowledge of what their subjects of study think, say and do in the field—Amazonia, Africa, Melanesia and so on.

Harris (2007) writes in his edited volume, *Ways of Knowing: New Approaches in the Anthropology of Experience and Learning*: 'that there are multiple ways of knowing the world has become a truism'. This volume is a collection of works by anthropologists concerned with the way in which other people, as well as themselves, come know the world and the different ways in which they know it. Writers in the volume explore knowing as a practical and continuous activity and the implications of this understanding for anthropology. Knowing the world, Harris writes, is always bound up with the world. That is, a person does not leave their environment behind to know, nor do they stop to know, they continue knowing. Thus the individual papers this volume contains could be said to explore ways of knowing, phenomenologically: part of the appeal of phenomenology (the study of things as they are perceived, not things as they are) is its insistence that any attempt at objectivity is always mediated by the context and personalities within which knowing objectively is framed. This raises the question, is it indeed possible to know 'objectively'?

At the same time, as anthropologists work alongside those with whom they engage in the field in practical activities, some consider the possibility that people come to know through doing, or such practical activity. The question this raises for anthropology is whether tacit (practical) and perceptual (phenomenological) ways of knowing are different modes of apprehension or fundamentally the same?

Harris's volume is part of series of works arising out of similarly themed conferences organized by the University of St Andrews Social anthropology department, over the twenty-five years of its existence. The first conference was on Power and Knowledge, published as *Power and Knowledge: Anthropological and Sociological Approaches* (1985). The relationship between power and knowledge was perhaps topical of the time, particularly in light of the extensive work of the French philosopher Michel Foucault well-known for his study of power during the 1960s, 70s and 80s, to his death in 1984. In this volume, those contributing to the conference and published volume seem concerned with the power relationship between them and their subject of study, and studying how their subjects of study conceive of this relation (if it is one that exists for them at all).

Dominic Boyer (2007) in Harris' volume, citing Crick (1982), states: 'the anthropology of knowledge is not a subfield but merely a reminder of what anthropology is centrally concerned with'. In a special issue of *Ethnos* (Volume 70, Issue 2, June 2005), Boyer continues: 'In truth, it would be hard to locate anthropological research if it did *not*, at some level, speak to and about human knowledge […] how could any investigation of meaningful action and experience not also, at once, be an investigation of local schemes and settlements of knowledge and modes of knowing?' (2005: 141). An explicit engagement with knowledge and knowing was key to the disciplinary development of anthropology in the twentieth century. In particular, debates in texts like Tylor's *Primitive Culture*, Frazer's *The Golden Bough*, and Levy-Bruhl's *How Natives Think* concerned the question of the universality of knowing. Were different ways of knowing equivalent or some more scientific and valid than others? While these questions are ones that we have indeed resolved, the matter of the different ways in which people know remains central to the discipline. In fact, many would say *is* the discipline of anthropology.

Scotland

This study also takes Scotland as its regional focus, through the fact that I seek to explore the particular effects of FOI in Scotland. A handful of anthropologists have made Scotland their research focus. While more commonly anthropologists take an interest in the Islands of Scotland such as Islay (Whitehouse n.p.), the Hebridean islands (Ennew 1980, Mewett 1982, Parman 1990, Macdonald 1997, Kohn 2001), Shetland (Byron 1986, Cohen 1987) and Orkney (Forsythe 1980), some have focused on mainland Scotland including the Highlands (Jedrej and Nuttall 1996), the east coast (Nadel-Klein 2003, Scheldeman 2006, Rapport 2008), the Scottish Borders (Neville 1994, Gray 2000), the south west (Smith 2006; 2008) and Ayrshire and Angus (Strathern and Stewart 2001). In this thesis, I particularly draw on the work of Anthony Cohen (1987; 1996) who writes on issues of identity in the Shetland Isles. His interests lie in the manner in which individuals negotiate their discreetly different and collective identity there. I also draw on the work of Nigel Rapport (1997; 2008) (with whom Cohen has written on the conscious self, 2005) who draws on his understanding of people in the English village of Wanet, and puts forward a theory of 'individuality' that he sees also at work in Scotland (see for example, Rapport's University of Edinburgh Institute of Governance, Identity Briefing No. 10, January 2006, and his more recently published book 2008).

Worth mentioning is the impact of the Age of Enlightenment in Scotland, and the Scottish Enlightenment. Largely because the Scottish Enlightenment had an influence on many institutions and architectural arrangements (e.g. Robert Adams' National Archives Building was a modification of Jeremy Bentham's Enlightenment inspired Panoptican) that we still recognize in Scotland today and will be indirectly addressed in this thesis. The Scottish Enlightenment also provides some background to the legislative framework in Scotland within which we currently operate. The Scottish Enlightenment was a project by leaders of the Scottish professional middle classes to reinvent Scotland as part of a modern and

dynamic Britain, in a manner that would give Scots access to expanding world markets through economies of scale and the protection of the British navy (Murdoch 2007). In particular, it brought with it an emphasis on national unity leading to the formation of a Union between Scotland and England. The problem lay in how so-called fragmented parts might be united, that is, Scotland united with England. Most in Scotland were in favour of a federative model (a political association of equal States), yet some also seemed to consider that an incorporative union (in which the government and institutions of the smaller state would be absorbed into those of the larger) was more conducive to imperial expansion (Manning 2002). While the potential fragmentation of the Union that emerged in 1707 remains in the minds of policy and decision-makers today, it is perhaps an awareness of potential disharmony that accounts for people's behaviour in the field of FOISA, suggesting that the emphasis on union instilled in individuals by the Scottish Enlightenment remains.

In addition to the above, the Enlightenment emphasized the flattening of inequality, perceived a result of people's lack of access to knowledge. Visibility and illumination tropes were particularly emphasised by Enlightenment thinkers since it was through shedding light on persons and things that people might come into and challenge the truth (Jay 1993). A Freedom of Information Act, providing citizens with a right of access to information that public authorities hold, flattens perceived inequalities that are the outcome of the lack of distribution of information, and sheds light on the inners workings of various levels of government thereby making organizations 'transparent' only seems to embody the Enlightenment ethos.

In the paragraphs that immediately follow, I explore some of my main theoretical supports, individuals on whose work I explicitly and regularly draw throughout this thesis. In the sections that follow, I touch on the work of scholars more generally pertinent to this thesis, and on whose work I implicitly draw.

Main Theoretical Supports: Anthropology, Law, Policy and Governance

This thesis draws on recent anthropological scholarship in the area of law and policy. In particular, I draw on the work of the anthropologist Annelise Riles, who is also an academic of law. As a lawyer and an anthropologist, her work focuses on the knowledge-making practices of law, which she contrasts with those of anthropology (*Property as Legal Knowledge*, 2004). Her doctoral research (*The Network Inside Out*, 2000) concerned the practices of United Nations delegates at the Fourth UN World Conference on Women in Beijing in 1995, as a result of which she has subsequently made 'documents' (pillars of bureaucratic practice) her research focus (*Documents: Artefacts of Modern Knowledge*, 2006), the study of which she describes as a way of obtaining insight into modern ways of knowing: documents are paradigmatic of modern knowledge practices and thus 'provide a ready-made ground for experimentation with how to apprehend modernity ethnographically' (2006: 2)

In the context of the Fourth UN World Conference on Women, Riles attended delegate meetings and she describes the way in which legal documents were generated at each level of meeting by cutting

and pasting words, sentences and paragraphs taken from other legal documents. '[T]he skill of the exercise lay in the detail… The objective was not so much to achieve transparent meaning as to satisfy the aesthetics of logic and language' (2001: 79). Her experiences of the drafting and transfer of documents in relation to the Beijing Conference is in some ways similar to my experiences of the document culture of FOISA. Here, documents—reports, consultation or policy documents—were drafted according to a logic provided by documents drafted in previous meetings. Through her focus on the drafting of documents, Riles underlines the failure of lawyers to see meaning in the way an anthropologist might.

I also draw on the work of Marilyn Strathern, in particular her more recent work on kinship and law (*Kinship, Law and the Unexpected: Relatives are Always a Surprise*, 2005). At the heart of this research is the issue of how anthropologists come to 'know' of others' knowledge making practices. Since in seeking to uncover culture or historical constructs, anthropologists are bound by ways of knowing that *create*—as much as uncover—these constructs. The subject of her research is 'the anthropologist's relation', so-called because knowledge of social relations was something that anthropology—a discipline emerging out of the Enlightenment—came into in its search for the truth(s) about human beings. This knowledge gave anthropologists a means of studying relations elsewhere, only to realize that outwith the modern world, their lack of knowledge in this area suggested *they* were the ones who were not so advanced.

Strathern's work on knowledge and information is particularly relevant to this thesis. For example, in her examination of 18th century scientific information gathering practices, Strathern argues that what emerged from, but was by no means invented by, the scientific revolution was:

> '…knowledge capable of looking to more than one source. Truth might rest in the persuasiveness of concepts, as logically connected to other concepts, or truth might rest in the persuasiveness of persons, bringing with them the guarantee of professional expertise, and in either case relations had to hold' (11).

It is the latter way of knowing on which she later draws but it is the former way that informed scientific ways of knowing, where scientific truths were determined by the quality of the information to hand, not in its presentation, and individual actors were screened out of the evaluative process. The value of writing lay in how it stood up to other claims about the world. However, the author became part of an assembly of authors. Strathern quotes Shapin (1994) writing on the problems of trust engendered in the collective-character of empirical knowledge-making: 'scientific knowledge is produced by and in a network of actors' and 'knowledge about people was constitutively implicated in knowledge of things' (2005: 61). What counted as knowledge, depended, it seems, on what people were willing to attest. Accountability was above all a social matter: it was relations that produced knowledge out of information, and it was by virtue of being relational that knowledge was accountable (Strathern 2005: 62). What seemed to be uncovered were the relations that made something true.

I also draw on the work of Tony Crook (2000, 2006, 2007), an anthropologist whose research is largely inspired by his experiences of knowledge practices in Bolivip, Papua New Guinea. Here, in Bolivip, knowledge is imagined as 'a bodily resource' that can be extended or combined with others. Crook contrasts ways of knowing in Bolivip with ways of knowing in anthropology that imagines 'it is possible to separate and divide social and analytical relations, whereby knowledge travels between persons as a thing'. It is Crook's (2007) re-description of Riles' work (a contemporary of his as a postgraduate at Cambridge), his research concerning 'secrecy' in the context of other anthropologists' study of it and of Bolivip (2006, 2007), and his work on 'responsibility' in relation to genetic modification (2000) on which I specifically draw here.

I also turn to the work of Michel Foucault. Foucault's power analytics and his work on power in relation to knowledge or Truth (in Gordon 1980) are particularly relevant to this thesis. But while discussing Foucault's work in depth throughout the thesis, it is not his theory of power that I uphold— rather drawing on my ethnography, I challenge his power analytics.

Max Weber and Bureaucratic Practices

In her examination of documents Riles (2006) draws on the work of the sociologist Max Weber. Weber is considered one of the founders of modern sociology. In his examination of Western society, Weber considered behaviour in the West as increasingly and primarily dominated by goal-orientated rationality. Weber began his studies of rationality in *The Protestant Ethic and the Spirit of Capitalism* in which he showed that the Protestant ethic was behind a shift in emphasis in Western society towards economic gain. The rational roots to this doctrine he explores, in his later works, in the context of bureaucracy.

The document, according to Weber, takes up a special status as part of the foundations of the organization and is a so-called effective means of knowledge transfer: 'The management of the modern office is based upon written documents (the files)' (Weber 1948: 197). It seems documents, as Weber describes them, have a particular function to bridge 'gaps' in knowledge. Weber highlights persons in the context of the bureaucracy as if cogs in the machine:

> '…the position of the official is in the nature of a duty. This determines the internal structure of his relations … Entrance to an office … is considered an acceptance of a specific obligation of faithful management in return for a secure existence' (1948: 199)

He continues:

> '[Bureaucracy's] specific nature, as welcomed by capitalism, develops the more perfectly the more the bureaucracy is dehumanised, the more completely it succeeds in eliminating from official business, love, hatred, and all purely personal, irrational, and emotional elements which escape calculation. This is the specific nature of bureaucracy and it is appraised as its

special virtue' (Weber 1948: 216)

The effective transfer of knowledge through the use of documents of which there is no change in meaning and in which people (are assumed to) take uniform interest is secured by the fact that persons take on the form of things. In other words, the individuality of people is not implied in the use of or perception of these documents—those handling and producing them could be anyone. This perhaps points to why Riles would see them as paradigmatic artifacts of modern knowledge-making practices, and why the management of the modern office is based on them.

Scholars writing on openness and government secrecy also popularly draw on Weber. Secrecy, Weber argues, is characteristic of bureaucratic life:

> 'Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of 'secret sessions': in so far as it can, it hides its knowledge and action from criticism […] The concept of the official secret is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude… In facing a parliament, the bureaucracy, out of sure power instinct, fights every attempt of the parliament to gain knowledge by means of its own experts or from interest groups… Bureaucracy naturally welcomes a poorly informed and hence a powerless parliament – at least in so far as ignorance somehow agrees with the bureaucracy's interests' (Weber 1948: 233-234)

A familiar equation that takes 'knowledge as power' also suggests that at the root of secrecy is power (Roberts 2006; Wilson 1984), and a well-governed public whose lack of knowledge of what *else* there is to know guarantees their equality in each other's eyes. Secrecy, here, in other words, conceals the inequity that it establishes.

Jeremy Bentham, his Panopticon Design, and his Critics

Jeremy Bentham, inspired by Enlightenment thought that emphasized visibility and access, designed his Inspection House or Panopticon, which in his eyes would facilitate transparent governance. The Panopticon was a circular building made up of many cells with a central observation tower from which the all-seeing inspector could supervise numerous inmates simultaneously. Each cell had a window on the outer side of the building and also on the inner side corresponding to the windows of the tower. The central observation tower did not always have to be occupied by a warden for inmates to feel the effects of power. This was a building designed to illuminate the persons it contained as well as Bentham's own management of them (Bentham 1823). It was an architectural and management arrangement that Bentham imagined might be applied to hospitals, factories and schools, and in fact acted as a model for

language laboratories where teachers could listen in to pupils' conversations without them knowing. Bentham continues to influence the design of buildings such as hospitals, libraries, and prisons today.

Jeremy Bentham is regarded by scholars with an interest in government secrecy as one of the first thinkers to conceive of and actively promote transparent governance through his design of the Panopticon. In the opening pages of his book on government secrecy, *Blacked Out: Government Secrecy in an Information Age,* Roberts (2006) notes the importance of Bentham's Panopticon design for governance since, in principle, it reverses the power relationship between government and citizens, who are no longer the ones governed, 'The eye of the public makes the statesman virtuous' (Bentham 1785). However, rather than reversing the power relation between citizens and the public, there are those who consider the Panopticon facilitates a kind of power that remains firmly in the hands of government.

Foucault and His Followers

Michel Foucault, the French philosopher, is known for his work on power, and the relations of power, and in particular on the axiomatic relationship between power and knowledge. Although it is not Foucault's power analytics that I take up in this thesis, but challenge his notion of power drawing on my ethnography, it is worth touching on his ideas here.

Foucault appears centrally concerned with how persons turn themselves into subjects and treat others as objects. This has occurred, he argues throughout the course of recent history, in one of three ways: by 'dividing practices'[2], 'scientific classification', and self-scrutiny or 'subjectification'.

Dividing practices he describes in instances where lepers are isolated from those who are healthy, the mad separated from the sane, poor from the rich, men from women. This method of separation both objectifies subjects and normalizes certain ways of being, thus 'human beings are given both social and personal identity' (Rabinow 1982: 8).

The second method of objectification of the subject is through scientific classification[3]. Here, he points to the way in which 'the discourses of life, labour and language were structured into disciplines' that, like natural science, appeared to deal with the universals of human social life and progress logically (Rabinow 1982: 9). Their discontinuity, however, and apparent conceptual break from preceding disciplines enabled Foucault to approach such means of classification in terms of knowledge and power; the way in which life, labour, and language was structured was the outcome of different systems of power.

Thirdly, Foucault points to 'subjectification' where the person turns him or herself into a subject. Rather than passive individuals who are subject to the power of others, Foucault points to instances of self-formation where the person is active. Psychiatry might, for example, be a form of subjectification of

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[2] See Foucault *Madness and Civilisation* and *Birth of the Clinic,* and later in *Discipline and Punish*, where individuals are separated and classified in relation to others.
[3] See Foucault *The Order of Things*

the self, since it entails self-correction at the hands of the psychiatrist, and at the same time, is an example of a dividing practice where a division is made between the psychiatrist and his or her patient.

It is in light of this framework of analysis that Foucault also looked on Bentham's Panopticon as a means through which this power flowed: while those overseen by the warden became 'objects' of power, the warden him or herself was enmeshed in a network of power that flowed through people, statements and things, and turned them into 'subjects' of power.

Following Foucault, Shore and Roberts (1995) critically analyse new systems for assessing quality in university research and teaching, and in particular the Government White Paper entitled 'Higher Education: A New Framework' that distinguishes between 'three mechanisms designed to ensure quality in Higher Education … Quality Control … Quality Audit [and] Quality Assessment' (1993: 4). Similarly to Foucault, they describe new management practices in higher education as disciplinary technologies that are geared to enhance efficiency and productivity, and 'control, classify and contain teachers' (1).

While power flows through people, things and statements, the relations between which, Foucault argues, points to what is true, there continues to be debate within anthropology as to what governs these relations and determines what we come to know—and thus what we might look on as 'true'. In a way, we return to the question of knowledge and 'ways of knowing'.

Meaning and Value

Strathern (2005: 63) writes, 'One grasps a piece of information as *knowledge* by being aware of its context or grounds, that is, of how it sustains a relationship to other pieces of information; in short, knowledge is gained through knowledge' (italics added). In the current study, as information was passed between people handling information requests under FOISA, they were aware of its changing meaning and how it might be (unpredictably) used by those receiving it. Data might start out as data, and be turned into information when in relation to other data. However, it was as information came into relation with other information, itself attached or associated with particular important persons, that information also had meaning—that is, appeared something to be thought or acted on.

Georg Simmel (1990) in *The Philosophy of Money*, argues that value—and therefore our interest in a particular thing, whether information or otherwise— lies in the scarcity of an object: we desire objects if we think they will be difficult to achieve or to obtain. The value of an object is, then, proportional to its availability. 'I [have shown]', Simmel argues, 'that [the] process of the formation of values develops with the increase in distance between the consumer and the cause of his enjoyment… distance, measured not in terms of enjoyment, in which the distance disappears, but in terms of desire, which is engendered by the distance and seeks to overcome it' (69). As an advocator of FOI, Wilson (1984) also argues that people withhold information so as to increase its value. Value, here, appears to lie in the availability of a particular thing.

But in writing in the context of gift and commodity exchange, and the value attributed to the thing being brought or exchanged, and the reason for its particular value, other scholars argue that the value of an object lies in the persuasiveness of persons with whom it is associated. They thus explore the value attributed to an object as a consequence of its attachment to a subject and through this challenge the subject-object distinction itself.

Subject or Object?

Marcel Mauss ([1950] 1990) writing on Polynesian gift exchange in *The Gift*, draws a distinction between gift and commodity exchange. On gift exchange he writes, 'What imposes obligation in the present received and exchanged, is the fact that the thing received is not inactive. Even when it has been abandoned by the giver, it still possesses something of him' (11-12). The value of the gift object, here, is in the person who gives it and the gift as a result seems inalienable from them. That the thing exchanged is inalienable means that an alliance is not temporary but, Gregory (1982) explains, persons seem bound in perpetual interdependence. Gift exchange appears to establish 'a personal qualitative relationship between the subjects transacting', (Gregory 1982: 41-42). It seems that in a gift economy persons and things take on the form of persons, whereas in a commodity economy, people and things take on the social form of objects. Mauss examined gift giving not only in terms of from whom or what an object derives value and agency but in terms of what an object in the process seems to become. He thus appeared to go some way towards challenging the distinction between subjects and objects, persons and things. However, as Henare, Holbraad and Wastell (2007: 19) note in their edited volume, *Thinking Through Things: Theorising Artefacts Ethnographically*, while Mauss comments on the inadequacy of persons and things as categories with respect to Polynesian gift exchange, he stops short of revising these categories altogether. But it was in challenging the distinction between subjects and objects that Mauss also explored where value itself lay.

In his attempt to fashion a different approach to art objects, Alfred Gell (1998) sought 'to produce a theory of art objects that *looks* anthropological…' (Reed 2005: 222). Reed argues, 'he wants his theory of art to take the form of analysis anthropologists adopt when examining more conventional subjects such as kinship, gender or exchange'. Gell sought to question, or at least explore, the relationship between persons and things, and in so doing went some way to highlight their interchangeability (Reed 2005). Yet he did not entirely break down the distinction between them. Indeed, in arguing that a theory of art objects might *look* like one of kinship or exchange, he seems only to sustain the very distinction. As Leach (2007) comments, Gells casts objects only as secondary agents: their agency remains irreducibly human in origin, that is, the value and agency of an object is attributed to the persons doing the exchanging, and objects themselves remain inanimate.

Reed (2005), in his exploration of text production, as well as the kind of knowledge anthropologists might have of texts, draws on Gell's examination of art objects. In particular, the ways in which objects can substitute for persons, which was, he agues, what particularly intrigued Gell (Reed 2005:

222). Writing on text production in the context of weblogging, Reed states that, as with art objects, one might argue that webloggers (or bloggers) consider weblogs as substitutes or extensions of themselves:

> '…unlike many text producers in the academy (including anthropologists), these keepers of online journals or diaries are explicitly concerned with substituting texts for persons. Bloggers do not spend much time interpreting weblogs, they are far more concerned with the network of *relations that these digital texts mediate and with the kinds of agency weblogs reveal*' (224-25, my italics)

It is themselves that bloggers seek to depict. Bloggers put themselves forward unreservedly: blogs are of the moment, a record of how individuals felt or thought at the time, often constituting rants about work colleagues, friends, family, and a way of exorcising oneself onto the page. Bloggers get a certain thrill out of their blog being a public document, something that might be read by anyone. It is the bloggers themselves that readers of blogs seem to be consuming. Browsing or reading text elicits a response, similar commentary, or a question from other bloggers. As it does so, and like the relations between data, between information and between persons that I later describe in relation to FOISA, a network of intersecting text organically grows. This network, Reed explains, is akin to a network of bloggers, text depicting their views as if replacements for them. It is in this manner that Reed explores how text (objects) substitute for persons in depicting their particular *form*. But text also takes on a life of its own. It has new form and new meaning in relation to other texts. As people's accounts are joined by those of others who comment on what bloggers write, a network of text builds up which has new meaning in relation. People, Reed argues, come to substitute for text as it appears to say new things about them—to depict persons differently. Individuals who first know each other through weblogging, on meeting in real instances do not quite know what to make of each other. Text appears an agent with agency in its own right, and to mediate relations between persons *instead* of persons.

Reed here reveals text or objects as acting as subjects and also collapses the distinction between them. His description of bloggers' postings that form a network of interrelating statements is not unlike my own description of information disclosed under FOISA that has new meaning and new form in relation to other information, such that true meaning appears lost—a tactic used by practitioners to hide the meaning of information, and an issue that also concerns them. The point is that objects appear as subjects in the manner in which their form and meaning changes in relation to other subjects. Thus value appears to lie in their (changing) form (or meaning) and is not solely derived from the subjects with which or whom objects are associated, as if things themselves are secondary agents and inanimate. Form, but also value, is the consequence of a network of relations and the connections that people can read between subjects.

Allan Pottage (2004), an academic of law, turning to social anthropology, addresses the (new) dilemma lawyers face in determining what constitute persons and things: 'In Western legal systems', he

argues, 'persons and things are now problems rather than presuppositions. One could point to technology, and biotechnology in particular, as the main factor here, but there are other reasons for the implosion of the old legal division between persons and things' (2004: 1). The boundary between persons and things itself appears an artefact of modern knowledge practices, and must be worked out in legal practice.

Translation and Purification

It is the relations people can read between subjects (information and persons) and their interests in them that gives information particular meaning on which people might act. It is also these connections that appear to determine decisions over public and private, what constitutes valuable information and thus what is in the public interest to disclose. However, it is these connections that decisions over public and private also conceal: information is public and disclosed for the very reason that it says *nothing* about individual persons, their interests and the connections that can be read between subjects in relation.

Latour (1993), writing on modernity and its constitution, argues that modernity—truth and its discovery—comes with our ability to separate practices of purification from practices of translation. These two practices must remain distinct if we are to remain modern. The practice of translation '…creates mixes between entirely new types of beings, hybrids of nature and culture'. It corresponds to what Latour calls networks and:

> '…would link in one continuous chain the chemistry of the upper atmosphere, scientific and industrial strategies, the preoccupations of heads of state, the anxieties of ecologists; [whereas purification] would establish a partition between a natural world that has always been there, a society with predictable and stable interests and stakes, and discourse that is independent of both reference and society' (10-11)

So long as we consider translation and purification as separate processes, Latour argues, 'we are truly modern – that is, we willingly subscribed to the critical project, even though that project is developed only through the proliferation of hybrids down below'. But as soon as these processes are seen in conjunction, and to work together, we are no longer modern and things appear no longer pure. As Latour states, 'As soon as we direct our attention simultaneously to the work of purification and the work of hybridization, we immediately stop being wholly modern…. we become retrospectively aware that the two sets of practices have always already been at work…' (11).

History of FOI in Britain and Elsewhere

A General History

Freedom of Information, popularly translated into the counterpart, 'the right to know', is a global phenomenon. Over seventy countries around the world now have access rights to information (Banisar 2006), such the United States, Canada, New Zealand and more recently China. Alasdair Roberts (2006) is most notable for his detailed theoretical research and practical investigation of Freedom of Information laws and Government secrecy around the world. It is with his expertise and good work in mind, that I offer a brief history of FOI here.

FOI took root in Finland and Sweden much earlier than elsewhere. Sweden has had a Freedom of the Press Act as part of its constitution since 1766, which gives the press the right to disseminate information in printed form—enacted, it has been said, because it was useful means by which the King of Sweden could obtain information on others. A key and remarkable feature of the Swedish Freedom of the Press Act was that it gave citizens the right to demand documents from government bodies.

Centuries later, the 1966 American Freedom of Information Act followed the Swedish and Finnish FOI Acts. The American FOI Act was at the time considered a bit of an oddity. The FOI laws in Sweden and Finland provided the right to official information, but most information accessible under the American FOI Act would not have been considered 'official' (Roberts 2006: 14). The phrases 'freedom of information' and 'the right to know' were first coined by members of a group of American journalists who, after World War Two, campaigned for a right of access to information. Kent Cooper (1956) coined the phrase 'the right to know', while Herbert Brucker (1964) first used the term 'freedom of information' (Marcus and Powell 2003: 329). While during war-time journalists reasonably expected information to be censored and carefully channeled in the interests of national security, it was during peace time and in light of the fact that the American government continued to operate an oppressive regime of information control, that journalists (and others) began campaigning for access to information and increased government transparency in the United States.

Before American journalists took a stand to propose an American Freedom of Information Act, progressive reformers recognized the need for bureaucratic power to be held in check. In 1946 the American Congress adopted the Administrative Procedure Act (APA), which 'required federal officials to provide notice about proposed new rules in the recently created Federal Register, and provide interested parties an opportunity to comment. It… gave citizens a right to fair treatment and a right to appeal unfair decisions… [as well as] a rough guarantee of access to information' (Roberts 2006: 13).

Yet a rough guarantee of access was still not enough. In 1950 journalist Harold Cross was commissioned by the American Society of Newspaper Editors to write a report on the problem of government secrecy. This included noting the weakness of the APA. It was Cross who first proposed a

new FOI law (building on the notions put forward by Cooper and Brucker) that acknowledged the right to know and created and enforced the presumption that all citizens have access to all government records. It was he who first conceived of an American Freedom of Information Act (Roberts 2006: 13).

As the post-world war Truman and Eisenhower administrations tightened their grip on secrecy in the early part of the Cold War, journalists became increasing interested in a right to know, and by the early 1960s in America a growing number of consumer and environmental campaign groups also supported the notion. It was in 1966 that the FOIA was eventually introduced, establishing a right to information held by government agencies. It articulated the presumption that government documents *should* be publicly accessible, and included provisions to ensure that officials complied.

Three Waves

The American adoption of an FOI law in 1966, and the strengthening of access to information in the wake of the Watergate scandal in 1972, started the modern history of FOI. Birkinshaw (2001) notes there have been three distinct waves in which FOI legislation has been adopted around the world. For various reasons, Canada, Australia and New Zealand all adopted FOI legislation in the early 1980s and over the next ten years FOI legislation was adopted throughout Europe and the Commonwealth. This constituted the second wave of FOI laws, the first consisting of its enactment in Sweden and America. It was not until the 1990s that FOI began to emerge as an international norm, marking the third wave of enactment. This was partly because the Organization for Economic Co-operation and Development ('OECD'), the World Bank, and the Council of Europe championed it. FOI legislation was passed in the UK in the third wave of FOI development, comparatively late, and behind five of its G8 counterparts and ahead of two— which were Germany and Russia (McDonald 2006: 129).

Despite its profound influence, twenty years on from its enactment, only eleven countries had comparable FOI laws (Roberts 2002: 14). Previously considered a luxury, motivated by calls from civil society organizations, the media and the international diplomatic network for increased transparency, many more countries—such as China and Jamaica—have recently begun to adopt FOI. Only in the last ten years have over half the FOI laws around the world been passed, and in the last two that dozens of countries have adopted access to information laws.

The change has been particularly dramatic in Central and Eastern Europe. The fall of the Berlin Wall and the crumbling of the USSR led to a spate of FOI laws in the region—with the Ukraine and Hungry adopting FOI in 1992, Azerbaijan in 2005, and Macedonia in 2006. Its more widespread adoption in Europe is largely attributed to the work of George Soros's Open Society Institute, that took the lead in promoting transparency as a means of developing democracy in the transition from the Cold War era (Banisar 2006). While the European Convention ('EC') on Human Rights does not strictly include a right to obtain information from public authorities, it does specify that information must be provided in certain

cases, for example, where a refusal to provide information infringes individual rights with respect to private and family life (article 8)[4].

Interest in FOI in the Americas has been strong. Mexico has one of the strongest FOI laws, overseen by an advanced information system that keeps track of all requests and ensures that they are answered on time. Laws have been adopted in Jamaica, Trinidad and Tobago, Belize, Panama, Peru, Ecuador, the Dominican Republic, Antigua and Barbuda. In most countries, pressures have come from the World Bank and the Organization of American States.

In the Asia-Pacific region, Australia and New Zealand were the first to adopt FOI laws. South Korea and Thailand adopted laws in the 1990s, and Japan adopted a national law in 2000. India adopted a weak national law in 2002 following the adoption of laws in a dozen separate states with stories of their use by activists against corrupt local governments. This national FOI law has more recently been strengthened.

In the Middle East, only Israel has adopted a national FOI law. In Africa progress has also been slow. Many Governments have been pressed to adopt access to information laws, but the old era of the Official Secrets Act still predominates. In Uganda, an FOI law was more recently approved, and the Kenya and Nigeria have committed to adopt an FOI law (Banisar 2006).

Most FOI laws offer the same basic provisions, generally because they have been modelled on the American FOI Act. Anyone can ask for recorded information, while some newer Acts state that individuals have the right to information in any form. Some legislation—such as Scotland FOI Act—distinctly stipulates from which bodies individuals can obtain information, while other legislation relies on a more general statement of designation—public bodies that exercise a public function (Banisar 2006).

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[4] The Scottish Parliament Information Centre (SPICe). *Research Paper 01/17*. p. 22.

The UK adopted its FOI Acts relatively late, behind five of its G8 counterparts and ahead of two. The following shows the year in which each G8 country adopted FOI legislation:

Russia	Not as yet
Germany	2006[5]
UK	2005
Japan	2001[6]
Italy	1992[7]
Canada	1983[8]
France	1789[9], 1978[10]
USA	1967[11]

The motive for adopting FOI legislation appears to differ for each jurisdiction. '…by the 1990s many countries were adopting FOI for quite different reasons: to win credit with donors and, in particular, to fight corruption…. Individual statues are commonly the product of local political struggles, and their design is influenced by the objectives of the campaigners and legislators engaged in those struggles' (McDonald 2006: 130). Thus there is danger in cross-comparing different legislation that was formulated and introduced under different conditions.

FOI in the UK and Scotland

In the UK, as in the United States, a climate of continued information control and civil repression after World War Two, despite less pressing issues of national security and defence, gave rise to tensions between citizens and government, and threw into question issues of rights and individual freedoms. But unlike the precedential creep towards openness exhibited in the US, the challenges that faced Britain were different. The Official Secrets Act, first enacted in 1911, had made the unauthorized disclosure of information an offence at the start of World War One.

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[5] The Act to Regulate Access to Federal Government Information was adopted in June 2005 and came into force in 2006.

[6] The Law Concerning Access to Information Held by Administrative Organs was approved by the Diet in 1999, after a twenty-year effort and came into effect in 2001.

[7] Chapter V of Law No. 241 of August 1990 provides limited access to administrative documents. The 1992 Regulations give a right to demand information for legal purposes. Amended and relaxed in 2005 and relaxed to mean individuals can ask forto provide information proven to be in the public interest.

[8] In 1983, the Access to Information Act provided Canadian citizens and other permanent residents and corporations in Canada the right to apply for and obtain copies of records held by government institutions.

[9] Article 14 of the 1789 Declaration of the Rights of Man called for access to information about the budget to be made freely available (Banisar 2006).

[10] The 1978 Law on Access to Administrative Documents provides for a right to access by all persons to administrative documents held by public bodies (Banisar 2006).

[11] Some states have provided access to records for over a century. Court records and legislative materials have been open for years. The Freedom of Information Act was enacted in 1966 and went into effect in 1967.

It was a young Margaret Thatcher who, as a newly elected MP in 1959, took the first steps towards openness by attempting to introduce a bill to make local councils open their meetings to the public. Mrs. Thatcher wanted the circumstances in which the press where excluded from meetings tightly defined, which was rejected by the then Conservative government on the basis that meetings were closed 'in the public interest' – a broad phrase that government might apply as it liked.

Attempts made in the late 1970s by the then Labour government to promote access included the so-called Croham Directive, named after Lord Croham the former head of civil service. This promised the release of background papers to policy decisions, although very little was disclosed under it. In 1978, there was an attempt to introduce Freedom of Information legislation in the form of a private member's bill introduced by Clement Freud MP. However, this bill fell through when the 1979 election was called.

Throughout the 1980s there were concerted attempts by the UK Campaign for Freedom of Information (CFoI) to introduce an FOI bill in Parliament. In 1984, David Steel MP introduced in Parliament a Freedom of Information Bill, drafted by the CFoI. The Bill received significant support, and all eighteen Liberals and all four Scottish Democratic Party Members of Parliament as well as Plaid Cymru and Scottish Nationalist MPs put their names to it. But, surprisingly in view of her earlier position with regard to Council meetings, it did not receive the support of the then Prime Minister, Margaret Thatcher, and as a consequence it received the support of few Conservative MPs and it was not passed. However, the Data Protection Act was passed in 1984, giving citizens a right of access to their personal information and making it an offence for people to share information about others without their authorization.

> *UK Campaign for Freedom of Information*
>
> UK Campaign for Freedom of Information (CFoI) was established in 1984, by Des Wilson, former chairman of the charity Friends of the Earth. While directed by Des Wilson, CFoI is governed by its member organizations and has campaigned for the right to know since its inception. Today its director is Maurice Frankel.
>
> There is also a CFoI in Scotland, part of the UK CFoI. This is co-directed by David Goldberg and Derek Manson-Smith, who work closely with Maurice Frankel of the UK CFoI.

Failing the enactment of FOI, the CFoI introduced a number of compensatory Acts throughout the 1980s considering that it was not politically the right moment to put forward a second FOI bill. In 1984, it put forward a Local Government (Access to Information) Act, giving the public wider rights of access to council meetings, reports and papers. Similarly put forward was an Access to Personal Files Act, which was passed in 1987, again promoted by the CFoI. It gave people access the right to see manually held social work and housing records about themselves. The CFoI also promoted and drafted an Access to Medical Records Report Act that was passed in 1988. It gave people the right to see any report produced by their own doctor for an employer or insurance company. In 1988, it promoted an Environmental and Safety Information Act, giving people the right to see enforcement notices issued when organizations breach laws dealing with environmental protection and safety.

In 1990, an Access to Health Records Act was passed after being twice 'talked out' in the Commons—MPs deliberately discussed the bill until they ran out of time to formally pass it. This allows people to see information put on their medical records after November 1991 (unlike FOI, it is not retrospective). In 1992, the CFoI drafted a second FOI bill, but the bill did not get a second reading. Also in 1992, Labour published the Right to Know Bill, which Labour promised it would introduce if elected. This largely replicated the FOI bill drafted by the CFoI in 1992. Roy Hattersley MP, then shadow Home Secretary, at this point also promised an FOI Act if Labour won the election. The Right to Know Bill was introduced in Parliament, and obtained a second reading, but was also 'talked out'.

In the early 1990s, Thatcher's successor, John Major, Prime Minister and leader of the Conservative government, took more significant steps towards implementing openness after a series of promises of action. The 1994 Code of Practice on Access to Government Information provided two new legal rights to information—access to manually held personal files and to health and safety information. Other information might also be released at the discretion of a public authority and those handling information, to be overseen by the Parliamentary Ombudsman. In 1995, the Code of Practice on Openness in the NHS also came into force that provided access to NHS information and was similar to the central government Code—it provided the same right of access, under similar conditions, but applied to different information. This was a significant advance but it seemed the Codes of Practice also had

substantial weaknesses. The CFoI persisted that there was still a need for 'a Freedom of Information Act, creating a statutory right of access to information across the whole public sector.'[12]

What is an Ombudsman?

An Ombudsman carries out independent investigations into complaints, for example, about Parliament, the NHS, Public Services, when they have not acted properly or fairly, or have not provided a fair service.

Both Labour and the Liberal Democrats in their 1997 general election pledges made an offer of a UK Freedom of Information Act. In December 1997, the newly elected Labour government published a White Paper, Your Right to Know, and promised to publish a draft UK FOI Bill in early 1998. A draft bill was published for public consultation in May 1999. It was drafted by the CFoI, and appeared largely modelled on the American FOI Act.

In Scotland, FOI was a devolved matter. In November 1999 the Scottish political partnership then in place between the Liberal and Labour parties published a separate consultation paper, An Open Scotland, as part of the 1999 Partnership Agreement that established the principles for a devolved Scottish Parliament[13]. A devolved FOI Act provided the new Scottish Parliament with the opportunity to introduce its own legislation—some say stronger since information has to cause *substantial* public prejudice before it can be justifiably withheld and the maximum cost for information (which if exceeded means public authorities can refuse a request) is higher. Designed and enacted as a new devolved Scottish Parliament put down its roots, this seemed the Act and the perfect moment in which Scotland could make clear what it stood for, that perhaps distinguished it from the rest of the UK. An Open Scotland was followed in March 2001 by a consultation on the Draft Freedom of Information (Scotland) Bill, on which individuals, organizations and campaign groups were invited to comment. The FOI (Scotland) Bill received Royal Assent in May 2002, two years after the UK FOI Act was passed in November 2000. Both Acts came into force at the same time, in January 2005, which many argue gave Scottish public authorities less time to prepare—and some say less time to shred important documents they sought to keep under wraps.

A Note on Methodology

Before describing my fieldwork, what I did, and with whom I met, it is worth writing a few words on how I approached fieldwork on FOISA, which I conducted between October 2004 and April 2006. A project such as this—an examination of FOI in Scotland, involving an investigation of the manner in which FOI is being used by citizens, the way in which practitioners respond to FOI requests, and the basis on which

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[12] http://www.cfoi.org.uk/ombud1.html

[13] *Partnership for Scotland* set out the key principles of the Liberal Democrat-Labour partnership forming the 1999 coalition Scottish Government

decisions over public and private were being made—can only be done through long-term, in-depth ethnographic fieldwork. However, carrying out fieldwork on FOISA in such as way as to reveal its effects proves a little more difficult.

I based myself in the city of Edinburgh from where I could quickly and easily travel all over Scotland. My field study was multi-sited (Marcus 1995) and involved locating myself wherever FOISA was being implemented, enforced, and used in Scotland. It seemed immediately obvious to base myself in the public authorities covered by FOISA in order to observe the manner in which FOISA was being implemented within these authorities, people's responses to the legislation—practitioners as well as applicants—and a way of making contact with applicants.

While I anticipated that obtaining access to people working for these public authorities would be difficult, civil servants, government officials, Members of the Scottish Parliament ('MSPs'), Scottish Executive policy makers, the Scottish Information Commissioner and his staff—to name just a few—all assisted me with my research, and were extremely welcoming, open and generous with their time, and themselves. Practitioners whom I approached by writing a letter to introduce my research aims and to request an interview with them, would invite me into their organizations, sit me down, offer me a cup of tea and biscuit, and after speaking with me for a while, would generously ask if there was anyone else I wanted to interview or meet in the organization. They could easily set up a meeting, find someone who would be really good to speak to, and perhaps even contact their friend in another authority who could help me out.

It was in this way that I eventually made contact with individuals who were happy to let me come and work for them for a short period of time, on a part-time basis for a two to three months. Much of my fieldwork involved me sitting and working alongside FOI practitioners in large council buildings, hospitals, an NHS health board, a police headquarters and Universities helping them and their colleagues handle requests for information under FOISA. I also carried out small tasks and worked on short FOI projects, such as preparing an authority's publication scheme (on-line catalogue of all the information they hold). These were tasks or projects that the people with whom I worked did not always have time to do. So in return for access to the field, I offered practitioners a spare pair of hands, which in light of the fact that I was an unpaid volunteer, were generally gratefully received.

It was interesting at this point to wonder why people were so generous—who did they think I was, and was there any sense that I could do something for them? Was the fact that people so easily opened up to me, indicative of an already 'open' field? It is perhaps difficult to say. When asked about their generosity, people would often remark that they, and their organization, had always been open.

In addition to participant observation fieldwork, I found much of the background information I required for this study was already available to me—on the internet, in public, council and government libraries, and freely distributed amongst the public in the form of annual reports, brochures and leaflets. FOISA—and a new right of access to information—was being firmly planted in the minds of the public:

information about it was freely available in public buildings and on the television. The legislation, of course, embodied an image of itself, it not only promoted access but information concerning it and how it was to be implemented was to be made accessible in authorities across Scotland.

Ethics: Problems of Description

Participant observation fieldwork such as this entails some ethics issues—in particular concerning the description of people, what they think and do, and the use and exchange of personal information that is considered reflective of those it is about. Interestingly, an issue that is pivotal to FOISA—a decision over what is public and what is private information—is one that is pivotal to a study such as this.

FOISA emphasises the public nature of information often retained by public authority civil servants. Yet in so doing, it highlights the personal nature of information also, as shown by the difficultly that people often have deciding what information is in fact personal and what is not—information appears personal at every turn. That is, as information was passed between people, those handling or creating it did not seem to be able separate themselves or their interests from what they handled or created. Decisions made under FOISA over public and private in fact serve to *illuminate* the extent to which information was thought of as personal—introducing the issue of how to decide what is not? Both from an analytical perspective, and in light of people's own awareness of what information disclosed about them, the names of all people and places have been changed in this thesis

But it is perhaps also worth keeping in mind that the moments that I collected in the field, stories of events, descriptions of people, instances of concealment, discovery or confusion, were in fact constructed by me. Wagner (1977) writes, in relation to systems of categorization in the life sciences and social sciences, that as soon as something is one thing, there is always the potential to be something else. Things, people, information both resist and incite the manner in which they are arranged. There are always new possibilities and different links—different insights—to be made. A particular description, interpretation, representation and decision about what something is, can be eclipsed by a different description, interpretation, representation, from a different angle—simply a thought from a different perspective, a result of someone's different interests, will be revealed in the author's very description. So a description about a person or an event that has the potential to reveal someone's true identity, is rather a question about the author and their particular interests, relationships and thus what they create, impose, and construct, rather than what they *reveal*.

Fieldwork: Tracing the Threads of FOISA

I started fieldwork in October 2004, three months prior to FOISA coming into force. It involved tracing the effects of legislation that was designed to roam anywhere within the public sector and set trapped information free. Since FOISA could be used by anyone anywhere in the world and served as a point of

comparison for advocates of access to information laws in other jurisdictions, its impact was potentially endless, as was the 'field'.

Basing myself in the city of Edinburgh, and not far from the SIC, I travelled from the Highlands and Islands to the Scottish Borders to attend FOI meetings, interview users of the legislation, work alongside FOI Officers in public bodies as they dealt with requests for information, and to meet with decision and policy makers involved in the implementation and enforcement of the Act. The field consisted of a network of relations through which I travelled. Like a document that 'unfurls' (Reed 2006), it was on speaking to one person that I was motivated (by others) to get in touch with another: an applicant, public authority FOI Officer, end-user or member of the FOI Campaign in Scotland. But a vast field of options rapidly became one in which names were repeated in conversation, conference speeches, minutes to meetings and on websites, and one made up of a handful of people many of whom became my main informants.

Prior to embarking on fieldwork, I had made contact with the Office of the Scottish Information Commissioner (OSIC) in St Andrews. I met with the SIC's Head of Policy and Information and I arranged to meet her on a regular basis while I was in the field to gain knowledge of the Act, the events running up to its implementation and current developments. I soon established contact with the directors for the Campaign for Freedom of Information in Scotland, members of the Scottish Executive FOI Unit, researchers at the University College of London Constitution Unit (those researching the impact of the UK FOI Act in the UK), Alasdair Roberts, at the University of Syracuse in the United States and individual FOI Officers as well as users of the legislation. It seemed there were multiple groups and persons with whom I could liaise. While I was aware that my involvement with multiple groups implied divided loyalty, my informants were not. Yet relations between different groups were often strained. The Scottish Executive FOI Unit, for example, both responsible for FOI policy and covered by the new legislation seemed considered neither a public authority by those working for public authorities nor a decision-maker. It had the capacity to appear neither as one thing nor another, which left individuals involved in the enforcement and implementation of the Act and FOI practitioners entirely unsure as to the basis on which it was acting at any one time. The Unit *seemed* to have the power to turn things their way, but was subject to the same legislation and obligations.

Early on, members of the CFoI in Scotland established a Scottish FOI Strategy Group which met every four months and of which I became a member. One of the CFoI in Scotland directors, was friendly with the Information Compliance Officer at Lochhead Council who, he suggested, would be willing to assist me with my research. It was from pursuing suggestions such as these that I made contact with users of the legislation and FOI practitioners and was able to voluntarily help out on a number of small FOI projects in Scottish public authorities. I worked for Glendale Council on a voluntary, unpaid basis, compiling an end-user questionnaire and collating the statistics gathered from this. I also worked for NHS Glendale helping FOI Officers to collate and organize frequently made requests under topic

headings such as MRSA, staff, or car parking, so that they might proactively disclose information or advertise its availability on their website. And I worked for the Scottish Executive FOI Unit tabulating the trends that emerged from reports from different sectors on the volume and types of FOI requests received so far.

It was through meeting and speaking with FOI practitioners that I made contact with requesters. End-users were not always easy to find: it was clear that the legislation was being used since public authorities had record of its use, but short of going through public authority records and public authorities themselves, there was very little chance of catching people submitting requests. From the divisions on which FOISA is premised (citizen versus public authority), it might be surprising that FOI practitioners were often on friendly terms with regular users of the Act. While FOISA required practitioners to 'advise and assist' requesters in making their requests—provide information on what their public authority held, how to phrase a request, and what they might reasonably expect to receive—practitioners were also often genuinely happy to help requesters and me (as a requester of information of sorts). This meant that, if agreeable with this applicant, they were also happy put me in touch with them. Many of the individuals with whom I spoke I have remained in contact with. Some frequently used the legislation as a means of regularly gathering information to compile reports, respond to a public consultation and campaign against the amendment or closure of a public service and became adept at using their 'right to know'. Others had used the Act only once or twice, and were happy to recall their experiences. I also, although with less success, contacted applicants through the Citizens Advice Bureau, a service in Scotland and the Scottish Civic Forum (now disbanded).

My informants and I would meet at FOI conferences and events throughout the year, giving me the opportunity to less formally catch up with them. I was generally wholly reliant on the kindness of people, practitioners, the SIC and his staff, and users to allow me to attend meetings, and gain some understanding of the field of FOI in Scotland. There were what seemed like endless invitations, and endless avenues to pursue.

Introductory Comments on FOISA from an Anthropologist

When citizens, organizations and government are presented with the opportunity to acquire information on themselves or on each other, how do they respond? When disclosures create new social knowledge—by knowing new things about one's self or others—what decisions and actions follow on? That is, when people come into knowledge about something or someone, they have now to negotiate that knowing. New dilemmas are created in which decisions have to be made over how to act. These new decisions involve new ways of acting and relating.

FOI legislation came into force in Scotland in 2005. It contains within it the presumption that publicly funded information both belongs to no one and to everyone, and should be set free so that others can use it. It seems citizens, by their common relation of access to common information, come to share a

relation in common, as a supplement to or indeed, model of society. But public bodies and their employees do not always to let go of the information that they hold, and free flowing knowledge is not always of interest to those who receive it.

As the first anthropological study of its kind, my research on the FOI Act in Scotland follows my undergraduate study of knowledge and how it was formally and informally shared amongst employees of a well-known large accountancy partnership in London. People there were interested in the connections they could read between information and persons; knowledge as an independent object stored in a database was activated (as a subject) through its embodiment in a Partner.

In this study, I examined two distinct knowledge sharing networks: formal knowledge sharing practices in which employees formally submitted knowledge to knowledge sharing databases that stored such knowledge as was deemed useful; and information knowledge sharing practices in which employees came into knowledge through their interests in relations with others. I described the manner in which, while there appeared a distinct lack of interest in knowledge that was more formally stored, this knowledge was activated through its connections with knowledge sharing networks—gossip between secretaries, advice received from Partners, and chats by the water cooler or over coffee.

Knowledge appeared to be socially constituted. It seemed knowledge was contained in, was attached or belonged to, and was an extension of, the person or persons who shaped and developed it. Formal knowledge that was categorized, documented and storied in a database had the effect of detaching the knowledge from the persons who shaped it. Consequently, although formal knowledge was sanctioned, such knowledge was nevertheless de-socialized—employees felt separated from the knowledge they had fashioned. In contrast, knowledge circulated in lose verbal networks in which participation was voluntary, and the distribution of informal knowledge was uneven. Significant gaps and overlaps between the two systems meant formal knowledge started as information knowledge and a good deal of formal knowledge, although valuable, remained uncaptured by the informal network.

FOISA, by comparison, seemed informed by a notion of persons and things that discounted the relations through which they are formed. It seemed purposefully designed to make obvious the absence of social and political relations, and to remove any trace of a decision-making political process that contravened a duty of accountability to the citizens in whose name a public body operates. Relations were both made irrelevant to information dissemination and yet also seemed crucial to its transfer.

I originally entered the field with the following aims:

1.To analyse the reasonings, cultural assumptions, and social objectives designed into the formulation of FOI legislation—for example, what are the bases upon which decisions over public and private are made?

2.To investigate and describe the uses to which the legislation is put and how new rights to information are exercised—for example, what social uses or ends are

perceived in FOISA and what motivates people to seek out particular things about themselves or other parties?

My actual findings are considerably more profound than these initial aims suggest. This thesis centres on the kinds of subject-object transformations that were a result of the way in which, as social relations were made obvious or hidden by those sharing and receiving knowledge, persons appeared as persons, or as things, and knowledge appeared as knowledge, or as information.

Such subject-object transformations were a result of people either considering themselves as acting in the capacity of the organization, and undifferentiated, as 'anyone', or in a personal capacity. Perceiving themselves as acting on a common or shared footing, people thinking of themselves as one of many, rather than one alone. As practitioners and applicants came into the same knowledge and the divisions between people disappeared, people, and the relations between them, disappeared also—or were made 'transparent'. This form of transparency, 'transparent persons', throws into question (and elucidates) a theory of transparency that explains the divisions between people in terms of secrecy (chapter six).

Running through all six chapters of the thesis is the manner in which people, things, concepts appear divided and combined in different moments; their separation and unity a consequence of their divided and combined *form*. People's simultaneous division and combination points to two kinds of relation at work: a conceptual relationship through which entities are divided and an inter-subjective relationship through which they are combined. It is these two relationships *operated together* that enables people's shifting perspectives, thought and social action.

Both a division between persons, things, concepts as well as their lack of division points to a relationship between them and illuminates how people, concepts, things are in fact dependent on a relationship for their composition. Put simply, and in terms of people, one person's viewpoint elicits another. This gives rise to not just one, but two different perspectives on the same thing. The differences between people, in this case, is their perceptions of the same thing from two different angles.

Marilyn Strathern (1992) writing on English kinship in the late twentieth century explains difference comes from the fact that something might always be considered from a new or different angle. She states:

> 'Difference… becomes apparent from a simple fact of life: it is a connection from another angle. That is, what looks as though it is connected to one fact can also be connected to another… [such that] one thing differs from another insofar as it belongs to or is part of something else.' (1992: 73)

It seemed people's changing perspectives on the same thing, their difference from some people and similarity to others in different moments, was a result of their divided and combined interests in a

particular thing (relation). Often to the confusion of those with whom they interacted, practitioners, citizens and policy-makers' changing interests in a particular relation meant they appeared to undergo endless permutations in form, and offer endless different perspectives on the same thing.

Each perspective might either be classed as 'public' or 'private', and it is how practitioners made decisions over which that I turn to now.

2
Public and Private

Introduction

Decisions over public and private lie at the heart of FOISA. FOISA intersects with the Data Protection Act that gives the public a right to access their *own* personal information and at the same time, prevents others from accessing it without permission. Thus, while FOISA provides people with a right of access to information *in general*, it also contains provisions for the retention of information that is 'personal'. However, practitioners and decision-makers find that decisions over what is personal and what is not are often difficult to make: persons, in their private capacity, are seen as disclosed through the disclosure of information with which they are associated. To which others, such as the SIC, often respond that the information people seek to withhold is not personal and merely reflects the role a person is performing or occupying as originator or handler of the information.

At another level, it is not only information that is disclosed under FOISA, but data also. In response to requests for data, some practitioners argue that data alone is meaningless. It is the relation between (bits of) data that turns data into information, gives it meaning and form. Data itself is seen as a relational subject and appears in a particular form in response to other subjects. The relationship between data, information and knowledge are discussed in this chapter, as well as the subject-object aesthetics that these terms imply.

Often considered fixed and something to be uncovered, this chapter argues that it is the relation between things that invokes their public or private form. Whether persons or information are public or private depends on the relational context of any one moment. Rather than an innate quality, public and private is the *form* that persons and information take. I shall further argue that a public-private division between entities also marks a public-private division within them.

The relationship between public and private is one that has captured the interest of anthropologists. Some, for example, investigate the way in which music and sound reconfigure the boundaries between public and private (see Georgina Born's most recent work on sound, in press). Marilyn Strathern (1992) in her study of the quintessentially English 'Bed and Breakfast' and the domestic image it presents (part of a broader study of English kinship), argues the difference between public and private:

> 'had its analogue in the way objects of knowledge were created. The English imagined the 'real' nature of something lay within. Thus one looked inside the genteel person and found morality […] one went into the front room of the house, thinking the real home was behind closed doors' (129-130).

The home within a home, and the public-private division it evokes, belongs to an epoch that we have now left behind she continues.

The relationship between public and private is also one that has entered into anthropology more practically. Malinowski is most well-known for establishing a separation between public and private in the form of his fieldwork diaries and private diary based on a distinction he made between public objective and private social data, one that has been collapsed in anthropology. In terms of ethics, ethnographers must also make decisions over what constitutes public and disclosable information and what is private and not disclosable. In many respects, this is a decision resolved through changing the names of people and places so that they are not identifiable from the text (which I have done here). However, the issue remains that public and private is a very real dichotomy with which anthropology must contend, although not always without question.

In this chapter I draw on some of the decisions that the SIC has made over public and private. These decisions are widely referred to and discussed by practitioners and used as guidance by them. I also touch on the claims that people—practitioners, end-users, and policy-makers—make over information that, in conflict with others, they consider either personal or public. I present a particular case concerning National Services Scotland ('NSS') and a researcher from the Scottish Parliament who sought information that NSS refused to disclose. I also discuss some of the issues that Duncan, at Lochhead council, faces as he tries to convince colleagues to disclose what they deem personal information.

Decisions over Public and Private

Apart from the question of the privacy of the subject matter of an FOISA request, public authority employees often appeared to consider that the information they handled or originated concerning themselves or other people would disclose them and others in the form of persons, their individual motivations and intentions becoming revealed along with the requested information. It was this, it seemed, that often deterred them from complying with requests as promptly as they perhaps should, their dalliance thought of by other practitioners to indicate their concern over getting a response wrong but above all seeming to indicate their concern over differentiation, and also an awareness of other's concerns over their differentiation also. It was on being differentiated that employees and others who were the subject of information, or had helped create it, might be disclosed as acting in their own person and not in the person of the public authority.

Yet, and here there is a degree of reflexivity, whether information was public or private, when and for what reason persons (themselves included) might be disclosed along with the requested information, was for individual public authority FOI Officers to decide. FOI Officers might refer to a number of things before reaching a decision: the SIC's guidance, briefings on Confidentiality, Personal Information and Commercial Interests decisions that the SIC had made regarding what constituted public or private information and any case-law to hand. However, decisions over public and private could only be made

(and it was well-known) on a case-by-case basis, such that each should be treated in isolation and might even set precedent. Compliance in one moment might appear non-compliance in another moment. Decision-making was in this sense 'devolved'; it was the responsibility of individual FOI practitioners alone. There appeared no larger network to which practitioners might turn for an answer. In some cases an individual might deliberately allow a case to reach the SIC's desk for him to make an often complex decision over public and private on their behalf. But such a move also risked their own reputation as well as that of the authority, which might be considered non-compliant. Thus, allowing a request to go to the SIC on appeal was a last resort. So while practitioners had to comply with the law and ensure that other employees did so, the law itself seemed something that was not just applied but potentially realised (by the SIC) after the event.

The SIC's Briefings

These provide general guidance on the interpretation and application of the FOISA exemptions that specify under what circumstances information cannot be disclosed For example, under what circumstances a requester is 'vexatious' and can be refused information.

Confidentiality

Information might be considered confidential when it contains communications with a legal advisor where advice is either sought or given, and consists of documents created in the contemplation of legal proceedings. Information might also be considered confidential under other circumstances: for example, where a court has allowed a witness to refrain from revealing their content[14].

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[14]http://www.itspublicknowledge.info/web/FILES/TheLaw/Section_36_-
_Confidentiality.pdf#search=%22confidentiality%20briefing%22

Personal Information

This applies to two kinds of request: when a person has asked for information about themselves, and when a person has asked for information about someone else. In the case of the former, that person might be asked to reapply for the information under the Data Protection Act. In the case of the latter, information cannot be disclosed *unless* the subject of the data has had the chance to exercise their right under the DPA to issue a notice to the data controller to prevent this information being released—a decision which itself will be subject to the public interest test.

Public Interest Test

Most exemptions in Part Two of FOISA are so-called qualified exemptions, which means that they are subject to the public interest test. While the public interest is not defined in FOISA, it is described as information that is of serious concern and benefit to the public, not merely of individual interest. When applying the test, the public authority is deciding whether it serves the interests of the public better to withhold or disclose information

Commercial Interests

Information may be withheld under this exemption when, it is considered a trade secret or when disclosure would prejudice substantially the commercial interests of any person or organization, the economic interests of the whole or part of the UK, or the financial interests of an administration in the UK.

The courts made an effort to clarify what constitutes personal information[15] in a well-known case, known as the Durant Case, in which the appellant sought disclosure of information that he claimed to be personal data relating to him held by the Financial Services Authority. Lord Justice Auld argued that:

> 'It follows from what I have said that not all information retrieved from a computer search against an individual's name or unique identifier is personal data within the Act. *Mere mention of the data subject in a document held by a data collection does not necessarily amount to his personal data.* Whether it does so in any particular instances depends on where it falls in a continuum of relevance or proximity to the data subject…

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[15] DPA Part 1 Schedule 1: 'personal data' means data which relate to a living individual who can be identified—
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

It seems to me that there are *two notions* which may be of assistance. *The first is whether the information is biographical in a significant sense***,** that is, going beyond the recording of the putative data subject's involvement in a matter or an event that has no personal connotations, a life event in respect of which his privacy could not be said to be compromised.

The second is one of focus. *The information should have the putative data subject as its focus* rather than some other person with whom he may have been involved or some transaction or event in which he may have figured or have had an interest, for example, as in this case, an investigation into some other person's or body's conduct that he maybe instigated.

In short, it is information that affects his privacy, whether in his personal or family life, business or professional capacity'

(Auld LJ in Durant vs. Financial Services Authority [2003] EWCA Civ 1746, my italics)

The interaction between the UK FOI and DPA in relation to the Durant case was summarized in a Standard Note issued by the House of Commons Library in 2006 for the benefit of Members of Parliament and their staff:

'As the result of the Durant judgement there has been a narrowing of the definition of 'personal data'. The judgement identifies two notions to determine whether information affects an individual's privacy, firstly whether the information is biographical and secondly whether the individual is the focus of the information. So simply because an individual's name appears on a document does not mean it is 'personal data' and they are entitled to protection under the *Data Protection Act 1998*. It is more likely that when an individual's name is accompanied by other information relating to the individual, then this would be 'personal data"[16]

The Durant decision had a significant impact on how the line between public and private was drawn. And yet it was also a point of reference from which decision-makers had more recently deviated: the IC, responsible for enforcing FOI in the UK (apart from Scotland) and DPA in the UK as a whole, more recently returned to the view that 'any reference to someone's name is personal data', as the director for the Campaign for Freedom of Information (CFoI) revealed in a workshop on the SIC and IC's decisions in early 2008. 'It seems we understand the Data Protection Act… but we don't really understand it', the CFoI director remarked while taking an audience of FOI practitioners through the

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[16] http://www.parliament.uk/commons/lib/research/notes/snpc-04018.pdf

SIC's and IC's decisions. So, although there were guidelines advising people as to when information was personal, these guidelines were by no means specific, and their ambiguity left it to individual practitioners to decide.

But decisions over public and private were not simply a matter of when individuals themselves might be disclosed, but when discrepancies between organizations, their accounts, policy, operation and structure would also be revealed in a way that would illuminate these organizations individually. In other words, claims to privacy might be made when information disclosed individuals, and people's motivations and intentions, but might also be made when information disclosed organizations as differentiated through the divisions between them by way of information contained in tender agreements, contracts, policy documents and recorded communication. Claims to privacy, in this case, were made because individuals sought to conceal their organization's interests and the particular angle and approach that made it singularly attractive to others. To disclose the details underpinning this would put at risk such an organisation's niche in the market.

Thus, while individuals sought to conceal, were embarrassed even, by the differences between them, organisations sought to retain the divisions between them and thus others' interests in them. And yet competition by public sector bodies for financial reasons was not within the scope of FOISA, and while government owned organizations such as McBride ferries (that was tendering for the Highland and Island ferry routes) sought to retain what they saw as commercially sensitive information, to withhold information so as to enable competition seemed contrary to the ethos of the Act.

Although a good deal of the legal detail lies outside of the sphere of anthropology, in this chapter I address, as far as possible, the basis on which decisions over public and private are made in the context of FOI in Scotland, and the SIC's decisions and claims that people make over information that they consider private. I present three case-studies. The first concerns particular decisions of the SIC concerning public and private, his thoughts, and where the line between public and private might be drawn. The second case is that of the National Services Scotland versus Donald, in which the SIC's decision for the NSS to disclose information it holds is taken to the Court of Session and latterly the House of Lords. The final case concerns claims made by public authority employees, members of the public, and FOI Officers over public and private, and the basis on which such claims are made. I turn to Duncan, at Lochhead, who must decide whether information that the council holds and an applicant has requested constitutes private information; he tackles staff who have ideas of their own. The chapter might be considered a response to the following: when and in what manner might information disclose persons? And when and for what reason do individuals fail to appear as in a personal capacity?

The SIC's decisions (2005-2006)

The SIC generally made his decisions on a case-by-case basis. While this often left civil servants uncertain in their decision-making, it also suggested that it was the context of the case that more often than not

determined its outcome; it was not only FOI practitioners but the SIC who on occasions seemed to find it difficult to decide over public and private.

The Role of the SIC

The Scottish Information Commissioner is responsible for promoting and enforcing FOISA. While individuals must submit their requests for information to public authorities, the SIC's role is to ensure that these authorities comply with the Act. If a requester is dissatisfied with a response an authority has given, then he or she can go to the SIC and appeal this decision. On conducting an independent investigation into the allegation, the SIC will issue both parties with a decision notice—and he might either agree with the public authority, or the requester in any particular case.

While there were provisions within FOISA to protect the disclosure of personal information, senior decision-makers were often of the opinion that the general public and individuals working for public authorities had become too accustomed to claiming information as personal. Information, practitioners argued, was retained on 'questionable' grounds and people were 'over sensitive' about information and should perhaps take a 'less emotive view'. The public/private division was reflected in the sensitivity of information people handled and produced: there was a balance to be struck, it seemed. However, people were themselves *internally* divided—acting in both a public and private capacity. Given this, their excessive attachment or detachment from information suggested that the balance had been tipped, making some people appear more (or less) a person in the eyes of the law. FOI seemed about redressing this balance, which required treating information less personally and adopting a certain detachment from it.

In his 2006 annual report, the SIC listed some key findings in relation to personal information and also the commercial interests exemption, expanding on and explaining his decisions case-by-case. Commercial interests, the SIC interpreted as a public authority's ability to successfully engage in the buying and selling of goods and services—such as drugs in the case of the NHS, education in the case of a University, and ferry crossings in the case of McBride ferry company. On this basis the SIC argued that public authorities did have commercial interests; it was in the public interest for authorities to engage in trade. However, commercial interests did not extend to financial gain, and the SIC would not uphold their commercial interests simply because an authority sought to trade profitably—that is, when an authority faced competition from another organization that offered the same products and services for less money. This was hard on particular authorities that were unable to protect their commercial interests as other companies dug deep into their policies, procedures, accounts and bids with the aim of undercutting them. In the case of McBride ferries, tendering to run the Highland and Islands ferry crossings, and facing competition from organizations not covered by FOISA, this was a very real problem.

The SIC offered two examples of where different parties considered information either public or private. These decisions had become a matter for wider public debate. The first regarded the expense claims of key public and political figures. The public, and in particular, journalists and MSP's research assistants had been particularly keen for MSPs to routinely disclose their expenses, making the Scottish Parliament 'one of the most open' in the world. The SIC wrote:

> 'Expenses claims of employees are by their nature personal data as defined by DPA. While there may well be cases where I order the release of expenses claims, in one particular case I decided that release of travel expenses claims forms would cause unjustified stress to the people who were the subject of that information.'[17]

While the disclosure of personal data was exempt under FOI, this exemption was not always absolute: the SIC might decide for himself if the disclosure of personal information was in the public interest. The second example concerned the disclosure of the names of employees: a decision with which the SIC had had some difficulty, as had public authority FOI Officers as they decided whether the names of FOI applicants should be released in response to demands that requests made under FOI including the names of applicants should routinely be disclosed. The SIC argued:

> '…public authority employees are more likely to expect that information about them will be released than people in the private sector.
>
> For example, I ordered a local authority to release the name of one of their community wardens. However, this does not mean that information about the private sector will always be kept secret. In another case, an applicant wanted to know the names of people working for a private sector company who had been complained about to a trading standards service. I ordered the release of the names of the directors of the company who had been complained about, while agreeing that the names of the employees who had been complained about should not be released'[18]

It seemed that what constituted private and public information was under constant negotiation. A person (and information they held) might appear private in relation to the wider public, as the SIC ruled with regard to employees (as opposed to directors) of a private company whose names were in public authority trading standards records. But people might also appear combined and public, as was the case with the local authority employee, whose role made him a representative of the public authority. In other words, while differentiated (as a named warden) in relation to other members of the public, an individual

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[17] SIC's 2006 Annual Report.
[18] Ibid.

might also be considered as undifferentiated (a warden) amongst members of the same company (of wardens). People in this sense had the potential to appear private and public in different moments and when viewed by different people. When it came to persons in a public authority performing a public service, people's lack of individuality (eg one warden amongst many) seemed crucial. Here, specific differentiation might in some ways appear a sign of mishap or malpractice. Meanwhile, those of more senior rank and who occupied positions of authority over an organisation and others, were less able to retain the right to privacy. As providers of knowledge, this latter group's private thoughts were immediately visible through *and shared by others*. Knowledge that distinguished them from others, became knowledge that others held in common.

At a half-day course on the *Scottish Information Commissioner's Decisions -- What do they mean in practice?* in early 2007, the director of the Campaign for Freedom of Information discussed some of the SIC's more recent decisions regarding personal information. As the image, projected on the screen to his left, flicked from 'how to interpret FOI requests', to '**Personal Information**' written in large bold type, he exclaimed, '…this is not five minutes worth of stuff… I think most of us need a dose of caffeine before we tackle this!' After a brief break, plenty of coffee and a selection of biscuits which had been quietly laid out by caterers on a rectangular table at the back of the room, delegates got back into work, putting their thinking caps firmly back on.

Among the decisions that were discussed was the SIC's decision to disclose the names of staff at a public Ski and Outdoor Centre. The names, according to the SIC, were 'fair to disclose as… [they were] related to professional life… [and] some of the names were on [the] web'. However, staff employment dates, according to the SIC, were 'unfair to disclose… [considered] not purely professional, [contained] elements of private life, [and] staff not senior'. The public authority that held the information had later appealed to the Court of Session, and the SIC had been requested to review his decision.

A second example concerned a request for the hours worked and overtime claims for two named SDEA (Scottish Drug Enforcement Agency) officers responsible for the surveillance of those making the request. The SIC concluded that 'contractual hours [are] not normally personal [whereas] variable hours are. A reasonable person would not expect strangers to have access to detailed, systematic knowledge of their hours of overtime particularly given that this could reveal information about their individual income'. The surveillance 'log book [detailing employees' names and their hours was] produced during trial [in court]', the director of CFoI continued. However, the SIC was 'not persuaded that information revealed in open court is automatically considered to be in the public domain unless the information has been published and/or there had been contemporaneous reporting… in the media'.

This was an interesting conclusion to draw, that information revealed in open court could still be considered that which had *not* been publicly released. It was clear that the SIC sought to distinguish what information about employees could and could not be released, which he did so on the basis that while some information might unify them, such as contractual hours of employment, other information was

thought of as distinguishing them from each other, such as their overtime. In other words, information might constitute public or private information depending on the context in which it was considered: in relation to the wider public, employees, it seemed, sought to argue that their names in association with their jobs was private information. In relation to one another, however, information about an individual's job did not necessarily disclose them as individuals since much of this information (and perhaps even the job itself) was shared amongst colleagues. However, information that did individuate them was information concerning start dates and the hours that they worked on which they were able to individually decide. It was this information that was seen to differentiate them and thus consisted private information.

In this case, employees appeared as both public and private in different moments; they might think and act in ways that were homogenous, shared amongst them, and also in ways that distinguished them from each other. In other words, each individual employee was split down the middle—each had the capacity to appear either public or private, shift in form, such that a division *within* each was reflective of a division *between* employees as they appeared as public or private—as if 'person' was itself a form, sharing the aesthetics we are becoming familiar with.

It was clear from the SIC's decisions that what constituted private and public information was slowly being untangled. Although sometimes unhelpfully, delegates were told that the SIC would continue to work on a case-by-case basis. If an applicant or public authority was not satisfied with the SIC's decision, however, an applicant having appealed to him because they were dissatisfied with the way a public authority had handled their request, either or both might decide to take the case to the Court of Session, and as a last resort, to the House of Lords. The SIC would put forward a case on behalf of the applicant, and the authority would argue its own case. Two cases where the SIC's decision was appealed to the Court of Session are detailed below. It appears it was not only the SIC who sought to decide where the line between public and private might lie—he needed some help…

National Services Scotland of the Scottish Health Service vs. Donald

The Information Services Division ('ISD'), an arm of Nation Services Scotland ('NSS') of the National Health Service ('NHS'), formerly the Common Services Agency ('CSA'), was in the business of processing and analyzing information, or so-called health data. Stewart worked for ISD and, as he explained, handled mental health data. I had met Stewart at an FOI workshop that I arranged for FOI practitioners during 2006, the second year in which FOISA was in force. We agreed to meet some weeks later to discuss the issues he had raised in the workshop, and were of concern to him and to others in ISD. Two requests made to them and to which he had responded had been appealed to the SIC, of which one had been appealed to the Court of Session. Stewart commented on the two cases and recalled how practitioners and the public watched with great interest.

The first case concerned a request by a journalist for the surgical mortality rates of surgeons since 2000. The NSS was concerned that although mortality rates reflected a surgeon's performance at work,

disclosure had the potential to affect a surgeon's private life. When directly compared, without taking into account surgeons' different operating conditions, figures might be considered reflective of a surgeon's personal approach, motives and intentions. Figures might be interpreted, misinterpreted and speculated over by the public, a surgeon's friends and colleagues in a way that would impact a surgeon's private and professional life. It was for this reason that ISD argued that the information was personal and should be withheld. In the refusal notice (supplied to the applicant in response to his request) ISD had argued, according to the SIC:

> '…some of the third parties involved (the clinicians) object to the release of data of this kind requested by [the applicant] because the data does not take account of the risk characteristics of individual surgeons' patients. The CSA were therefore of the opinion that disclosure of such information is likely to be misleading rather than informative and would thus be unfairly detrimental to the clinicians' (Decision 066/2005)[19]

There were rumours that as a result of their own potential disclosure, surgeons would begin to refuse difficult cases that had the potential to raise their mortality figures. The SIC was also unsure whether disclosure would cause confusion and alarm amongst the general public, and would be of greater detriment than it was benefit, particularly if the mortality figures were used by journalists to create exciting news headlines such as Doctor Death, as anticipated by some. 'This one I did get sleepless nights over', the SIC recalled later the following year. The SIC eventually decided in favour of disclosure. He argued that the information constituted personal information but its disclosure would not breach any of the data protection principles. However, he took several key journalists to one side around the time that the data was due for release to ensure that they would each handle the data responsibly. Such responsibility was made theirs by the SIC's very personal efforts to contextualize that which was about to be disclosed. The journalists could, in this regard, not feign ignorance. Responsibility, it seemed, came with knowledge.

Requests also appeared to generate more requests: the surgical mortality rates case led one man, a lawyer in England, to request, as Stewart explained:

> '…all the e-mails to do with the surgical mortality [case]. He wants to find out how the organization responded, and what the thinking was and what was the process of debate. I had to send him around over one hundred e-mails…'.

Surprisingly, however, Stewart made no mention of any issues over the volume of information that he had to disclose or staff having concerns over the disclosure of e-mails to which their own names would be undoubtedly attached.

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[19] www.itspublicknowledge.info

The second case concerned a request for information relating to incidences of childhood leukaemia in a small area in the East of Scotland. The NSS withheld the data on the grounds that it would reveal the identity of individuals in the area, and argued 'the years for which data were available involved very small numbers and…. there were in consequence concerns that their release would give rise to a significant risk of indirect identification of living individuals'. The NSS was concerned that in conjunction with additional information, the public would be able to identify those in the area with leukaemia. The SIC ordered NSS (then the CSA) to release the information, 'in a perturbed (barnardised) form'[20]. On further refusing to issue the data apart from in aggregated form, incorporating figures from the whole of the region, for the years 1990 to 2001, the NHS appealed to the Court of Session. The Court found that:

> 'In the course of his reasoning the [SIC] had concluded that the true data at census ward level constituted personal data within the meaning of the Data Protection Act 1998, that they were, by virtue of section 38 of the FOISA (as read with the 1998 Act) exempt data and that the [NSS] was not obliged to give them to [the applicant]. However, in the course of the correspondence there had been reference to a process of perturbation known, after its author, as 'barnardisation'. That method, as envisaged generally by the CSA, involved the random modification of small numbers….
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> …It is, it appears, a standard statistical method, devised with a view to avoiding or minimising the risk of the identification of individuals in circumstances where the numbers are small but which can nonetheless provide useful information for planning and other purposes. The total number of diagnoses of leukaemia in [the region] of children in the age range 0-14 years in the period from 1990 to 2001 inclusive was 15, over the 47 census wards of that area…'[21]

Barndardisation

A technique developed by Professor George Barnard (1915 – 2002), a British statistician, barndardisation is a method for disclosure control for tables of counts that involves randomly adding or subtracting 1 from some cells in the table.

Barnardising the figures would make any symptoms and statistics harder to match up and persons themselves less identifiable in light of smaller numbers. The NSS indicated that it was reluctant to release

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[20] The idea came from the NHS who were developing the technique at the time, Stewart explained. However, the NHS argued that this was a draft version of a possible technique, which had not been tested. Previous versions when tested had not prevented the disclosure of identity, and as a result the NHS was hesitant to recommend the technique.
[21] CSA v SIC at http://www.scotcourts.gov.uk/opinions/2006CSIH58.html.

data where the number of incidence in any one 'cell'—data set—was less then five. It further stated that in cases where the population was relatively small and covered a small geographical area, people who knew a child had cancer could request information on all childhood cancer and could potentially learn that the child had leukaemia[22]. Obscuring the detail in the data would mean that the public might identify trends across the region without identifying specific individuals. As the figures for the total incidences of leukaemia were gradually divided by region, and then by area, in order to establish the figures for the small area that had been requested, it seemed there was a critical number at which persons with leukaemia in the data set would be themselves revealed as persons—by disclosing their individual physical and personal circumstances. Barnardising the figures would change the potential number of individuals with leukaemia in each sub-set, such that there was less chance that symptoms and people could be (as easily) linked, and at the same time, such symptoms would no longer appear singularly theirs. That is, it seemed it was vagueness in the data itself that ensured individuals could not be differentiated. Obscurity in the data leads to uncertainty in the information.

This brings us to the question of what, if any, is the difference between data and information? Stewart explained to me that the NSS had deliberately not released the leukaemia data even before running an analysis on it: it was clear the 'data set was far too small'. While still keeping back the raw data, the NHS gave a second applicant, a woman who had made the same request, an interpretation or analysis of the data, which revealed the trend across the region that both applicants apparently sought, which 'she was quite happy with', Stewart explained. On the question, posed above, of the difference between data and information he continued:

> 'Some people would say that there is… the way we hold [data] is in an electronic soup on our server, it's got a structure but it's in relational databases held electronically… And that's data. Now you can argue that you have to do some analysis on it to turn it into information… Now we've never done a particular analysis, never created information, do we have to do that in response to a request for data, for information? Now I spoke to [the SIC] about this… and he said you do…'

Data seemed only to have meaning in relation to other data. The database provided both a context and stable meaning. It was this meaning that NSS had to supply along with data in order for it to be meaningful (make the right kind of sense). It was as if data existed in an organizational framework to which new data had to be carefully inserted in order to have meaning within the same framework. There was, then, a spectrum of forms in which a response to an FOI request might come: in the form of data, or meaningful data (information) or meaningful and valuable data (knowledge). Each perhaps specified the degree and type of relation: data that was related to other data and had had 'some analysis' done on it

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22 Decision 021/2005.

elicited information, but information too had to be turned into knowledge and seemed only meaningful if associated or attached to particular persons. What appeared to differentiate data, information and knowledge, then, was varying degrees of personalization. Stewart remained confused, however, as to why, if contextual or analytical information should be supplied with data that was disclosed, contextualized information or analysis alone (which he was happy to provide) was not enough to satisfy the applicant and the SIC. After all, he argued, '[i]t's not a Freedom of Data Act… it's a Freedom of Information Act…'.

Earlier in the year I interviewed Donald who had asked for the leukaemia data. He was a researcher for the one of the Scottish political parties and worked in the Scottish Parliament. 'I think they're really pushing it to argue that to give us bare statistics would actually risk identification. I just don't think that's credible'. Donald explained what he had asked for and why he had asked for it:

> 'Apparently it was the most difficult thing [OSIC had] had to deal with… it took them five months [to get the decision out]… I sort of formally requested information from the [ISD] at the beginning of January, and they replied fairly quickly saying no we're not giving it to you. But we can do this. … I said no, I don't want that, I want you to give it to me, so I'm formally appealing to you.

> …the [SIC's] Office has instructed them to give me the information within forty two days which is around about now… [but] they said, well we haven't decided what we're going to do yet…

> We were trying to determine whether there are or are not leukaemia clusters along the Sandwell coast. Because if there are, we would try and link those to Sellafield or… So we're just trying to find out if there's anything or not

'So what kind of information do you think ought not to be released?', I asked, wondering if there were any absolute exemptions on disclosure.

> 'That's a good question… I suppose it's… the one we've got in at the moment [the leukaemia case], I suppose personal data, health things, that's got to be left out. …but there's a difference between statistical data and access to someone's personal medical files for instance. I think that's real, and that's what we've been arguing with them and the [NHS] don't agree… it's just a culture of release of information, I think they're over cautious'

According to Donald, then, an individual's medical records were personal information yet providing the public with perturbed statistics was a way of providing data in a seemingly less personal way. It seemed personal information might be depersonalized by making numbers ambiguous, symptoms and

statistics more difficult to match up and individuals one of several in a manner that persons themselves disappeared.

Apart from considering whether the data disclosed an individual's identity, whether information should be seen as public or private often depended on the context in which it was considered. Information that seemed to differentiate individuals one from another in relation to wider society, such as an employee's contracted hours of work, was information that people held in common in relation to work colleagues, and might be considered less revealing of their *personal* motives and interests. Perceiving individuals as combined by their role or their approach to their job, rather than divided, seemed a method through which persons were disguised. An interest that was otherwise specific to one or two persons became more general, such that these interests were no longer specifically *theirs* but were seen to belong to the group of which they were part. People thus appeared to operate not in their own personal capacity, but in the capacity of the organization. This shift in perception, it seems, enabled practitioners to decide over what was private and what was public, decisions they would otherwise have been unable to make.
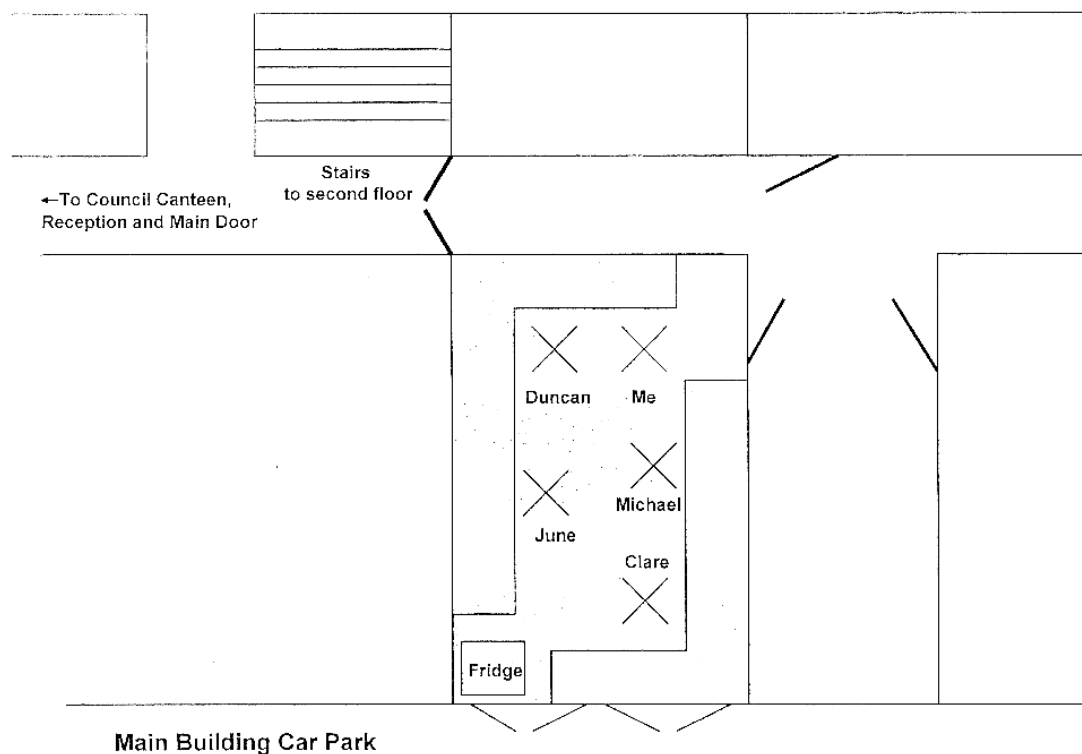
Duncan at Lochhead Council

Figure 2. Layout of part of Lochhead Council's main building (ground floor), including Duncan's office and seating arrangements

Duncan was the Information Compliance Officer for Lochhead Council. He worked in a small, unventilated, rectangular room on the ground floor of a large, old council building located near the centre of Lochhead, a small town in the south west of Scotland. His colleagues June, Clare and Michael sat beside and behind him, all four of them sharing the same high desk that ran around the edges of the cramped room (see figure 2). June was the council's Records Manager. She often stood in for Duncan when he was away from his desk or off work, and was young and lively. Clare and Michael were new graduates who helped Duncan and June in their roles as Information Compliance and Records Manager. It was their first paid full-time position and they seemed attentive and keen to learn all they could.

In the first two years that FOI was in force, Duncan could receive from between eight and twenty Freedom of Information requests a week. He would spend much of his time logging requests, chasing up enquiries and co-ordinating responses to requests for information that he and other colleagues had received, as well as talking to staff about compliance or technical issues. He was attentive to detail and left himself sticky yellow post-it notes in neat rows along the edge of his desk. At lunchtime he would buy soup from the small hatch along the corridor, served by an elderly lady who also cheerfully sold cold cans of fizzy drink and snacks. Duncan would eat this soup back at his desk, slowly dunking his sandwiches into the hot liquid before eating them while doing a crossword puzzle.

I assisted Duncan in his office one wintry March morning in 2006 as he made a note of new requests and checked the council's FOI log to see what requests were still outstanding. Duncan noticed that several services had yet to answer requests that he had forwarded to them some time ago. He made a few phone calls and, leaning back on his chair with the phone in hand, arranged to see those responsible for handling FOI requests that were still outstanding. As Duncan and I climbed the council's wide and heavy, stone staircase to speak to Pat, an FOI Officer on the second floor, Duncan explained, 'This one's to do with job descriptions. Pat's okay. She's pretty sound'.

Duncan knocked on the door of the Head of Customer Services to speak to Pat, his secretary and the FOI Officer for Customer Services. As Duncan entered the darkly furnished room, he began pacing about while Pat remained firmly seated behind her large, wooden desk. She quickly explained why she had not yet dealt with the FOI request that was imminently due:

> Pat: 'It's some guy in payroll that doesn't want his job description to go out… he thinks it'll identify him'
>
> Duncan: 'I don't see anything wrong with it… it's nothing to do with him. It's his job description. If he didn't do [the job], someone else would be. Tell him it's got to go out, and if anyone has anything to say about it, tell them to come to me'

When we were back in Duncan's office, Duncan elaborated on what he meant:

> 'We get requests here about jobs that people do, and my opinion is that information should be disclosed. Why shouldn't it be disclosed? My job doesn't identify me. I don't own the job… I'm only doing the job. If I or anyone else leaves the job, someone else would do the job. Your job description is not personal information'

Brought into this specific relation of deciding between public and private, it seemed that Duncan, in his role as Information Compliance Officer, has taken on the same role as the SIC. He had both the position and capacity to decide what constituted personal information.

Duncan, then, seemed to think that a job did not distinguish persons from others despite the fact that a job could also be said to say something about a person. Rather, someone's job description did not identify them since persons taking up the same position, he argued, would inevitably think, do and act in the same way. To check that he had made the right decision, Duncan consulted the SIC's website and read the Craigdale Council decision. The SIC had decided that in this case it was in the public interest to disclose 'the job descriptions of people higher up in an organization'. He had issued Craigdale Council with a Decision Notice, ordering the council to release the information. Triumphant, Duncan telephoned Pat to advise that she should release the information as soon as possible.

A Decision Notice

A decision notice is defined in the Act as 'notice in writing' of any decision made by the SIC on an applicant's appeal to him.

The same afternoon presented a second problem. Janice, the Head of Early Years, Play and Out of School Care, (whom I did not meet but heard much about), had received a request, forwarded to her by Duncan, which, Duncan explained, she did not answer. The request was for the number of registered sex offenders, and drug addicts with children, in the care of the council. Janice had argued that the council 'did not hold' this information and so had refused the request. She would write to the applicant in the next few days, she explained. But Duncan was adamant that this was information that the council did hold and made some enquiries. He consulted Fiona in Social Work who worked in a different service, but the same department as Janice. Fiona explained to Duncan that the council did in fact hold the information, but it seemed that Janice had 'not attempted to look for it'. That afternoon, Duncan and I walked along the narrow corridor of the council's main building and across the snow-clad car park to the more modern annex to have a detailed discussion with Fiona in her office on the top floor. Duncan and I climbed the many flights of stairs to the top of the annex, pushing through heavy double doors, and walked along vast corridors. As we did so, Duncan explained that 'some people do not like releasing

information because they don't like getting it wrong'—they might stand out as their own person rather than the person of the public authority.

We entered Fiona's office, which she shared with Anne her colleague, and Duncan discreetly closed the door behind us. He dragged two chairs up to Fiona's desk and invited me to take a seat. Anne continued to work as Duncan, Fiona and I sat and spoke about the case. First Duncan had to reassure Fiona that I was 'okay', that she could talk frankly in front of me. In light of Duncan's own approach to dissemination and the discussion that we were about to have, such discretion seemed out of place—as if Fiona's knowledge here, was personal only in light of my presence as someone from outside the organization, (the division between what was public and what was private momentarily appearing again to give us our own division). But this brief division between Fiona and me only appeared to reflect Janet's own sense of division from others. Fiona agreed with Duncan, 'there was no problem in releasing [the information]'. The information that had been requested could be found, she argued, although with some difficulty. She apologized: '[s]ome of my colleagues are, putting it lightly, narrow in their views'. A more balanced viewpoint, it seems, might be to consider information as something to disclose, reflective of a balanced person—someone who might appear in both public and private form, an individual's narrowness indicative of their being too private perhaps. As an end to their discussion, Duncan and Fiona agreed it was possible to bypass Janet and locate the information by going through different channels. The information would be held elsewhere, in a different form or in parts. Fiona would locate the information, instead of Janet, and distribute it as soon as possible.

Once we were back in his office, Duncan gave his opinion on why people were reluctant to comply with FOI. 'People only object to [FOI] because there's something wrong with what they've done, or they've got something to hide, or they've been administratively caught out by the Act'. In Duncan's eyes, it was clear that Janice had not wanted to provide the information because she did not want a decision that she had made to be scrutinized by the public. But I later heard from a different source that Janice had been 'concerned for the sex offenders, drug addicts and children' who were the subject of the request. She thought that releasing information about them would change the council's approach to the way these persons were managed in a manner that would harm the people concerned.

As well as untangling public from private information and dealing with coy decision-makers, this particular day Duncan had to tackle staff and other individuals who were dragging their heels over the release of potentially confidential information. Since January 2005 when FOISA came into force, it seemed authorities had taken to liberally stamping confidential on information they supplied to other authorities, in the belief that this would inhibit naïve council staff from releasing the information. The SIC drew a fine line between information that was reasonably confidential, such as communications between a social worker and a client, communications during legal proceedings, or a contract held between a private business and a client (that is information the disclosure of which would constitute an actionable breach of confidence), and information that council staff hesitated to give out because it said

something about themselves or the council. When on one occasion an FOI Officer tried to withhold information on the basis of confidentiality, Duncan made sure that the confidentiality exemption had been correctly applied. He looked at the SIC's website and the section 36 confidentiality briefing and applied the public interest test to determine whether, despite the confidential exemption, it was in the public interest for information to go out.

In the end, the decision as to whether information was public or private lay with the SIC. While public authority civil servants would do their best to make the right decision, he would be the final arbitrator concerning any decisions that they made. Civil servants would for this reason not only regularly check new decisions that the SIC had published on his website, but remain aware that if an applicant was not a happy with the response that they had issued, their decision would be appealed, on neutral terms, to the SIC.

Negotiating Relations

It appears in the cases above that whether information and an individual appears as public or private depends on to whom or what they are in relation. When in relation to others from whom they are differentiated, people appear as persons and the information that they originate as private. In the instances above, information about someone's occupation or health was often considered by those disclosing it to constitute personal information. Yet as they came into relation with others, knowledge that seemed to differentiate people was also knowledge that appeared shared. Information about what someone does for a job could well be information people held in common: because people conducted themselves in the same way as others in the same job would. Such information, in short, said little about an individual person. But put back in relation to the wider community, individuals who have knowledge and interests in common can appear once again individuated; that is, the knowledge that they share is also knowledge through which they are distinguished from others who do not share it.

So people are at once divided (differentiated) and combined (hold knowledge in common), their divided and combined form something that appears as they come into relation. This not only provides the sense that individuals are dependent on others for their own private or public form, but that such a change in form moment to moment produces a kind of merographic effect, that makes individuals and any information they produce difficult to capture and define.

Merographic

'It presupposes that one thing differs from another insofar as it belongs to or is part of something else […] The ability to constantly re-describe something from another viewpoint [inducing the form in which appears…] produces a displacement effect of a particular kind [as if nothing is ever definitively 'known']' (Strathern 73: 1992).

Yet even information that appears and remains personal is information that might in other cases be disclosed. Information such as expense claims and performance rates were released in the public interest. This was because information was thought to disclose a common approach to the spending of public money, an approach that in light of the fact that it is was more common also seemed justified, (publicly endorsed). While FOI maintains the distinction between information relating to a person's private and professional life, the conversion of personal information into that which is public seems pointed to the manner in which personal lives might be regarded as combined so as to appear public. Claims to privacy that a person might make appeared to diminish with hierarchy. While more senior members of an organization might look on the information that they held or originated as personal, as they disseminated and shared this same information with others in the organization, knowledge that distinguished them from others was also knowledge that united more junior members of staff. This seemed not only knowledge that staff to whom it is disseminated held in common but might be more than happy to disclose (given it said nothing about them personally). Important to note, then, was that *knowledge that was public, that is, held in common, was also knowledge that for others was personal*, and reflective of their motives, interests and endeavours. Thus what was private appeared to double up as, and permeate, what was otherwise public depending on the way in which these capacities were activated by relations. And as decisions over relations were made and, as a consequence, persons and things appeared in a particular form, the relations themselves fell into the background. What had been constructed would now seem given, as if discovered, as the method of construction fell away.

Decisions over public and private were amongst the most time-consuming and difficult to make. As information appeared private in one moment and public in the next, as persons who held or originated information and information itself came into relation with different entities, persons and things appeared a product of one relational context and then the next. There seemed, for those with an interest in such decisions, often no clear pattern to the way in which and reason why decisions over public and private were made. At a half-day workshop on the SIC's decisions, the director for the UK Campaign for FOI remarked that the SIC, for example, had both decided in favour of the disclosure of expense claims (on the basis that it is in the public interest for such information to scrutinized), but also against the disclosure of such information (on the basis that its release would cause undue stress to the subjects of the information). The SIC's decisions on matters of public and private (as well as other points of law) were regularly scrutinized by the CFoI and compared with those of the UK Information Commissioner. It was helpful for FOI practitioners, for example, if they could see some pattern in the decisions the SIC (and IC) made, which would indicate his thinking on what constitutes public and private information, providing guidance on how they might make decisions in the future. But the SIC was renowned for stating that cases were decided on a case-by-case basis, which indicated that there might not be any pattern at all. So while there appeared to be no pattern to the SIC's decisions, pattern itself depended on the way in which cases were scrutinized and themselves divided and combined. As one pattern emerged,

another might disappear as decisions were made over how the line between cases, like the line between information and between people, could be drawn.

The UK Information Commissioner (IC)

The IC is responsible for enforcing and promoting the UK FOI Act outwith Scotland and the DPA in the whole UK.

Indeed, while public and private might pivot on a single viewpoint, a particular approach seeming public and private in different moments, a single individual might also adopt different, sometimes contrasting, approaches to the same thing, whether this be an issue, case or information to hand. As people shifted their viewpoints, there seemed an accompanying shift in scale and increased complexity, producing the sense that that there was perhaps always more to know, always a new position or perspective to take up (Strathern 1992). People with different viewpoints on the same thing might at once appear to have combined *and* divided interests in their relations with others.

The fact that people appear at once combined *and* divided, and information is ordered and reordered, comes from the simple fact of life that something might also be considered from a new or different angle (Strathern 1992). Writing on English kinship in the twentieth century, Strathern states:

'Difference… becomes apparent from a simple fact of life: *it is a connection from another angle. That is, what looks as though it is connected to one fact can also be connected to another…* [such that] one thing differs from another insofar as it belongs to or is part of something else. I call this kind of connection, link or relationship *merographic*' (1992: 73, original emphasis)

By merographic, Strathern is not referring to the study of part-whole relations to which Thornton (1988) refers, but to the:

'English view that anything may be a part of something else… In this view, nothing is in fact ever simply part of a whole because another view, another perspective or domain, may redescribe it as part of something else. When that something else is perceived as a context or underlying assumption, the very grounds on which things appear become another perspective on them.'

Strathern uses perspective here in a very specific sense, to describe the manner in which we might consider ourselves, through our relations with others, as taking up different positions on things, perhaps as a consequence of our membership of a particular group or organization. There is a sense, here, that the world is broken into fragments, giving rise to the contemporary division between individual and society. But as new capacities elicited by new relations emerge (relations here providing 'perspective'), these

provide grounds for a new perspective on something else, which is inevitably part of something else from which to consider the same thing; it is a cyclical process that guarantees new angles from which to consider something and is replicated on different scales. There are only seemingly endless permutations in form, providing the sense that connections are always partial, that there is no whole. Indeed perhaps instead of fragments and conceiving of the world in terms of parts and wholes, it should perhaps be considered fractal (a curve or geometric figure, each part of which has the same statistical character as the whole[23]) suggests Strathern.

While people might have different viewpoints on the same thing, only one viewpoint seemed *theirs*, the other belonging to the wider group or society. The more one knew, the more there seemed to know about a particular thing, knowledge itself seeming to come from and belong to different levels of organization and an individual's membership of different groups. Thus knowledge itself no longer seemed personal. While such detachment was an effect of purification or separation of networks from the forms they elicit (see Latour 1992), it was a technique that came in useful when persons sought to disguise themselves (disappear). In the case of the leukaemia data, the SIC argued that such data should be released on the grounds that barnardisation would sufficiently obscure the numbers in the data set. In this way, the identity of individuals would be disguised as connections became more difficult to establish; and there would be sufficient ambiguity that persons might be considered one of an unknown number. Information, in this sense, would seem less personal by dint of controlling its form.

The potential for different perspectives on the same thing presents the dilemma that things might be described and at the same time categorized differently. Certain attempts to analyse and find pattern in the SIC's decisions were made on the basis that decisions concerning the division between private and public might be themselves divided and combined to create some sense of pattern. Since his decisions might be divided and combined along different and contrasting lines, as soon as two cases appeared the same and a pattern emerged, pattern was also lost. This only reflected the manner in which individuals were themselves divided and combined along different lines, considered public and private in their relations with others. As Wagner (1977) writes with regard to systems of categorization in the life sciences and social sciences, things both appear to resist and incite the manner in which they are arranged. As soon as something is one thing, there is always the potential for it to be something else. Wagner states:

> '…the more discretely and specifically we define and bound the units of our study, the more provocative, necessary, and difficult it becomes to account for the relationships among those units; conversely, the more effectively we are able to analyze and sum up the relationships among a set of units, the more provocative, necessary, and difficult it becomes to define the units' (Wagner 1977: 386)

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[23] Compact Oxford Dictionary online

It seems there are always new possibilities and other links to be made; different ways of categorizing and organizing species (in the life sciences) and persons (in the social sciences) in a manner that can only leave scientists in pursuit of order, in a dilemma. But it is a dilemma that too seems resolved if categories, people and species themselves are seen as belonging either to the province of culture or as innate. '…it is this negotiation, taking one or another of the semiotic modalities as the province of one's deliberate action and responsibility, and relegating the other to the realm of the given, that provides the potentialities and limitations of any particular scientific task', Wagner continues. It is a division that is otherwise often referred to as 'science's relation' (Strathern 2005), that is, a division in knowledge and between persons where knowledge appears at once given (discovered) and constructed (invented). It seems it is only by subdividing knowledge in this way that science might overcome the paradox that is categorization. And yet it is a relation that will eventually require unpacking.

The manner in which things are (eventually) categorized and the meaning of or approach to a particular thing, seems to depend on the relationship that is established between relations themselves. Knowledge, viewpoints, approaches might be organized along different lines, the relation between them producing a scale or order. Scale in this light refers to the way in which approaches and perspectives are organized so as to produce a particular meaning or system of categorization.

It is the relation between relations that appears crucial in establishing the meaning of things, which perspective or approach to prioritize above others, and how to categorize and re-categorize decisions. It seems in establishing such a scale, and the relationship between outlooks and approaches, (as revealed through the information that people hold or produce), that the context of a particular case will emerge and information and persons appear public or private. FOI practitioners, who on a daily basis had to make decisions over what constituted public and private information, found themselves making decisions over the order of knowledge. It seemed it was decisions over what constituted knowledge that the SIC took into account in concluding whether information was public or private. What appeared to govern these decisions were the interests and value perceived in a particular relation. It was people's divided interests in a particular social relation that invoked their separation and combination, their particularly different viewpoints, and the particular meaning of information and form of a thing.

Conclusion

I have explored the manner in which persons and information appear both public and private in relation, and the fact that decisions over the relationship between relations appears to set the context of a particular case. The relationship between public and private was one that was under constant negotiation. A single viewpoint appeared both public and private as persons appeared in one moment divided from, and in another combined with, others. A momentary shift in context or meaning made what otherwise appeared public, private, and vice-versa. While public and private might pivot on a single viewpoint, a division between persons along a private public axis seemed only to reflect a division within persons along this

same axis. Persons might appear both public *and* private in different moments. While a single viewpoint – a person's public and private form -- was in flux, people might also appear simultaneously public and private due to a division within persons that reflected a division between them. Despite being under constant negotiation, the relationship between public and private was also one that was often looked on by practitioners and members of the public as fixed, that is, something to be uncovered. On this analysis, public knowledge was knowledge to which individuals had a right: and they had that right because public knowledge depicted what was commonly known, or true. There was a sense of ownership on two fronts: knowledge that was public was to be commonly held and at the same time belonged to no one, while knowledge that was private only belonged to the individual and might be individually and discretely known. Insofar as knowledge was separated from persons, it was also something that could be commonly owned and thus become something that in turn separated people, one from the other.

3
Culture Change

Introduction

The focus of this chapter is the 'culture change' that FOISA is designed to achieve in Scotland. Culture change in Scotland involves a change from a public sector culture of information retention, to one of openness and transparency. It was a New Labour incentive to bring about change across the public sector, to make public authorities and various levels of government appear, if not become, transparent and open in light of declining trust in government, and in particular, in a New Labour government. In Scotland, campaigners and decision-makers such as the Campaign for Freedom of Information in Scotland and the Scottish Information Commissioner, considered that public authorities should not need additional resources—monetary or otherwise—to implement, and comply with, FOISA. Public authorities should be readily *able* to provide information to those who want to know, have methods of organizing this information, and be able to quickly locate and retrieve it without any major organizational changes. It was perhaps for this reason that FOI in Scotland, enacted two years behind the UK FOI Act, came into force at the same time as the UK FOI Act, giving non-Scottish UK public authorities five years to prepare, and Scottish public authorities only three.

This chapter follows on from the previous one, and explores what culture change entailed in theory and in practice for practitioners handling and responding to FOI requests, for end-users devising and submitting requests, and for policy and decision-makers implementing FOI.

FOI Officers approached the enactment of FOISA with some anticipation. Many had been involved in establishing a framework for its implementation and enforcement within their authorities since well before the Act came into force in 2005. For this reason, they looked forward, with some anxiety, to the hour that FOISA came in—to see whether their hard work had paid off, whether the systems they devised to track and process requests would hold up, and how employees would respond to the new legislation—would they recognize an FOI request when they saw one and readily provide information?

Social relations in which practitioners' were enmeshed and on which their knowledge depended, were continually made visible at FOISA meetings and conferences and as practitioners conversed and liaised with colleagues. Yet, as this knowledge was shared *between* groups, between a practitioner and an end-user, for example, in the form of an e-mail or a letter, these relational connections appeared truncated and lost. 'Hot' knowledge was received as 'cold' information (Strathern 2004).

This chapter therefore focuses on the way in which the relations that were the focus of chapter two, that inform what people come to know, elicit the form of persons and things as public or private or otherwise, and turn data into information, and information into knowledge, are moment-to-moment,

made present, or absent by those originating, handling and exchanging knowledge. As practitioners, policy-makers or end-users present themselves as 'anyone', no different from anyone else, one of many rather than alone, undifferentiated from others in what they think and how they act, so the differences between them drop away and information passes freely—detached from the networks from which it was originated. In the examples that follow, knowledge alternates between appearing in two forms: something that travels between people in a relationship (knowledge), or something that travels independently of those who transfer and create it, in neat units (information).

In light of this, culture change had three key forms in the cases below: the first concerns practitioners' replication of each others' form through common or shared knowledge; the second concerns the replication of a form of a relationship, the division between citizens and government becomes replicated within the authority; and the third concerns the manner in which FOI officers within each part of the authority made social links absent from the knowledge they disclosed.

Looking at the first of these, public authority employees, both practitioners *and* their colleagues were often aware of the manner in which their own particular interests, personality, and relationships might be disclosed with the information that they provided. As a result, they often avoided—or were certainly reluctant to—disclose information. This meant that FOI practitioners had a hard job in persuading colleagues (and sometimes themselves) to release information as well as handle FOI requests more generally. As gaps emerged within the authority, between public authority employees, 'culture change' (from secrecy to openness) invoked the migration and replication of a division (between the culture of secrecy and that of openness) rather that its resolution. What was previously a division between the public and the public authority became one between different persons within the authority.

As to the second, decision-makers and protagonists of FOISA preferred FOI to be a 'devolved' activity. They saw the responsibility of dealing with FOI requests not as that of one department or one person but as that of *every member of staff* together with dedicated members of staff positioned throughout the organization. Practitioners were encouraged to take on new ways of working and, in accordance with advice from the SIC that was available at FOISA events and disseminated through colleagues, to perceive themselves and what they did differently. It was necessary for practitioners to replicate each others' and, more particularly, the SIC's approach, in order to comply with the new legislation. Culture change, here, concerned the propagation of a particular form through shared knowledge.

Turning to the third, moment-to-moment, practitioners either made absent or present the social relations that informed what they knew and how they acted. While the concealment of the social relations on which knowledge depends made knowledge appear *in the form of* information and persons *in the form of* independent, discrete things, their revelation made knowledge appear in the form of social knowledge and people in the form of persons. The neat switch between these two modes—persons or things, knowledge or information—and the way in which people in their relations with others put this change to use, is the focus of this chapter. In this case, culture change lay in the manner in which, in highlighting their own

lack of differentiation, people made themselves appear as undifferentiated things and turned knowledge into 'information'.

I draw on official rhetoric, including Ministers' speeches, the consultation document that set FOI legislation in motion in Scotland (An Open Scotland), and the words of the Scottish Information Commissioner and his staff to describe the change that is expected to take place, and what culture change is expected to achieve. In conjunction with this, I examine people's responses to this change: in particular, those of practitioners handling and responding to requests for information under FOISA. I draw on four case-studies: three concerning practitioners as they handle and respond to requests for information and deal with colleagues, who are often reluctant to disclose information, and the other concerning the conferences and meetings practitioners attend about FOISA and culture change, at which they share and receive knowledge on the Act and the change it will initiate.

Culture Change: The Official Story

Culture change is at the heart of Freedom of Information legislation in Scotland as well as, it seems, in other jurisdictions with access to information laws. Culture change concerns a change of public sector attitude towards information dissemination, a shift from a culture of secrecy to one of increased openness. It was a strong message carried by both Ministers and decision-makers north and south of the border, in light of the enactment of the UK and Scotland FOI Acts that the public sector must operate more openly. The policy was introduced after years of campaigning by groups such as the UK Campaign for Freedom of Information against what was perceived as unnecessary secrecy. A Freedom of Information Bill was finally offered in 1997 in New Labour's election manifesto, and after their election, took the form of the UK white paper Your Right to Know, and in Scotland the 1999 consultation paper An Open Scotland. A Freedom of Information Bill for Scotland was a promise that Jim Wallace MSP, later Scotland's Deputy First Minister, had made on his election as MSP for Orkney and Shetland and it was one that he appeared keen to keep: 'When I first stood for the Westminster Parliament in Orkney & Shetland in 1983, and was asked what private member's bill I'd like to bring in, if successful in the backbench ballot, I committed myself to an FOI Bill', he said in his speech at a FOISA conference in 2006. He continued:

> 'The need to overturn a culture of secrecy was a pressing one. Here was a country, or more specifically, a public service which was still dominated by the 1911 Official Secrets Act – a piece of legislation introduced to combat a German spy fear in the years before World War I. But its ethos – everything being secret except that which was expressly allowed not to be – pervaded government.

I recall citing as examples, the offence committed by revealing the whereabouts of the Post Office Tower in London, or by the Head Gardener in the Royal Botanic Gardens disclosing, without authorization, the order in which the plants were watered.

It wasn't just a change of legislation, which was needed; it was a change of culture'.[24]

The default position of information retention, it seemed, was so entrenched that legislation alone was not going to change culture but legislation must be accompanied by a change of attitude across the public sector. Culture change appeared both a precondition and an outcome. In A Partnership for Scotland, which set out the key principles for the so-called Lib-Lab partnership[25] (an alliance formed by the Labour and Liberal Democrat parties in Scotland) published shortly after the 1999 elections to the Scottish Parliament, Scottish Ministers made clear their commitment 'to the early introduction of an effective Freedom of Information regime' and 'a culture of openness within the public sector' considered 'an essential foundation for the successful implementation of [FOI][26]. It was argued that culture change would lead to more efficient and effective governance, as public scrutiny ensured better records management and that the right decisions were being made at the right cost.

FOI was foregrounded against decades of official secrecy in Britain. The 1911 Official Secrets Act (introduced in 1889 and amended in 1911, 1920, 1939 and 1989) was a measure enacted in the interests of national security from the viewpoint of being on a war footing. It placed an emphasis on the *retention* of information: and, as the quote above indicates, its scope was extended over time to include, not just sensitive information, but any information that a civil servant or government contractor might come across in the course of their work for the government. The OSA continued to be staple legislation throughout most of the twentieth century on which Ministers, public officials and decision-makers relied. In light of slow moves in other jurisdictions around the world towards openness, considered by their own citizens and other nations as a sign of democracy and a transparent and accountable government, Britain's lack of access to information legislation in the late twentieth century seemed backward. Or perhaps a demonstration of an implicit assumption that government and its employees could be trusted to 'do the right thing': an assumption that the public, and many civil servants, felt was being increasingly abused.

Freedom of Information legislation was aimed at reversing this long-standing emphasis on the retention of information, and provide people with an automatic right of access—unless of course information was exempt, considered for example, personal, confidential, or something that might prejudice the conduct of public affairs[27]. An authority 'if in doubt' was to 'give it out' as the CFoI in

[24]http://www.jimwallace.org.uk
[25] http://news.bbc.co.uk/1/low/special_report/1999/06/99/scottish_parliament_opening/379340.stm
[26] www.scotland.gov.uk/library2/doc02/opsc-01.html
[27] Exemptions on disclosure such as these, however, were often subject to the public interest test, and a decision over disclosure or retention something to be decided on by a practitioner or the SIC himself.

Scotland famously stated. The increasingly apparent decline in public trust towards government provided New Labour with an incentive to introduce an FOI Bill, in addition to the clear call for change on the part of groups such as the UK CFoI and the wider public.

To obtain and share information, then, was a way of participating in politics, devolving politics to citizens, which in some ways alleviated Members of Parliament from having to make decisions. FOI embodied a devolved structure of governance, where civil servants' relation to Government invoked their decision-making capacities, and in their relations with civil servants, citizens had capacities to challenge and amend these decisions. Government had, in a sense, been taken out of the equation.

However, advocacy was also coupled with skepticism: there are those who continue to doubt that organizations will ever start liberally disclosing information that they prefer to retain. Drawing on the experience of other jurisdictions with FOI regimes, in particular Canada and the United States, Roberts (2006) states that organizations will always resist disclosure, '[e]xperience has shown that the governing institutions in Westminster systems are particularly resilient, and capable of rejecting alien transplantations such as FOI laws, or of developing new routines designed to minimize the disruptive effect of these new laws' (2006: 108). While there is small chance that there will be a change in culture or increased trust, Roberts's outlook is balanced: some information will be released, he argues, and citizens and non-governmental groups will undoubtedly find FOI a useful tool for extracting information about government and decision-making.

Prejudice the Conduct of Public Affairs Exemption

Information is likely to be retained if it is considered it would be likely to prejudice *substantially* the maintenance of the convention of the collective responsibility of the Scottish Ministers, would or would be likely to inhibit substantially the free and frank provision of advice, or free and frank exchange of views for the purposes of deliberation. Or if it was likely to prejudice substantially the effective conduct of public affairs. The use of the word *substantial* here, over using prejudice alone distinguishes FOISA from the UK FOI Act.

Agents of Change

The shift in emphasis from retention to disclosure and the responsibility to see the change through fell on public authority FOI Officers and practitioners responsible for handing FOI requests on behalf of their organization. Complaints officers, personal assistants, secretaries, records managers, archivists, and others who had a good knowledge of their authority juggled their day-jobs with receiving and responding to FOI requests. It appeared a testing role, and one that required individuals to not only have determination (in their dealings with resistant colleagues and testing applicants), but to also be friendly, sociable and think laterally – where else might information be kept or who might hold it? FOISA in effect required public authority employees to re-learn what and how they knew.

FOI Officers were individuals often already with a public facing role in the authority, and dealing with FOI was something for which they also became responsible. Upbeat spirits, sociability, patience, good knowledge of the organization and working relationships with colleagues appeared part of the job description. Practitioners had to draw on their relations with others and ask favours to get information retrieved and supplied on time, and also remain in regular contact with colleagues as well as applicants by telephone and e-mail. Discussing requests over coffee with a colleague was incorporated into an Officer's daily routine: FOI, it seemed, was a sociable business. While often the ones in the firing line when a deadline was not met or a request mislaid, it was FOI Officers—agents of culture change—who rarely received praise for relentlessly encouraging colleagues to disclose information and rigorously promoting FOI within their authority. Promoting as well as enacting FOI seemed part of their job: there was the expectation (amongst decision-makers) that much information an authority held was and should be free.

Thus culture change was in the hands of individual FOI Officers, such as Colin and Samantha, principle FOI Officers for NHS Glendale, a large public authority in the East of Scotland. And Duncan, whom we have met before, at Lochhead. Many of these people, already in a public facing role and thus seeing the benefits (for the authority and the public) of sharing information with members of the public with whom they already liaised, were advocates of FOISA; they saw its practical uses—the fact that citizens would be more aware of how their organization operated and the demands they often placed on it and its capacity to deliver on these (or not). Openness also served to extend a network of relations: between the authority and the outside world and within the authority—between citizens and civil servants, and high-ranking officials or public authority directors in whom new relations invoked new capacities. But practitioners were also aware of the problems and issues that FOISA raised. They sometimes considered themselves caught up in a media cycle, and as receiving requests for information from the media that would only generate new requests (from journalists) off the back of a new media story.

FOI Officers acted as a kind of pivot, a fulcrum that elicited new social knowledge as they liaised between applicants, decision-makers and civil servants. They drew on their network of relations to locate and disclose information such that recipients of it were at times wholly reliant on an FOI Officer's ability to persuade colleagues to share what they held. Subjects of the legislation—civil servants themselves— became enthusiastic advocates of it, as if the division between the law and public authorities was realized as 'the law and public authorities' versus public authority colleagues: the 'law' took the form of a 'subject' to persuade a 'culture'—civil servant colleagues—to change.

Rachel and Spin

Indeed, FOI Officers often had to manage the needs of their colleagues many of whom were more reluctant to give information out. Rachel, NHS Glendale Press and Communications Officer, and one of Colin and Samantha's colleagues mentioned below, was concerned with managing spin. It was important to Rachel that she was one step ahead of journalists who might reinterpret information for their own

purposes and in the process potentially damage the reputation of NHS Glendale, leading to loss of public trust. Of course, too much spin risked the same effect. Rachel carefully advised Samantha and Colin what to give out and when. She might, for example, request that they disclose only paragraphs relevant to a particular enquiry rather than a whole document, or issue contextualising paragraphs along with information so that those receiving it might not misconstrue its meaning.

Journalistic spin and information spun by others who attempted to keep ahead of the game, appeared only to reflect if not replicate the spin-doctoring for which the New Labour government had became notorious during the late 1990s and early 2000s. New Labour spin constituted the careful presentation of ideas in a manner that, some argued, substituted for solid Labour policy. Once a story had been spun, carefully bolstered and seamlessly replicated, it appeared it had to run its course. Cracks and inconsistency had the potential to point to conspiracy and deceit not only due to apparent contradiction, but as new knowledge arose people might also presume what was known had always been known and had simply been concealed. At the same time, government spin-doctoring appeared counteracted by media spin, from which public authorities such as NHS Glendale sought reprieve in the form of spin management, that is, the reduction of spin through the use of (for example) press releases, itself spin of a kind.

Spin was counteracted by spin: considering something from a new or different angle engendered in others the capacity to do the same. Given this was the case, it seemed in the end difficult to tell who revealed or concealed the truth. Spin lead to correction and amendment of spin, in the form of spin, meaning that while information was replaced with information, people were also trying to read into this information the relations and persons that underpinned it. The distinction between information and knowledge, here, was blurred.

It seemed, then that an existing culture of releasing information pre-dated FOI, one of 'spin', and 'spin management', which took a very different approach. FOI implementation created a clash between these cultures, suggesting that the culture change FOI brought about also lay in *this* change.

It was FOI Officers with whom I spent much of my time during fieldwork. In the following case studies, I highlight people's responses to the legislation. I came to know Colin through his colleague Samantha, to whom I was introduced by an FOI Officer at Glendale council. That is, located in one field context, I came to know about (and later to meet) informants in another. Colin, as with other FOI Officers, appeared overworked and overstretched—but despite this, made time to communicate with applicants and respond to their requests as well as talk with me. I worked alongside Colin for just over three months, helping him collate and make available responses to requests on topical issues such as MRSA, NHS waiting lists and car parking fines. I shall also discuss the formal and informal FOI meetings, larger conferences and sector and cross-sector events that were a method through which the message of culture change was disseminated. It seemed the message of information dissemination was itself disseminated

throughout the FOI community in a way that made it both a message and a model. I also revisit Duncan, at Lochhead, and Morag, records manager for the University of Glendale who deftly encouraged people within their authorities to disclose information. Duncan and Morag attended and spoke at larger FOI conferences and sector meetings. It is Colin and NHS Glendale to which I first turn.

Persons in the Form of Persons

Colin, principle FOI Officer for NHS Glendale

Colin, the principle FOI Officer for NHS Glendale, and his boss Samantha worked for NHS Glendale Health Board, which was within walking distance from the busy town centre. Colin had worked for the Health Board for some time, but Samantha had only recently been recruited to assist him with FOI. While Colin had changed jobs, he continued to sit with his former colleagues with whom he got on well in the Facilities Department (see figure 3).
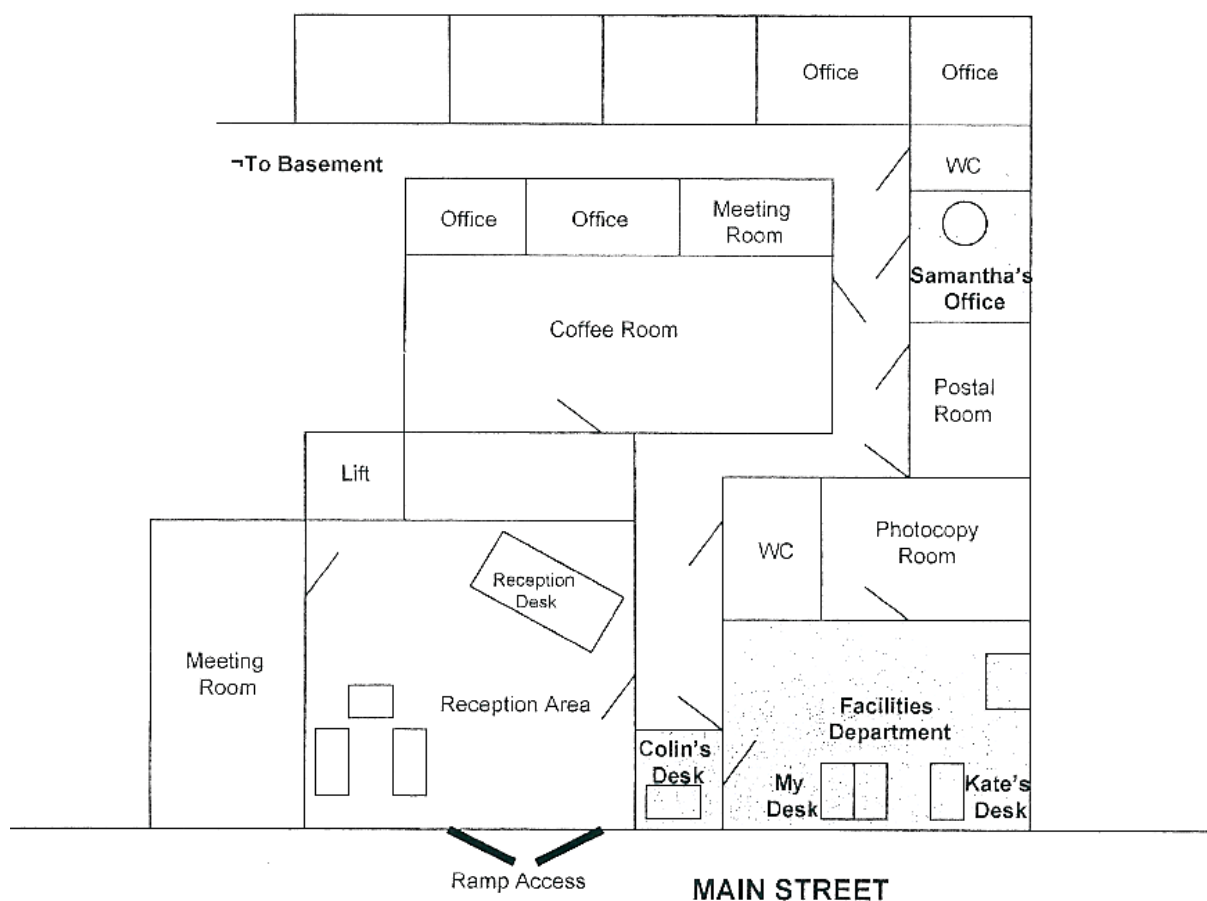
Figure 3. Layout of the ground floor of NHS Glendale Health Board, including Samantha's office, the Facilities Department and seating arrangements

Colin was young and enthusiastic, and was on familiar terms with many of his work colleagues as well as many applicants. He was a keen snowboarder, and when I initially began working for Samantha and Colin, he was away snowboarding with his girlfriend of ten years. Colin was originally from the North of Scotland and had moved to Glendale to be with his girlfriend when she moved to Glendale to study medicine.

In the first year that FOISA was in force, Colin received up to eight FOI requests a week which, although not an unusually high number, meant that Colin had plenty of work to do locating and providing the information that had been requested. He dealt with these according to FOISA, the FOISA Codes of Practice and guidance from the SIC and the Scottish Government FOI Unit. As the person responsible for handling FOI requests on behalf of his authority, Colin had twenty days in which to collect and put, as another FOI Officer explained, different 'bits of information' together and compile a response to an FOI request. He also had a duty to advise and assist an applicant with their request so that they find the information they require. However, Colin did not always find his own colleagues co-operative when it came to assisting him with FOI requests. They often did not respond to his requests for information, and he was acutely aware of the danger that they might never respond. He explained:

'There are times when you have to ask people again and again [for information], and we're still not sure we've got [it] all. [If it's not all there] no one else is going to get it…'

Although dependent on colleagues—as one civil servant on a chain of others—it was still Colin's responsibility alone under the Act to locate and retrieve information that had been requested. Even, Derek, NHS Glendale's Chief Executive, Colin explained, was occasionally reluctant to disclose information. It seemed this was because Derek was aware of how NHS Glendale's response might be considered incomplete or inadequate by those receiving it. In one case, to comply with a request and to ease his own concerns, Derek had asked Colin if there was more information that he could send out. All responses went out in Derek's name, and if a response was neither considered adequate nor provided enough information, Derek would be considered personally to be in the wrong, or at least reveal his own difference from others. Colin continued, offering an explanation for Derek's anxiety:

'We always like to give [the applicant] something, even if we don't hold the information… I know we don't have to, but it's much better for us if we *look* as if we're being helpful. Otherwise, the next thing you know, [the request] hits the Commissioner's desk'.

For Colin and his colleagues, it was important not to be seen as providing no information at all: this might imply an authority was withholding information. It was as if the authority must at least hold *some* relevant information. Something was better than nothing, even if irrelevant since the *act* of disclosure

was seen as being as important as the content of the information provided. Openness was something that practitioners considered the need to continually perform. It became a marker of the fact that persons and their authorities were readily disclosing information, with the alternative problem that if individuals were to stop performing disclosure in front of others that this implied that they were not actively doing it. This left individuals and authorities concerned that they might at any one point be considered by others as not being open; a turned back was enough for suspicions to form and eyebrows to raise.

But in providing information, an authority and those working on its behalf risked disclosing themselves as differentiated and as standing out, much to their embarrassment (after all, an applicant was not required to say *why* they wanted the information). This differentiation might not only suggest that they were in the wrong, but meant that they themselves were exposed as individually different, making their own personal interests, concerns, capacity, and social relations visible to others.

Despite Derek's concerns, Colin was acutely aware of the need to respond to an applicant within twenty days (as stated in the legislation). They might otherwise consider his lack of response 'a mute and deemed refusal' and ask the authority to review its decision. But sending a prompt response was more than simply an attempt by Colin to comply with the Act. It was important to Colin that it appeared to the applicant as if 'anybody' within the authority would be in a position to provide it. A delayed response seemed to suggest that Colin had made some kind of personal effort to locate, retrieve and provide information, which of course he had. His own very personal efforts to secure and retrieve information from colleagues, and his reliance on his particular network of relationships meant that information was not simply information, but took the form of social knowledge informed by these very particular relationships. If provided on this basis, the information requested would also carry person-ality, that is, some part of Colin himself. It seemed necessary to make these relations absent, which Colin did through the speed of his response.

> *A Mute and Deemed Refusal*
>
> This is a term used by the SIC to describe when an authority (deliberately or otherwise) does not respond to a request for information within the twenty day deadline. Their silence (muteness) is taken to indicate they refuse the request.

It was Colin's job and *his* responsibility to provide information in a manner that would not expose either his authority or colleagues. Yet the full, adequate and, hence, *slower* response that people such as Colin's boss Derek preferred, in order for him personally not to stand out, seemed to be in conflict with the rapid response that Colin preferred, which itself was also intended to make absent the social relations (and hard work) that informed it.

It seemed those working for public authorities, concerned about appearing individually different, considered only what was at stake for them in disclosure. Given this, culture change was neither straight-forward, nor easy. While in principle it addressed the division between citizens and government, resolving this division only led to a division emerging elsewhere—between public authority employees themselves. As the 'devolved' practices of the legislation placed Colin in a position analogous with the SIC, Colin found himself taking sides with the Act. The form of the relationship between the public and public authorities was thus reiterated within the authority itself.

It soon became apparent that a division between citizens and civil servants might rapidly become one that emerged between Colin and his colleagues as he fulfilled his obligations under the Act. The Act, here, seemed being put to work *beyond its own realm*, between civil servants themselves rather than between civil servants and citizens. As Colin went about persuading colleagues to release information, culture change lay in the migration of the secrecy divide from being between public organizations and the public they served to being within the organizations themselves.

Implementing and enforcing FOISA, here, entailed Colin managing his relations with others, and controlling whether or not those relations were apparent. It was through making social relations that were crucial to the information that was gathered and disclosed, invisible to those receiving this information, that knowledge took the form of information and Colin the form of an independent entity, or thing, whose actions were not informed by his relations with other people. This seemed crucial to the effective operation of FOISA and 'compliance' that required persons not to act in their own capacity, but in the capacity of the organization—or 'decision-maker'. Yet social relations, as the passage below shows, were integral to FOI.

Among the colleagues with whom Colin regularly liaised to gather information and provide an applicant with a response was Margaret, an FOI Officer working for one of the hospitals in the West Glendale Hospitals Division, some thirty minutes away from the Health Board by train. Colin and Margaret often spoke on the telephone and corresponded by e-mail. As part of my work with the Health

Board, and offering a spare pair of hands, I was asked if I would visit Margaret and help her prepare for an internal FOI Audit that would take place in the following weeks. It was nearing the end of the first year that FOI was in force, and the authority was reviewing how FOISA had been implemented and the manner in which FOI requests were managed and recorded.

Margaret was a well-dressed, middle aged woman with two sons in their twenties who, she said, she continued working to support. Her husband was a successful builder, and Margaret drove a black BMW to and from work. Margaret had worked for the authority for over ten years, in the same office with many of the same people. She had been a Personal Assistant to one of the Senior Managers before he relocated to a larger hospital and she now worked as a Complaints Officer, and had recently been given responsibility for FOI. She regularly met with friends and colleagues in her own building to talk over her weekends, personal dilemmas and upcoming events such as her father-in-law's recent visit to the hospital. She also discussed complaints and FOI requests with colleagues. She might discuss how to interpret a request, what information the hospital held, and who held information and might even bring a request up in conversation with colleagues over lunch or morning coffee, people with whom she was good friends and would spend a weekend away once a year.

On one occasion, Margaret received a forwarded FOI request from Colin as an e-mail that had been sent to NHS Glendale by an MSP's assistant on behalf of a well-known MSP. The applicant had requested copies of all e-mails that the authority held to and from a particular group of '.gov.uk' e-mail addresses. It seemed that the applicant, working for the opposing party, wanted background information on the government's decision to change the way in which the NHS in Scotland was organized, one that had been controversial. Margaret and her colleagues speculated that the MSP was going to use the information to present a counterargument to the changes. On collecting, to her knowledge and that of her colleagues, all the information that the applicant had requested, Margaret passed it as an e-mail to Colin for him to provide the applicant with the information along with a written explanation.

Although Margaret forwarded the information that she had collected to Colin in the cold form of an e-mail attachment, the information that Colin and the applicant received was as if far from cold. It was the consequence of hot and detailed social exchanges over coffee and lunch and by telephone. Attached to information was knowledge born out of regular exchanges between colleagues, something considered neither by Colin nor the applicant as they received information as cold fact. No relations between information and persons were apparent.

Knowledge and persons, in the above case-study of NHS Glendale, appeared in two forms: in one moment as knowledge and as persons dependent on the network of relations integral to FOI, and another as entities that operated independently of these relations. The form of knowledge and people here depended on the manner in which practitioners made visible, or invisible, the social relations on which they and knowledge depended. Colin found that making knowledge appear as information, and himself as an independent entity, was often crucial to its transfer, and also his own compliance.

Applicants sought to receive information, not social knowledge (the perceived outcome of very *particular* relationships). Colin considered that providing an application with a speedy response would make these relationships invisible. Yet relations once again became visible in light of divisions disclosed by that information; differences between colleagues, different authorities, and an authority and the public. It seemed through these differences, people's particular motives, interests and above all the social ties they sought to conceal, were made visible. In an effort to make the social relations that were integral to FOI disappear, the trick for practitioners seemed to be to actively appear the same—replicate the social form that the SIC, other practitioners and authorities took.

This method of replication—constituting a particular kind of 'culture change'—was most apparent in the FOISA conferences and meetings described in the following section. Indeed, the practice of information dissemination, between practitioners and applicants seemed replicated amongst practitioners as they passed advice *about* dissemination, openness, and culture change in conversations between them at conferences. FOISA appeared both *a model for* dissemination between civil servants and citizens and *a model of* dissemination since FOI practitioners' own practices replicated the very information sharing practices that the FOI Act endorsed.

Coffee, meetings and conferences

Like all new legislation, FOI attracted much attention from private legal consultancy groups, web based organizations such as www.freedomofinformation.org that advised on FOI (and sometimes Data Protection), and publicly funded legal information services. Much of the advice that public authority employees dealing with the FOI Act received from these organizations constituted informal advice. FOI practitioners could only look to the SIC for formal guidance on how to apply the legislation, against which their decision-making would be assessed. Nevertheless, private exams on FOI and DPA, that practitioners such as Duncan took for his own peace of mind (to ensure that he had done *all* he could to comply with FOISA), attendance of private events and conferences run by private consultancy groups and listening to free advice supplied by such groups were all attractive to public authority FOI practitioners. Indeed, those with formal (although not officially recognized) qualifications would also receive kudos from fellow colleagues, who would look on those with qualification as a source of guidance and advice.

In addition to giving rise to a burgeoning field of rights, and advisors, and information providers, a whole host of formal and informal FOI meetings and conferences were put on by private events organizers in the first two years that FOI was in force, when I carried out my fieldwork. These events were on occasions organized in collaboration with the SIC: his Office would assist with the conference agenda, suggest speakers and the SIC would also present to an audience of public authority FOI practitioners on matters of interest or concern. But most were run independently of the SIC's Office, and were a way of facilitating information gathering and sharing amongst FOI practitioners with new

responsibilities to handle FOI requests in a particular sector (for example, Health or Higher Education), or across sectors.

Universities Scotland, for example, the representative group for all Scottish Higher and Further Education Institutions (SHEI), held a conference for FOI practitioners in SHEIs at the beginning of 2005 to which representatives from other sectors such as the Scottish Government FOI Unit, Scottish Enterprise, and Northern Police Constabulary were invited to speak and offer their perspective on the impact of FOI in Scotland. The conference was for practitioners to share points of concern pertinent to the HEI sector such as what to do with a request for information for cutting edge research when an applicant sought to 'cherry pick' other academics' findings. Such issues were raised and discussed, and on occasions informally agreed on, delegates themselves ensuring they established guidelines for a common approach that would not be perceived by the SIC or other institutional practitioners as collusion. If practitioners were seen as colluding, that is, deliberately attempting to withhold information by getting more than one person to deny its existence or conceal it, this would raise suspicion and they would be seen to be in deliberate breach of the Act.

Larger FOI events provided practitioners with the opportunity to replicate others. Replication became a method through which people might get things right and make a non-controversial decision under FOISA that was likely to be accepted by the SIC rather than rejected by him. In fact, it had become imperative that individual decision-makers such as FOI Officers making important decisions over what information to retain and what information to disclose, listened carefully to others such as the SIC, colleagues, and members of the Scottish Government FOI Unit as well as the wider FOI community. Decision-making had become a devolved practice; practitioners must make important decisions over what constituted information that was in the public interest. And so in following others, and taking the lead from Government decision-makers and policy-makers, people found themselves replicating the work of Government, its decision-making, and becoming fractals (or an extended arm) of the larger Government body.

The HEI sector also disseminated information to its members via group e-mail and regularly held its own informal group meetings, which meant topics of interest, core concerns, and information requests were regularly shared amongst FOI practitioners across the HEI sector. Meetings and conferences appeared themselves replicated: smaller and more informal meetings replicated larger more formal ones in form and function. It was as if individual practitioners' very attendance of formal and informal, smaller and larger meetings and their replication of others at these meetings meant that the form of meetings themselves was replicated and transferred. Host practitioners at smaller meetings put on spreads of food, provided plenty of coffee, and breaks were an opportunity for people to exchange thoughts on requests they had received and debate compliance issues. While informal, there were aspects to informal meetings that replicated the formality and sociability of larger ones: not unlike larger meetings, delegates wore dark

suits and ties often in contrast to their usual causal work attire, invited guest speakers, and scrutinized other institutions' figures.

FOI practitioners such as those participating in informal HEI meetings also attended large cross-sector conferences held throughout the year. Perhaps the most well-known and most attended was the annual FOI conference run by Holyrood Events in conjunction with the SIC's Office. It was at these larger conferences that the SIC would speak as well as an international delegate such as the Information Commissioner from the Ireland FOI Office, or New Zealand FOI Ombudsman. Other panel guests might include well-known journalists speaking on their experiences of using the Act, lawyers from private law firms providing legal advice on points of law, a director from the Campaign for Freedom of Information in Scotland and representatives from the voluntary, private or public sector talking about their experience of and the potential impact of FOI on their sector. Such conferences provided the SIC and other speakers with a platform from which to deliver a message and thus publicize their cause. The SIC might draw on examples where a public authority had failed to comply with the Act and areas where authorities could be more proficient.

Delegates such as Colin, from NHS Glendale, would visibly fidget in their seats as they listened to panelists speak, since they did not always agree with what invited speakers had to say about the Act and the way it was implemented. Over a generous lunch put on by conference organizers, delegates grumbled about the SIC and his decisions, and the complications surrounding the location, retrieval and dissemination of information that the SIC did not seem to appreciate. FOI Officers talked of spending hours transferring electronic documents from their authority's intranet to the internet and creating links in and between documents (for example, its publication scheme in which links to documents could be provided), so that others could find information without submitting a request, only for these links no longer to work when the authority's intranet was updated. Or debate how to avoid trapping information in outmoded and potentially inaccessible electronic records management systems, and yet despite its inaccessibility did the SIC consider this information that the authority held? In some ways practitioners such as Colin and his colleagues were moving faster than the SIC, implementing, expanding and realizing the implications of FOISA.

Despite their grumblings, and on re-gathering after lunch, delegates would sit in silence as the conference chair asked for views from the floor. Delegates, who had seemed annoyed when discussing the SIC's latest decisions were reluctant to speak when given the opportunity to do so in front of colleagues, international panelists and the SIC. Indeed, at a conference at the end of 2006, the SIC had remarked on individuals' 'embarrassment' to disclose information—or to comment at the conference. He did not consider embarrassment to be an excuse. Despite this, practitioners seemed reluctant to provide panelists with information in the same way that, in the case-study above, they had been reluctant to respond to FOI requests because they were embarrassed.

When I later asked Colin, with whom I had become well acquainted, about his and others' silence, Colin shrugged his shoulders. He was, again, silent. Culture change was not easy. People were cautious about revealing what they knew given what information might, or might not say about them in the eyes of others, their approach, what they did, and how they thought. In the opinion of the SIC, it seemed, some practitioners and often their colleagues, were silent because they did not like to 'get it wrong'. Although possibly true, the reason for people's silence was subtler than this. Rather than principally being concerned about making a mistake, practitioners appeared concerned about being personally revealed. Information, here, appeared to communicate a practitioner's *own* concerns and interests. Indeed, information in fact constituted social knowledge in the eyes of those who disclosed it. There were, however, ways and means that people avoided disclosing their own intentions, perspective or interests along with the information that they provided, as detailed in the passage below.

Persons in the Form of Things

Avoiding Embarrassment

In addition to larger conferences, practitioners regularly met in the first two years that FOI was in force (2005 – 2006) at Scottish Government led implementation meetings. These were an opportunity for sector representatives to voice their sector's concerns, report on the progress their sector had made with implementing an FOI regime, and update other sectors on the types and volume of requests that they had received. These meetings, called Scottish Freedom of Information Implementation Group (SFOIIG)[28] meetings were held every three months in different locations across Scotland (often in the south in large cities such as Glendale, Lochhead or Strathmore) and attended by between twelve and fifteen practitioners, for example, representatives from the Scottish Consumer Council ('SCC'), Audit Scotland, Universities Scotland and government agencies such as the National Archives of Scotland ('NAS') and Historic Scotland. Each sector representative was asked to provide the group with a quarterly written (sometimes oral) report several pages in length, consisting of a breakdown and analysis of the number of applicants, types of requests, and FOI reviews conducted over the past months, often neatly displayed in tables and charts.

Representatives would compile these figures by collecting information from most of the authorities across their sector, and each individual authority would have compiled the information to be forwarded to their sector representative by collecting information forwarded to them by each service and department. The method of organizing information at the level of the authority replicated the method of collating and organizing information for each meeting. In addition to the sector updates, items on the agenda might include a discussion of amendments to particular sections of the Act, its scope and statutory

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[28] Scottish Public Information Forum (SPIF) meetings post March 2007

bars on disclosure[29]. Discussions also covered SFOIIG group membership and how to publicize public SFOIIG meetings more widely.

As well as bringing and receiving collated information, sector representatives were each expected to articulate their sector's viewpoint, each of which were negotiated and combined to produce SFOIIG action points, or a decision as to what the next step with regard to a particular issue should be. Yet unlike the public authority employees described above who seemed reluctant to articulate their view in front of others for fear of standing out, and disclosing their own personal views in light of their anticipated difference, representatives at these meetings seemed less intimidated. Rather, a representative's viewpoint did not appear to be his or her own, but the result of a long and drawn out process, a particular arrangement of persons and information, and many meetings, the order of which was crucial for decision-making to be inclusive. This organizational arrangement seemed to leave behind the individual *who no longer appeared to be acting in their own capacity, but the capacity of the group they were representing.*

As the representative for Universities Scotland once commented, 'We're the representative body. I represent the representative body… The [SHEIP] practitioners group is an informal group, and feeds into the secretaries' group of [Universities Scotland], which is a formal group made up of managers'. It was important that information was combined and passed on in the right manner to produce an action point that might simply be to arrange a separate meeting, the results of which would be presented to the group at the next SFOIIG meeting. Decision-making was a rolling process whereby the pooling and combining of information would produce the impetus for more pooling and combining—which seemed for those involved, to indicate progress.

Above all, information and action points generated at SFOIIG meetings seemed the consequence of an internal logic that came from the order of meetings, rather than an assessment of the meaning of information; the outcome of meetings at one level seemed to frame decisions made at subsequent meetings such that the outcome of a SFOIIG meeting was laid out in the arrangements and patterns that preceded it. What was important to those present at meetings was not from whom or what suggestions came but the information that was under consideration. Individuals, here, did not act as individuals or in a personal capacity. Information that was negotiated seemed no longer to originate from its sector representative as an individual in is or her own right, rather the negotiations were conducted based solely on what they as representatives brought to the table. In their acting on behalf of the group from which they were themselves indistinguishable, representatives were not acting as one single individual, but as one among many. Negotiating with others who saw themselves similarly, the action points noted or

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[29] That is, the potential for the actions of the Freedom of Information (Removal and Relaxation of Statutory Prohibition on Disclosure of Information) Order 2004 to be replicated for Scotland. In some cases, other legislation prohibited the disclosure of information. These prohibitions had to be addressed in light of FOI. The 2004 Order removed and relaxed prohibitions on disclosure at the UK level, but did not apply to Scotland where prohibitions still remained in place. The Scottish Government therefore asked to be made aware of any unnoted prohibitions and considered that the 2004 Order might be replicated in Scotland.

conclusions reached in any one meeting were not personal. Persons, personalities, individual intensions and motivations were made absent from the negotiations. The outlook of these representatives was in direct contrast to those of civil servants sitting at their desks, who worried that their own thoughts and interests would be disclosed by the information they provided.

The forms that persons and knowledge took here is not dissimilar from those Annelise Riles describes in her analysis of meetings in which UN delegates generated documents as part of the United Nations Fourth World Conference on Women in Beijing (2000). Riles draws a neat comparison between the documents generated at different levels of meeting, and Fijian mats, '[c]reating a mat', she explains, 'is a work of repetition – of the careful repetition of simple shapes to form the patterns and of the even repetition of hand gestures in platting' (75). Documents generated at each level of meeting provided a starting point for documents generated at the next:

> '[and] at each level of negotiation mirrored the others in form and function. Conferences at global, national, regional and subregional levels all generated their own 'platforms for action', which were then taken to higher levels of conferences and incorporated into the new documents negotiated there… At each level, successive drafts were incorporated into preceding ones.' (2000: 79)

She continues:

> '[T]he skill of the exercise lay in the detail… It entailed the wearisome and often highly frustrating detailed work of cutting and pasting, of organizing and collating… The objective was not so much to achieve transparent meaning as to satisfy the aesthetics of logic and language.' (2000: 79)

The language of the documents had 'a shape, a rhythm, a feel, not simply a meaning', she explains (80). The people Riles writes of are lawyers (UN delegates) and professional negotiators who manage, combine, and organize information in a particular manner. While I write about a different group of people, civil servants and FOI practitioners, there are similarities in the manner in which people's own particular or personal form is no longer seen, made absent through interests *shared in common.*

Tony Crook (in Harris 2007), writing on Riles' UN delegates and the document writing process described above, offers a re-description of her account. He similarly emphasizes the unindividuated status of delegates. 'In an earlier version of her analysis, Riles presented the image of the brackets with words inside, and the negotiating room with delegates inside as equivalents', Crook explains.

> 'Upon entering the negotiating room… the very real differences of economic and political influence were exchanged for sententious guises that placed each country delegate on an equal footing as though they merely replicated and repeated each other's status.' (2007: 10)

Delegates, he writes:

> '[r]ather than speaking out of their own interests... spoke of these interests through resolving state differences they perceived in the room... Collective differences are recognized in the suggested offering of the delegate [which] serves to reiterate the replicated status of the delegate such that when suggestions are made they appear in the voice of an undifferentiated [whole]' (2007: 11)

UN delegates had the capacity to unite or differentiate the whole, and acting not as individuals but in terms of the whole were, not unlike representatives at the SFOIIG meeting, themselves undifferentiated. Of all the relations they contained, had the capacity to activate, representatives were careful to only act on the basis or footing that they shared in common. Compliance demanded action from a role or office not a person—as a *thing*, not an individual person whose personality, gender, religion, race, had any bearing on the negotiations in hand.

The form driving the UN delegate meetings that Riles describes was the same form that was driving the action of the delegates within each SFOIIG meeting. It was through emphasizing the non-differentiation of meetings, through reference to the participants' identical form and function that political and social relations, persons and personality, were entirely removed from the negotiating process. Moreover, the meetings themselves appeared contained units, the interaction between which was predicated on the circulation of information that emerged out of each level of meeting, representing activities, processes, and negotiations between delegates that were themselves not personal. In this way, persons—UN delegates or professional negotiators—neither directed the flow nor the composition of the documents they produced.

The approach both of FOISA representatives and Riles' UN delegates, their perceptions of themselves and the basis of their actions, was not unlike that of Duncan at Lochhead Council, a keen advocate of FOISA, and whom I discuss in the following paragraphs.

More from Duncan at Lochhead council

Lochhead council is a small public authority situated to the west of Glendale. As Information Compliance Officer, Duncan was on familiar terms with members of the wider FOISA community and practitioners often mentioned his name, recommending him as a 'good person to know' and source of advice on FOI matters. It was undoubtedly due to Duncan's popularity and his colleagues' high regard for him that, in a small network of FOI practitioners, FOI policy-makers and FOI end-users in Scotland, Duncan became one of my main informants. His colleagues at Lochhead also regarded him as a bit of an FOI expert, and he was particularly well known among staff for his kindness and willingness to help. But in response to these compliments, Duncan would shrug and say, 'I'm only telling you what anyone else would tell you'.

Duncan (perhaps due to his helpfulness and knowledge of FOISA) would attend and sometimes speak at larger FOISA conferences with the SIC, applicants and practitioners. Conferences were an opportunity for Duncan to consult the SIC and Scottish Government FOI Unit on a particular matter or how to handle a particularly difficult request. He would otherwise 'give the [Scottish Executive] FOI Unit a call' or contact one the SIC's staff, with whom he was familiar. More recently he had been invited to become an FOI examiner by one of the private consultancy firms specializing in FOI.

In the first two years that FOI was in force, Lochhead council received between eight and twenty FOI requests a week. Duncan was often busy logging requests, following up enquiries, responding to e-mails from applicants expressing their thanks or concern at having a request refused, and chasing up late responses. Duncan liaised with FOI Officers across the authority, each responsible for responding to FOI requests on behalf of their section. He might arrange to meet an FOI Officer at their desk and council staff would also regularly drop by to speak with him in his office. On these occasions, Duncan would deftly close his office door so that those 'across the corridor' would not overhear conversations that would seem politically inappropriate; the council operated politically neutrally, but this did not prevent individual council staff from having and indeed expressing their own political views, Duncan explained. Duncan, then, was a point of contact for FOI Officers, council staff and the public, and managed this interface between the internal private politics and external public face.

It was Duncan's role within the authority to receive and log FOI requests, and pass these onto people in his authority who could deal with them. Lochhead council took a 'devolved' approach to FOI, which meant that Duncan gave the responsibility for dealing with FOI requests to designated FOI Officers in departments across the council. Duncan, however, remained on hand to co-ordinate a particularly tricky response. Receiving and handling FOI requests was only one part of Duncan's role as Information Compliance Officer. He also dealt with Data Protection issues, liaised with council archivists and assisted with the management of council records. He liked to think of himself as an honest, straight-talking man, who encouraged others to talk frankly. Unlike those who seemed reluctant to readily disclose information in answer to a request, Duncan appeared an advocate of FOI: 'The Act has a dual purpose', he explained, '…if people get better information they have better information on how well the service is performing' and the council is then able to provide better services. He continued:

> '….you've got to get people into the mindset of disclosure. Disclosure is the way to
> approach it. Don't take the alternative posture, which I would consider "let's go and look
> for an exemption". What we've always preached [here] is disclosure is the way forward'.

Devolved and Centralized Approaches

Taking a devolved approach was the method decision-makers and stakeholders preferred since information requests were received and responded to by employees throughout the organization. The opposite approach was to deal with all FOI requests centrally. In this case, a central department took responsibility for coordinating and providing responses. For example, the UK Department of Constitutional Affairs has a 'clearing house' to ensure 'consistency across central government in relation to the application of [FOI]'[30].

While some practitioners appeared concerned about the disclosure of information, considering themselves *personally* revealed on providing access to information they held or, indeed, what was in their heads (comments, concerns, views), Duncan did not appear to be so. Part of Duncan's enviable skill came in not considering himself differentiated in what he knew or how he acted. In fact, Duncan saw himself as 'the same as anyone else'. The views he held were not exclusively his, rather views he considered he shared in common with others. In fact, Duncan always made sure, given all the relations he had the capacity to activate, that he only ever acted on a basis that he shared with others. He would explicitly and loudly ask himself whether it was his own personal opinion, or a view held by others he was acting on. As a result of the fact that Duncan did not consider himself as individually differentiated, rather one of many thinking and acting on the same basis, Duncan was able to disclose information freely—knowledge, here, and Duncan himself, appearing in the form of a independent entity that could be shared.

Duncan's skill was enviable, since not considering oneself as acting in one's own capacity was exactly the culture change that FOISA required, considered necessary in order for people to more liberally share what they knew. Practitioners and colleagues who were less willing to share information—in this case perceived in the form of knowledge with relations internally implied—and would not disclose information either at FOISA conferences or in response to an FOI request for information, could usefully take Duncan's advice. Although whether Duncan was able to explain *why* he was able to share what he knew in the manner that he did—that it was because he considered himself undifferentiated from others, which had the effect of making social relationships that informed what he knew absent—was perhaps unlikely. It seemed, for people to more freely give information out, this kind of outlook was what was required.

So culture change lay in people's ability to consider what they did as well as the information they handled in a new light. Information itself became something to disclose unless exempt rather than to retain unless its release was permitted, which was exactly what Morag, a Records Manager for Glendale University, thought.

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[30] Source: http://www.foi.gov.uk/practitioner/clearinghouse.htm

Morag at Glendale University

Morag was not unlike Duncan in how she approached information and its disclosure. She regularly attended larger FOISA conferences and meetings. Morag seemed well-known amongst decision and policy-makers such as the SIC, the Head of the Scottish Government FOI Unit, and other FOI practitioners in her own and other sectors. Like Duncan, Morag seemed an advocate of the legislation and was keen to provide information under FOISA unless it was exempt. She was chairperson of the SHEIP group, and chaired and organized SHEIP group meetings. As one of its founding members, she seemed to find it useful and was keen to encourage SHEIP group members to 'share their experience' and circulate any issues or conclusions regarding HEI FOI policy, which she would then draw to the attention of the Universities Scotland FOI representative. As she explained:

> '[SHEIP] has a link with the Universities Scotland secretaries group, so if there are significant strategic issues, we can raise them through that channel, which again gives us support and it's a very useful mechanism because it's a means of getting FOI onto the University Secretaries agenda'

Like Lochhead council, Glendale University took a devolved approach to FOISA, which meant that Morag was responsible for 'planning, advising, training and supporting' other members of staff to comply with FOISA but did not 'necessarily do the work [herself], partly because', as she explained, 'to implement records management across an organization of 7,000 people […] is not a job for one section unless it's an extremely large section'. As Morag explained:

> 'The [appointed] practitioners [in each organizational area] are supposed to take the lead on setting up records management systems in their areas. They also are responsible for maintaining their areas' contribution to the publication scheme because again, we don't know what's changed out there or what's out there at all, so they all contribute. And they're also responsible for handling FOI requests that relate exclusively to their area… a lot of requests are coming into us centrally, business areas are getting them and forwarding them to us because one of our roles is to act as a kind of post office… to get requests in the right direction. And yes, although a lot of people talk about the information map as being crucial to help deal with FOI requests, I've found that actually what you need to *know* is who is responsible for what'.

As a devolved activity within the organization, the relationship between FOI Officers, such as Morag and her colleagues, and public authority employees appeared analogous to that of the SIC and the public authority. Again, as with the case of Colin and colleagues at NHS Glendale, the particular form of

the relations was reiterated, and in establishing the same form, Morag and her colleagues also came into—shared—the same relations. Once again, culture change was the propagation of a form and of relations, which in this sense made social relations, not absent and irrelevant, but *entirely* relevant.

> I wouldn't say we had databases, it's much more people based with a people structure. I suppose people isn't always entirely correct because it's roles… it's role based… so it doesn't matter if it's Fred or Jane, but it is very much reliant on who's responsibility [it is]. Which area of the University would it be, so if Fred is away Jane can answer it too. But it is based on functions rather than records and pieces of information and… because we've got practitioners, a very good spread of practitioners, usually we can figure out which part of the University has responsibilities in this area. And contact the relevant practitioners.'

Morag it seemed was reliant on a network of people who might locate, retrieve and disclose information and who would inform her and others of what information the University held. While a map of all the information held by the authority was of little use since this might change over time and thus an information map would be in need of constant updating, a good knowledge of the people in that organization and their position in it was more useful. People appeared interchangeable, here, for the reason that their attributes were not considered theirs, but of the group that they each represented. The emphasis was not on the individuals themselves, it did not matter whether it was 'Fred or Jane' who retrieved the information, but the fact that each individual acted on a shared basis.

Morag's comments only served to reiterate Duncan's own understanding of his role and himself as 'anyone', and also that of the UN delegates that Riles describes who never acted in their own capacity, rather in the capacity of the group they represented. Only ever acting on a basis he shared in common with others, Duncan only ever saw himself as having knowledge that derived from elsewhere, and was not his, and that made him one among many, considering that he interacted with others who were one among many also.

The network of practitioners of which people were a part, and the system in which they operated, seemed to make people themselves equivalent to a parallel information map. *As information providers themselves, people were a route to information in a system that otherwise sought to take the individuality of persons out of the information-sharing process.*

Persons and Things

It is difficult to hold in a single view knowledge of a person as a subject, informed by their relations, and knowledge of a person in the form of an object, or thing. But exactly this alternation has been the focus of this chapter.

Social relations are integral to FOI, as they are integral to knowing. Social knowledge, into which people come while having coffee or lunch with colleagues, at meetings, or in locating and retrieving

information as part of an FOI request, depends on social relations—or rather someone's interests in a particular social relation. It is this interest that invokes their division and combination with others.

Margaret, at NHS Glendale, regularly met her colleagues—her friends for many years—for morning coffee at which she would discuss what she did the previous weekend, her father-in-law's ailments and on occasions, an FOI request to which she was having difficulties responding. The information that Margaret gathered and forwarded to Colin was socially governed. Thus the information that another practitioner or an applicant received, was social knowledge.

The social networks intrinsic to the emergence and transfer of knowledge between practitioners, and practitioners and applicants, seemed no different to those visible at FOISA meetings and conferences. While FOI was a *model for* knowledge sharing between public authorities and citizens, it was also *modelled on* these very practices as practitioners and decision-makers themselves shared knowledge, about FOISA and culture change, at conferences and meetings.

As evident in these meetings, culture change entailed establishing a common basis of thinking and acting, the replication of certain forms, and the propagation of particular relations. Unlike other forms of culture change, social relations were crucial to the change, as it was necessary for practitioners to both make and un-make social ties as they took on a new ways of working.

While social relations, as was well-known by FOI practitioners themselves, were integral to FOI and to the location and retrieval of information in response to a request, practitioners also made absent the social ties that otherwise governed what they knew and any information an applicant received. On considering themselves as acting on a common or shared basis *every time they thought and acted*, persons concealed their own personal form (despite the fact that the particular basis on which they thought and acted was informed by their particular interests in a social relation) and made social knowledge appear as objectively gathered information.

Conclusion

I this chapter, I have principally focused on the role of practitioners as agents of change who are key to implementing culture change in government agencies in Scotland. I have drawn on the official culture change rhetoric in order to relay something of what culture entails for practitioners responsible for handling information requests, and the expectations of policy-makers and decision-makers such as the SIC. I have drawn on four case-studies, three concerning practitioners and the way in which they go about implementing culture change, and the fourth concerning the meetings and conferences at which the message of culture change is disseminated amongst practitioners keen to learn.

I have touched on three forms of culture change: the move from secrecy to openness as between the public and the public authority and the consequent change in relations between public authority employees themselves; the devolution of decision making to individual FOI officers within each part of

the authority, their replicated form and the associated relational changes, and the absence of social links from the information given by the public authority to the public.

The first two overlap, and concern the social relations, or social form that practitioners, in order to comply with the legislation, also come to share. Unlike the third form of culture change, this change requires practitioners to be particularly aware of with whom they have social relations in common and the basis on which they operate. Practitioners, taking on new roles as promoters and enforcers of FOI, also find themselves in a role, in relation to their own authority, analogous to that of the SIC. In order to comply with the Act, practitioners have to act out a role, and in so doing, they come into new knowledge and act on a shared basis, this being a basis they hold in common both with each other and with the SIC. As a result, divisions open up within the authority as others are resolved. Sharing a common basis with the SIC, new divisions emerge between practitioners and some of their colleagues, that replicates that formally between the SIC and the public authority as a whole. As divisions emerge within the public authority, 'culture change' entails firstly the propagation of a particular form, and secondly, the emergence of this new division.

But culture change also requires that social and political relations play no part in the dissemination of information; and that neither have a hand in what is provided nor direct the flow of information. In order to comply with the Act, practitioners must thus make absent the social ties that are integral to FOI: that daily inform the way in which practitioners locate and retrieve information, and respond to requests. Making these relations is a brilliant manoeuvre that takes extreme skill and effort. In particular, I draw on the thoughts and practices of Duncan, at Lochhead council, and Riles' description of the work of UN delegates at the Fourth World Conference on Women in Beijing. Both Duncan and delegates (and others also mentioned here) make social relations absent by making absent their own particularity. By always holding knowledge in common with others, Duncan ensures that he is never acting in his own capacity but in the capacity of the group with whom he shares knowledge in common. In so doing, Duncan *never* acts in his own right, and always as one of many—or 'anyone' as he states. Similarly, UN delegates are differentiated only in light of the shared basis they hold in common with others. The differences between them, then, only serve to indicate their replicated and repeated status that places them on an equal footing.

In chapter two I sought to touch on how it is our interests in a particular social relationship that invokes our division and combination, govern our thoughts and actions, and the form that these actions take as public or private. In this chapter I have sought to show the way in which these relations are also made absent, and in so doing, persons appear in the form of independent, and unrelated entities, and knowledge in the form of information. The particular manner in which this is done is of interest here, as well as how culture change appears to demand both making social relationships present and absent.

In the following chapter I seek to explore how these pairs of alternating forms, persons and things, knowledge and information, inform two ways of knowing.

4

Secrecy and Truth

'Secrecy is the bonding material which holds the rambling structure of central government together. Secrecy is built into the calcium of a British policy-maker's bones' (Hennessy 1989: 346)

Introduction

This chapter focuses on the secrecy that protagonists of FOISA, at all levels, see in the actions of people who appear as still reluctant to disclose information under FOISA. FOISA is designed to change a public sector culture of secrecy, to one of openness and transparency. This entails policy-makers persuading organizations and civil servants to be less secretive about what they think and do, and share information they hold with one other—to reveal the truth. But it is lack of secrets in instances in which secrecy is suspected in which I am interested in this chapter.

Several scholars have more recently taken secrecy as a subject of study within and beyond anthropology. I touch on the work of anthropologists concerned with secrecy in different field contexts. In particular, I turn to the work of Crook (2006, 2007) who responds to Frederick Barth's (1987, 2002) examination of secrecy in the context of the Min area of Papua New Guinea, and also writes of 'secrecy' there. Crook argues perceptions of Min secrecy are the outcome of an anthropologist's *own* knowledge-making practices. Others, such as the non-anthropologist and the founder of the UK Campaign for Freedom of Information (that drafted the UK FOI legislation), Des Wilson (1984) MP, argue that at the root of secrecy is power.

Of particular re-known for his research on Government secrecy and transparency is Alasdair Roberts (2006). His recent book, *Blacked Out: Government Secrecy in an Information Age*, centres on the tactics that politicians and bureaucrats around the world have used to preserve government secrecy. Roberts (2006) notes in relation to the American public that the rhetoric of secrecy can in fact exacerbate public suspicion and mistrust. Considering secrecy rhetoric sometimes as just 'rhetoric', Roberts urges us to act on information: the revelation of injustice is not a remedy for injustice, it requires us to act on the injustices that concealed information newly discloses.

However, it is not only decades of official secrecy that are the cause of suspicion and mistrust in the cases below. As two different accounts, that of the discloser and recipient of information are put together, two different approaches to knowledge also appear. It is the misfit between these two different approaches, what knowledge is and how it works—knowing relationally and knowing in the absence of relations—that also seems to be at the root of secrecy.

In Chapter Three, I described how FOI Officers such as Colin and Duncan made every effort to ensure that their own personality was not evident in and did not shape the information they disclosed to applicants. Designed to make absent social relations that could otherwise determine where information flowed, this concealment was what appeared required of them in their role as FOI Officers. Considering themselves as always acting on a basis they held in common with other people, Colin and Duncan went to great lengths to conceal the relations that information might reveal, (carried in the very information selected, type, or amount to disclose). But concealment of social relations, here, is a doubled-edged sword; as we shall discover, it is this concealment of relations that also leads to accusations of 'secrecy'.

Perceived as always acting on a basis they share in common with others, and thus as non-differentiated or 'anyone', differences between different non-differentiated practitioners, in the case-studies below, applicants explain in terms of 'secrecy'. Given practitioners are perceived as sharing a common basis, and as undifferentiated, the knowledge that they handle in the eyes of applicants (and often in their own eyes) takes the form of information—or an independent entity that travels free of social ties. In light of this, knowledge (in the form of an independent unit or entity) is conceived of as something that people either have, or have not. Knowledge is not conceived of as something into which people come in their relations with others and as not known prior to this relation; consequently, silence in cases where it is presumed that people have knowledge is also explained in terms of 'secrecy'.

At the same time, this chapter illuminates the manner in which there is not a crisp distinction between 'information' and 'knowledge'. Knowledge that appears in the form of information is also turned back into knowledge as result of with whom it is associated. At the same time, social relations are embodied *in* disclosed information. As in the examples inspected in chapter two, the action of *form* shows individual entities, or things, as being implicated in other relations, such that to see an individual entity alone (for example, a piece of information) is also to acknowledge that it exists in relations—and makes the not-seen, in some ways, perceptible.

While applicants such as George a regular FOISA user, read the relations implied in the information released and considered that with whom information was associated determines its usefulness (and the truth), there are also instances in the case-studies below where the relations information contained or implied have a detrimental affect on its value and applicants' relationships with FOI practitioners. Contrary to FOISA rhetoric, and despite practitioners' efforts to conceal their own personality from information, the quality of information here *does* lie with the quality of the person providing the information. Considering those who work for the same organization to share the same knowledge and same form, and tracing these social ties in information that is disclosed, applicants consider practitioners 'secretive' when they also seem to contradict each other.

'Truth' has received particular attention within and beyond anthropology. I explore the work of the French philosopher Michel Foucualt who is well-known for his exploration of the intersection between truth (or knowledge) and power (in a selection of collected works in Gordon 1980). Truth is

something in which social anthropologists largely take interest by way of their subjects of study. There is a sense in which people 'battle' over the truth yet also that truth emerges out of and exists in a network of relations. While those with whom we liaise during fieldwork, interview, or become friends with, might search for the truth, a social anthropologist might ask what constitutes the truth for particular people in particular moments? In other words, a search for the truth turns into an examination of knowledge, what it is and how it works. It is only on putting two versions of the same story together, comparing two different approaches to the same issue, person or thing, that the *grounds* on which people think and act, that is, people's different interests in a particular thing (relation), become apparent.

Before turning to instances of secrecy between practitioners and applicants, and moments in which applicants establish the truth, I turn to official rhetoric relating to FOISA and secrecy, and offer some thoughts on truth in relation to individualism and secrecy in relation to power.

The Rhetoric of Secrecy

First mooted in the U.K. in the 1980s and finally enacted in the form of Freedom of Information legislation in 2005, the right to know was a long awaited response to an extended epoch of official secrecy in Britain. The culture of secrecy was formally crystallized in Britain in the form of the 1889 and 1911 Official Secrets Act (OSA). Section 2[31] of the 1911 OSA made it an offence for persons, members of the security or intelligence services, Crown servants and government contractors to disclose unauthorized official information, documents and articles relating to security, intelligence or defence[32]. While the aim of the 1889 OSA was to curb leaks by government civil servants that had the potential to make Britain vulnerable to invasion, the 1911 OSA was an updated version more suited to a time when Britain was on the brink of war with Germany. The OSA in some ways formalized an informal culture of secrecy that had been slowly mounting in the second half of the late 19th century. From around 1844, there were reports of personal written correspondence being intercepted by Government, to which Government seemingly did not own up (Vincent 1998) and reliability and discretion was secured through appeals to moral probity (Rogers 1992).

Through World War Two, the Cold War, and into Margaret Thatcher's 1980s Conservative government, Britain remained in a state of official secrecy, although there was some resistance and reform in the latter half of the twentieth century. While in some ways tolerated during times of war, it was under Thatcher that the media, citizens, and campaigners began to resist secrecy and increasingly apparent civil repression; the rate of prosecution under the OSA increased sharply under the Thatcher government (Vincent 1998: 11) and organizations such as Liberty and Charter 88 were founded, as well as the 1984 UK Campaign for Freedom of Information. Thatcher's refusal to justify secrecy through legal-rational

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[31] The OSA of 1889, was in two parts: Section 1 dealt with spying and Section 2 with breaches of official trust (Hennessy 1989: 352).

[32] 1989 Official Secrets Act, http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890006_en_1.htm

means, and her efforts to control and change the way in which the British State worked in a manner that left even Ministers in the dark, seemed to stir up dissent within Whitehall, among the media, and security and intelligence services. The press had been seemingly tolerant of Government secrecy, often sharing the interests of government, yet under Thatcher was increasingly used as a medium through which to reveal and challenge government policy. Most well-known is perhaps the case of Clive Ponting who used the media to mount his campaign against government. He released two classified Ministry of Defence (MoD) documents to Tam Dalyell MP that revealed that there had been a two-year systematic cover-up by the government of events surrounding the 1982 sinking of the Argentinean cruiser General Belgrano[33]. Ponting's case revealed that the OSA was an inadequate tool for silencing civil servants, and the OSA was amended in 1989[34], in some ways making it more draconian. The secret side of British politics has of course been notoriously played out in popular culture, reflected in a spate of television serials, documentaries and films throughout the 1980s, and embodied in the well-known character, James Bond secret agent 007.

The Campaign for Freedom of Information

A London based group that has been campaigning for FOI legislation since 1984. It maintains a website that is full of information on the history and origins of FOI in the UK, and provides the latest updates on FOI developments in Britain – minor amendments, debates on FOI at Whitehall and Holyrood, and FOI in the press,.

A link marked 'Secrecy Examples' provides access to a page of links to publications that contain examples of official secrecy. Every year, the CFoI has an annual Freedom of Information Awards ceremony through which it recognized individuals who have campaigned for greater openness, and authorities and companies that have developed initiatives to disclose more information.

Maurice Frankel, directs the CFoI and is a full time campaigner for FOI. The CFoI was founded by Des Wilson (Wilson 1984) and works closely with the CFoI in Scotland.

The United States at the same time also existed in a state of official secrecy, although an OSA was never enacted and calls for access to information and the right to know came much earlier. Throughout

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[33] Ponting pleaded not guilty to charges of unlawful disclosure under the 1911 OSA, arguing that releasing the documents was in the public interest. He was eventually acquitted: while the judge ruled that he was incorrect to interpret the 'interests of the State' in section 2 of the OSA as 'the public interest', Ponting managed to persuade the jury of the morality of his actions.

[34] In the 1989 OSA the public interest ('interests of the State') clause was removed. In addition to its amendment in 1889, the OSA was also amended in 1920 and 1939. The former affected Section 2 of the OSA and was in response to demands from MI5 to preserve as much of the Defence of the Realm Act (DORA) as possible, (by amending the Aliens Order (?)). The 1939 amendment did not affect Section 2 since the 1920 amendment was sufficiently all embracing to satisfy MI5, but was confined to Section 1 and affected the practice of journalism in permitting the prosecution of persons who failed to give information about unlawful disclosures. Journalists, in other words, had to name their source! (Hennessy 1989: 356)

both World Wars, it seemed, the American government was also cautious with information and it was largely due to this that there were demands for the American government to be more open post World War Two, in some ways granted in the form of the 1946 Administrative Procedure Act (APA) (Roberts 2006) (see introduction). But it was in light of the weakness of the 1946 APA that the 1966 American Freedom of Information Act was conceived, which created and enforced the presumption that all citizens have a right to government records. The route to openness in the US was in many ways much swifter than in Britain, largely due to the absence of an OSA, which in Britain pointed to a more entrenched culture of secrecy making the shift to a culture of openness seem more difficult to accomplish.

However, FOI was not simply about opening the floodgates and letting information out. Decisions over what information should and should not be released had to be carefully considered. As part of a series of Cambridge conferences in late 2006 and early 2007 entitled, Debating the Evidence, The Rt. Hon. Tony Benn, former cabinet secretary Lord Wilson of Dinton, BBC Diplomatic Correspondent Bridget Kendall, and Chairman of the Weapons of Mass Destruction Commission Dr. Hans Blix were invited to talk on Freedom of Information. Delegates and speakers addressed the issues entailed in FOI legislation, balancing perceived benefits against disbenefits. The debate turned out to be a debate about the Iraq war: although rather than discussing whether it should have taken place, the debate was over what kind of information that should have been made available to the public prior, during and after the war, and on what occasion should information be justifiably withheld? How might those responsible for information balance the risks and responsibilities entailed in its disclosure, and strike a balance between secrecy and truth—as if secrecy or truth, knowing or not knowing, were a black and white matter of revelation and concealment?

FOI in Scotland and the UK seemed particularly about unlocking the door of public institutions and letting trapped information out, as well as allowing the public *in* to scrutinize them. As one FOI Officer for a Scottish local authority remarked as he explained to an audience of civil servant practitioners about what FOI meant, 'information is trapped within the organisation, and FOI is there to let it out, to make it free'. The image of information trapped within the organization was one that was drawn on by public authorities as well as by those implementing and enforcing the Act to depict its meaning and the use to which it could be put. The U.K. Information Commissioner uses the image of a half-open door as a logo, perhaps to suggest that locked doors are being opened as a result of FOI legislation. The picture, here, is one of information as a trapped person, or prisoner, awaiting release: as if like people, information too is meant to be free.

Truth and Individualism

Michel Foucault's examination of truth in selected interviews and writings on power/knowledge between 1972 and 1977, collected and edited by Gordon (1980), forms part of a body of work, spanning from the early 1960s to his death in 1984. In this collection of works, Foucault examines knowledge—or Truth— in relation to power; the two, he argues, are inextricably linked. In an essay on Truth and Power, transcribed and translated in this volume by Alessandro Fontana and Pasquale Pasquino, Foucault asks what governs statements and how statements govern each other so as to 'constitute a set of propositions which are [scientifically] acceptable, and hence capable of being verified or falsified…' (1980: 112). While Foucault writes about science, his argument here seems applicable to the way he considers knowledge to operate more generally. Truth is an outcome of a regime or network of interrelating statements that point to and uphold one another and thus indicate what is True. People are the vehicles of power not its point of application, he argues. This means that those seemingly with power over others and in a position to govern what is True, are themselves governed, by these interconnecting statements and relations: power *circulates*, flows via persons and knowledge, and is in this sense transcendental.

At certain moments, the regime of truth—a matrix of interrelating statements— undergoes a global modification. There will be what might be called a paradigm shift. Foucault points to moments in science, or biology, as exemplary of such shifts at the turn of the nineteenth century (1980: 112). There is a battle around truth, not on behalf of truth, he argues. To resist truth and hegemonic power, it seems, is only to act according to another truth; to become subject to a different regime. It is not possible to subvert the power of truth by changing 'what's in [people's] heads', since this would only entail more of the same power/knowledge; people would simply come under a different regime of power. Rather it is necessary to '[detach] the power of truth from the forms of hegemony, social, economic and cultural, within which it operates…' (133). In other words, it is to take the power out of truth.

His exploration of the will-to-knowledge, or truth and power, forms part of his critique of Enlightenment thought, although there are many who also consider Foucault as employing the methods he seeks to challenge (Habermas 1986). However, it is not Foucault's power analytics—a term used to describe Foucault's theory of power (Dreyfus and Rabinow 1982)—that I take up here. These I challenge in chapter six in light of my examination of power in moments where practitioners seem to have power over applicants. However, rather I turn to Foucault's description of truth—what it is and how it seems to operate—as the outcome of a network of interconnected persons and things that appears, at first blush, not unlike my own. In this chapter, and in relation to the case studies below, I argue that the truth depends on the connections that people—applicants, practitioners, policy-makers—can read between information and those who hold or dispense it. For George, who seeks out the truth, knowledge embodied in a high-ranking public authority official determines what is true.

As citizens were keen to root out and resolve discrepancies between different sources of information—or different versions of the truth—FOI Officers quickly discovered it was important to communicate to an applicant at the earliest possible stage how and in what way their request was being dealt with, sometimes as important as responding to the request itself. Information brought with it information, and requests generated requests, and even requests about requests in a manner that suggested FOI might elicit information in an endless stream. In the cases below, applicants, often unfamiliar with large, and complex organizations seem suspicious and confused if they received a seemingly contradictory response. It was for this reason that Colin and Samantha, FOI Officers for NHS Glendale, were extremely careful to explain the contradictions between information emerging from different sources— different people or different organizations. On one occasion (not included here), Colin's colleague, Dave, recalled Colin's mistake of not telling the applicants who had applied for personal data under FOI instead of the Data Protection Act that they had made an application under the wrong Act. Colin instead passed their request onto NHS Glendale's Data Protection Officer. Discrepancies between the two Acts, in addition to Colin's lack of explanation, pointed to Colin's secrecy (and also that concealed within the FOI Act) in the eyes of the applicants.

Through ordering and arranging information, the public sector might be seen as organized into a cohesive and joined up whole, from which the truth would emerge. However, the truth was not always easily agreed on. Since by definition the truth is itself definitive, as one person spoke the truth, another would take this to be an assertion of opinion or individualism. The conflict lay in the fact that while knowledge was the outcome of a network of relations, these relations could appear hidden, such that knowledge seemed given, with people themselves as having no hand in its production. As far as any individual was concerned, they saw themselves as altruistically providing the facts or truth into which they had also come (or, in Colin's case, passing on a request to where the truth could be found). As new disclosures revealed incomplete knowledge, the truth seemed something that was perennially under construction. Meanwhile, individuals seemed individualistic and acting for different ends in light of interests that appeared divided through new disclosures.

Secrecy and Power

Secrecy has been more recently explored within social anthropology (Barth 1987, 2002, Crook 2007, Herdt 1990, 2003, Lattas 1998, Tefft 1980). Herdt (2003), beginning with his own historical society and moving outward to Papua New Guinea, deconstructs the exoticism inherent in secrecy and, he argues, the tendency to transform members of social out-groups into marginalized Others typical of the way in which secrecy is treated within academia. Writing on 'secret societies and secret collectives' in relation to Victorian men's societies, Herdt (1990) argues secrecy is an intentional process of differentiating included persons and entities from those excluded, while building solidarity among holders of secret. Herdt's

analysis reflects the division perceived by FOISA protagonists between citizens and government, government appearing a kind of 'secret society'.

Stanton Tefft (1980), editing a volume on secrecy from cross-cultural perspectives states:

'Secrecy… proves to be dysfunctional for the political community and its member organizations and institutions when it prevents community members from making a realistic assessment of policies….' (17)

Tefft advocates openness, suggesting that in evaluating ideas for political reform as presented in his edited volume, the potential harm that secrecy can cause should be borne in mind. Des Wilson (MP and CFoI founder), advocates openness, considering power the root cause of secrecy. He not only elaborates on how power operates, but also argues it is lack of information that that leads people to suspect others of secrecy:

'Control of information – secrecy… *enables the powerful to maintain a monopoly of power.* The more secretive the centre of power, the more it develops a distance from the people. Lack of information excludes others from participation. In fact, it reduces the desire for participation, because the assumption that those in power have inside knowledge, are in possession of secrets, and are presumably deemed to be the most trustworthy, makes the majority of people feel inadequate and thus admire and respect the powerful.' (1984: 17, original emphasis)

Knowledge is assumed to be something that others have but do not share, their silence indicating retention of knowledge. The axiomatic relationship between knowledge and power suggests that equal access to information also equals equal power. At the same time, scarcity of information makes people and the knowledge they hold more desirable because it is less available.

If knowledge is conceived as an absolute, that is known or unknown, then people's lack of articulation becomes a sign of their secrecy rather than the absence of knowledge. As Crook explains: '[o]ne of secrecy's traps is to lull one into thinking that secrecy is a black and white matter of something in a state of either being known or being unknown' (Crook 2006:2). Under this analysis, knowledge is something that one either has or does not have. Thus the revelation of new knowledge points to that which was previously concealed. Unlike kinship, as a universal category of analysis, that 'operates as a general description through particular varieties', secrecy 'seems to collapse both into one – making it open to comparison with other examples and open to theorizing on a grander scale' (Crook). In other words, while kinship operates as a general description but cannot itself be generalized, secrecy it appears can be. A discussion of its variety would, for example, lead to a discussion about the relative *amount* of secrecy, secrecy itself, and what it entails, remaining unaltered.

Lattas (1998) notes that when knowledge is disclosed, it is generally thought of as something that is revealed gradually, as if shrouded and brought out into the light. It is this kind of thinking that truths are secret and emergent rather than constitute a response, that makes knowledge appear as if something that is known, held, stored, and revealed.

In the case-studies that follow, I offer different instances of secrecy. Often, not unlike the interchange between Barth and the Min that Crook (2007) describes, one way of knowing—that of the recipient of information—illuminates the other—that of those disclosing it. It is often the result of the conflict between these two ways of knowing that people appear 'secretive'. Following on from chapter two (in which I described the way in which practitioners, policy-makers and end-users know as a result of their interests in a particular relation), and chapter three (in which I showed that when people consider themselves as acting on a common or shared basis these social relations are made absent), chapter four addresses the two ways of knowing that emerge as social relations are made absent or present, and the difficulties to which the intersection of these two different ways of knowing gives rise.

At the crux of the chapter, is the manner in which knowledge can take the form of knowledge or information. Yet there is not a crisp divide between the two forms, information and knowledge, cross-over. The argument of this chapter lies in the detail: while knowledge appears in the form of 'information', this information can also appear in the form of knowledge as practitioners and applicants read the relations that are implied in its very form. For this reason the two words—'knowledge' and 'information'—have been carefully used, to point to the careful negotiation by practitioners of when relations are made present or absent, as perceived or not by applicants.

The following case-study concerns Colin and Samantha, FOI Officers for NHS Glendale, who had difficulties persuading applicants that they did not hide information. Relations between information requesters and disclosers, here, did not go smoothly.

Secrecy Examples

NHS Glendale

Colin, and Difficulties with Applicants

Colin was bright and funny. He had a friendly manner that made him popular with other NHS Glendale staff and applicants. He was in his early thirties, tall, and slim and had fine, blond, but receding hair. His long curved nose propped up a small pair of frameless, rectangular glasses that concealed his grey eyes. He had worked for NHS Glendale Health Board for over ten years since he moved to the city from the North of Scotland. And although he had recently started helping Samantha with FOI, he continued to sit in the Facilities Department with his old colleagues Kate and Jo.

The Facilities Department was on the ground floor of the Health Board, a tall, glass-fronted building that was squeezed in between yellow-brick houses that glowed warmly in the sun. It was nearing

the end of 2005 and I had worked for the Board for three months. Kate, Jo, Colin and I sat in the large, rectangular room that was the facilities department, reading and organising documents, while it continued to rain outside. The authority had decided to collect together all the FOI requests that it had received and responses that it had provided over the past twelve months, and organize them by topic in a table. I had been given this task, suggesting that as well as a 'researcher', people saw me as a useful pair of hands. The table would be put on the website so that people knew what information had already been made available by NHS Glendale and could access this information without making a request. Colin liked to talk, and as we sat and worked, he told the others and me about his weekend, his holiday and his girlfriend Maeve. I had taken Colin's desk so he worked from the room next door, in hollering distance from the others and me. He generally left the door wide open so that he could hear our conversations and join in if he pleased (see figure 3).

But Colin was rarely at his desk, often off in search of information an applicant sought or the persons who might hold it, discussing a request with another FOI Officer or with Samantha in her office nearby. Colin and Samantha worked closely together, combining their expertise (knowledge of the organization and colleagues) to fulfil their new responsibilities under FOI. The Board received between eight and ten FOI requests a week. As the person who carried most of the responsibility for handling requests, Colin often had difficulty locating and persuading colleagues to send information to him in time. Yet his friendliness with colleagues and applicants put him in good stead, and he was on occasions able to persuade someone to release information they seemed unwilling to provide and also to manage the expectations of applicants. At times, however, he and his colleagues seemed to mishandle an applicant or misjudge a situation, perhaps not recognizing that the social relationships within the organization that were for them, clear, for others were hidden behind the concrete walls of the organization. This left them and the applicant confused and problems to be resolved.

Establishing the Review Process

Colin was passing my desk one afternoon when he mentioned a case that concerned him: an applicant sought information from NHS Glendale and had been unhappy with Colin and Samantha's response. They considered that Samantha and Colin were withholding information and had requested a review.

Requesting a Review

If the applicant is unsatisfied with the public authority response to their FOI request, they can ask the authority for a review. The applicant has twenty days in which to request a review. After receiving such a request, the authority appoints an independent internal reviewer to appraise the efforts that have been made to locate, retrieve and respond to the request.

The applicant sought statistical information about post-traumatic stress disorder (PTSD) among Falklands War veterans in Scotland. He wanted to obtain an overview of the situation and whether incidences of PTSD had increased or declined in the years since 1982. He had made a number of similar requests for information to different public authorities on the same subject since the Act had come into force. In this case, he had contacted a large hospital on the outskirts of Glendale. It was this request with which Colin and Samantha were dealing. However, as Samantha and Colin wrote in their original response, this was information that their authority did not hold (see figure 4).

Date   22/8/08
Your Ref
Our Ref   AM/RM
Enquiries to
Extension
Direct Line
Direct Fax
Email

Dear

FREEDOM OF INFORMATION – POST TRAUMATIC STRESS DISORDER

I write in response to your email request of 5 December 2005, for information on Post Traumatic Stress Disorder (PTSD) amongst the Services since 1982.

I have been informed by Dr Claire Fyvie (Director, The Rivers Centre), that unfortunately they do not record the type of information requested. There is no way of knowing from the statistics that are kept whether a case of PTSD was combat-related or not, nor do they record Service, Country or Conflict.

The only way to find out this information would be to go back through every individual case file over the past twenty or so years. I'm sorry we can't be of more help, but we simply don't record data in this way.

I hope this information helps with your request.

If you are unhappy with our response to your request, you do have the right to request us to review it. Your request should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If our decision is unchanged following a review and you remain dissatisfied with this, you then have the right to make a formal complaint to the Scottish Information Commissioner.

If you require a review of our decision to be carried out, please write to [our internal], FOI Reviewer at the address at the foot of this letter. The review will be undertaken by [him] as he was not involved in the original decision making process.

Yours sincerely

Director of Finance
Cc: Chief Executive

Figure 4. Response from NHS Glendale's Chief Executive (on behalf of Samantha and Colin) given to the applicant who sought information on post-traumatic stress disorder

In line with their FOI review process, Samantha had passed the applicant's request onto NHS Glendale's internal FOI reviewer, Hector, and explained to the applicant what she had done. Hector was a man of few words. He was one of the Board's non-Executive directors and had worked in the Health service for the last thirty years. His FOI role was to review, when requested by them, the efforts Samantha and Colin had made to locate and retrieve the requested information. Samantha had, as she usually did under these circumstances, spoken to Hector directly about what was involved in the applicant's request for review. However, the applicant wanted to speak with Hector himself, and did not want to communicate with Hector via Samantha or Colin.

To confuse matters, however, Samantha, Colin and Hector had *already* communicated about the review. This was clear to the applicant from correspondence he had with Colin, in which Colin had explained that Hector was 'looking into the case'. In particular, Colin stated that Hector had already begun to look into the 'recording mechanisms' in place for recording information passed from NHS Glendale to the NHS Information Services Division. This suggested that the change in the applicant's perception of Hector that would arise from Samantha, Colin and Hector discussing the case, had already taken place. Samantha, Colin *and* Hector's shared knowledge, it seemed to the applicant, suggested a basis they shared in common, and put them in a position to collude against the applicant.

To begin the review process, Hector wrote to the applicant (having already discussed the review with Samantha and Colin, about which the applicant knew). Hector wrote:

Dear Mr. Jones,

I am writing in my capacity as FOI Reviewer for NHS Glendale.

I understand that there are matters pertaining to requests for information which you wish to be reviewed. Please confirm that you do indeed wish me to review these matters.

I am ready to carry out such reviews and should be grateful if you would advise me of the following:

1. Your address for correspondence (this can be your address email)
2. Details of your original requests for information
3. An explanation of how you are dissatisfied

Your sincerely,

Mr. Davis

Hector got the following response:

> Dear Mr. Davis,
>
> You know the answers to all of these questions, and you are well aware of what is going on, and so please, do not come across as being ignorant.
>
> Sincerely,
>
> Mr. Jones

The fact that Samantha, Colin and Hector had discussed the applicant's case suggested to the applicant that all three shared knowledge and a common basis, and would inevitably only come to the same conclusion about his request. He need not go through the review process: in his eyes, the outcome was a foregone conclusion. He asked for another reviewer, someone from outside the authority who was 'impartial'. It seemed, not only had Samantha, Colin and Hector shared what they knew, but working for the same organization suggested that they were *unable* to be separate, and impartial, and indeed would act as 'one' body.

Hector did not know whether to proceed with the review or not. Colin explained:

> '[the applicant's] complained to [the Chief Executive] about me, Samantha and Hector saying that we haven't done things properly. He wants another reviewer. …people are under the impression that the reviewer shouldn't be a member of this organization. But we are all members of this organization… Samantha is, I am, Hector is, there's no one who isn't a member of this organization! Anyway, I don't think Hector wants to do it [anymore]'

Hector, in the end, refused to conduct the review. He was unwilling to proceed for the very reason that his professionalism had been called into question. It seemed that the division *within* Hector and *between* him and others, that allowed him to in one moment, to offer his private thoughts, and in the other, a professional view, had been collapsed. His relations with his colleagues in the eyes of the applicant seemed to forfeit his own divisibility, and gave relational form to his professionalism.

Although no different from that in any other authority, it was the review process that activated, in the applicant, a new relationship with Hector as a result of his perceived relations with Samantha and Colin. As applicants read the relations that practitioners shared in what they did and said, and the information that they disclosed, the crisp distinction between information and knowledge seemed to blur. Relations were considered implied in the information practitioners disclosed in a way that left practitioners and applicants estranged. In fact, Hector, Samantha and Colin's unity might even negate the applicant's case. The basis they shared in common, their conformity, would serve to make their position (of there being no information to give out) once again relation-free and, hence, more credible in comparison with the applicant's case, which seemed based on his own opinion.

In the end, the applicant did not receive the information that he had requested from NHS Glendale. The authority continued to insist that this was information they did not hold. At the same time, a decision notice issued by the SIC, concerning a request that the applicant had made of the NHS Information Services Division (ISD) for statistics relating to Falklands War veterans with PTSD concluded that this too was information that ISD did not hold. It seemed the way in which hospital discharge data was classified precluded identification of PTSD.

Samantha, and Breast Screening Results

As the Boards Complaints Officer, and already in a public facing role, Samantha was responsible for handling FOI requests. She had a friendly manner that seemed appropriate for her role and would often happily talk to me for hours about the requests and complaints that the Board had received, issues they had raised, and some difficulties she had with applicants.

Samantha's office had a tendency to overheat. It was small and about one hundred yards from the room in which Colin and I worked. She generally left her office door open, which provided some cool air and a view of colleagues as they walked by and made cups of tea and coffee in the large coffee room opposite. On walking along the long corridor that stretched from beyond her office to the facilities department, I would be invited in for a chat at the small, round, wooden table that sat to one side of her desk. We would talk of how she could predict what requests would come in by the stories in the newspapers and how as she released information, one request would generate the next, and information would appear as a news story the next day only to generate new requests on the same topic. Samantha could see enchainment in information, the manner in which information elicited new information, and the way in which relations between different pieces of information informed the creation of information.

Sitting at her small office one morning, Samantha told me about a case that concerned her. She had received another letter from an applicant with whom she was now familiar. In this letter the applicant sought to explain what information she wanted and why she wanted it. But the letter was not only a request for information. In it the applicant relayed in detail her experiences in the hands of the NHS, described her ordeal, the treatment she had, and the actions she had subsequently taken against NHS Glendale, suggesting she required someone within the authority to understand her case and obtain some support. Receiving the letter, Samantha considered it should really have been sent to the Scottish Public Services Ombudsman (SPSO) with whom the applicant was already in communication. It was the SPSO who had informed the woman that NHS Glendale might provide minutes to a meeting that it turned out they did not hold.

Scottish Public Services Ombudsman ('SPSO')

A person can approach the SPSO after the formal complaints process of the organization concerned. The complaint will then be independently investigated by the SPSO, who deals with complaints against councils, the NHS, housing associations, the Scottish Government and its agencies and departments, colleges and Universities and most Scottish public authorities.

While a patient of NHS Glendale, the applicant was far from happy with the treatment that she had received. The breast-screening clinic where she had her breast scanned had given her the all clear, but she was subsequently diagnosed with cancer. On complaining to the authority about her initial misdiagnosis NHS Glendale's Complaints Panel decided not to uphold her complaint. On appealing to the SPSO, it was suggested to her that she sought out the minutes to the diagnostic panel meeting, which now proved difficult to find. 'I don't think we can help her', Samantha explained.

> '….complainants can now ask for their files [using FOI] whereas they couldn't before. There's one complainant [the applicant described above] at the moment… She thinks we're holding something back from her. And we're not, she just thinks we are.'

Complainant

A term used to describe people who had submitted a formal complaint to the authority.

Although the applicant had already taken her complaint to the SIC on appeal, she continued to ask Samantha for the minutes to the meeting, information that NHS Glendale did not hold. In fact, the minutes did not exist, Samantha explained. 'We never take minutes of that kind of thing, we never have. It's Scottish Executive policy, not us'.

Colin and Samantha's Cases Compared

Practitioners such as Colin often made sure they acted on a common or shared basis so as to comply with the Act and ensure that their own particular relations or personality were not seen to govern the decisions they made. However, complying with FOISA was a double-edged sword: practitioners' concealment of relations was both necessary for compliance and brought accusations of secrecy from applicants.

In chapter three I elaborated on the manner in which different persons were undifferentiated because they considered themselves as acting on a common or shared basis. It was in light of the non-differentiation of different practitioners that they made their own personality and individual relations absent. Different practitioners, such as Duncan and Morag, simply appeared 'anyone' in a position to locate and retrieve information; their own personality and position was irrelevant to what was retrieved and disclosed. Since different persons and organizations were perceived as undifferentiated, others might

only explain the differences between them in terms of their secrecy or the concealment of information. Indeed, it soon became clear to practitioners such as Samantha and Colin that perceived differences between what different people, organizations and even different Acts said, would indeed be interpreted by applicants in terms of 'secrecy'.

While practitioners' concealment of the relations on which disclosures depended was at the root of secrecy in the above instances, there were also instances in which relations between people were highly visible in the information that was disclosed—both evident in the communication between Samantha, Colin, Hector and the applicant, and potentially evident in the information they disclosed that was the outcome of a relation, made absent. The action of *form* shows individual entities, or things, as being implicated in other relations, such that to see a piece of information alone was also to acknowledge that it exists in relations.

The relation that Samantha, Colin and Hector shared in common made Hector's knowledge less valuable to the applicant, who was consequently concerned Hector would be partial as an FOI reviewer. Relations between practitioners diminished relations between Hector and the applicant. At the same time, discrepancies between Samantha, Colin and Hector, what they said and did, was also read by the applicant in terms of secrecy, since this could be the *only* explanation for their differences (given they were perceived as holding a relation in common thus as propagating the same form).

Necessary Feedback

Despite her continued communication with NHS Glendale, the applicant had already gone to the Scottish Information Commissioner, Samantha stated. On investigating the allegation that the authority withheld information, the SIC concluded, in a surprising twist, that NHS Glendale had failed to comply with the Act. He argued that each letter the applicant had sent had contained additional questions to which Samantha and Colin had not responded. One concerned a request for information about other (besides her own) complaints against the Scottish Breast Screening Service. Samantha, perceiving the letter as something that was the concern of the Scottish Public Services Ombudsman, and appearing to assume that the letter only reiterated the request with which they were currently dealing, overlooked the additional questions that lay embedded in the text. In the decision notice that the SIC issued to Samantha and her colleagues, they received a ticking off. While they had subsequently provided the information for which the applicant had asked, they had not done so within the twenty day timescale as laid out in the Act.

It seemed that the Act required (although not in statute) that requests for information that the authority held were not only recognized as and when they were made, and responded to in full and within the timescale, but that requests for unrecorded information—opinion, advice, suggestions, feedback, contextualization from those disclosing the information—also be provided.

It soon became clear to Samantha and her colleagues that providing an applicant with additional feedback, contextualising a request or clarifying certain organizational procedures was as crucial as

responding to a request itself. Only then would an applicant not be confused and suspicious. In other words, applicants required feedback twice, once in the form of the information requested, and secondly in the form of information *about* information, what it meant, why it was withheld, and why it was different. As such information was not recorded, an FOI request entailed both recorded information and access to persons and unrecorded information. This second kind of information, Samantha generally willing gave, as shown by the way in which she would happily talk with me, about FOISA, providing me with all the details, feedback, and context I needed for my research. In this case, providing and making visible to applicants the non-recorded information and *relations entailed within it*, took time and effort.

It was clear to me, if not to the applicants who received it, that this latter kind of information was different. Information, here, had relations internally implied—those of Samantha and her colleagues—as a result of which such 'information' was elicited or created. Information, here, appeared more like 'knowledge'.

But sometimes no amount of information was enough. On the one hand, feedback generated more questions and more answers as if the applicant and practitioners were *both* disclosers and recipients of information. On the other, it seemed to applicants as if there was always information that practitioners were not disclosing, and for this reason, always more to know.

In the case above, applicants read into knowledge relations between public authority employees, which created new divisions between them and the applicants concerned, and to accusations of secrecy in light of their differences. In the case below, George, an applicant and regular users of FOISA established friendly and often informal relations with FOI practitioners. The relations that George could read between public authority employees and information enhanced its value or importance—turned it into 'knowledge'. However, George perceived secrecy—or a reluctance to articulate what I knew—in my silence.

Establishing the Truth

George

Requester and Discloser: An Interdisciplinary Dialogue

There were times when George, a resident of the small town of Edenside and frequent user of the FOI Act appeared to assume I had knowledge that I might articulate so that he could respond to my research questions more fully. There was a sense in which he thought I was having difficulty articulating what I already knew, the division between us a consequence of the different knowledge that we had acquired and might either share or withhold. George was a grey haired gentleman, tall and slim, with a soft manner, and a slow walk. He was extremely careful with his words, a precision, he explained, that he had acquired from many years in business. He was a retired business systems analyst. He used to run his own small business with his wife, Helen, which entailed going into large companies and looking at the way they used

their IT systems, aspects of their business 'usually connected with databases', and recommending software. George was also developing his own philosophical theory of how the world worked, one that he had been contemplating for many years and to which he could now devote more time. Like all thinkers, he was finding it difficult to find the words to express his ideas. So George and I not only talked about the FOI Act, which he frequently used but mulled over some of his more theoretical ideas and how they might be developed.

I was introduced to George by Mike, the FOI Officer for the University of Edenside, with whom I had become familiar from attending a short introductory session on FOI that he had held at the University earlier in the year. Mike was in his early forties. He had been working for the University for some months, had a background in intellectual property rights and private business. George had known Mike since the end of 2004 when 'as a trial run' George had put an FOI request into the University, the year before FOI was enacted. Mike had treated this as a test case and George had subsequently put several requests into the University, which Mike generally forwarded to someone within the University who could respond, although George was not always happy with their efforts.

George was an active member of his local community and at the time of our meetings was principally involved in two projects. He was working on a response to a public consultation with other residents on the local council's regional development plan that he would submit in a few weeks. In addition to this, he was making a case, with others, against the closure of his daughter's primary school, part of a larger council run project to amalgamate and reorganize four existing schools in the area. On both projects he was someone who knew how to use FOISA, compose and submit requests on behalf of the group and 'dig out the facts'. In fact, George had developed quite a technique for composing questions that could not 'be easily misinterpreted' by those who dealt with them and left no 'wriggle room'. George had, for example, made requests for information on school closure procedures, pupil rolls and projected figures for the coming years, the number of university students with cars, and dog walking restrictions on university owned land.

Over the course of the year that FOISA came into force, George and I regularly met for morning coffee in a sunlit, glass-panelled conference centre on the outskirts of Edenside. Here, George could discuss the requests that he had made, out of earshot of other residents, and staff to whom he might have submitted a request. He did not want a discussion of how he went about getting information, thoughts on fellow residents and council and University employees to be overheard. In our meetings we discussed the requests that he had made and some of the e-mails that he had forwarded to me, containing correspondence between residents, information released as a result of a request, or an FOI request to which he was awaiting a response. He was also interested in learning more about social anthropology, and how its approach might fit in which his own research.

While I did what I could to assist George with his requests about social anthropology, as a requester or applicant myself asking for information from a 'practitioner', George did his utmost to

provide me with information that he considered I might find useful for my research. George did not want to provide me with 'useless' information and above all was concerned with neither 'wasting my time nor his'. In fact, he wanted to know how best to fulfil the promise that he had made at our first meeting, as he explained in some detail:

> 'I want to be quite clear in my mind… how [am] I best to carry out my promise to you without causing me a lot of extra work or you a lot of useless information… My simplest thing, if I was being pragmatic, [is to say] I'll just feed her the e-mails, that's what I'll do, job done'.

As if a public authority FOI practitioner responding to a request for information, George could provide me with the 'bare minimum', e-mail correspondence, that was easy for him to forward and might be of some value to me but he was uncertain in what way. He might then consider his promise fulfilled. Our relationship seemed somewhat contained: in return for my assistance with his own research, he would provide me with relevant examples and cases from the material he had to hand. In order for an obligation to appear fulfilled, however, George had to provide me with what I considered useful information, which meant I had to be absolutely clear about what I wanted. It was as if George considered himself a resource from whom I might extract supporting evidence to argue, extend, or supplement what I already knew. Yet I found I could not always be either precise about what I wanted or provide him with an answer.

George seemed to expect me to at least know what research questions I had in mind, and the findings I would obtain from the material he gave me. But I tried to explain to George that I did not know what I wanted. On hearing or reading any material he could provide, such as e-mail correspondence, between him and a fellow resident, or a letter from a council official, I might then know. But prior to knowing, so to speak, I did not know and therefore could not share with him what I knew. Knowing, in George's eyes, seemed a black and white matter of knowing or not knowing, something already in existence and slowly revealed rather than something that emerged in response. That I did not know what I knew before I 'knew' it, seemed to bewilder him. Unable to share with George what he only assumed I knew, George seemed increasingly frustrated and to think my silence disclosed an inability to express what I knew.

In George's eyes (and as a researcher himself), being a good researcher entailed knowing what I wanted to know before I embarked on my research. Familiar with a model of knowing in which persons and knowledge travel independently of the person and relations through which they are created (discussed in chapter three), knowledge seemed conceived by George in the form of an independent unit—something that was either known or not known and travelled independently of the relations through which it was formed; in the form of an object that can be collected, and applied, revealed or concealed. But as George also realised, knowledge travelled in social relations…

While over the course of these meetings our interdisciplinary dialogue was put to one side in preference for discussing George's recent activities in relation to FOISA, I did occasionally enquire how his research was going, as he frequently asked about my own research.

Access to Officials

In order to respond to the council's public consultation, George requested information from his local council as well as Edenside University. He received mixed responses to his enquiries. The 'middle ranking' officials seemed more often than not keen to provide him with information. However, the 'top officials' George had reservations about. They were 'occasionally a bit obstructive in the way they went about things, and weren't prepared to release too much information'. It was the 'top' or high-ranking officials with whom George really wanted to make contact, however. George suspected that the 'middle ranking officials' were just doing their job, disclosing information as and when requested, whereas those of higher rank had had 'some sort of guidance from the top', from those at Executive level. At meetings that George had attended he found that high ranking officials were evasive, '…people asked them direct questions and they didn't get direct answers, which always makes you suspicious…'. It appeared these were individuals to whom George considered knowledge was attached, and to whom he sought access. The very relations that made high-ranking officials of value to George also made them appear inclined to hang onto information, seemingly at the request of those at the top. Relations between high-ranking officials and people at the top, then, only diminished relations between officials and members of the public. However, George soon found there were ways of using the Act that provided him with access to officials of high rank in a way he had not foreseen.

Scrutinizing his own use of the Act, George was beginning to see that his use of FOI was changing. This was something that he found quite interesting and was a result of his and other residents' changing needs. The campaign against the school closure was moving fast and George often needed information quickly. Rather than obtaining information without the use of the Act, George began to use FOI as a 'lever': he would submit a formal written FOI request as a means of initiating an informal conversation with a council employee, preferably a high-ranking official, that both would consider a substitute for a formal written response. In other words, in submitting a request that would be passed to a council official, George would encourage this request to develop into a more informal conversation, one through which George would obtain information he considered more valuable than that obtained from a more formal written response.

Rather than an end in itself, FOI became a means to an end. In the early days of using FOISA, George had become acquainted with council staff to whom he now regularly sent FOI requests. Having made contact with these few members of staff, enough to know them by name and by sight, after making a request, George would follow these requests up with a telephone call to the council employee to whom he had made the request. After speaking with this employee on the telephone, a meeting might be

arranged, informally, or more formally attended by other council staff. A request became something to be talked about with those to whom he had sent the request, demanding a response of a different kind.

Submitting an FOI request in more regular fashion, and awaiting a response, would mean that George was put in touch with an FOI Officer, 'an employee of middle rank', who acted as a conduit for higher ranking staff. Meanwhile, those to whom George considered useful knowledge was attached remained out of reach. FOI used instrumentally, appeared to give George access to people and information he deemed important. Using FOI in this way meant that he could enter into relationships with council officials. George would regularly hang back after a council meeting to which he had been invited to have a word with a participant. While a middle-ranking employee might provide him with 'information', information turned into valuable knowledge as a consequence of with whom or what it was associated. High-ranking staff, George considered, had experience and learning that made them persuasive, turning information into truth and eliciting yet more truth. So while FOISA provided access to information, it was a way of obtaining access to people, without which information lacked meaning. At the same time, information was itself the action of form in relation and the outcome of (valuable) relations made absent or not seen.

Taking Care

But access to people was also something, it seemed, of which one had to take due care. George was aware that using FOISA as a lever, a means of entering into an informal conversation with council official, he could not relentlessly ask questions. The knowledge into which he came, was no longer dependent on the Act, but on this particular relationship. In stepping outside of the scope of the Act, George was working within different parameters. People would simply stop responding to the questions he asked, run out of patience, if George asked too many questions. Those disclosing information might reasonably assume after a certain number of times of responding that information was of suitable interest or value to the recipient, a request beyond this point suggesting that an applicant was demanding more of a relationship than was due.

In some ways, it appeared that requesters under these circumstances required a response in return for paying their taxes in a manner that echoed the reciprocity entailed in my and George's relationship. It also appeared the discloser as much as the recipient might decide what constituted valuable information and when their obligation to provide it had been met. On the other hand, there were times during his correspondence with the council when George, considered a debt fulfilled well before the council employees providing the information. As George remarked, on one or two occasions, individuals were 'exceedingly helpful… the middle ranking officials are very very helpful, and some of them way beyond the call of duty'. In this case as the recipient of information, it was George who was content with what he had been provided well before those providing information considered their obligation met. The information provided seemed of value to George, perhaps in a way that these council staff did not

anticipate. That is, information was itself the outcome of a relation, which remained latent or unseen in light of one piece of information alone. Information in this sense appeared more like knowledge that emerged out of and existed in a network of relations; yet appeared as 'information' in light of the absence of these relations, which nevertheless were read back into information disclosed. Information was both a product of relations that George sought to read and embodied these relations—they were implied in its very form.

In these case-studies, knowledge in the form of 'information' can be seen working in different forms, and to different alternative effects.

On the one hand, familiar with a model of knowing in which persons and knowledge travel independently of the person and relations through which they are created knowledge was conceived by George in the form of an object into which persons might come by belonging to a particular group, not a subject activated in relation. (This was a result of the manner in which people make the social relations that inform what they know and do absent by *always* considering themselves as holding knowledge in common and operating on a common or shared footing.) While I explained to him why I could not share with him what he needed me to share, and that I would come into knowledge (that he already presumed I 'knew') in relation to any material, e-mail correspondence, repeated conversations that he could share with me, knowledge was something that George presumed I had in advance of knowing it.

On the other hand, in contrast to Colin's case in chapter three where concealing his personal relations was a way of enhancing the value of the information he disclosed, the personal relations information carried or through which it was shaped was of importance to George. Knowledge in the form of information was turned back into knowledge as a result of the relations George could read between high-ranking officials and information. At the same time, individual entities, or things, were implicated in other relations, such that to see an individual entity alone was also to acknowledge that it was the outcome of relations—that is, knowledge in the form of 'information' and thus emerged and existed in a social network. Quality information came from quality people within the organization, in this case, high-ranking officials: its seemed a practitioner's position (and personality) both was seen to affect and not affect what was disclosed. Despite practitioners' best efforts to conceal their personality and personal relations so as not to shape or influence what was disclosed, the position of a practitioner did also determine the use and importance of the information disclosed.

Conclusion

This chapter has highlighted three key instances of 'secrecy' perceived in the actions and statements of practitioners. Each key instance, or type of concealment, is the outcome of carefully managed subject-object aesthetics on the part of practitioners, which have both a positive and negative on their relations with applicants.

To comply with FOISA, practitioners made the social relations that informed their response to a request deliberately absent. It was a result of this, the fact that different practitioners seemed undifferentiated, that knowledge appeared in the form of an independent entity that *could* be freely disclosed, an entity that is either known or not known, concealed and revealed. It was this method of concealment was also at the root of secrecy, on two counts.

It was a result of this concealment that knowledge seemed considered that which travelled independently of persons, as a detached object. Perceiving knowledge as an object meant people also read 'secrecy' into people's silence or lack of articulation of what they are perceived to know. In my relations with George, I could not share with him what he needed me to share. In George's eyes, I lacked the ability to articulate what I knew and seemed 'secretive'.

At the same time, differences between different people and different organizations, otherwise perceived to be undifferentiated, applicants explained in terms of their 'secrecy'. It was these discrepancies that practitioners sought to quickly explain. Otherwise, as FOI practitioners such as Colin, Samantha, Dave and Amanda discovered, such differences citizens took on for themselves to sort out. There seemed no justification for differences in policy and approach that would lead to a discrepancy in the services and facilities that people across Scotland received. Difference pointed only to lack of knowledge or, more likely, misconduct and concealment on the part of the authority.

To minimize confusion, it was necessary for FOISA practitioners to spend time providing applicants with additional feedback. It was important that practitioners such as Colin explained the reason why the applicants requesting their personal medical files needed to make a new request under DPA. Otherwise, the discrepancies between the two Acts might be perceived in terms of secrecy.

Such communication and the information they disclosed had the capacity to appear as originating from particular persons, and as emerging out of particular relationships, which, in turn, had both a positive and negative effect on applicants. While Colin's rapport with applicants put him in good stead, relations *between* colleagues could create divisions between them and applicants. This was what Hector soon discovered in light of his communications with Samantha and Colin. The unity that applicants perceived between practitioners such as Hector, Samantha and Colin, not only gave rise to new divisions between practitioners and applicants, but led applicants to presume that Samantha, Colin and Hector were being secretive when they were differentiated, or divided.

George also read the connections between high-ranking council officials and disclosed information. George sought information that came from persons in the council whom he considered knowledgeable and important. Where the information disclosed was seen in the eyes of an applicant (such as George) to be the product of a practitioner's particular position, this was what made it valuable or important—turning information into 'knowledge'. So a practitioner's position within the organization appeared both irrelevant and highly relevant to the quality of the information disclosed; personal relations and personality were both present and absent in information.

At the root of secrecy, stakeholders and applicants generally considered was 'power'. In the following chapter I explore the notions of power and agency associated with FOISA.

5
Power and Agency

Introduction

While power was not used in formal FOISA rhetoric to explain why people, government, practitioners, withheld information from citizens, advocates of the legislation regularly used 'power' to explain why people and organizations were 'secretive'. The axiomatic relationship between power and knowledge was at the root of such accusations: in the eyes of FOISA decision-makers, equal information also guaranteed equal power. Power and agency went hand in hand; or rather knowledge would provide citizens with power *and* agency. While practitioners with knowledge had power, this denied citizens agency. 'Agency' here appeared predicated on knowledge of the truth, suggesting FOISA decision-makers and practitioners conceived of agency in black and white terms, as something people had or were denied.

Power has been explored in depth within and beyond anthropology. Most well-known for his examination of power, and how it works, is the philosopher Michel Foucault. In particular, his writing on power and knowledge (in a selection of collected works in Gordon 1980) focuses on the way in which power flows through interconnecting statements, persons and things. These are the vehicles of power, not its point of application. That is, while persons are subjugated by others, these others are also subjugated by other people and subjugate themselves. In other words, power has no location—and is seemingly transcendental. However, although I make reference to them, it is neither Foucault's power analytics nor other notions of power that I take up in this chapter.

Rather, drawing on two case studies, that of Colin and Samantha at NHS Glendale, and Robert and Iain who are FOI practitioners at Bankside council, I explore instances of power and agency between practitioners and applicants working and submitting requests under FOISA. These moments of 'power' illuminate the assumptions underpinning a theory of power based on the axiomatic relationship between power and knowledge, and at the same time throw into question Foucault's power analytics. That is, might people's own practices challenge a theory of social relations that challenges Foucault's theory of power?

The Intrigue of Power

Power carries a certain fascination. Social anthropologists are urged to unravel relations of power; make explicit power that is most, as well as that which is least, obvious. What complicates their efforts is that there are multiple ways of thinking about power: power as coming from the structures in which people are embedded (Douglas 1987), value as coming from the retention of knowledge (Simmel 1990), and power as flowing through people and structures, itself transcendent (Foucault in Gordon 1980).

Power and agency were terms that decision-makers, practitioners and users of FOI legislation used in their own way to explain the reasons for and impact of promoting and restricting access to information. Power was seen as being at the root of secrecy and was also seen as the cause of lack of agency. Worth reiterating here is the claim of Des Wilson (1984), founder of the UK Campaign for Freedom of Information, that:

> 'Power and information are inextricably linked… it is the desire of most of those who achieve power to retain that power. To do that they feel a need to create an image of competence, reliability, sound judgement, even of invincibility. As these are extremely difficult standards to meet in our world, they rely on a combination of cover-up, public ignorance, manipulation of – sometimes even misrepresentation of – information, and selectivity of disclosure... it is almost beyond the power of men and women to resist the corruptive influences of power itself. The only antidotes to the disease are decentralisation and deconcentration of power, and democratic structures of the highest quality. Essential to all of this is freedom of information' (16-17)

Popularly, knowledge is power: the less knowledge is available, the more power its bearers seem to have. Power, then, is something gained through making knowledge a scarce resource in some theories (Barth 1975, Harrison 1995, Herdt 1990). Without knowledge, people seem without power and agency. Agency, here, comes with knowing and appears to hinge on a division between people that reflects that between individuals and society. In other words, it is society to which, without knowledge, people do not have access—from which they are excluded while still existing in (or as part of) it. People's lack of knowledge thus points to their lack of capacity to think and act on the same terms and appear in the same form as others—that is, in the form of society itself. Thus implicit in the term agency is a division between individuals and society that both puts people in their place and separates them one from another. Elsewhere, the term has a discourse of its own: Gell (1998) argues that agency is relational, '…for any agent [motivator], there is a patient [recipient], and conversely, for any patient, there is an agent' (22). Nor is agency reserved exclusively for people. An object might be looked on as a subject or agent with agency, with the power to motivate other subjects (Reed 2005). Above all, social anthropologists consider agency as not only pointing to the capacity of subjects to motivate and others to be motivated but agency serves to highlight *who or what motivates*. Agency, then, does not depend on the type of knowledge into which people come, rather is itself indicative of peoples' particular interests in a social relation.

In the eyes of Foucault, the dissemination of information that Wilson (1984) advocates allows for the continuation of power, rather than its dissipation. In other words, power is at work in information sharing itself, since the very power that dissemination dissipates flows, instead, through the relations that dissemination sets up. It is here that Wright and Shore (1997), following Foucault, and writing on power in relation to policy and governance, might step in to argue that what allows power to flow is the fact that

to participate in society it is necessary for individuals to seek out a certain kind of information, largely denied to them by others, and provided under FOISA. That is, to have 'agency', individuals must obtain knowledge that is itself considered public, common, and appears separated from the social networks of which it is a product. Thus power flows in places where it is thought most unlikely and is also least recognized.

Foucault's career spans some thirty years, from the early 1960s (*Madness and Civilization, 1961*) to his death in 1984 (*The History of Sexuality, 1984*) at the age of fifty-seven. The work that he produced during this time is often described as discontinuous since, for many, the links between his works are not clear. Each might be considered to stand alone, yet it seems that in the very discontinuity between his works lies a certain continuity. 'This business about discontinuity', Foucault once argued, 'has always rather bewildered me… It is a question of what *governs* statements, and the way in which they *govern* each other so as to constitute a set of propositions that are scientifically acceptable… it's not so much a matter of knowing what external power imposes itself on science, as of what effects of power circulate among scientific statements…' (in selected transcribed conversations and writings edited by Gordon 1980: 112). The sudden take-offs, sudden breaks, common to both his own work as well as evident in scientific practice, are the outcome of changing regimes of truth, that is, shifts in knowledge (*Power/Knowledge*, 1972-1977 in Gordon 1980). Identifying when and why these occur was for Foucault of greatest importance. Over the years, Foucault switched from a narrative on discourse (*The Order of Things, 1970* and *The Archaeology of Knowledge, 1969*), to one concerning power/knowledge (Gordon 1980), and later to experience (*Discipline and Punish, 1977* and *History of Sexuality, 1984*), although he also said, looking back at his work, that what else was he dealing with other than relations of power? As Dreyfus and Rabinow (in their Foucault Reader, 1982) argue, the power analytics that Foucault puts forward do not so much constitute theory as depict the full fluidity and contingency of power relations, of which Foucault describes himself to be part and product.

Foucault's power analytics are outlined in *Power/Knowledge* (Gordon 1980) in which Foucault argues that truth is the outcome of an interconnecting matrix of statements each of which point to other statements and to what is 'true'. It is through these statements that power flows. Power thought of in these terms is implicated in every thought and action, turning people both into subjects and objects of power. However, while taking an interest in Foucault's power analytics as well as other notions of power, it is not these that I take up. Rather it is the very dissipation of power in moments when power might be thought of as playing a crucial role, that highlights the very basis on which claims to power are made, how power operates and the assumptions that underlie its operation. Might Foucault and those who employ his ideas share assumptions about the nature of social relations, that both give rise to and support his power analytics?

Amongst his followers are Robertson (1999), for example, who argues that a shift from a culture of secrecy to one of openness marks not liberation from power but a shift in power relations:

'[the] …realist sees secrecy as a reflection of power, not values, and believes that there are almost as many reasons for secrecy as for disclosure. The realist argues that it is underlying changes to the structure of state power and not shifts in values which give rise to changes in official secrecy…. The realist takes the view that secrecy is not a matter of conviction but of the balance of power between different forces within the political system. Changes in the degree of secrecy will only follow changes in the balance of power' (9-10)

Meanwhile Susan Wright and Cris Shore (1997) writing on governance, policy and power turn to Foucault's power analytics for a description of policy in practice. 'How do policies construct their subjects as objects of power…'?, they ask. Policies 'codify social norms', conceal power, and produce self-regulating persons. And while governments consult people with expert knowledge—sociologists, criminologists, psychologists, religious ministers, behaviour therapists, medics and anthropologists—these persons only help others to 'act upon and reform themselves'. People both turn themselves into subjects of power and suffer external subjection. In fact Governments have come to rely on the capacity of subjects to self-regulate according to categories that have been normalized through the powers of expertise: liberalism *requires* that individuals govern themselves while persons at the same time seem to be acting as if free agents (9). Among his critics are Jurgen Habermas who argues that while critical of modernity—the Age of Enlightenment and will-to-knowledge with which it is associated—Foucault later takes modernity up as 'the critical impulse worthy of preservation and in need of renewal'. His approach, Habermas concludes, is inconsistent and lacks rigour (Hoy 1986: 107). Some historians argue Foucault's use of historical information is far from accurate. He frequently misrepresents an event, or simply makes something up entirely. Others, such as sociologist Andrew Scull, argue that years of scholarly research revealed nothing of importance for Foucault in relation to his project, rather his work is predominantly based on the detailed analysis of selectively mined nineteenth century sources that are themselves of dubious reliability. Such criticisms of Foucault's work cannot but undermine its utility.

Nigel Rapport (2003) puts forward an alternative theory of power. In contrast to Foucault, Rapport does not consider people as governed or governable and subjects of implicit power that flows through everything, everywhere, but in control of themselves and their own actions, which includes being in control of who is in control of them. Rapport develops this alternative theory of power based on his experience and understanding of key individuals who have had an impact on his own life. He describes these individuals as in control of themselves and their own life-projects. People, he argues, are 'responsible for determining the interpretations they make and the actions they take. These might include succeeding in feeling out of control, or in putting oneself in a position of helplessness…' (5). Rapport

uses the vivid image of a 'self-propelled projectile careering through space' to describe individuals 'in momentum'. He writes:

> 'Its energy and momentum carry it along a certain trajectory, and it is deflected from this path only to the extent that it comes under the gravitational sway of another body, or is actually hit by another body. Even if this were to happen, the displacement caused to its original trajectory would depend upon its own force relative to that of the other body: its mass and its speed in a certain direction. If it is forceful enough it carries on its way' (7)

It is people's apparent will here that is most striking. But central to Rapport's analysis is the notion that individuals are themselves discrete, separate and contained—transcendental even. In the same way that Foucault's power analytics is predicated on the understanding that individuals are separate and discrete and the persuasive relationship between them is one of power, so Rapport appears to replace the relationship *between* individuals with that of the individual him or herself. In other words, people are more generally conceived of as at the centre of a relationship that has the potential to unite discrete entities. It is in replacing strangers with the person him or herself that Rapport seems only to replicate Foucault's own understanding of the relation. It is perhaps the nature of the relation itself that requires closer examination, on which both theories of power (Foucualt and Rapport's) rely.

Power and agency are above all relational; people appear to have or lack power in their relations with others. This is because a contemporary notion of power appears to rest on a division between individual and society and the fact that there are certain things to know in order to appear in both forms. It is the separation of knowledge from the networks from which it originates that invokes people's own separation; that is, the fact that there is something to share and to know—a consequence of the magico-purificatory divide between knowledge and social networks that Latour (1993) describes:

> '…the word modern describes two sets of entirely different practices which must remain distinct if they are to remain effective, but have recently begun to get confused. The first set of practices, by 'translation', creates mixtures between entirely new types of beings, hybrids of nature and culture. The second, by 'purification', creates two entirely distinct ontological zones: that of human beings on the one hand; that of nonhumans on the other' (1993: 11)

Yet because knowledge is dependent on persons and things in relation, what is 'real' is neither fixed nor locatable. Power, then, is also something neither fixed nor locatable but is, rather, entirely relationally dependent. In this sense, there could be said to be no concrete power at all.

In the paragraphs that follow I turn to two cases, or rather a collection of moments where power is clearly harnessed and wielded, causes upset and concern, and is foregrounded and dissipates as people make and deal with requests for information under FOISA. In the first, Iain and his friend and colleague

Robert discuss how FOISA was implemented in their authority, and the difficulties and promises which they faced in being responsible for its implementation. Power comes into view and disappears as Iain and Robert themselves appear part of bigger networks, with responsibility and sometimes without power. In the second, I once again turn to Colin and Samantha of NHS Glendale and their difficulties with applicants who would simply not believe Samantha and Colin were not concealing information: power here was something that Colin and Samantha seemed to have but was not something that they realised they had.

Iain and Robert at Bankside Council

Iain was Council Secretary for Bankside Council, one of the largest councils in Scotland. He had taken on responsibility for the implementation of FOI in the authority with the help of his colleagues Robert, a trainer in employee services, Steven who worked in e-governance, and Fergus, described by Iain as Steven's side-kick. Since FOI had only been in force for six weeks, Iain and his colleagues were still getting to grips with it. Iain and Robert had been friends for over fifteen years, and appeared to regularly socialise outside of work as well as support one another on projects such as this. I had first written to Iain to enquire about the way in which FOI was being implemented and enforced in the council, and was as a result invited to meet Robert who I was informed would assist me with my research. From then on I was known as IAIN'S PHD STUDENT often written in bold type as the subject of e-mails passed between Iain and Robert.

The fact that I was awarded the title IAIN'S PHD STUDENT perhaps said more about the hierarchical nature of council then it did about me as a researcher. It was clear that both Robert and I were associated with Iain, and I as a result had access to persons and knowledge to which I would otherwise not. And it seemed that, in providing me with access to their knowledge, council staff were securing their own access to Iain's knowledge, in a way. But what the introductory statement also seemed to suggest was that what I required and what I would get from people was information. Indeed, in my discussions with Robert, he would (very helpfully) hand me files of information on the council and council process. In addition he would ask me what I wanted to find out, which is not something that I knew until I knew it. Knowledge here seemed thought of as something that might be easily and quickly retrieved, a latent entity rather than relational. In providing Robert a response he could then think of someone who would tell me what I needed to know. It seemed my research with Robert and others at the council was in some way modelled on FOI itself: it was about collecting and obtaining information, and relying on others to disclose it. While on the one hand knowledge travelled in a social relationship, its very association with Iain allowing it as well as Robert and myself to travel, on the other, knowledge became more like an object that anyone in the right position might obtain or provide.

Robert acted as a kind of envoy for Iain: he arranged for me to attend an FOI briefing for council employees, so that I could meet him and Steven, who had also been involved in the implementation of

FOI, as well as Elaine and Mark who worked at the Contact Centre where all FOI requests and general enquiries were received and forwarded to council staff to be dealt with. Robert was a friendly, cheerful man who was always there to offer help. He would happily point people in the right direction and tell them what they should know or should be doing. At presentations such as the one he was giving to council staff at the FOI briefing, he would break complex legislation down and re-explain it in way that staff could better understand. He approached new legislation as a problem solving exercise. It was a technique he more generally liked to employ: Robert and I would often find ourselves in a situation where I unknowingly presented a 'problem' for him to solve, breakdown and rebuild. As part of his promise to Iain to assist me with my research, Robert and I spent time together in his office on the outskirts of town, discussing what I wanted to find out and with whom I might like to speak. After several meetings with Robert, I eventually managed to meet Iain, although Robert suggested that I put together a list of questions that I would like to ask him, rather than, we joked, taking my usual anthropological approach.

Iain and I sat down over a cup of tea and some biscuits to discuss how FOI had been implemented. FOI had only been in force for six weeks, and we sat in Iain's large square office situated at the back of the City Chambers, which we had reached after walking up red-carpeted stairs and through a warren of corridors. Iain was a tall man in his late fifties, who appeared to take working for the council as a way of life; he was fully familiar, and entrenched, in the council's ways and planned to celebrate his sixtieth birthday in one of the larger meeting rooms at the Council Chambers. Iain had completed a diploma in Social anthropology at Oxford before leaving academia to work in local government and was therefore 'desperate' to find out what an anthropologist might see in FOI, and also the council. 'The focus of our diploma was very much, well, the Oxford tradition of E. Evans-Pritchard, kinship and marriage among the Nuer…', Iain explained. 'Most of it was based around primitive societies or underdeveloped societies, and the discipline seemed to be one more of methodology, you know you had to do fieldwork to get any credibility and, you know, mix with some of the less developed parts of the world'. In return for explaining to Iain what interest an anthropologist might have in FOI, Iain explained why he had been given responsibility for implementing it, situating himself within the council and in relation to others. He inherited responsibility for FOI because of his job as Council Secretary, which 'derives from the fact that I am secretary clerk to the council', Iain explained, but also because 'no body else really wanted to do it', and also because it was a niche for him and Robert to capture.

Robert was 'looking out for something where he could make his mark as well', Iain explained. So the year before FOI came into force, Iain and Robert started trying to raise the profile of FOI in the council: Iain made a presentation that Robert had prepared to a group of senior managers at 'one of these sort of group lunches' and persuaded 'the bosses' that they needed some resources put into FOI. 'We got a project manager and we got some support for him, and we got a project board that our project manager was reporting to, and I was sort of tacked onto this, in that I have my day job… but acted as a source of expertise and offered a general understanding of what we were trying to achieve… And the project kind

of took off from there'. The project team comprised of Iain, Robert, Steven and Fergus. They initiated a computerised system for logging all requests, which was 'a first' Iain explained, '…the council has never managed to achieve corporate logging of anything'. They also established an FOI Officers network, requesting that people in each of the eight departments took on responsibility for receiving and handling FOI requests. Finally, Robert ran a training awareness programme, that 'was excellent' Iain explained. 'August to December [2005], that was all the time we had really to prepare [for FOI], but I think we've done pretty well in that time', Iain concluded.

It appeared that one of the reasons for becoming the council's experts on FOI was that it was a means through which to be of particular value to council employees. Iain and Robert saw themselves as associated and with access to valuable knowledge in a way that made them essential to the way the council did business. This would heighten their profile within the council. At the same time, what constituted valuable knowledge had a tendency to shift and appeared relational. Robert might both have and lose power (value) depending on to whom or what his and other knowledge was associated. Robert's association with Iain was of great benefit to him. However, new knowledge, disclosed, for example, by the SIC had the capacity to differentiate Iain from others and the council from other authorities making Iain and the council appear without valuable knowledge. Such a change would undoubtedly affect the power Robert had in relation to others, as Iain's envoy and chief companion. There was in this sense power in disclosure itself, that is, in making otherwise powerful persons appear as lacking power.

It was perhaps in anticipation of the fickleness of power and possible change that Robert sometimes held onto knowledge for as long as he could: he was aware of the 'little bit of power' that he had in being able to provide others with information. He on one occasion took me through a request to which he was reluctantly responding: the Herald newspaper had requested information on the council's employment policy, as the Disqualified Adults list was due to be published and the Herald wanted to know how many persons were or had been employed by the council who were on the Disqualified Adults list. 'Maybe I should give more information', he explained. '[But] before I give them more information I need to sort out what the council's position is… When [the list] comes out, lots of questions are going to be asked'. He continued, '…am I being awkward, using my little bit of power… denying them something that [they] want?'

It soon appeared that the team's success, and Iain's and Robert's own success, largely depended on whether they stayed on the right side of the SIC and council management. After the council had been dealing with FOI for eight months, it received a Decision Notice from the SIC that was taken as bad news for the council. It appeared that the council, or rather staff at Contact Centre, had not recognised and responded to an FOI request and the applicant had taken the request straight to the SIC on appeal. The SIC had concluded that the council's lack of response was due to a Technical Breach and that it should rethink its request handling system. Iain, Robert and other team members had wanted to keep a low profile with the SIC and maintain both the reputation of the council and their own and were keen to drop

off the SIC's radar a quickly as possible. Iain called a meeting at the Contact Centre, attended by Contact Centre staff, Iain, Robert, and a handful of FOI Officers so that they might address and resolve the problem. Iain had to explain the situation to council management also, who were currently 'going crazy over council performance' of which FOI formed a large part. Fingers of blame pointed in different directions. While the SIC had pointed the blame at the council, and indirectly at Iain since he was responsible for the implementation of FOI, Iain had suggested to council management that the Contact Centre were to blame for the error, for which he apologized in the meeting. So it seemed divisions in knowledge and between people rapidly appeared where they were thought not to exist. While access to information was about resolving these divisions through shared knowledge, in this particular case people sought to make the divisions between them evident. It was a kind of backwards move, people differentiating themselves one by one in order to show that they had not acted out of turn.

Decision Notice

A Decision Notice is defined in the Act as 'notice in writing' of any decision made by the SIC on an appeal before the expiry of four months of receiving the application.

Technical Breach

A Technical Breach is a term used by the SIC to mark that a request had not been responded to due to technical failure or inadequate request handling systems.

In the Contact Centre's defence, one staff member with overall responsibility for the management of FOI requests explained, '…the way we manage services at the front end is best practice. We're juggling a number of tasks, not just FOI… the standards with regard to FOI are set, and these are checked constantly', she explained. 'Okay, so what are we going to do?', Iain continued. Robert was to write a report on the failing, which was to be circulated to council staff, and potentially presented to the SIC if he required a copy, that would recommend action. Robert recommended in his report that the Contact Centre took on the responsibility of managing the council's FOI network, instead of Iain, Robert, Steven and Fergus, which included establishing a user group attended by council FOI practitioners and a member of the council legal division. It also suggested that the Contact Centre conducted regular customer satisfaction surveys, produced and circulated an FOI newsletter amongst staff to increase awareness and raise the Contact Centre's profile, and provide targeted awareness training sessions where appropriate. It is possible that this would mean that Contact Centre staff became more involved in and thus more aware of FOI in the council. Amongst other consequences, perhaps in writing this, a researcher like myself might even draw the SIC's attention to their efforts.

Samantha and Colin at NHS Glendale

Samantha and Colin, NHS Glendale's principle FOI Officers, had also had on more than one occasion to deal with the SIC. In comparison with some of her colleagues, Samantha had a positive approach to FOI. She argued that people had a right to information and to ask for and obtain it from a public authority. People should get not just some, but all of the information they had asked for, she explained, bar the necessary exemptions. However, it seemed that Samantha's boss Rachel, NHS Glendale's Press and Communications Officer, did not agree. She was, Samantha explained, reluctant to provide people with information willy-nilly under the new FOI Act. Rather, she was concerned about the way in which those requesting it would use or even misuse information, and how information would inevitably be misinterpreted. She was particularly aware of journalists' use of the Act, that is, the manner in which the media spun information as they generated a good news story. It was for this reason that Rachel often issued Samantha and Colin with instructions on exactly what information to give out, when, and in what form, in light of requests for information from the media as well as members of the public.

As NHS Glendale's principle FOI Officers, Samantha and Colin were both based at NHS Glendale's Health Board, which was located in the centre of Glendale, and regularly liaised with other FOI Officers who worked in different divisions of the authority in different parts of the town. Samantha was bubbly and sociable, and would often happily spend time telling me about how NHS Glendale was structured, how FOI had been implemented in such a large and diffuse authority and issues or concerns that had arisen since its implementation. She was small, with short dark hair and wore large, heavy framed glasses that caught the light and flashed when she enthusiastically moved her head. She had been NHS Glendale's Complaints Officer for many years, and had been given responsibility for handling FOI requests when FOISA had come into force at the start of the year. It was a heavy burden for one person to manage, and so Samantha had soon recruited Colin to help her with FOI. Colin had also worked for NHS Glendale for many years, in the facilities department, which was only one hundred yards away from Samantha's office.

Although I have talked about Colin, his colleagues and their work before, it is worth repeating some of the material here. Colin too was sociable, and looked on by his colleagues as 'a bit of bright spark', someone who was clever and efficient. His spelling was not always accurate, but he had a good knowledge of the authority, its structure and who was likely to hold what information. His friendly manner put him in good stead when dealing with individuals who applied for information under the Act. He might, for example, correspond by e-mail or speak to regular requesters on the telephone about their request, to seek clarification or explain that a response might be delayed, which on occasions it was due to the reluctance of some of his colleagues both to respond to his enquires or disclose what they held. Despite Samantha's and Colin's efforts, however, there were occasions when they did not appear to manage an applicant particularly well and get a response right, and were sometimes considered by

applicants to conceal what they knew. It was in these cases, two of which follow, that Samantha, Colin as well as Hector, NHS Glendale's FOI reviewer, appeared to have power over others, often of which they were quite unaware.

On occasions, Colin and Samantha found themselves providing applicants with information twice over, once in the form of the requested information itself, and once in the form of an explanation as to what had or had not been provided. It seemed even information (itself providing context of sorts) required some kind of context. In this sense they were particularly careful to explain the contradictions that emerged in light of information requests. In one particular case, Colin, Samantha and Hector refused to provide information an applicant sought on the basis that it was a request for personal information that was covered by the Data Protection Act. It seemed that the applicant (the father of the family which was the subject of information) considered Colin and his colleagues were attempting to conceal information from him and were using DPA as an excuse to withhold it. This was exacerbated by the fact that rather than insist that he reapply for information under DPA, to be helpful, Colin had forwarded the applicant's request to NHS Glendale's Data Protection Officer. This had only caused the applicant further confusion. He considered he was being fobbed off, and persisted with his request for information, as another FOI Officer explained:

> '[The applicants] have been around for weeks. They want information we can't give them. You see what happened is Colin kindly told them that he couldn't give them want they wanted because of data protection issues, and kindly passed their request onto data protection....'

From the perspective of the applicant, it seemed as if Colin, Samantha and Hector conspired against him. The authority appeared to deliberately attempt to deny him the agency and power he sought. Power here was in the hands of very few. In fact, from outwith the authority it might even seem to the applicant as if the whole authority conspired against him and that Samantha, Colin and Hector and their work colleagues shared the same knowledge and approach. While the applicant was urged to correspond with the Data Protection Officer, from his point of view, it seemed as if the Data Protection Officer too was in on the conspiracy, the division between him and the applicants sustained by Colin and his apparent unity. There was a sense, then, in which a division in knowledge was also one between people, which brought with it hierarchy, inclusion and exclusion. So those with knowledge had power through their ability to close down others without knowledge.

A second case concerned an applicant who had been in frequent correspondence with Samantha and Colin over the course of the year. The applicant sought minutes to a meeting at which her complaint against NHS Glendale for misdiagnosis had been discussed but not upheld. The applicant had submitted a request after her formal complaint of being cleared of having breast cancer despite later being informed that she did in fact have breast cancer was, she considered, unsatisfactorily dealt with. According to

Samantha, the applicant had initially approached the Scottish Public Services Ombudsman (the SPSO) who suggested that she ask NHS Glendale for the minutes of the meeting at which her complaint against the authority had been discussed. On receiving the applicant's request for the minutes of this particular meeting, Samantha responded to explain that minutes of such meetings were not taken.   However, convinced that NHS Glendale *did* hold the minutes to the meeting, as the SPSO suggested it might, the applicant continued to request the information despite the fact that Samantha and Colin could not, they explained, assist her further.   In fact, the applicant had even written to Samantha to explain why she wanted the information, which was information Samantha did not require under the Act and did not need in order to deal with the applicant's request.   Samantha could only presume that the applicant assumed that she and Colin deliberately withheld the information she requested, Samantha explained to me over a cup of tea one morning.   In fact, Samantha seemed deeply sorry for the applicant and was distressed that the information that the applicant sought was not information that she was able to provide:

> 'I don't think we can help her …I think it's the Public Services Ombudsman she should be speaking to… She thinks we're holding something back from her. And we're not, she just thinks we are. She's not very happy with the way she was treated and the care that she received… but there was nothing wrong. Yes, some things could have been done better, but there was nothing seriously wrong with the way she was treated. But she's convinced that we're hiding something from her, and she's approached a few other complainants to ask them about their treatment. She's gone to the Commissioner and they've got everything. She's obviously really angry…'

It seemed that the applicant's lack of access to information in this case was not only of deep concern to her but concerned Samantha also.   Since Samantha and Colin appeared to withhold information from the applicant, they also appeared to have power that they did not have. Power, if only in appearance, it seemed, was not something that they sought or desired since it pointed to the deliberate attempt to create disparity and to deny others agency—access to knowledge. In fact, it was Samantha's and Colin's lack of knowledge, power and agency in light of this case that appeared to frustrate them. There was nothing they *could* do to help the applicant; they did not have access to the minutes she sought, despite—it appeared from the applicant's letter—the fact that the applicant assumed Samantha might have the minutes to the meeting in one hand and her letter in the other.

In attempts to further assist her, Samantha provided the applicant with an explanation of why the information she sought could not be provided and also attempted to respond to her letters and enquires. The applicant had made a point of disclosing why she sought information, which was not required under the legislation, and made explicit her motives. The response with which Samantha provided her seemed a response to the many letters that Samantha had received from the applicant, which would (Samantha it seemed hoped) provide the applicant's request with new context.   More than just information, the

knowledge that was exchanged here came from particular persons who were enmeshed in particular networks of relations, which each party seemingly made clear. It appeared that Samantha's efforts were an attempt to clarify the situation, and in this sense provide the applicant with the agency she sought and Samantha was unable to provide through other means. At the same time, Samantha's response might be considered a kind of reflection or realisation on the part of the applicant. On coming into new knowledge and being combined (rather than divided from Samantha and Colin) the applicant would be able to think and act in new ways. So knowledge was not so much something that was externally imposed on the applicant through which she was subjugated, as enabling.

In March the following year, the SIC published his decision concerning the applicant and the information she sought from NHS Glendale. While the SIC agreed that NHS Glendale did not hold most of the information that the applicant had sought, he found that the authority had failed to comply fully with the provisions of FOISA. Embedded within the numerous letters the applicant had written and sent to Samantha and Colin were questions that had remained unanswered. While considering that they had done all that they could to aid the applicant and yet remaining powerless to help, it seemed Samantha and Colin's had lacked awareness that, not only had further questions been asked, but that the applicant's correspondence concerning the original request might contain, even constitute an FOI request in itself. In this, they had failed to comply with the Act. It seemed Samantha and Colin had knowledge of which they were seemingly unaware, and the requests the applicant continued to seek met with silence. Their apparent lack of communication about these requests appeared to constitute neglect and the knowledge (that they did not know they had), with the potential to establish relations, appeared an unshared resource. Instead, Colin and Samantha (themselves unindividuated it seems) appeared to have power and agency that the applicant was deliberately denied, which only increased the sense that their efforts to retain knowledge were also deliberate. Samantha and Colin seemed to be holding onto power of which they were seemingly quite unaware.

In addition to requesting the minutes to the meeting at which her complaint against the authority was discussed, the applicant had asked for the number of similar complaints the authority had received about the Breast Screening Service, what they concerned and how they had been dealt with. Some of this information, the authority later explained to the SIC, although not to the applicant, they could not provide because it was covered by the Data Protection Act and constituted personal information. While upheld by the SIC, he chastised the authority in his decision for not disclosing this fact to the applicant. Instead they simply appeared to ignore her request. Rather than explaining to the applicant what information she could *not* have, the authority merely provided the information she could and, is so doing, denied, albeit unwittingly, the agency that the applicant sought.

Claims to Power

Power emerges as something that is relational: while people such as Robert at Bankside Council might make claims to power they, at the same time, remained aware of the way in which power itself was ephemeral. That is, something that they had but might also lose. Power, then, had a tendency to appear or disappear between people. People came into or lost power as new knowledge appeared or existing knowledge became associated with new people, themselves persuasive, and of (social) importance. Robert, Iain, Colin and Samantha, responsible for disseminating information (and with knowledge and power), turned out to be embedded in subtler networks than they perhaps realised. In relation to members of the public, they were perceived as having both knowledge and power. In Samantha's case, it seems, she did not appreciate the extent of this perception, which served to exacerbate the appearance of a divide between her and the applicant. Yet in relation to others in the organization, there seemed the potential for people to lack what others assumed they had. Samantha was assumed to be aware of the perception of the applicant in terms of her position of power. With Iain and Robert, power was seen by some as attaching to their dealings with others in the organisation where they, perhaps, did not feel this to be the case.

People seemed to slip in and out of power relations in different moments, and in their relations with different people. The fact that power was relational, that it existed between one person and the next only for the duration of the power-giving relationship made power itself seem ephemeral, something easily lost and gained—neither something that people could predict or determine nor something that people concretely had. It was not something that existed outwith a relationship and might show its face in particular, and unexpected, moments.

While seemingly something which individuals such as Robert and Samantha momentarily had, power was also something that was given up as divisions emerged between those who at first seemed undifferentiated. In this respect, Robert and Iain found themselves held responsible for handling requests for information that was controlled by others in their organisation. Power might thus appear to flow away from FOI practitioners, while responsibility remained theirs.

This is perhaps in contrast to Crook's (2000) analysis of the responsibility entailed in releasing Genetically Modified Organisms into the world. Here, he argues, because Monsanto plc (an agricultural company that applies innovation and technology to assist farmers around the world) was always part of a larger network, '…profit devolves to Monsanto alone, [but] *responsibility never will*':

> 'The striking thing here is how Monsanto is enabled to modify the length of its dependency in the greater chain by appearing, on one hand as if were *possible* to appear as an independent component… and on the other hand as if it were impossible to appear as an *independent* component (it could not force farmers to buy, it had to abide by regulations made at various levels)' (Crook 2000: 10)

While practitioners such as Robert and Samantha were members of a larger network, a department or organization, as a result of which *they* did not always have power and agency, at times they seemed solely *responsible* for the burden of handling FOI requests and the success and disappointment that a response brought. So, while they did not always have (or did not realise that they had) the knowledge or relations that others thought they did, responsibility could not be abdicated; while responsibility came with practitioners' knowledge of the Act and was a given and remained, power was a will o' the wisp.

But power was the product of a *desire* for what others knew rather than something that individuals intrinsically had. It was because people sought the knowledge that others had that people in possession of this knowledge had power, it seemed. If such knowledge was not desirable, then the power people had would soon dissipate, which individuals such as Robert quickly realised. And in his efforts to retain 'the little power he had', he perhaps held on to knowledge for a little longer than he should. It was people's desirability to know what others' knew that gave people power. In many ways, knowledge was desirable because shared knowledge was considered at once constructed and given, and in this sense as describing the really-existing world. Strathern (2005), following Miller in describing the way in which mothers approach caring for their children, '…mothers come to regard the child's growing up as a series of defeats… Whether in affirmation or denial of its importance, people… imagine themselves as confronting reality' (4-5). There is some similarity between the mothers described by Strathern and FOI practitioners. In particular, the feeling that mothers had of 'confronting reality', is not entirely dissimilar to FOI practitioners with information to disseminate. The mothers that Strathern describes felt obligated to communicate what they know so as to protect their children from the harm that might arise if they did not. All made the more difficult by the perception on the part of others that both FOI practitioners and mothers might have power of which they themselves are unaware.

So a desire for knowledge seemed a consequence of the fact that the knowledge that others came into was also considered as depicting the real world. Without such knowledge, of the world and the things in it, individuals considered themselves as unable to communicate about the world in which they and others live and act. So in a sense not only did people *give* power to others whom they perceived as having knowledge that they did not, but themselves lacked power and agency because of their perceived lack of such knowledge. A division in knowledge, then, not only marked a division between persons but also a hierarchy where people had the capacity to complete the knowledge of others; those 'lacking' knowledge seemingly incapacitated, unable to move. Power was something that individuals donated as a result of their own pursuit of power and agency. Meanwhile, power or lack of it was down to the simple (but extraordinarily powerful) fact that shared knowledge seemed real, as if it depicted the really-existing, lived in world—knowledge itself detached from the relational network in which it exists and out of which it emerges.

But while knowledge, under this view, seemed given, a description of the really-existing world also appeared constructed, as originating from persons enmeshed in a particular network of relations. In

the opening quote from Wilson (1984), he states that people are aware of the way in which others might no longer take an interest in *their* knowledge, and it is for this reason that they restrict access to the knowledge that they have in an attempt to increase its and their value through scarcity. Samantha, in receipt of a letter from the applicant in which the applicant explained her reason for seeking information, provided a response that was an outcome of her own relationships and interests. What divided persons, here, was not only knowledge but also people's different interests and motivations and it was this that each then shared with others through the provision of knowledge. As knowledge appeared as no longer objective and a description of the really-existing world, but something that depended on a social relationship and as originating from persons enmeshed in a particular network of relations, people with knowledge themselves no longer seemed powerful. In this sense, the power that disclosers had dissipated. So crucial to having and maintaining power was as much the scarcity of knowledge as people's ability to maintain (in others) the sense that knowledge constituted an objective description of the world.

It is here that we might once again turn to Foucault. It is perhaps worth re-iterating Foucault's theory of knowledge and power, in relation to Truth. Truth, he argued, was the outcome of a regime of truth, which he described as a network of interlocking statements, each pointing to what counts as true. It is because of the will-to-knowledge and the search for the truth, a project of the Age of Enlightenment that Foucault forcefully rejects, that the relationships that inform what is real, he argues, are concealed. Foucault, here, conceives of power as flowing through these relationships, and in concealing relations that inform the truth (knowledge), power itself appears concealed. It is because power flows via relationships that are themselves inescapable, Foucault argues power is also inescapable. Power emerges as imprecise and above all ubiquitous. It flows through the relations *between* entities, from statement to statement, person to person, using them as vehicles. Power in this sense is transcendental, appearing both as a positive and negative force, which represses and enables. So while people seek to obtain power and agency by coming into (new) knowledge that they consider themselves without, it is as a result of this that they become subjects of power, come under a different regime of truth and subscribe to an alternative network of relations. The important issue here is that in coming in to new knowledge the very operation of power is concealed.

Anthropology's Relation

Foucault presents an image of power as something that flows through people, statements, things. However, his power analytics in relation to power/knowledge (see Gordon 1980) form only a part of his work. In the course of his career, he sought to highlight the mechanisms through which power is mobilized, and through which it flows. But while power flows between entities, such a concept of power is the result of the particular way in which relations themselves are conceived—as that which (solely) exists between things, linking them together in a kind of chain. It is a particular approach to the relation that gives rise to and sustains a particular notion of power—power that subjugates, turns people into

things, and enables people to control and feel in control. In the following paragraphs I re-examine power by re-examining the relationships through which it operates.

It is worth drawing on Strathern's (2005) examination of the creation and flow of knowledge in relation to the production of sixteenth and seventeenth century scientific texts. What counted as knowledge was what people were willing to attest, and the value of their testimony rested in turn on the kind of people they were. It was the relations between people and information that produced knowledge out of information. As Strathern writes:

> 'If items of information, the categories in terms of which the world could be described, were judged against one another, any fit was simultaneously a relation between them. 'Knowledge' became understood as accountable information, and it was by virtue of being relational that it was accountable' (Strathern 2005: 62)

Interrelating statements and people in positions to sanction knowledge made knowledge accountable, and governed what was 'true'; 'What validates one fact are other facts, always provided the connections can be made to 'hold' (2005: 62). Strathern's examination of the connections between people, texts, and information that govern what is true, seems not too dissimilar from Foucault's analysis of the way in which people realise what is true. Yet Strathern points not just to the relation that connects, but to the relation *between* texts, pieces of information, that turn knowledge into information. "Knowledge' became understood as accountable information, and it was by virtue of being relational that it was accountable', she argues (2005: 62). It was the relations *between* texts that made it able stand up to other texts. In fact, she states the relation through which we come into new knowledge comes in two parts, or rather is made up of two kinds of relation:

> 'Now the relation is divided (into two kinds) in a particularly powerful way that I want to call 'anthropology's relation'. The two kinds that principally interest me here comprise the conceptual (or categorical) and the interpersonal. On the one hand are those relations seen to make connections through logic or power of articulation that acquires its own conceptual momentum; on the other hand are those relations that are conducted through interpersonal terms, connections between persons inflected with a precise and particular history' (Strathern 2005: 7)

The conceptual relation is one where something sustains a relationship with something else in a manner that elicits its form; the form or meaning of persons, information, things in relation do not pre-exist this relation. So information '…sustains a relationship to other pieces of information' (2005: 63). It is through this that we grasp information as knowledge. Through bringing bits of information into relation, information is provided with new context or grounds. At the same time, interpersonal relations

are that which connect the forms and meanings elicited through the conceptual relation together; people by their shared knowledge, information by its shared meaning.

Different from the concept of the relation on which Foucault draws, the relation that Strathern refers to as Anthropology's Relation is not just that which connects people, information, entities together but also that which invokes new meaning in information and new divisions between people as, in relation, they offer different perspectives on the same thing.

In the above two case-studies, or string of moments, people appeared as both differentiated from friends and colleagues, and as holding knowledge in common or combined. Here, as they came into relation, people offered different perspectives on the same thing. At the root of their differentiation was their divided interests in a particular thing (relation). In contrast, people's lack of differentiation pointed to a connection between them, or shared knowledge, and thus their shared *form*.

Robert assisted Iain implement and enforce FOI at Bankside Council, although he soon realised that power and agency derived from his shared interests was momentary: he and others appeared united due to their shared knowledge, yet there was always the potential for Robert (and Iain) to appear differentiated from others as members of a larger network and accountable to those in that network. His shared knowledge pointed to his power and agency, the divisions that emerged between him and others might point to his lack of power and agency. While divided from some people through his union with others, Robert was also divided and combined to the *same* persons. His colleagues were persons with whom he sought at times to appear in harmony, yet in others to distinguish himself from, in particular, when he sought to appear without responsibility for a mislaid request or misjudged response. Robert was in a situation where he might (although not always) decide in which form he might appear—as expressing private interests and thoughts, or appearing in unison with others. His private or public form was itself relational, appearing private or public in relation to those around him. As such he was not always able to govern his own appearance and prevent his own shifting form as information revealed him in a new light or context.

The applicant who requested information from NHS Glendale (that it did not appear to hold) similarly seemed to have interests that were both shared and divided. She sought information concerning the complaints other individuals had made about the clinic at which she had her breast scanned. She considered that complainants who had had similar experiences to her might also share common concerns and interests. Yet the information she requested was also thought to highlight the divisions between her and other complainants, their personal circumstances, divided interests and particular motivations. So this applicant had the potential to be at once united and divided from other complainants, as they might be from each other. Knowledge was both that which was held in common, and that which differentiated people from others. Both Robert's and the applicant's separation *and* unity with others might be revealed in their shifting in form that would also inevitably shift of its own accord.

Knowledge emerged from within a conceptual relationship *and* as a result of an interpersonal relationship. The two relations—division and combination—operated together in tandem. Knowledge that emerged as persons, items, information come into relation was knowledge that was shared interpersonally. In other words, *knowledge emerged and was passed on within a single relation and did not originate from outwith a divided pair*. Knowledge took the form of a response that originated from persons in relation and with particular form that had the potential to be reversed and replicated. In their relation with others, Robert and the NHS Glendale applicant appeared part of a divided pair, such that they could see themselves *in another form* reflected back at them in others. Both knowledge and persons appeared part of a dual pair, each reflective of the other in a different and complementary form. Knowledge no more subjugated persons as enabled their own divided form to momentarily appear and be displaced by form that seemed previously concealed.

Considered in this light, power conceived as that which flows between entities in an ongoing chain, from person to person, thing to thing, via documents and statements, simply loses its way. Power no longer flows along a single chain, and seems to dissipate. Knowledge also no longer comes from a single, insular entity. That is, knowledge does not come from and in the guise of a single individuated person who through their shared knowledge is combined with and has power, in light of which others appear as subjects and subjugated.

The division between public and private reiterates the contemporary division between individuals and society. Individuals are thus part of and within society as they might also impose themselves on it. At the same time, society shapes or has influence on individuals themselves. Individuals and society also appear in relation, one that has the potential to appear inverted or reversed. Thus society appears as individuals and individuals as society, in a manner that confuses quite who or what shapes whom. Society and individuals are the form that persons take in relation, and the relationship between them indicative of people's changing form.

But it is a relationship that also suggests that society might emerge from within individuals themselves, as these persons in a different form. So in addition to individuals as potentially external and internal to it, it is possible to think of society as emerging from within persons as revealed through their changing (and multiple) form. But what exactly constitutes society and individuals as they emerge in relation is determined by the relation itself. Both and neither form might in the end constitute society, or even appear as society itself in different forms. As society is enacted in persons as they enter into multiple conceptual (division) and interpersonal (combination) relations, so persons could also be said to contain society rather than be contained by it. Society emerges with each new form, and with each new relation, division and combination. It is in these moves that people perhaps come to realise that which they each contain, and of which they are already (but unknowingly) constituted. Each move, then, each new thought, can be considered as either (inter-subjectively) imposed from one person to the next, or as

emerging and shared as the outcome of a relation. It is in this small difference that power itself appears (knowledge as externally imposed) and disappears (knowledge as externally realised).

The Power of Division and Combination

Power slips and slides; people no sooner have power than it is lost, and in the hands of others, it seems. As persons, entities, information come into relation, new knowledge emerges as a consequence of this relation, and individuals who elicit knowledge in others momentarily appear without knowledge, power and agency. Divisions in knowledge appear to point to divisions between people, their divided form, and the hierarchical relationship between them—there are those with knowledge and those who lack it. Hierarchy appears an intrinsic part of people's relations with others. From moment to moment, those who are combined might appear divided in a manner that reveals them as having knowledge that others do not and as having power over others from whom they divide themselves.

So power seems something that persons might have, but also something that they quickly lose, belongs to a higher order and appears attached to different people. It is something that slips away and out of people's grasp as quickly as they are able to claim it. It was through becoming known within the council as FOI experts that Robert and Iain seemed to raise their profiles, and became individuals who other employees might look to for important knowledge. This knowledge was crucial in light of the power of the SIC to enforce FOI, take an authority to court, and publicly 'name and shame' individuals and authorities. In fact, it was because of the decision notice that SIC had issued to Bankside Council explaining that it had not dealt with an FOI request in an appropriate manner that Robert, Iain and the council momentarily appeared to lose power and agency through their apparent ineptitude (or lack of knowledge). It seemed only by differentiating themselves from work colleagues that Robert and Iain might reclaim power and agency: to point out that it was not them but others in the council who knew how to receive, log and disseminate FOI requests that Robert and Iain ensured that the knowledge and thus responsibility for request handling was not theirs. It was through delegating certain tasks that neither knowledge nor power was theirs in relation to this task, and neither was the responsibility. This was in contrast to Samantha and Colin's experience, at Glendale, it seemed, where knowledge and power was something that they felt they did not have despite an applicant's assumptions that they might. Responsibility here was something that remained theirs. So while power and agency flowed away from Samantha and Colin, as members of larger networks and in their relations with others with knowledge, they carried the responsibility for handing FOI requests on behalf of NHS Glendale.

That power slips and slides, is shifting and ephemeral may come as a surprise to those who associate power with particular establishments, institutions and strong-holds. Power is imagined to be something fixed and permanent: located in particular bodies. It is not that power shifts here, but particular bodies who have the power to do the shifting. But their ability to shift persons and things, to impart change, depends on their own appearance in relation to others. New knowledge might as quickly

dissolve power that people appear to have as enable people to dissipate the power of others. The SIC's own ability to secure power and agency depended not so much on the powers given to him as on his appearance in relation. It is the relations between persons and things that have the capacity to manipulate appearances, form, knowledge, power and agency – and in this sense it is the relation itself that is the only thing that remains stable. So it is as divisions and combinations are drawn between things, persons, authorities, institutions, the relations into which they come and decisions that are made over these relations, that power emerges and disperses; power and agency are as much a matter of how lines are drawn as the words that are written or uttered. Power in this sense has no fixed location, no permanent address, and in some ways could be said not to exist at all but for people's capacities in relation.

In his role as enforcer and promoter of FOISA, the SIC has the power to investigate an authority's conduct if it appears it has failed to comply with the legislation by not responding to a request for information, or not responding to the satisfaction of the requester. It is within his powers (and as part of an investigation) to issue an authority with an Information Notice that requires it to release any information to the SIC that he and his team requires. If the SIC considers an authority has not complied fully with FOISA, he might also issue an Enforcement Notice stipulating what an authority must do to comply with FOISA and how long they have to do this. The SIC also has the power of entry and inspection if he considers that an authority continues to withhold information from him and his staff. On obtaining a warrant, he is entitled to 'enter and search premises, inspect and seize any documents which may constitute evidence and, inspect, examine, operate and test any equipment in which information may be recorded'[35]. It seems an extremely intrusive procedure—to prise out information, as if itself a bodily substance that others seek to retain and one person's physical, personal and bodily intrusion of another. And yet it is those members of the public without information against whom the injury is perceived to be done.

Most powerful of all, given to him by law, was the SIC's ability to point the finger of blame. Authorities, and more particularly the individuals that they employ, seemed to be acutely aware of the divisions that might be drawn between them and how in being differentiated they also were made to appear as if they were themselves incapacitated and lacked power and agency. It was in his capacity to differentiate one authority or person from another where the SIC's real power lay. Bankside Council was among the many Scottish Public Authorities to which the SIC served decision notices, and it was in this very act that an authority suddenly lacked power and agency as did those who acted for or on its behalf. It seemed for this reason that Robert and Iain sought to quickly point the finger of blame at others and avoid the SIC's own gaze. So while a person or authority's power and agency depended on their relations with others, it seemed in the SIC's power to decide how the lines uniting and dividing bodies would be drawn, which of course depended on his own capacity to do so—his own appearance in relation. It was

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[35] Enforcing Freedom of Information: The Scottish Information Commissioner's Powers' (Booklet produced by Scottish Information Commissioner's Office in 2005)

perhaps for this reason that in his second four year term as Commissioner, the SIC decided to publish league tables stipulating which authorities were best and which were worst at complying with the Act. Since his real power lay in his ability to determine the power of others through publicly highlighting their division and combination, highlighting authorities' divided and combined form was a way of getting them to organize themselves.

Conclusion

Two forms of power (and two forms of agency) have been highlighted in this chapter, clearly emergent in the field of FOI that on the one hand provided practitioners with an explanation for why individuals and authorities held onto information longer than they should, and on the other, scholars with an explanation as to why information might be disclosed. I hope to have challenged both a concept of power that relies on the axiomatic relationship between knowledge and power, and one developed in relation to this by the philosopher Michel Foucault resting on the notion that power runs through *everything* via the connections between them. And to have pointed to and critiqued the notions that underpin them.

Power seemed a consequence of people's demand for or need of knowledge, without which they might neither know nor act in the world in which they and others lived (have power or agency). It was therefore something that they *gave* to others as much because knowledge that was shared seemed knowledge that was true as there appeared only one way of knowing. It was consequently as a result of people's search for power and agency for themselves (that they lacked) that others also acquired it. While this is so, others might argue that it is through the dissemination of knowledge that power flows; it is a consequence of the assumption that people consider themselves as acquiring the truth. Yet interconnected statements, persons, bodies point to what is true; that power flows but remains undisclosed. This constitutes one reading of Foucault's power analytics that nevertheless points to where implicit power might be thought of as lying.

But power here is also the consequence of particular assumptions about what constitutes a relation. The relationships through which power flows seem considered as those that link people, bodies, information together in a chain. Yet there is no account of from where knowledge originates, and to where or from where it flows. Knowledge just appears out of and goes to nowhere, but in the interim appears as a subjugating and powerful force. It is through reconceiving of the relation that it is also possible to challenge this particular perception of power. Rather than solely intersubjective, Strathern (2005) posits a relation in which conceptual and intersubjective relations work together. It is in appearing as at once divided and combined, and the way in which persons work these two relations in tandem, that makes knowledge appear as something that emerges and is exchanged within a single relation. Thus power that *flows* linking persons, statements, entities together dissipates: it has nowhere to go, no links to flow through. Knowledge does not appear to emerge from a single entity, but rather is the product of a particular relationship. It thus does not come from a single person who might be seen as having power

over others. Instead, it seems returned to the recipient or consumer as something they helped to produce. Knowledge is in this sense reflected back at them, individuals seeing versions of themselves in others and a form they might have concealed within. A division between persons, in this sense, reflects a division within a particular person, and in taking on new knowledge that emerges out of a relationship, people shift in form as if a different version of themselves (previously concealed) is enacted.

6
Transparency and Trust

Introduction

Transparency and trust were two core notions that underpinned FOISA. Indeed, FOISA was enacted in 2005, after two enquires, the Hutton Inquiry (2003-2004) into the suspected suicide of the government weapons expert Dr. Kelly, and Butler Inquiry (2004) into the reliability of the intelligence used to justify the war against Iraq, had involved unprecedented levels of public access to information. They illuminated the public's need for information, and perhaps the extent of public mistrust, and pointed to a new era of government transparency. In light of a feeling of public mistrust in government more generally, in part engendered by New Labour spin, providing the public with a right of access to information held by public authorities and different levels of government was a means of ensuring its transparency and accountability—that is, the public would then know what actions government is taking and could hold it to account for these actions. This, it was hoped, would mean that the public could begin to trust these bodies.

In this chapter, I draw on the work of scholars in the field of law, political science, and also philosophy as well as social anthropology writing on government transparency often in relation to, but not always, FOI law around the world. In particular, I draw on the work of the recently published book *Transparency: Key to Better Governance?* (Hood and Heald 2006), in which key scholars and protagonists in the field of government transparency write about the perceived benefits, disbenefits and likely outcomes of transparency and FOI law. I also draw on the work of the philosopher Onora O'Neill (2002) writing on trust and transparency, and that of Anthony Giddens (1991) on trust and modernity. O'Neill (2002) argues that while effort towards and theories of transparency tend to focus on the dissemination of information, more information does not always lead to greater transparency. Rather 'Reasonably placed trust requires not only information about the proposals or undertakings that others put forward, but also information about those who put them forward' (2002).

Drawing on two case-studies, one concerning the FOISA meetings and conferences that grew up around the enactment of FOISA and the (transparent or otherwise) relation between the Scottish Information Commissioner's Office (OSIC) and McBride Ferries, I approach transparency heuristically and newly explore what it is and what it does in light of these cases. As practitioners liaise with others at FOI meetings in meetings, and in their attempts to comply with FOISA, they make the divisions between them disappear by coming into the same knowledge. In replicating each other's form, people make themselves transparent, or disappear. As they do so—appear similar or different in different moments— their 'transparency' throws into question a theory of transparency predicated on the notion that people are

different because they conceal information. The point is that transparency in one form—that is, transparent persons—is a means through which to think about another form of transparency—transparency as revelation. In the following section I touch on some of the literature concerning transparency.

Making Things Explicit

Public sector transparency largely underpins FOI legislation in Scotland and elsewhere, the aim being to increase public trust in government and scrutiny of government-related processes. A transparent public sector appears to place demands on other domains to be transparent also, in particular the private and voluntary sector, and as FOI legislation matures there is the propensity for it to extend beyond its own realm – as differences are resolved, new gaps appear to open up elsewhere.

Secrecy and transparency work in antithesis: they are different sides of the same revealed/concealed axiom. While transparency reveals what secrecy appears to conceal, secrecy conceals what transparency has the potential to reveal. Each provides work for the other. Both come in a variety of forms, although might also be theorized on a grander scale: as Tony Crook (2006) notes with regard to secrecy (worth reiterating here): unlike kinship as a universal category of analysis that 'operates as a general description through particular varieties, secrecy seems to collapse both into one'—making it open to comparison and analysis on a larger scale. Transparency is above all about making things, processes, and persons *explicit*. It is also about being able to *challenge* the modus operandi: two heads are better than one - government and citizens together might come up with a better, more democratic, solution to issues of policy, governance and ethics. The term transparency often crops up in UK, European and International policy documents, can be frequently read in newspapers and on advertising billboards, and was (more recently) used in relation to New Labour funding. Transparent government first formally appeared in the United States in the form of the 1946 US Administrative Procedures Act that provided 'a rough guarantee of access to information' (Roberts 2006: 13), and most appropriately in the form of 1976 US Government in the Sunshine Act that required every portion of every meeting of every government agency headed by a collegial board to be open to public observation (Hood 2007a: 10). The concept has since been adopted by governments as well as non-governmental organizations around the world, on occasions the private and voluntary sector, and is embodied in the not for profit organization 'Transparency International'. It was Jeremy Bentham who is considered to have first advocated government-related transparency in the form of his Panopticon, or Inspection House[36] (e.g. Hood and Heald 2006). As Bentham states, 'My prison is transparent: my management, no less so' ([Bentham] Taylor Milne 1981: 229). Some consider transparency an aspect of devolved government (Florini 1998), where citizens armed with information might regulate institutions, organizations and persons in place of Government, reflecting the way in which

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[36] The building allowed light from external windows to render inmates obvious while an internally partitioned watch-tower kept the warden out of sight.

audit and decision-making are also increasingly devolved (see chapter two). Audit is often no longer the responsibility of external auditors but has become an in-house function (Strathen 2000), and the responsibility of civil servants and, through them, the public at large. Similarly, decision-making concerning, for example, which matters are of public interest (in terms of FOI), previously the responsibility of Ministers and high-ranking officials, becomes the responsibility of individual, and more junior, civil servants, again subject to challenge by the public.

Visibility, scrutiny and challenge were characteristics of the Age of Enlightenment of the seventeenth and eighteenth century that continues to have significant influence throughout the world today. It was particularly important in the formation of a united Britain (Manning 2002). Enlightenment thinkers emphasised vision and visibility, knowledge through seeing, and it was in shedding light on persons and things that persons could also know and challenge the truth. It is perhaps due to this that transparency is considered a metaphor for *light*. The Oxford English Dictionary definition of the word 'transparent' is: '[h]aving the property of transmitting light, so as to render bodies lying beyond completely visible; that can be seen through; diaphanous'. In other words, transparency means to be seen as well as to be seen through and in effect to render something or someone visible by allowing light to fall on things such that obstacles and obstructions (to light) have the quality of translucency. Transparency did not entirely emerge out of Enlightenment thought, however. Persons were rendered visible in the Light of God, their souls open to scrutiny and surveillance by the one true seer, God, prior to the Enlightenment. Human vision was subordinate to that of God whose gaze was all-seeing. Religion, and here one might cite a number of examples from numerous religions, was and is in many ways ocularcentric, that is, is often sight, light and vision orientated (Jay 1994). While we owe much to Enlightenment thought for its use and proliferation, it seems it was Plato who most probably originated the concept of transparency (even if he did not attach it to this exact word) (Jay 1994).

There are those, however, who deride visibility and vision altogether: Michel Foucault states, 'visibility is a trap' (Foucault 1975: 200), and argues that (modern) vision is hegemonic (Levin 1997; Reed 1999) – that is, it encapsulates and extends modern ways of knowing, in which power is implicit and must be made explicit. Foucault uses vision to undermine (modern) vision, and turns to the prison which he states exemplifies a historical shift: the principle of the dungeon, where darkness affords inmates protection, was later replaced with an architectural form where inmates were illuminated and might be overseen by a warden in a central watchtower. There was, Foucault argues, a historical break between what Reed (1999) terms 'classical' and modern forms of vision. Classical architecture, Reed argues, threw light on the Sovereign and directed gazes in a single direction, while new, modern structures, of which Foucault considers Jeremy Bentham's Panopticon, or 'Inspection House' an example, aimed to illuminate everyone (Reed 1999). Modern vision is hegemonic, Foucault argues, although it is not Foucault's critique that I adopt in this chapter.

While the ideal of a transparent world, thought possible through the circulation of knowledge (Vattimo 1992), is a utopia to which many aspire, others argue that it is perhaps the word transparency that has seen more recent popularity, rather than the concept itself (Hood 2006b). In other words, the word 'transparency' has been 'will-o'-the-wisp' picked up and used, passes in and out of fashion, taken up by different policy makers in a seemingly empty fashion because it is used elsewhere. However, in as much as words carry meaning, that is, they are used in a specific sense, in the same way that a concept is often encapsulated in a particular word, the adoption of the term (however flippant) seems only to flag up a certain taken-for-granted possibility, that what is invisible might be made visible.

Despite its clear meaning and what it obviously entails in theory – to whom, what and how are persons and things to be made 'transparent'? In practice, transparency might have any number of meanings and comes in a variety of forms. It is perhaps for this reason that in conducting research on transparency in government, scholars tend to first establish what transparency means according to legislation, policy documents, and decision-makers, prior to conducting their research (Glover and Holsen 2007). Whether an authority is 'transparent' will, then, depend on the way in which transparency is defined, and persons, government or organizations might find that they are non-transparent in light of requirements for them to behave in a certain fashion in order to appear 'transparent'.

However, increased transparency, increased access to information, does not necessarily lead to increased trust, argues O'Neill (2002), rather to confusion and misinformation. It is O'Neill's discussion of trust in relation to transparency to which I particularly turn in this chapter. Trust has been widely discussed amongst sociologists, philosophers, archivists and historians (see Giddens 1990, O'Neill 2002,). Of particular note is Giddens (1990) outlook on trust as "a device for coping with the freedom of others" (Giddens 1990: 33). In this case, trust appears a response to others' freedoms and in some ways a way of curtailing them. Trust is 'confidence in or reliance on some quality or attribute of a person or thing, or the truth of a statement', Giddens continues (30), and appears above all governed by the circulation of information, rather than, for example, power. But does trust between persons operate differently from trust in government? Is trust different in different social situations and between different people? These are questions that appear to have been little addressed by scholars, on which the following cases might shed some light.

In Scotland, in relation to FOISA, transparency appeared to be used interchangeably with 'openness', Ministers, decision-makers and commentators appeared not to discriminate between the two. Others, however, do so, and while openness is thought quite literally to refer to the disclosure of information, transparency is considered to refer to the way in which its meaning and significance might be clarified for those who receive it (Birkinshaw 2005).

Much of the above description, the forms of transparency that I describe, might be covered in the case-studies below. However, I above all seek to highlight transparency of a kind not described above, one that obviates the very basis on which other forms of transparency appear to operate. In other words,

I use transparency to foreground transparency, in the same way that I use the above description to foreground certain aspects of, or frame, the two cases that follow, and Foucault uses vision to foreground (or undermine) vision (Foucault 1975). I turn first to Malcolm, Records Manager for McBride ferries, who handled all of McBride's FOI requests and had some initial difficulties with FOISA. I also once again turn to the larger FOI meetings and conferences in which practitioners, decision-makers and stakeholders attempt to make themselves transparent to each other, through speeches, in conversations over lunch, electronic voting systems, repeating themselves and replicating others.

Malcolm and McBride Ferries

Malcolm had shiny black hair and a weathered, red face. He was in his mid to late thirties, and spoke in short, abrupt sentences, that slowly unravelled, lingered and lengthened the longer one spent in his company. His wife had, only a few weeks before, had her first baby, and photos of his new son were pinned on short, soft partitions that separated his desk from others and fashioned the open plan office space that he shared with colleagues. I had met his wife some weeks before, while working with archivists at the University of Strathmore where she worked. She was at that point fully pregnant, and so it was good to hear the happy news.

Malcolm worked in Gilmore, a small town thirty miles to the west of Strathmore, and there were frequent trains between the two. The ferry terminal in which he worked looked out onto the heavy McBride ships that sat in the ferry port, and employees worked to the sounds of a rippling sea, chugging ships and seagulls. Malcolm had not been working for McBride ferries for long: when a flood of ads for records managers hit the press the year before FOI legislation came into force, he took up a post as records manager with McBride. He had perhaps been recruited a little late. He appeared to be eternally catching up, writing policy, organizing records, putting procedures in place to deal with FOI. On top of this, McBride ferries was in some ways a test case: it was covered by the new Act since the majority of its funding came from the Scottish Government, but many of its private competitors were not, which put McBride in a difficult situation. While its competitors had access to much of its own company information, McBride did not have access to its competitors'. There were rumours that the company had only realised that it was covered by the legislation late in 2004, the year before FOISA came into force, perhaps accounting for Malcolm's late recruitment and for McBride's apparent disorganization. This late realisation, accompanied by its competitors frequent use of the Act to obtain information that it held, such as accounts and company information, appeared to leave McBride employees deflated and meant that the relationship between McBride and the SIC was often strained. McBride was a new and, it seemed, exceptional case, and the SIC often took some time to reach a conclusion on matters concerning them, while Malcolm champed at the bit. There were times when Malcolm was sure that McBride could justifiably withhold information on the grounds of 'commercial interests', an exemption that in the SIC's opinion was used too frequently by authorities seeking to withhold information. The SIC's apparent

inflexibility on the matter appeared only to anger Malcolm, responsible for disclosing information that could potentially put his colleagues and himself out of job if a competitor successfully undermined McBride's bid to continue running the Highlands and Islands ferry routes. While the SIC considered it in the public interest for information to go out, Malcolm considered it in the public interest for McBride to continue running its routes and not be replaced: a new private company would bring with it its own employees, could leave in a few years to the detriment of the local economy and infrastructure, and besides, McBride was trusted and liked by many islanders, they would see McBride's demise as a great loss, Malcolm remarked.

I visited Malcolm in late 2005, when the Act had been in force for almost a year. He greeted me at the ferry terminal reception desk, and offered me a wrapped sweet from the reception desk counter. We climbed the narrow stairs to the first floor as I chewed on the sweet, and Malcolm told me about his new son, whom he had called John. 'Would you like a cup of coffee?', he asked, as we reached the top. 'Yes please', and so we stopped off in the small kitchen on our way back to his desk. Someone had neglectfully split some milk, or perhaps a large milk carton had burst in the fridge, and grumbling, Malcolm slowly mopped up the mess that had been left. On the first floor, Malcolm's desk formed part of a square huddle in which he sat with colleagues and from which he looked onto a line of glass offices where employees of higher rank—including the Company Secretary—sat. Malcolm's desk was in the shape of a V, on which his printer and PC were propped and, when he was not sitting at it, underneath which he neatly tucked his swivelling chair. 'We'll speak to the Company Secretary in about half an hour. I've arranged for you to see him', Malcolm explained, as we sat at his desk and he began taking me through McBride's recent experiences. He pointed to newspaper clippings that were pinned to the partition beside him, looked up policy documents on his computer that he printed out for me to read, and browsed the internet in search of Ministerial speeches and the SIC's latest decision. McBride ferries had been in the newspapers on several occasions since FOISA had come into force: journalists took an interest in the high volume of requests that McBride had received in the first few weeks of 2005 from rival ferry companies and solicitors. It was widely known that McBride ferries had received 722 separate requests from the same solicitor on behalf of a client on the day that FOISA had come into force. It seemed that some people were aching to use the Act! These, Malcolm had not received until it was too late, after the twenty day deadline had expired, and so not only had McBride ferries unintentionally not complied with the Act but had also not seen the applicant's request for a review waiting in its FOI inbox.

Malcolm and McBride ferries had a tricky relationship with the SIC and his staff. The SIC had let McBride ferries off relatively lightly regarding the 722 request that it had apparently ignored; the SIC commented that it had been a careless mistake for Malcolm to set up an FOI inbox that he then did not check, which was regarded as a 'technical breach'. However, he upheld McBride's complaint that the requests were 'vexatious', aimed at disrupting 'business as usual': FOI practitioners appeared keen to discourage users from seeing the legislation as a way of 'tying up' key members of staff, preventing a

company from doing business. In other ways, however, McBride felt hard done by. The company was bound to providing competitors with information, in a way that made information appear more like life-blood, a substance the more of which they released, the more likely they were to truncate their own operation. The SIC afforded them little protection in a battle that appeared to them inherently unfair. Despite their attempts to justify the use of exemptions such as 'commercial interests', 'confidentiality' or 'personal information' in order to retain information, these avenues were rarely upheld by the SIC. Malcolm complained the SIC and his staff tended to take the opinion of the applicant over that of the company, often despite the company's own attempts to be helpful and assist both an applicant and the SIC, which were invariably ignored and never formally acknowledged in the SIC's written decisions, explained Malcolm. Malcolm commented on two cases in particular where McBride had refused to provide an applicant with information, who had as a result taken their case to the SIC. These had yet to be resolved at the time of our meeting, but might shed some light on the issues that appeared to most concern Malcolm, as well as transparency and trust.

The first concerned a request for copies of vessel log sheets covering a twelve month period, for a specified route[37]. Malcolm decided to refuse the request on the grounds that it would cost too much to retrieve the information required (it would exceed FOISA's six hundred pound upper cost limit). The applicant appealed to the SIC. In his decision, the SIC stated:

> 'The relevant log sheets are contained in 'deck log books'. The deck log book contains a number of two-sided sheets, one of which (both sides) must be filled out on each day that a vessel sails. The sheet records the time of each sailing, passenger and crew numbers and various other pieces of information about the day's sailings. As a number of [McBride] vessels operate on the… route, the log sheets requested by [the applicant] would be contained in a number of log books, which are stored on the vessels themselves'

Malcolm had argued that the cost of retrieving the books from each vessel would exceed the upper cost limit. However, the SIC responded that if the request was broken down into twelve separate requests, the cost of responding to each individual request would not exceed the upper cost limit and all twelve questions might be answered. After he had put the same request in as twelve separate requests, Malcolm still refused to supply the information. He stuck to his original decision. Malcolm offered his version of the case:

> '[When we refused to provide the information] …the [applicant] went to the Commissioner and complained about it and the next week we got another request in for twelve separate months. And to my mind, that was effectively the same request irrespective of whether it

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[37] SIC decision number 027/2006: www.itspublicknowledge.info.

came in on twelve different pieces of paper... I mean the cost would have been effectively the same, so my advice was to turn it down again…'

The SIC consequently appointed one of his officers to investigate the case. During the investigation, it emerged that the applicant had in fact wanted the crew and passenger numbers. Malcolm continued:

'We can get the crew numbers from a different source [...and] don't have to go through the expense and hassle of going on board the vessel and comparing all the logs to search out the information… The [crew] phone in when the vessel leaves the port… and give us the passenger numbers and the crew numbers…'

On suggesting to the SIC that he could retrieve the information from a different source, Malcolm's offer was declined. As far as Malcolm was concerned, the problem was one that was easily resolved, without going through the difficulty and expense of retrieving the log books. After conducting an investigation into the efforts made by McBride to locate the information and to ensure they held the requested log books, the SIC issued his decision. But there was no mention of McBride's offer to provide the information from an alternative source, Malcolm explained. This only appeared to frustrate Malcolm, who concluded that the SIC must be 'suspicious' of McBride. The SIC's investigating officer kept on asking 'the same questions' throughout the investigation, Malcolm continued. But as he explained, '…we've explained that we aggregate… information by topic and not by route… [and she] knows this'. It appeared no amount of asking would change the answer Malcolm gave. It was as if the investigating officer had her own method of organizing information in mind, one that she simply assumed McBride might have considered and that the company might actually arrange information in this manner. Yet McBride ferries did not, and so, Malcolm explained, the officer recommended that the company change its systems so that information might be (more easily) retrieved, although Malcolm insisted that it was not possible.

It is possible to consider the frustration on both sides, McBride's frustration at not being heard, and the SIC's (and his investigating officers') frustration at McBride's, or Malcolm's, apparent non-compliance. There were certainly things that McBride, it appeared, could do to make its organizational process more transparent, information easier to retrieve, and to comply with the Act. At the same time, part of its apparent disorganisation, lack of transparency, and non-compliance was a consequence of two modes of thinking, two approaches or perspectives. While McBride appeared suspicious, as if withholding information, they were at the same time not heard. There was one of way of doing things, it appeared, which the public largely determined. As guardian and enforcer of the public's right to information, the SIC could not take the word of a publicly owned company over that of an applicant, and as a result did not appear to 'hear' what McBride told him. McBride, in essence, was seen neither as

trustworthy, nor trusted – as perhaps Malcolm rightly concluded. If the SIC was to listen to McBride, instead of an applicant, the public might loose faith, and, with it, the belief that the SIC shared the public's objectives and concerns. This appeared to confuse Malcolm who considered that McBride really did act in the public interest: they had assisted both the SIC and applicants, and also considered McBride's replacement ultimately of detriment to the public. To listen to and trust McBride might be to act in the public interest as far as Malcolm was concerned. The public in this sense might be considered to constitute different groups, each with a different interest in a particular issue.

When the decision concerning the vessel log sheets was eventually released, Malcolm meticulously went through it '…to see if there's anything I can find, that they've not put in… stuff that's missing'. It appeared that recent experiences with the SIC and his staff made Malcolm mistrustful. It seemed the SIC's lack of trust in McBride was a consequence of their different objectives, that McBride would inevitably approach the same issues from a different angle. Meanwhile, Malcolm checked the SIC's decision in case McBride had been misrepresented: information that McBride deemed important might be unconsidered, left out.

While he and I continued talking, Malcolm searched around for another document, this time the written version of a speech that Margaret Curran, then Minister for Parliamentary Business, had given at an FOI conference. Malcolm had gleefully listened to the speech at the conference as Margaret Curran had explained, '…it's important that public authorities have the right to make decisions and the right to govern themselves… I'm trying to find it now', Malcolm said, scrabbling around his desk, flicking through documents on his computer screen and leafing through desk draws. Soon after the conference, Malcolm had asked for a written copy of the speech in which he considered Margaret Curran to contradict the SIC over whether or not an authority had 'commercial interests'. It was of course in McBride's interests to find out: they had attempted to use the commercial interest exemption to protect their own interests, withhold information from competitors who sought to run the Highland and Islands ferry routes, an argument that the SIC had so far not upheld. On receiving a copy of the speech, Malcolm realized that parts of Margaret Curran's speech had been changed; most disappointingly for Malcolm, the bit about 'commercial interests' had changed and now concerned 'common interests'. She '…had changed 'commercial interests' to 'common interest'… look, here's the e-mail I sent [asking] about it, and the reply saying that it was not a verbatim speech'. So, it appeared her speech had been slightly amended: in the written version she appeared to no longer contradict the SIC.

The contradiction was an important one for practitioners who often saw gaps, discrepancies in what others said, as opportunities in which to offer their own input. While Margaret's Curran's speech pointed to information that the SIC potentially concealed, the changes that she made only highlighted facts that she appeared to conceal also. It was the SIC's and Minister's apparent difference that pointed to the fact that one or the other concealed information. In other words, both the SIC and Margaret Curran appeared non-transparent, and to withhold vital information that was of use to those, such as McBride,

that sought to prevent their own replacement. But while a gap had emerged, it soon closed and the opportunity for resistance and rebellion dissipated.

Although as far as Malcolm was concerned, there were still often inconsistencies in what the SIC and his staff said: '…one of them says one thing, and directly contradicts themselves at the next meeting without any indication that there has been a change of approach', he exclaimed. The only reason for their difference, he concluded, was that the Office of the SIC ('OSIC') had perhaps decided to approach the same issue from a different angle, the lag-time between meetings explaining the differences in what different individuals said. There was a sense in which the SIC and his staff were considered undifferentiated, their difference coming as a surprise and explained in terms of OSIC's change of approach. Such changes appeared to leave Malcolm and his colleagues unsure of where they stood, never able to quite trust the OSIC. And while it was possible for a practitioner to read the SIC's latest decision to establish his current thinking, it was also tempting for a practitioner not to take up his perspective on a particular matter in light of his apparent inconsistency and mistrust of them. 'Why are they stuck in St Andrews anyway… I mean, why there?', Malcolm continued. It was not a question that the SIC had not been asked before, although according to him, St Andrews was as good a place for him and his staff to be as any. But for Malcolm, it was too far away:

> 'They should be in one of the major cities, not stuck out in St Andrews where no one can get
> to. Their staff must also be spending a lot of public money going to and from each place…'

The distance appeared to mean that practitioners felt more out of touch, had less frequent contact with the SIC and his staff, which left them more uneasy and unsure. It was as if the distance meant more time passed between each meeting, and that there would be more change in the SIC's thinking, explained by Malcolm in terms of change of approach.

Coffee, meetings and conferences

While Malcolm argued that he was left unsure of OSIC's approach, frequent FOISA conferences and meetings in the first two years in which FOISA was in force provided practitioners with the opportunity to meet and speak with decision-makers and also for the SIC and other stakeholder groups to make their voices heard. These meetings and conferences were a way in which practitioners might keep on top of recent proceedings, the thoughts and approach of the SIC and in touch with each other. Networking, it appeared, formed a key part of FOI in Scotland, a way in which practitioners might know of and meet their evolving obligations under the Act.

Conferences and meetings were held all over Scotland, in well-known exhibition halls with high ceilings, bright lights and modern architecture, or in large chain hotel conference suites with colourful carpets and sleek décor, old and ornate chambers with spiral stairs and gilded banisters, or large, creaking auditoriums. Delegates spent much of their time with their eyes raised to the ceiling, admiring the

architecture, as well as chatting to old friends and colleagues about the latest FOI statistics, or request. Practitioners shared stories and advice, readily passing examples and information on. They at the same time were present to learn from the SIC as well as other practitioners. From the start to the close of the meeting knowledge was circulated, offered and received in a social relationship that pointed to 'knowledge' as dependent on this relationship.

While often held all over Scotland, most conferences and meetings took place in the city of Glendale, for this was the easiest place it seemed for delegates to get to. They could last all day or a good part of the day, many held on an annual basis. Those who attended smaller meetings might bump into the same practitioners at larger conferences, or make new acquaintances. Smaller half-day meetings took place once every four to six months, and those who attended might take the opportunity to speak with the SIC or the Head of the Scottish Government FOI Unit over a sandwich lunch, hang around for a brief chat with other practitioners, or arrange a private meeting with the SIC at his office in St Andrews.

The SIC was a forceful and passionate speaker. He was a modest man, smartly dressed, good-looking with short dark hair and tanned complexion. Those attending larger meetings were often impressed by his oration skills. And as he took to the stage, he often visibly trembled with excitement, anticipation and adrenaline. It was clear that he had a message to deliver, to a captive audience - people able to make a difference by promoting FOI within their authority. It was crucial that he made his meaning and thinking completely clear, that access to information was a right and not a privilege – something that some civil servants, it seemed, had yet to realise. In many ways, he had an audience who were keen to listen. While the SIC sought to make himself absolutely clear, those with new responsibilities to retrieve and disclose information on behalf of their authority also had new responsibilities to make decisions over public and private (should information go out or be retained? - what was in the public interest?) that might have otherwise been made by central Government. If they were sometimes unsure as to what or how to decide, the SIC might provide vital clues. It was on this basis that individuals often attended conferences and meetings, to obtain guidance. So, while the SIC aimed to make himself transparent, practitioners it seemed required him to be so.

Transparency, it appeared, was in this sense about devolved decision-making, individual practitioners were in a position to make decisions over matters that might have been for Government to decide yet continued to seek guidance from the top in order to make these decisions. It seemed that while decision-making was devolved, individuals were not at liberty to decide for themselves how to govern; rather they took on others' thinking – that of, for example, decision-makers, Government representatives and the SIC. In other words, it appeared Government itself was in some ways devolved, individuals making decisions on behalf of others' whose thinking they carefully replicated. The SIC was an independent arbitrator, appointed by the Scottish Parliament, and in this sense was in a position to regulate rather than act as a conduit for the Scottish Government. It was not even Government, then, whose guidance individuals followed at annual conferences, rather that of the SIC, whose own thoughts

and opinions appeared an outcome of his involvement with a network of persons that in some ways emerged out of conferences and meetings such as these.

Delegates and speakers often wore suits to FOISA events, forming a swarm of black and grey as people moved to and fro, between conference room and dining hall, dining hall and cloakroom, clutching conference packs handed to them on their arrival and their name badges clearly displayed. Delegates after catching an early-morning train, arriving at an all-day conference in time for a modest breakfast of mini patisserie and a cup of tea or coffee, might take the chance to speak with the SIC's staff as they put up their conference stand and lay out brochures, leaflets and pens for the event. Those arriving a little later, might see the SIC dash through the auditorium foyer before making his way to the conference platform. Lunchtime and coffee breaks provided an opportunity for delegates to speak to friends, colleagues, the SIC and his staff, journalists, members of the private and voluntary sector and of the Campaign for Freedom of Information in Scotland. There were sometimes as many as two hundred practitioners in one room, forming a neat queue for food and talking. Nancy, Records Manager for the University of Gordonbridge, and Craig, one of the Records Managers for the University of Dale regularly attended annual conferences, along with colleagues from the Higher Education sector. FOISA conferences seemed an opportunity for Nancy to gently catch up with colleagues, compare notes and liaise with individuals from other sectors in the lunch or coffee breaks. People would move from person to person, joining and leaving conversations that they might later resume. Craig, on the other hand, was more vocal and would frequently voice his opinion as a member of the audience when it came to question time at the end of a conference panel session. He might also have a word with the SIC when he could.

So, delegates did not only attend conferences to listen to the SIC or other conference speakers, but also to catch up with each other. It was an opportunity for them to discuss in a sociable setting, difficult requests, their authority's policy or approach, and the outcome of a previous meeting. Information circulated quickly, as practitioners learnt from other practitioners, constructing the truth between them, individuals filling in the gaps that appeared in others' and their own knowledge. Not only did individuals appear to readily make themselves transparent but there was unquestioning trust – information travelled between groups and persons and as information travelled there was no sense that a gap in knowledge pointed to secrecy and dishonesty because knowledge itself appeared truncated from social networks. That is, delegates did not leap to conclusions about each other – that they concealed information, were dishonest and secretive - that they might about an authority or civil servant under other circumstances. While civil servants and authorities might be considered secretive, delegates did not appear so. Trust (or lack of it) was not an issue, was neither contemplated nor in question.

Delegates and speakers were from a wide spectrum of organizations, representing a variety of interests. The different positions on FOI and mixture of interests and professions meant that discussions between delegates, speakers and decision-makers on and off stage were often charged and fruitful. Should FOISA be amended or extended, was it of detriment or benefit? Conference speakers might, for example,

include the current Minister responsible for FOI, someone from the Scottish Executive FOI Unit, a member of the CFoIS as well as a well-known journalist and solicitors from well-known firms. Some were better at presenting than others and used PowerPoint slides as they spoke on stage, while others simply offered their view. As a member of the audience one could spot a presentation that had taken time, care and effort to prepare especially for the occasion, and one that had perhaps been written for a prior event. It was the freshness of a presentation that made some easier to engage with than others, while someone's ability to ad lib, to respond to the audience as they presented was particularly successful.

On the one hand, it was the immediacy of a speaker's response that appeared to matter. Practitioners were in some ways already aware of this: it was crucial to get the timing of a response to an FOI request right not only because the twenty day limit would fast approach, but a delay would make persons or organisations less transparent. In other words, a response from a person or authority did not automatically make them transparent in a way they might imagine, rather a response often had to be carefully timed, not appear the outcome of a particular relationship between discloser and recipient. A languid response made those disclosing information appear relationally involved with others, colleagues and applicants, as if their consistency, regardless of those with whom they were in relation, pointed to the fact that they were less of a person, less like a subject—and seemed instead autonomous and identical, which also underlined their 'transparency'.

On the other hand, a personal response—civil servants acting in their own personal capacity not that of the organization—also had the effect of transparency as the audience received knowledge, not information, that was the outcome of a relationship between them and the speaker through which the speaker established what was useful or relevant.

Practitioners did not always seek to be transparent, however. There were those who avoided the gaze of the SIC and his staff, and on occasions other practitioners, by concealing themselves in amongst others, often those with whom they were already familiar. They would avoid articulating their views in front of others, particularly as members of an audience of delegates. It appeared that most practitioners, speakers and the SIC's staff considered that these persons were afraid of saying or doing the wrong thing, which is why they were reluctant to reveal their thoughts. In fact, their reluctance to speak in meetings only reflected their reticence - as civil servants responsible for enforcing FOI within their authority - when disclosing information that their authority held. While it could be said that practitioners did not like to get things wrong, it could be also said that people were simply reluctant to differentiate themselves from others - it was a consequence of their differentiation that they might get things 'wrong' (see chapter two). Networking, liaising with other practitioners, hearing the SIC and others speak, while at the same time not disclosing their own thoughts was a way in which to make the differences that they perceived between them and other delegates disappear, without these differences becoming obvious to others.

Individuals not only sought to avoid standing out from the crowd, they also sought to become one of the crowd: the hierarchical division between persons, a consequence of their divided interests,

setting up a relationship between individual and society, the latter from which they were excluded. Individuals that existed in society sought also to become 'society'. It was in this way that they would avoid making mistakes. The point is, that through mingling, liaising, listening to others, individuals came into new knowledge that meant they thought and acted on the same basis as others, which not only enabled them to make decisions about FOI requests but also had the effect of making individuals themselves disappear, see-through or transparent, and at the same time the collective, group of which they were part and society, appear. This, then, was a different kind of transparency to that so far described, not the outcome of people deliberately setting out to be transparent, rather the effect of persons taking the same interest in the same things (relation) – the same form - so as to erase their differences. It was of course, in many ways, an ideal: a soon as divisions were erased, new ones appeared. People's divided interests in a relation (knowledge) simply meant that they were divided and combined in different ways; there never appeared a point where everyone considered the same knowledge or relation of utmost value. However, the point is that such an ideal, which had the effect of making persons disappear – become transparent - is a vehicle through which to think about other forms of transparency. A point to which I return later. I first turn to the question of trust.

Trust and Misinformation

Trust, or lack of it, seemed partly due to the fact that persons often operated on quite different bases; people were unlikely to trust those who did not share their values and interests, the same knowledge or the same perspective. This appeared, at times, the case between Malcolm, McBride and the SIC. The SIC appeared to think and act on quite different grounds to McBride, and as a consequence Malcolm considered that the SIC had neither the interests of the public nor McBride's own interests in mind when dealing with an appeal. There were also times when the SIC's apparently changing approach meant that Malcolm was reluctant to place trust in him and his staff; different people said different things at meetings and conferences, he argued, their difference pointing to the SIC's changed approach rather than their own differentiation. In this sense, people seemed conceived of as themselves identical rather than motivated by their divided interests. Such inconsistency meant that Malcolm appeared not to depend on them to do as they said, was left unsure of the basis on which they operated. It was their lack of communication that appeared to most concern him, if they communicated their changed approach, he would perhaps be less uncertain and more trusting. As Anthony Giddens (1990) writes, mistrust appears in many ways an outcome of lack of communication, information about information: Malcolm's uncertainly was not a result of OSIC's changing approach but lack of information about such change. Above all, however, lack of trust seemed the outcome of new revelations that pointed to previous or ongoing concealment, and the fact that what people disclosed was not always everything that they knew. This seemed to make it difficult for people like Malcolm to place trust in others, to act on what they said: there was a sense in which there was more to what people actually said. Indeed, it was because knowledge was concealed that Malcolm

was not able to apply the commercial interests exemption in the way he would have liked. Here, lack of trust was the outcome of a discrepancy in perspectives or information, explained in terms of secrecy. Implicit in this was the sense that things were things in themselves—objects—to discover, and that persons might have the same logic, their differences explained in terms of concealment. Since concealment appeared in some ways the cause of mistrust, transparency offered one way of reinstating or encouraging persons to (once again) trust.

Onora O'Neill (2002, 2006), however, disagrees. She argues that transparency is not always the route to greater trust, and that the root cause of mistrust is lies and deceit, not secrecy. Transparency might be seen as a way of addressing secrecy, through the revelation of truth, but revealing hidden truths does not necessary mean that individuals will not continue to conceal information: thus others continue to mistrust. Transparency, then, does not lie in the abundant disclosure of information, which in some ways only leads to increased confusion as people receive a flood of often contradictory information from different and unknown sources, but lies in undermining lies and deceitfulness. She offers the example of trust between friends and family:

> '…our clearest images of trust do not link it to openness or transparency at all. Family life is often based on high and reciprocal trust, but close relatives do not always burden one another with full disclosure of their financial or professional dealings… they certainly do not disclose family information promiscuously to the world' (69)

It appears that if there were fewer lies and less deceit, the question of trust would not arise; there would be no need for people to disclose information, make themselves transparent, to (re)gain people's trust. It appears O'Neill sees transparency not as a solution to lack of trust, and instead advocates addressing the cause of mistrust, which she considers as lies and deceit.

While transparency does not always lead to increased trust, disclosed information is not always that which is most trusted. More information does not necessarily lead to greater transparency, O'Neill argues. As information circulates, is sent and retrieved at the click of a mouse, we are increasingly unable to work out from where or whom information comes. How can we place trust when 'we cannot even tell *who* has asserted, compiled or endorsed the supposed information?' (O'Neill 2002: 74). While information in its increased abundance often has no source, appears detached from those from whom it came and thus its reliability is difficult to verify, it seems valuable information is attached to reliable persons, and comes from reliable sources. Unable to verify its reliability, persons are less likely to trust the information they receive, and persons, organizations and processes are less likely to appear transparent. Further, while persons might be able to trace from where or whom information came, trustworthy information is not always information that is trusted. It was perhaps for this reason that, in the above case, no amount of information made McBride transparent to the SIC and vice-versa; McBride seemed neither trustworthy nor trusted by the SIC and his staff, while the SIC, despite perhaps being trustworthy, was not trusted by

Malcolm. It is for this reason that O'Neill argues, transparency is as much about the disclosure and dissemination of information as it is about *communication*, that is the meaning and possible importance of information for those receiving it, which might entail associating information or those issuing it with something or someone already known and trusted. Transparency, then, is not just about making the absence of social and political relations obvious as it is about the presence of these very relations and the connections people can thus read between information and persons. In order to travel, knowledge becomes information and must once again be turned into knowledge. It is in this way that information might be meaningful. Strathern (2004) might describe this in terms of information that comes into the 'personal organization' of the consumer. In other words, for information to be useful, for information to become knowledge, it must be attached to some person or some thing that persons already deem reliable and important.

While trust, transparency and reliability were often in question between citizens and central government, or citizens and public authorities, trust between individuals of the same as well as different sectors at, for example, meetings and conferences, appeared less of an issue, redundant even. While some practitioners at FOISA meetings were reluctant to disclose information - they attempted to conceal themselves and what they did not know – others readily circulated information, as if constructing the truth between them like a jigsaw out of bits of information. There did not appear to be the scepticism between practitioners exchanging information in conversations, at meetings, in speeches, and in the form of conference information packs that citizens revealed of those working for central government and public authorities. In other words, new knowledge that highlighted gaps in practitioners' knowledge in circumstances where everyone sought to establish the facts was not explained in terms of secrecy. This was partly because there was not the same expectation that people should know, indeed, practitioners were working the truth out between them. It was also a consequence of the fact that practitioners appeared, or so others considered, to seek to distribute what they knew as much as establish the facts for themselves. This was because while information had the potential to disclose the divisions between them, it also did not differentiate them at all: the knowledge into which people came was in this case a consequence of divided access and opportunity rather than people's own divided interests. In other words, knowledge said nothing about people personally. Knowledge appeared conceived of as an entity independent of social relations that meant that people themselves appeared as if identical. Thus discrepancies in knowledge pointed to people's *lack* of knowledge rather than their concealment of it—a consequence of the social relations information might otherwise disclose. In other words, trust—or lack of it—appeared an excess of sorts. It seemed not to occur to practitioners, either those disclosing or receiving information, that they or others might withhold information and practitioners had little doubt of others' honesty.

Varieties of Transparency

Transparency is in some ways the antithesis of secrecy: it concerns disclosing information that is considered to be (deliberately or otherwise) concealed. Examples of secrecy show that secrecy appears to take the same form, arises for apparently similar reasons, and might also be resolved through similar means. For some, transparency as an artefact of modern knowledge practices is a way in which to explore the nature of modernity itself, question the divide between 'rationality' and 'irrationality' by examining instances of transparency around the globe (West and Sanders 2002). Yet transparency does not always entail disclosure. In some cases it is about heightened clarity. Since transparency comes in a variety of forms (Hood and Heald 2006), it is important to establish exactly what transparency might mean before making organizations, processes, persons 'transparent'. The following paragraphs outline debates of what transparency might entail.
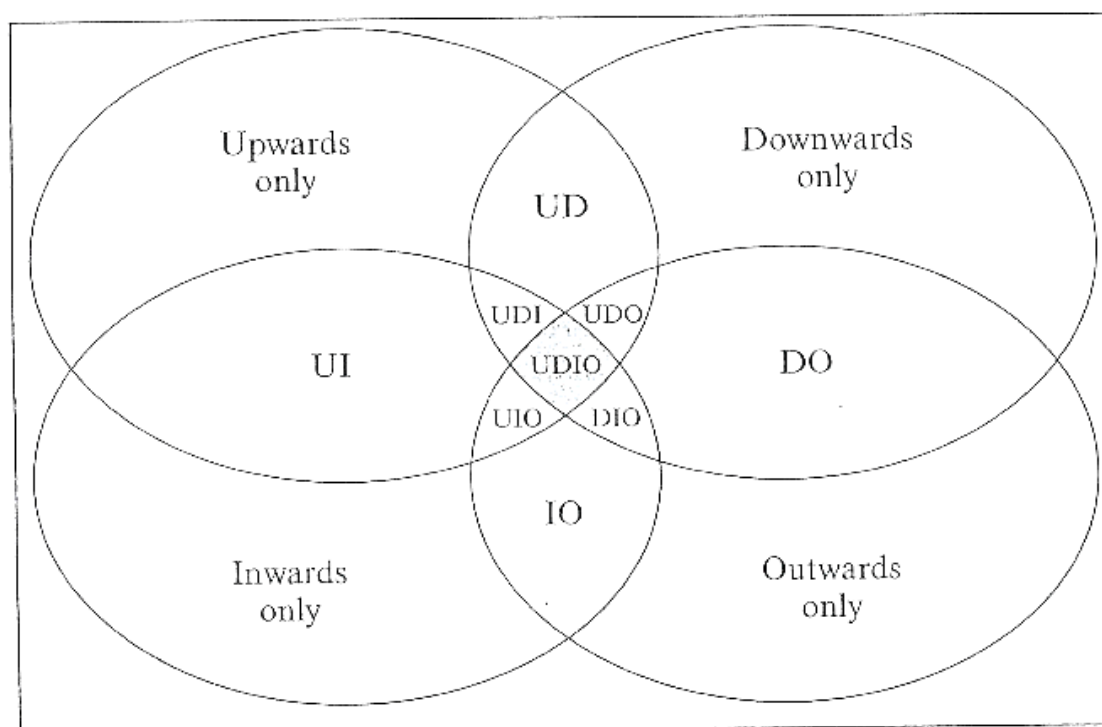
Figure 2.1. Four directions of transparency.
Note: With four directions, two combinations (UO and ID) cannot be shown in this two-dimensional representation. No significance is to be attached to which two combinations are not represented in Figure 2.1; this entirely depends on the labelling of the four circles. The shaded diamond-like area (UDIO) denotes the simultaneous presence of all four directions of transparency (fully symmetrical transparency).

Figure 5. The Venn diagram that Heald (2006) employs to describe different varieties of transparency

Transparency appears most often to involve face-to face accountability, for example, when government bodies and the public are made reciprocally transparent. Yet Roberts (2006) might argue that often when this is the case, there is transparency between autonomous institutions within a network, but a distinct lack of transparency between the network and those on the outside[38]. Relations between different bodies - government, officials, citizens – might be diagrammatically represented (Heald 2006). The Venn diagram that Heald employs consists of four overlapping circles, each circle representing a different body or group (see figure 5). He states that transparency might be upward, where hierarchically subordinate persons make themselves transparent to their superiors. It might be downward - the former in reverse. It is possible to have transparency inwards, where those on the outside can see into another body, and also outwards - which is this in reverse. In other words, persons might have access to information from persons above or below them in a particular hierarchy, and from within or outwith a particular organization or group, or any combination of the above. Of particular note is the way in which in Heald's description, persons and knowledge appear to neatly reside in discrete domains to which others might have access, making knowledge itself appear as if employed, circulated, revealed and concealed in individual units.

Face-to-face accountability might for example be compared with another form of transparency, that is, the European Union (EU) notion of transparency that, Hood (2006) argues, emphasises the production of auditable statements and accounts by international bodies that are only intelligible to lawyers and accountants - with the aim of placing financial and regulatory relationships at arms length (13). Documents, here, as with face-to-face accountability, facilitate transparency; documents are the basis of communication, the route to new knowledge, and make possible the verification of others' thoughts and actions. However, documents' lack of intelligibility to persons other than lawyers and accountants suggests that such bodies are only partially transparent, or that transparency entails only select visibility. It appears, then, that the kinds of persons and institutions involved influences what transparency itself involves, the way in which it is performed, as well as the expectations placed on bodies to be transparent. With regard to the case-studies of Malcolm and McBride, and practitioners at meetings and conferences above, reciprocal transparency appeared the most common form of transparency. Practitioners liaising with other practitioners, speakers and the SIC at FOISA conferences and meetings were acutely aware of how they appeared to others - as transparent, as persons (relational), or as lacking knowledge.

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[38] This is because the very structure of governing institutions is changing, subverting the effectiveness of newly adopted disclosure rules. One of these changes is the emergence of 'networked' forms of governance, 'through which agencies in different governments cooperate to achieve a common goal' (2006: 21). Roberts offers NATO as an example of 'networked governance'. NATO countries, after decades of experimentation, have established a method of 'information sharing'. However, deepening the flow of information among NATO governments raises security issues, and in the drive to give participating countries assurance that information flowing through the network was be protected, governments took steps to restrict access to that information.

In other cases, rather than about relations between groups, transparency entails tracing relations within groups. In this case, rather than about disclosure that dissolves the differences between different groups, transparency is as much about keeping internal parts separate. This particular strain of transparency is linked to the EU use of the term, (Hood 2007: 15). Hood is worth quoting in full:

> 'It is the doctrine that government should operate accounting regimes that separate out different kinds of activities, specifically to make it possible to identify who pays and who benefits from particular programmes and measures, and to distinguish the financial and other activities of different 'cost centres' within government'

In other words, here transparency entails clarification—making entities stand out alone. It ensures that loss-making activities are clearly identified and specifically subsidised, not covered up in covert cross-subsidies. According to Hood, clarification is not unusual practice in public service management, and was a feature of public enterprise management in the 1960s: it appeared more choice and more options brought with it the burden of keeping things separate, preventing their amalgamation. That combination and/or separation might be done purely for people to demonstrate that they have interests in the right relations is a concern: things that are separate, should stay separate, and not get lost in new relations and endeavours. In other words, audit trails that make transparent the relations between things should themselves be made obvious or transparent.

Transparency is also about unearthing the context in which cases, speeches and decisions are made, and thus the basis on which people, in a particular moment, think and act. So, in recovering what is meant by 'transparency' with regard to particular legislation, what it entails, it might be necessary to unearth the context in which a particular statement about transparency was made by Ministers, officials and decision-makers (Holsen and Glover 2007). In the same way, persons are often expected to, as they make decisions, account for the basis (or context) in which they make them: in relation to secrecy, Birkinshaw (2006) argues that '[s]ecrecy… may be necessary; but it has to be justified. Justification is part of transparency'. Transparency appears to entail a certain self-reflexivity, characteristic of modernity (Giddens 1990). In an effort to make his moves and meaning transparent, after conducting an investigation, the SIC would issue a detailed decision that included the points that he either had or had not taken into account, and presenting each side of the argument, that of the applicant and public authority. It was these decisions in which FOI practitioners were most interested since a particular decision might not only inform an authority of its position but also offer guidance on how to make decisions in the future. Public authorities too were expected to make the basis on which they made decisions transparent, so that these decisions could be scrutinized, checked and verified by the SIC and the public. Transparency was not just about unearthing the facts, then, it was about establishing the basis on which such facts were constructed: persons must not only be self-reflexively aware of how they act, but the basis on which they act also.

While transparency is an end in itself - it is about dissolving the differences between persons, groups, bodies and also clarifying relations and connections – it is also a means to an end. It, in other words, has instrumental value (Heald 2006b). Transparency 'might be seen as a core concern, to be intrinsically valued, or as something to be valued instrumentally, as a building block…', (Heald 2006b: 59). Transparency, then, might be considered a route to other core attributes, such as trust, efficiency, accountability, autonomy, fairness, legitimacy and confidentiality and it is through these that transparency appears also to acquire its own value. In other words, the value of transparency might be measured in the effects of which it is instrumental. In the examples above, transparency is supposed to bring about increased trust, publicly owned companies such as McBride might no longer conceal their moves. Yet transparency also appeared to lead to mistrust and uncertainty: the more the SIC and his staff disclosed, the more discrepancies appeared to point to unexplained change and Malcolm was often left confused. So, transparency does not always – as O'Neill (2002) underlines - lead to increased trust. Indeed, transparency might come into conflict with some if not all of the core attributes mentioned above, that is for example, jeopardise trust or inhibit efficiency. As Heald (2006b) explains, once individuals are aware that every e-mail, every working method, every recorded conversation might potentially be disclosed as a result of FOI, this could change working practices, discourage people from keeping and preserving records, which will only lead to inefficiency and ineffectiveness (68-69).

But I seek to highlight another form of transparency that has so far not been described. Transparency appears predominantly about revealing what is otherwise concealed, dissolving the differences between persons, and clarification. It is through mingling, liaising with the SIC and other practitioners at FOISA events that people make efforts to come into the same knowledge, share the same interests and also the same form. It is in this way, by relying on knowledge that others provide, that persons in receipt of new knowledge might no longer stand out, and make themselves disappear, see-through, or transparent. People no longer appear as a person operating in their own right, but a person of the public authority or larger body they then represent—as if anyone. It is persons as operating *in their own right* that that disappear, are made transparent.

And it is in this way also, that the whole, collective or group to which persons belong, momentarily appears - in the absence of conflicting interests and in light of individuals' uniformity. As persons seek to share others' knowledge, then, it has the effect of making both persons and the collective of which they are part, transparent. That is, of concealing persons and revealing their collective form. This, then, would be a different kind of transparency, one that operates on quite a different axis to the kinds of transparency so far described and might also foreground the very basis on which other kinds of transparency appear to operate.

Transparent Persons

In order to disappear, become transparent, practitioners otherwise possibly reluctant to share their knowledge, appeared reliant on other practitioners to disclose their own knowledge, to themselves be explicit. Transparency of one kind, in terms of persons revealing what they knew, was in some sense a route to transparency of a different kind, that is, persons appearing see-through or transparent, their disappearance a result of their shared knowledge, non-differentiation, and the fact that they were no longer (individually) seen or stood out. The outcome of transparency, of evenly distributed knowledge, a 'transparent society' (Vattimo 1992), then, was that individuals themselves became transparent—no longer acted in their own right—and might no longer be seen.

While transparency was in one sense about dissolving the differences between persons, for example, practitioners in FOISA meetings were keen to come into new knowledge in order to comply with FOISA, there was also the sense in which this was an ideal: gaps in knowledge might be bridged but new ones would inevitably open up elsewhere as persons took an interest in new relations and new knowledge. In other words, it was likely that people's interests in a particular thing (relation), their values and their knowledge would change, perhaps as a result of their efforts to dissolve discrepancies perceived between themselves and others. Although momentarily undivided, people's interests would inevitably become (once again) divided. It was a result of their changing interests in a particular relation that people might appear combined and separated in different ways—come into and act on different or the same knowledge. So at FOISA events, as information circulated and people's knowledge was completed by others, in an effort to bridge the gaps between them and in their own knowledge, people could find the basis on which they dealt with FOI requests constantly shifting, being amended and completed. It was this of which Malcolm of McBride ferries complained. It seemed as soon as he established the basis on which OSIC operated, their approach and thinking on a particular issue, they appeared to take a different tack, their change of approach revealed the differences between what different OSIC staff said at FOISA events. Malcolm was constantly catching up, establishing the basis on which he should make decisions as information circulated.

On coming into new knowledge such that people's interests in a particular person and relation appeared momentarily divided, individuals that had otherwise disappeared might again become visible as independent entities. The collective or whole of which they were a part might seem to fragment, appear absent as a result of the absence of a relationship between people: society appearing, as independent persons are strung together, as if there was no apparent relationship between people. In essence, while undivided interests, and therefore shared knowledge, had the effect of making persons transparent and the collective of which they were a part appear, moment to moment, people's changing interests, their shared as well as different knowledge, had the effect of making individuals and the collective of which they were a part disappear and (re)appear—an effect of revelation and concealment that did not involve disclosure. There was both the sense that transparency was something that was constantly being done and undone,

realised and dissolved as people's divided interests meant that they were both separated and combined but also, as gaps in knowledge appeared as others were resolved, that transparency might never be realised,.

While differing knowledge and the absence of a consensus might produce a sense of social fragmentation, the dissolution of the collective and (re)appearance of individual persons, difference was more often than not explained in terms of secrecy. Malcolm at McBride ferries argued that on changing the written version of her speech so that she did not come into conflict with the SIC, Margaret Curran (Lab.), then Minister for Parliamentary Business instead appeared to conceal the truth, the difference between what she and the SIC said explained in terms of secrecy. In this sense, there was no conflict of knowledge, rather differences between persons, what they said and did, were explained in terms of concealment or perhaps lack of information. The information to which people had access, then, was hidden or partial rather than the truth. In this sense, persons appeared differentiated only by what they knew (or what they revealed they knew) rather than by *how* they knew. As Tsoukas (1998) explains, knowledge that people disclose is often considered as if objectively gathered *information*. It was for this reason that trust in relation to information dissemination by practitioners appeared an excess of sorts. In other words, discrepancies between what people 'know', it is assumed, point to people's lack of access or deliberate concealment of information rather than their divided interests. Tsoukas draws on Lakoff's description of the 'conduit metaphor… [that] suggests that meaning is a thing and that the hearer pulls out the same meaning from the same words… [Meaning] exists independently of beings who understand the words' (1998: 830). Tsoukas, then, underlines the point that knowledge appears to be considered as if an object that is passed between people unchanged, that persons are undifferentiated in their interests, the differences between them explained in terms of lack of information or concealment. It is for this reason that he argues that transparency is something that might never be achieved: as people come into and disclose new knowledge as a consequence of their changing interests and relations, they also point to information that otherwise appeared concealed, that others did not disclose.

So practitioners at FOISA events, as they passed knowledge, explicitly embodied as knowledge and implicitly as information, between them, might be considered to have been doing one of two things: either dissolving the differences between them by coming into new social knowledge that meant their interests were no longer divided (rather they had the same interest in the same thing (relation)), or circulating information on the basis that their interests were already undivided, in other words persons appeared to be differentiated by the information to which they had access. These are two different ways of reading the same activity, and yet also reveal the basis on which 'freedom of information' and transparency appeared to operate as well as the basis on which practitioners themselves fraternized. In other words, transparency of one kind - the way in which persons appeared to make themselves disappear, or transparent, by dissolving the differences between them—appeared also to foreground the assumptions behind transparency of a different kind, transparency as revelation. Above all, and as Tsoukas (1998) highlights, while information and knowledge were words that are often used interchangeably to depict or

describe the same thing, their usage also points to assumptions about persons and knowledge-exhange, that is, the presence or absence of social relations. Persons might come into and disclose new knowledge, their knowledge revealing the relations in which they have interest, or exchange 'information'. Knowledge (as information) circulated as if an object in which (undifferentiated) persons have undisputed interest.

So, transparency appeared in some sense a way of distributing information in which others were already considered to be in possession. As information circulated, people might complete others' knowledge, bridge or fill in the gaps, and it was in this way that between them practitioners constructed the truth, like a jigsaw out of bits of information. Transparency was above all a way in which people might come into the same knowledge, know 'more', and in essence have equal agency. However, it was a result of individuals' divided interests - their different knowledge – that they appeared to withhold or lack information. Transparency might be thought of in terms of revelation of that which was concealed, but it also entailed a consolidation of interests that were otherwise divided: those whose knowledge was otherwise different became shared. So, distributed information that was otherwise explained in terms of revelation of the truth, pointed also to people's changed interests and their different knowledge: transparency did not necessarily mean people came to know more, or even that the truth was revealed, rather that persons whose knowledge and interests were otherwise different came to know the same. Knowledge was in this sense displaced and replaced.

As people came into new social knowledge and gaps in knowledge appeared resolved as a result of one kind of transparency, I argue that individuals themselves also disappeared—became see-through or transparent—and that transparency in terms of disclosure—transparency-as-revelation—resulted in a different kind of transparency, transparent persons. The aim of transparency-as-revelation was for the differences between people to drop away, come into the same knowledge, appear in the same form as a result of their shared interest in a particular thing (relation). While social relations were of concern to those who considered that they might lack knowledge, get it wrong, or be embarrassed on disclosing what they knew, for those who shared the same knowledge and form as a result of their shared interest in the same thing, social relations appeared to drop away, disappear, along with people's differences. In essence, social relations appeared no longer in question. The difference between citizens and Government also becomes 'balanced', transparent and non-existent. The very aim of disclosure, then, was for persons to be undifferentiated in what they knew, and its very outcome appeared exactly this, undifferentiated persons who shared the same knowledge, thought and acted similarly. Transparency's end-point, was transparent persons, persons who were identical in form and for this reason appeared to disappear completely into the collective of which they were a part.

Conclusion

There are, of course, numerous instances when people deliberately withhold information from others, in order to conceal what they know and are in this sense non-transparent to others. However, this chapter

does not so much explore incidences of deliberate concealment or lack of clarity, rather what transparency is and what it entails as highlighted in the field as well as by other scholars. I explore the arguments of those with an interest in Government related transparency and through this offer my contribution and an account of what a social anthropologist might see in the field by way of transparency. Above all, persons it seems seek to be undivided. They see divisions between them reflected in what they know and how they act. It is on coming into the same knowledge, sharing the same interests and outlook that persons erase the divisions between them, also making themselves disappear and the collective of which they are part, appear. Individuals might reappear once again, on being divided by different knowledge, but the divisions between them might also be seen (and often are) in terms of concealment, or their non-transparency. In this case, persons who are otherwise divided are assumed to be undivided, the differences between them explained in terms of secrecy.

Recapitulation: Relations that Unite and Divide

Access to Information

This thesis has been a study of key moments of interaction between FOI policy-makers, practitioners and applicants as they submit and respond to FOI requests, and between policy-makers and practitioners at FOISA meetings as they share their experiences of the Act and obtain guidance from other practitioners. It has explored the key notions that underpin the Act—access to information brings *power* and *agency*, and *trust* and *transparency*. It is about *changing* an entrenched *culture* of British *secrecy* to one of *openness* and truth, which involves individuals within public authorities making decisions over what constitutes *public* and *private* information.

I have explored these notions both in terms of the official rhetoric that underpins them, and heuristically, in terms of how the concepts work themselves out in practice: I have provided a description of incidences of power, agency, transparency and trust, public and private, and culture change as they emerge in the field. What is often the case, is that the academic theory and official rhetoric that underpin these terms, do not always mesh with what happens in practice. So I offer more than one view: that of the academic, the policy-maker, the Act, the practitioner handling the request, the decision-maker, and the applicant or member of the public. It is these views combined that informed the findings of this thesis.

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Locating, retrieving and sharing information is a highly sociable business. FOI practitioners frequently met and talked at conferences and small informal practitioner meetings throughout the year, and liaised with colleagues about what information was held, who held it and what to disclose—colleagues on whom they depended to locate and retrieve information. People might discuss the SIC's latest decision over a buffet lunch of sandwiches or a request over coffee or on the telephone.

It has been said that the Scottish Information Commissioner (SIC) seeks to implement a 'burger bar' approach to information dissemination. Like a burger bar where the same quality burger is given to each and every person who walks through the burger bar door, the same information is given to everyone. FOISA thus makes obvious the absence of social and political relations, and resolves the divisions between people, (in so doing creating new social entities). The free dissemination of knowledge foregrounds knowledge as an independent entity; cut lose of social and political networks that might otherwise direct its route, social relations are neither implicated in its presentation or use. In light of their absence, knowledge appears a tool that might be accessed, picked up and used, and in the form of information. *This thesis has focused on the subject-object transformations that FOI entails, that are the outcome of the way*

in which individuals—practitioners, applicants, policy-makers—make absent or obvious, by the shared or divided form they take, the social ties on which they and social knowledge rely.

<p style="text-align:center">***</p>

Summary of Argument

It is perhaps worth touching on some core findings emerging from the thesis before recapitulating the findings from each chapter:

This thesis has centrally focussed on the way in which people—policy-makers, practitioners, applicants—come into the same knowledge through sharing experiences at FOISA meetings, listening to the Scottish Information Commissioner (SIC) speak, reading his briefings, or chatting over lunch or coffee at their desks. Through coming into the same knowledge, people come into a shared or common basis on which to think and act.

It was by acting on a shared or common basis that individuals made themselves disappear, or appear 'transparent'. That is, people appeared in the capacity of the organization and not their own capacity. However, in light of new knowledge into which they or others came, people would appear once again divided individuals and the social relations between them were once again made visible—reappeared, throwing into question a theory of people's division as indicative of their 'secrecy'.

As differences were dissolved in this process, different practitioners appeared themselves undifferentiated, or as acting in the capacity of the organization or larger group of which they were a member. Their non-differentiation was necessary for FOISA compliance; it was important that practitioner's individual personalities were seen not to determine what they disclosed, and for them to be seen as acting as 'anyone' in the authority. But their non-differentiation also seemed to make it easier for them to disclose information: information was no longer about or perceived in relation to them as discrete persons. This change of attitude was part of the 'culture change'.

It was as a result of the perceived non-differentiation of different practitioners that the social relations on which disclosed knowledge always depended were made absent: complex networks of relations between practitioners, colleagues, friends within and beyond a single authority that informed what an applicant actually received, were hidden. Thus social knowledge appeared in the form of 'de-socialised' information. It was through providing equal access to information that individuals had equal access to political power. FOISA thereby placed citizens and government on the same level—both able to partake equally in the decisions and actions that government takes.

Whether practitioners, applicants, and other actors could be considered as acting in their own right, or in the capacity of a larger grouping, they themselves and their personality being 'transparent', determined whether the information they created or handled was 'private' or 'public'. Then, as practitioners came into new knowledge, this created divisions between them, and between them and

applicants, and individuals once again appeared to act on a personal basis and the information concerned seemed once again to be private. As individuals alternated between acting on a common or different footing, they alternated between appearing 'public' and 'private'—thing or person—a division *between* individuals reflecting a division *within* each of them.

This thesis explores the subject-object aesthetics that are a result of people, in one moment, acting on a divided basis, and in another, a basis they share in common—in light of which knowledge appears either in the form of knowledge or information, and people in the form of person or non-person private or public.

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Private and Public

In chapter two I ask how are decisions over public and private made under the Act? While FOI provides access to information deemed public, in accordance with the Data Protection Act, it also includes provisions for the retention of personal information. DPA provides people with a right of access to their own personal information and prevents this information being disclosed to others.

Yet practitioners often found it difficult to make a decision over what constituted public information and what was private or personal. It seemed as if persons would be disclosed by disclosing information created by them or about them, at every turn. In response to this the SIC replied that people were often over-sensitive, and that more information could be disclosed than practitioners perhaps realised. Practitioners such as Duncan, Information Compliance Manager for Lochhead council, in a position and with the capacity to make decisions over public and private similar to the SIC, found himself persuading others to release information that they considered personal, that he and the SIC did not.

While practitioners sought guidance on how the line between public and private should be drawn, decisions over public and private were always made on a case-by-case basis. Information, for example about an employee's contracted hours, appeared private in relation to the wider society from whom he or she seemed differentiated, but when put back in relation to their colleagues with the same hours, the same information appeared public, and thus was able to be disclosed. Whether information was public or private depended on the particular relational context in which it was assessed. Since this was the case, information, and those creating, holding or the subjects of information, would appear public or private in different moments. Perhaps contrary to expectation, the relationship between public and private was not fixed and something to be unearthed, but relational—a public-private division between persons reflecting a public-private division within persons.

Strathern (1992) writes that people's division and combination—their difference or similarity to others—is the consequence of the fact that something can always be seen from a different angle. New knowledge creates dilemmas over how to categorize and order cases, people and things, seen from

multiple angles, might be arranged, combined and divided along different lines. It is people's interests in a particular relation that invokes their division and combination. Indeed, practitioners, end-users, the SIC himself, often adopted contrasting and conflicting approaches to the same thing, whether information—in sum or in part—was confidential for example, which for practitioners seeking pattern in the SIC's decisions over public and private, was problematic. There were no guidelines it seemed they could follow. As each new connection (from a different angle) was invoked in relation, connections seemed partial, as if there was always more to know. This was reflected in Duncan's particular need for more information before he could make an informed decision about whether information really could be disclosed.

The combination and division of cases was reflected in people's own combination and division, and as a result of their changing interests and relations. As people's interests in a relation changed, they underwent endless permutations in form—their own form emerging in accordance with the perspective they disclosed. Practitioners, end-users, and decision-makers, then, might each adopt a different perspective in relation to one another, and on the same thing. Each perspective, relayed in the information produced, might be either 'public' or 'private'. It was categorized differently as people appeared to act in the capacity of persons or the capacity of a larger body—divided or combined, differentiated or undifferentiated, person or thing.

As one of many, persons could be disguised—a specific interest, concern or relation, appearing a general feature of the group. This was a method used by statisticians to conceal 'persons' in information. As with the leukaemia case that Stewart described, obscuring the number of individuals with leukaemia in a data set would suggest that an ambiguous number of people held the same characteristics in common, making it more difficult to identify people through their symptoms, thus implying these characteristics were not singularly theirs.

Culture Change

In this chapter I touched on the official rhetorical concerning culture change, what Members of the Scottish Parliament write and say on the subject, and what policy and decision-makers consider it will achieve. I also touched on the responses of FOI practitioners and their colleagues to this change and the expectations placed on them.

FOISA is designed to bring about a of public sector change of culture, from one secrecy to one of openness. This change required people in public authorities, FOI practitioners and their colleagues, to readily disclose information to those who requested it. Such a change requires public authority civil servants to think quite differently about what they do.

Enmeshed in a network of relations on which FOI practitioners depend to locate and retrieve information in response to a request, this information is a product of these relations. Practitioners such as Margaret, an FOI Officer for NHS Glendale, whom I helped prepare for an 'FOI audit' regularly met with colleagues for morning coffee and lunch with colleagues and other FOI practitioners to discuss at great

length with each other what they had done at the weekend but also FOI requests with which they were currently dealing. While relations between practitioners and colleagues were sociable, relations between practitioners and applicants were often equally as warm. Colin, another FOI practitioner for NHS Glendale was often on friendly terms with applicants, and would regularly exchange e-mails with them regarding their request for information, or their request for a review. The network of social relations in which practitioners and applicants were enmeshed was replicated at FOISA conferences and meetings at which practitioners liaised, discussed their particular concerns and requests with each other and the SIC, and learnt from the SIC and other practitioners how to comply with FOI. FOISA, it seemed, was both a *model for* knowledge sharing—facilitated relations between practitioners, and practitioners and applicants— and *modelled on* knowledge sharing—sociable FOI events were a means through which practitioners could also share and exchange what they knew.

As practitioners shared knowledge at FOISA conferences and meetings, at which they listened to the SIC talk on culture change and about his latest decisions, practitioners such as Morag, a keen advocator of the Act, established with others a common or shared basis on which to think and act. FOI compliance, here, entailed adopting a common footing, and thus the propagation of certain *forms*, through shared knowledge. It was important to listen carefully to the SIC and his staff and adopt the same approach in order to comply with FOISA. Attending training courses and taking exams on FOISA was another way in which practitioners made sure they complied with the Act, and came into the same knowledge. Duncan also regularly read the SIC's 'briefings' as a means of ensuring he complied. Replication seemed to underpin FOISA: information dissemination at meetings was not only a means of disseminating the message of culture change, but was the culture change itself, made visible in practitioners' replicated form and the replication of meetings themselves as organizers of these meetings looked to prior or larger meetings for guidance.

While new knowledge and a new way of behaving came with the role of FOI practitioner, practitioners such as Colin, quickly realised that his shared form with the SIC and other FOI advocators created a new division between him and his colleagues. This division was analogous to that between the SIC and the public authority. As a result, the division between the SIC (or the law) and the authority (in its pre-culture change state) shifted to become one that existed between public authority practitioners such as Colin and his colleagues. While responsibilities for making decisions under the Act were devolved, handed down to individual civil servants, devolution seemed to bring the same government-citizen relationship, replicated here in the relationship between Colin and his colleagues. FOISA thus seemed capable of being put to work *beyond* its own realm (between different parts, or persons, in the authority as well as the authority and the public). Culture change, here, entailed the *migration* of a division.

On the one hand, FOISA was principally socially governed: practitioner's own personal relationships with colleagues informed what information they located, retrieved, and disclosed to applicants, the form and functions of FOISA meetings at which new social forms were adopted and

further propagated, their roles as FOI Officers. On the other hand, underpinning FOISA was a right of access to information designed to make social and political relations absent—that is, FOI required that social relations played no part in how or where knowledge—in the form of information—travelled. The points is, included in the responsibilities of individual FOI Officers, such as Colin, Duncan and Morag, was the obligation to make absent the very social relations on which their, and their colleagues, activities depended. This required great skill.

I draw on the work of Riles (2000), who describes the activities of UN delegates at the Fourth World Conference on Women in Beijing. She shows how delegates, like practitioners, make their own part in the generation of documents at meetings one of a non-differentiated delegate rather than a person with personality. Each level of UN meeting is identical in form and function, and documents generated at one level of meeting are taken to the next and formed the basis of a new document. Different meetings were undifferentiated in the same way the different delegates who participated in the meetings were undifferentiated. The differences between them were a result of the different shared basis that they held in common—each delegate acting, not in his own capacity, but in the capacity of the country they represented. The undifferentiated state of delegates, reflecting the undifferentiated state of UN meetings served to make absent social relations that might otherwise be considered to direct the flow of information and thus the outcome of the meetings themselves.

Riles' description of UN delegates provides a parallel example useful for thinking about the activities and expectations placed on FOI practitioners here. It is, in particular, useful for highlighting the undifferentiated status of FOI practitioners, who conceiving of themselves as such, were successful at providing information. Of all the relations he contained, practitioners such as Duncan ensured he *always* acted on a common or shared footing with others so as to make absent *his* particularity. As one of many, rather than one, acting alone, this brilliant manoeuvre made the social relations, that otherwise might appear to inform a practitioners' actions, disappear. Acting on a common or shared basis in *everything they said and did*, practitioners made themselves appear independent of social relations that might otherwise be seen to compromise their credibility. Culture change, here, entailed making individual persons absent.

Secrecy and Truth

Chapter four builds on the previous two chapters, chapter two on private and public and chapter three on culture change. Drawing on the arguments of the previous two chapters in which I point to two different ways of knowing—knowing in relation, and knowing in the absence of relations—I ask what happens in light of the intersection of these two ways of knowing? That is, I explore instances of secrecy where there is no secrecy, and practitioners are left bewildered by applicants' accusations that they conceal the truth. I also explore instances in which people establish different and conflicting notions of the truth, such that there appears no definitive truth. What is at the root of perceptions of 'secrecy' and what governs knowledge and what is the truth for practitioners and applicants who seek it out?

This chapter presents different moments in which applicants perceive 'secrecy', and offers three key reasons why practitioners were perceived as 'secretive' when there were no secrets. Each key instance, or type of concealment, is the outcome of carefully managed subject-object aesthetics on the part of practitioners, which have contrasting and unexpected effects on their relations with applicants. As mentioned in the chapter above, practitioners such as Colin often made sure they acted on a common or shared basis so as to comply with the Act and ensure that their own particular relations or personality were not seen to govern the decisions they made. However, 'compliance', here, was a double-edged sword: practitioners' concealment of relations was both necessary for compliance and brought accusations of secrecy from applicants.

It soon became clear to practitioners such as Samantha and Colin, who were FOI Officers for NHS Glendale, that differences perceived between them and what they each said, different organizations stated, and even different Acts stipulated, would be interpreted by applicants in terms of secrecy. Practitioners such as Colin and Samantha, and even different organization or representatives such as NHS Glendale and the Public Services Ombudsman were perceived by members of the public to be undifferentiated—to *always* act on a common or shared basis. As elaborated in the chapter above, this constituted the 'culture change' FOISA was meant to bring about, and would at the same time guarantee that applicants did get equal access to information: a practitioner's own personality would be left out of the decision-making process. But because different persons and organizations were indeed perceived as undifferentiated, the differences perceived between them by applicants could *only* be explained (by the applicants) in terms of 'secrecy'.

While the knowledge that practitioners such as Colin disclosed in response to a request remained the outcome of their particular relations with practitioners, colleagues and applicants, their non-differentiation concealed the particularity of these relations. The social knowledge that they disclosed was thus received by applicants as objective, 'de-socialised' information—although knowledge, here, appeared as information only because it was separated from the social networks out of which it emerged. As a result of the fact that both knowledge and persons appeared independent of the social relations on which they relied, knowledge was also something recipients considered that disclosers either had or did not have, as if an object that could be collected, applied and put to use.

It was as a result of this that recipients of knowledge such as George, a frequent user of FOI, considered knowledge that (in this case) I did not disclose in our meetings, but that he presumed I knew, was due to my secrecy or reluctance to share it. Perceiving knowledge as an object, something that was either known or not known meant people read 'secrecy' into people's silence or lack of articulation of what they are perceived to know. In my relations with George, I could not share with him what he needed me to share. However, as I explained, I would come into knowledge (that he already presumed I 'knew') in relation to any material, e-mail correspondence, repeated conversations that he could share with me. But knowledge was not something that I knew in advance of knowing it. Familiar with a model of

knowing in which persons and knowledge travel independently of the person and relations through which they are created, knowledge was conceived by George in the form of an object, not a subject activated in relation.

While the above instances of presumed secrecy point to secrecy as rooted in the absence of relations, knowledge seen in the form of an object that might be revealed or concealed, the third instance was one in which relations were made highly visible. Applicants, such as the one with whom Samantha, Colin and Hector had to deal, who sought information on post-traumatic stress disorder, sought to read the relations *implied* in information that was disclosed to him—in the form of written e-mail correspondence, conversations and response letters. He was concerned that the relation that Samantha, Colin and Hector shared in common would make Hector partial as an FOI reviewer. Here, relations between practitioners diminished relations between Hector and the applicant, giving rise to accusations of secrecy.

Thus knowledge could be perceived in the form of knowledge—with social relations attached— or in the form of information—knowledge that was separated and independent of social relations. But information also carried implied social relations it seems. While who disclosed the information that a applicant such as George had requested was not something that was generally taken into account, or should affect what he received, George quickly realised that he did receive different information from different people within the authority in response to the same request. While in striking up informal relations with practitioners and taking his request outwith the scope of FOISA, George quickly realised that a practitioner's position did determine what he received. Information, here, carried relations in as much as relations gave meaning to and *fashioned* what information was given out.

This chapter has explored the way in which, as social relations are made absent, knowledge appears in the form of an independent entity that can be freely disclosed, and is either known or not known, concealed and revealed. This informs a way of knowing that is in some cases at the root of secrecy. But information also embodies relations that applicants can read into disclosed information. Information appears as both an object (with relations concealed), and an object in the form of a subject embodying relations. These subject-object aesthetics inform perceptions of secrecy and the truth.

Power and Agency

Power holds a certain fascination; for academics concerned with how power operates and relations of power between different bodies; and for FOI practitioners, applicants, policy-makers and advocates of FOISA. Power and agency were notions associated with FOISA, in particular due to the perceived axiomatic relationship between knowledge and power. This was one on which decision-makers, practitioners and applicant's regularly drew. That is, equal information was perceived to provide people with equal power. In this chapter, I both explore the assumptions underlying the relationship between knowledge and power (that underpins FOISA), and throw into question the power analytics of Michel

Foucault who is well-known for his work on power. Could instances of 'power' between practitioners and applicants working and submitting requests under the Act throw into question a theory of social relations on which Foucault's power analytics is based?

Power, while often sought by practitioners such as Iain and Robert, who were responsible for implementing and enforcing FOISA within their council, was also something that the same practitioners knew they could loose as quickly as they came into it. Power and agency were above all relational. Power was a consequence of people's demand for or need of knowledge. It thus depended on who had 'knowledge' in any one moment in the eyes of those who sought knowledge out. At the same time, whether people were perceived as having knowledge depended on whether they were seen as undifferentiated and as sharing knowing in common with others, or as differentiated, thus as acting on a personal and private (and hence unreadable) basis. Knowledge, here, seemed more like information—that is, believable or important because of its separation from the relations through which it was constituted.

Robert knew that whether he was perceived by others to have important knowledge depended on his association with Iain, who was Council Secretary and considered by other council employees as having knowledge. However, even Iain could be considered to lack power and agency in relation the larger organization, his relations with other employees, and in particular, his relation with the SIC. Indeed, in was in light of a Decision Notice from the SIC that the power relation between Iain, Robert and other council employees momentarily shifted. As a result of their apparent non-compliance, Iain and Robert, and their council were differentiated from other councils and other practitioners and in so being seemed to lack knowledge of the Act, and of their own organization.

Indeed, this was where the SIC's real power lay, in his capacity to differentiate otherwise undifferentiated FOI practitioners as they attempted to comply with FOISA. While considering themselves undifferentiated, revealing the differences between them disclosed particular practitioners as acting in a personal capacity in relation to the legislation, and thus as lacking knowledge of it. Yet the SIC's own knowledge and power depended on his relationships with other people, and whether he was considered divided or combined, as acting in the capacity of a person or in the capacity of a public body. At the same time, in light of the divisions that emerged between the SIC and Iain and Robert, as he concluded in his Decision Notice that they lacked knowledge of the legislation, some practitioners remarked that it was the SIC who was acting in a personal capacity and the one who lacked knowledge.

The French philosopher Michel Foucault argues that power is attached to the truth, which as evident in this chapter as practitioners and applicants seek out truth in order to have power and agency. Power flows through the connections between people, statements, things that point to what is true. So, while Robert had power in relation to Iain, and Iain had or lacked power in his relation with the SIC, the power that Robert had was a result of the connections made between him, Iain and the SIC. As power flows along the relationships between entities, power itself is transcendental.

However, although Foucault's power analytics might be aptly applied to the power relations at work between practitioners and applicants, it is not Foucault's power analytics that I turn to. Rather, I argue that Foucault's theory of power is predicated on particular notions that what constitutes the relation is that which *only* connects people, things, entities together in a chain. It is through reconceiving of the *relation* that it is also possible to challenge Foucault's perception of power. Robert in his relations with Iain and other employees, and Iain in his relations with the SIC, appeared differentiated or undifferentiated, divided or combined to others in different moments. That is, as acting in a personal capacity or the capacity of the organization. It was this, it seemed, that determined for others whether Robert and his colleagues had or did not have knowledge and power. But important to note is the relation through which Robert and Iain were *divided* as well as the relation that *connected* Robert and Iain and along which knowledge passed. Rather than being solely inter-subjective, Strathern (2005) posits a relation in which conceptual and inter-subjective relations work together. It is in appearing as at once divided and combined, and the way in which persons work these two relations in tandem, that makes knowledge appear as something that emerges and is exchanged within a single relation. Thus power that *flows* linking persons, statements, entities together dissipates—for two reasons: power can no longer flow via the relation (because the nature of the relation changes), and persons no longer appear single, discrete entities (so there is no individual on which power can act and from whom it flows).

Placing the relation, constituted by people's division and combination, at centre stage rather than the person him or herself (from whom knowledge and power appears to flow) changes our outlook on power. As Robert in his relations with others held knowledge in common and was differentiated either in light of his new knowledge or knowledge into which others had come, his perspective of the same thing changed as did his *form*. While Foucault considers knowledge as that which flows between people via the perspective or knowledge they share, it is in light of Robert's changing *form* that Foucault's notion of 'power', as that which flows between single, whole entities dissipates: shared knowledge here constitutes people's shared form, that neither comes from or goes to a single individual, but could be said to be a collective realization of persons' varying forms.

Transparency and Trust

In this chapter I explored the arguments of those with an interest in Government related transparency and through this, offered my contribution and an account of what a social anthropologists might see in the field by way of transparency. I also explored the relationship between transparency and trust, and in particular draw on the argument of Onora O'Neill (2002) that: 'Reasonably placed trust requires not only information about the proposals or undertakings that others put forward, but also information about those who put them forward'.

It was clear from the activity of practitioners at FOISA conferences that people sought to come into the same knowledge, to be undifferentiated, and in so being, comply with FOISA. They replicated

each others' form such that different practitioners were no longer differentiated, shared knowledge in common. That is, as practitioners, such as Morag who sought knowledge from colleagues on how to respond to a particular request or Duncan who sought advice from the Scottish Information Commissioner, each came into new knowledge that erased the divisions between them and other practitioners. In erasing these division and taking on the same form, practitioners made themselves disappear—or transparent. At the same time, as practitioners' appeared unified, the divisions between them erased as a result of their shared knowledge, the collective of which they were a member appeared. As individuals once again acted on a different footing, on coming into new knowledge through which they were divided from other practitioners, individuals would once again reappear and no longer be 'transparent'—or see-through—and the collective of which they were a member would once again disappear. Considering transparency in terms of people's own combination (transparency) or division (non-transparency) is a new way of thinking about transparency. This form of transparency, that I describe in terms of 'transparent persons', made practitioners appear completely undifferentiated to the point that the social relations between them were made absent, no longer in question. In light of their and others' undivided state, the difference between citizens and government also seemed non-existent, and transparent—these entities themselves balanced.

But people's own transparency—in terms of their lack of differentiation—required practitioners and the SIC to share their own knowledge, and be explicit themselves. One form of transparency—the alternative form I proposed here—required another form of transparency—transparency as revelation and the disclosure of information in order for practitioners to themselves *be* transparent. As people were themselves transparent and disclosed what they knew, transparency produced new concealments as other people came into this knowledge, which displaced and replaced what they knew.

Considering the MSP responsible for Parliamentary Business and overseeing the implementation of FOI legislation in Scotland as having contradicted the SIC in her speech at a Holyrood FOI conference in early 2005, Malcolm concluded that she or the SIC must be concealing the truth: the contradiction between two sources of information and two persons, explained in terms of 'secrecy'. Transparency explained in terms of people's division and combination, or their shared or divided footing, throws into question a form of transparency-as-revelation (in terms of the disclosure of withheld information).

Bibliography

Cited Archival Documents

BBC News article. 28th June 1999. *Coalition Deal in Full.* Available Online: http://news.bbc.co.uk/1/low/special_report/1999/06/99/scottish_parliament_opening/379340.stm

Court of Session. 2006.   *Opinion of the Lord President in Appeal by the Common Services Agency (Appellant) against the Scottish Information Commissioner (Respondent) [2006] CSIH58.* Available online: http://www.scotcourts.gov.uk/opinions/2006CSIH58.html.

House of Commons Library. May 2006. *Freedom of Information, Data Protection and papers of a pervious administration.* Available online: http://www.parliament.uk/commons/lib/research/notes/snpc-04018.pdf

The Scottish Information Commissioner's Office. 2004 Annual Report. Available online: http://www.itspublicknowledge.info/home/SICReports/AnnualReports.asp

The Scottish Information Commissioner's Office. 2005 Annual Report. Available online: http://www.itspublicknowledge.info/home/SICReports/AnnualReports.asp

The Scottish Information Commissioner's Office. 2006 Annual Report. Available online: http://www.itspublicknowledge.info/home/SICReports/AnnualReports.asp

The Scottish Information Commissioner's Office. 2007 Annual Report. Available online: http://www.itspublicknowledge.info/home/SICReports/AnnualReports.asp

The Scottish Information Commissioner's Office. *Section 38 Briefing.* Available online: http://www.itspublicknowledge.info

The Scottish Information Commissioner's Office. 2005. *Enforcing Freedom of Information: The Scottish Information Commissioner's Powers*

The Scottish Information Commissioner's Officer. *Decision number 027/2006.* Available online: www.itspublicknowledge.info

The Scottish Government, News Release. February 2006. *Surgical Mortality Rates.* Available online: http://www.scotland.gov.uk/News/Releases/2006/02/06102527

The Scottish Parliament. *Justice 1 Committee, 1st Report on Freedom of Information (Scotland) Bill.* Available online: http://www.scottish.parliament.uk/business/committees/historic/justice1/2001.htm

The Scottish Parliament. *SP Bill 36.* Available online: http://www.scottish.parliament.uk/business/bills/billsnotInProgress/index.htm#36

The Scottish Parliament Information Centre (SPICe). *Research Paper 01/17.* Available Online:

http://www.scottish.parliament.uk/business/research/pdf_res_papers/rp01-17.pdf

The UK Campaign for Freedom of Information. *Testing the Open Government Code of Practice.* Online resource: http://www.cfoi.org.uk/copbriefing.html

The UK Campaign for Freedom of Information. *The Campaign's views on the operation of the Open Government Code of Practice.* Online resource: http://www.cfoi.org.uk/ombud1.html

Office of Public Sector Information. *1989 Official Secrets Act.* Available online: http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890006_en_1.htm

Wallace, Jim. November 2006. *Speech on Freedom of Information at Holyrood Conference.* Available online: http://www.jimwallace.org.uk

Cited General Works

Banisar, D. 2006. *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws* (available on-line: http://www.privacyinternational.org/foi/foisurvey2006.pdf)

Barth, F. 1975. *Ritual of Knowledge among the Baktamen of New Guinea.* Oslo: Universitetsforlaget.

Barth, F. 1987. *Cosmologies in the Making: A Generative Approach to Cultural Variation in Inner New Guinea.* Cambridge: Cambridge University Press

Barth, F. 2002. "Sidney W. Mintz Lecture for 2000: An Anthropology of Knowledge". In *Current Anthropology*, Volume 43, No. 1, pp. 1-18

Battaglia, D. 2001. "Multiplicities: An Anthropologist's Thoughts on Replicants and Clonesin Popular Film". In *Critical Inquiry*, Volume 27, No. 3, pp. 493-514

Battaglia, D. 2005. The Ambiguity of Transparency. In Current Anthropology, Volume 46, No. 1 pp. 153-155

Bentham, Jeremy. 1823. 'A fragment on government, or, A comment on the commentaries: being an examination of what is delivered, on the subject of government in general, in the introduction to Sir William Blackstone's commentaries; with a preface, in which is given a critique on the work at large'. London: Printed for W. Pickering, and E. Wilson.

Birkinshaw, P. 1990. *Reforming the Secret State.* Milton Keynes: Open University Press

Birkinshaw, P. 2001. *Freedom of Information: The Law, the Practice and the Ideal.* Butterworths

Birkinshaw, P. 2005. *Government and Information: the Law relating to Access, Disclosure and Regulation*. London, Dublin, Edinburgh: Butterworths

Birkinshaw, P. 2006. 'Transparency as a Human Right'. In Hood, C and Heald, D. (eds). *Transparency: The Key to Better Governance?* Oxford University Press on behalf of The British Academy

Brodie, A. 2003. *The Cambridge Companion to The Scottish Enlightenment*. Cambridge: Cambridge University Press

Cohen, A. 1982. *Belonging: Identity and Social Organization in Rural Cultures*. Manchester : Manchester University Press

Cohen, A. 1987. *Whalsay: symbol, segment and boundary in a Shetland island community*. Manchester : Manchester University Press

Cohen, A. 1996. "Personal Nationalism: A Scottish View of Some Rites, Rights and Wrongs". *American Ethnologist*, Volume 23, No. 4, pp. 802-815

Cohen, A. 1997. "Nationalism and Scottish Identity: Who Owns the Interests of Scotland?" In *Scottish Affairs*, Volume 18, (Winter 1997), pp. 95-107

Cohen, A. and Rapport, N. 1994. "The Very Idea". In *Anthropology Today*, Volume 10, No. 1 pp. 1-2

Cohen, A. and Rapport, N. 1995. *Questions of Consciousness*. London: Routledge

Couzens Hoy, D (ed). 1986. *Foucault: A Critical Reader*. Blackwell Publishers Ltd

Corsin Jimenez, A. 2007. *The Anthropology of Organisations*. Ashgate

Crook, T. 2000. "Length Matters: A Note on the GM Debate". In *Anthropology Today*, Volume 16, No. 1, pp.8-11

Crook, T. 2004. Transactions in Perpetual Motion. In Hirsh, E. and Strathern, M. (eds) *Transactions and Creations: Property Debates and the Stimulus of Melanesia*. Oxford: Berghahn Books

Crook, T. 2006. "Secrecy's Traps". Paper for the *American Anthropological Association* annual meeting

Crook, T. 2007. 'Figures Twice Seen: Riles, the Modern Knower and Forms of Knowledge'. In Harris, M. (ed). *Ways of Knowing: New Approaches in the Anthropology of Experience and Learning.* Berghahn Books: Oxford

Crook, T. 2007. *Anthropological Knowledge, Secrecy and Bolivip, Papua New Guinea: Exchanging Skin.* Oxford University Press: British Academy

Curtice, J., McCrone, D., Park, A., Paterson, L (eds). 2002. *New Scotland, New Society? Arre Social and Political Ties Fragmenting?* Edinburgh: Polygon

Devine, T. 2006. *The Scottish Nation 1700 – 2007.* London: Penguin Books

Douglas, M. 1987. *How Institutions Think.* London: Routledge and Kegan Paul Ltd

Dreyfus, H. and Rabinow, P. 1982. *Micheal Foucault: Beyond Structuralism and Hermeneutics.* Chicago : University of Chicago Press

Fardon, R. (ed). 1985. *Power and Knowledge: Anthropological and Sociological Approaches.* Edinburgh: Scottish Academic Press.

Florni, A. 1998. "The End of Secrecy". In *Foreign Policy*, (June 1998), pp. 50-63

Florini, A. 2007. *The Right to Know: Transparency for an Open World.* Columbia University Press

Foucault, M. 1979. *Discipline and Punish: The Birth of the Prison.* London: Penguin Books

Gell, A. 1998. *Art and Agency: An Anthropological Theory.* Oxford: Clarendon Press

Gellner, D. and Hirsh, E. 2001. *Inside Organizations: Anthropologists at Work.* Berg Publishers

Giddens, A. 1990. *The Consequences of Modernity.* Cambridge: Polity Press

Graeber, D. 2001. Towards an Anthropological Theory of Value: The False Coin of Our Own Dreams. New York: Palgrave

Gregory, C.A. 1982. *Gifts and Commodities.* London: Academic.

Gordon, C. 1980. *Power/Knowledge: Selected Interview and Other Writings 1972-1977 by Michel Foucault.* New York: Harvester Wheatsheaf

Harris, M. (ed). 2007. *Ways of Knowing: New Approaches in the Anthropology of Experience and Learning.* Berghahn Books: Oxford

Harrison, S. 1995. 'Anthropological Perspectives on the Management of Knowledge'. In *Anthropology Today*, Volume 11, No. 5. pp. 10-14

Hazell. R. (ed). 1999. *Constitutional Futures: A History of the Next Ten Years.* Oxford: Oxford University Press

Heald, D. 2006. 'Varieties of Transparency'. In Hood, C and Heald, D. (eds). *Transparency: The Key to Better Governance?* Oxford University Press on behalf of The British Academy

Heald, D. 2006. 'Transparency as an Instrumental Value'. In Hood, C and Heald, D. (eds). *Transparency: The Key to Better Governance?* Oxford University Press on behalf of The British Academy

Henare, A., Holbraad, M., and Wastell, S. (eds). 2006. *Thinking Through Things: Theorising Artefacts Ethnographically.* Milton Park, Abingdon, Oxon; New York : Routledge

Hennessy, P. 2002. *The Secret State: Whitehall and the Cold War.* London: Penguin Books

Hennessy, P. 1989. *Whitehall.* New York: Free Press

Herdt, G. 1990. *Secret Societies and Secret Collectives.* In Oceania (60), pp. 360-381

Holsen, S. and Glover, M. n.p. What is Freedom of Information for?: An Exploration of the Objectives Behind the FOI Act 2000. Paper presented at the Political Studies Association 57th Annual Conference, University of Bath 2007

Jay, M. 1992. *Downcast Eyes: The Denegration of Vision in twentieth-century French Thought.* Berkeley, Calif.; London: University of California Press

Konrad, M. 2003. "From Secrets of Life to the Life of Secrets: Tracing Genetic Knowledge as Genealogical Ethics in Biomedical Britain". In *The Journal of the Royal Anthropological Institute*, Volume 9, pp. 339-358

Latour, B. 1993. *We Have Never Been Modern*. Cambridge, Mass: Harvard University Press

Lattas, A. 1998. *Cultures of Secrecy: Reinventing Race in Busg Kaliai Cargo Cults*. Madison: University of Wisconsin Press

Levin, D. M. 1997. Keeping Foucault and Derrida in Sight: Panopticonism and the Politics of Subversion. In D. M. Levin (ed) *Sites of Vision: The Discursive Construction of Sight in the History of Philosophy*. Cambridge, Mass: MIT Press

Levine, A. 2005. "Transparency and Conspiracy: Ethnographies of Suspiciaion in the New World Order". In *PoLAR*, Volume 28, No. 1, pp. 160-165

Manning, S. 2002. Fragments of union : making connections in Scottish and American writing. Basingstoke; New York: Palgrave

MacCormack, C. and Strathern, M (eds). 1980. *Nature, Culture, Gender*. Cambridge University Press

Marcus, G. 1995. Ethnography In/Of the World System: The Emergence of Multi-Sited Ethnography. *Annual Review of Anthropology*, Vol. 24, pp. 95-117

Marcus, G. and Powell, M. 2003. "Review: From Conspiracy Theories in the Incipient New World Order of the 1990s to Regimes of Transparency Now". In *Anthropology Quarterly*, Volume 76, No. 2, pp. 323-334

Mauss, M. 1990 [1950]. *The Gift: The Form and Reason for Exchange in Archaic Societies*. London: Routledge

McDonald, A. What Hope for Freedom of Information? In Hood, C and Heald, D. (eds). *Transparency: The Key to Better Governance?* Oxford University Press on behalf of The British Academy

Murdoch, A (ed). 2007. Scottish Nation: Identity and History: Essays in Honour of William Ferguson. Edinburgh: John Donald

Neuberger, J. 1987. Freedom of Information ….Freedom of the Individual? London: PaperMac

O'Neil, O. 2002. *A Question of Trust: The BBC Reith Lectures 2002*. Cambridge University Press

O'Neil, O. 2006. Transparency and the Ethics of Communication. In Hood, C and Heald, D. (eds). *Transparency: The Key to Better Governance?* Oxford University Press on behalf of The British Academy

Piotrowski, S. and Van Rizen, Gregg G. 2007. "Citizen Attitudes Toward Transparency in Local Government". In *The American Review of Public Administration*, Volume 37, No. 3, pp. 306-323

Pottage, A. and Mundy, M (eds). 2004. *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*. Cambridge University Press

Rapport, N. 1997. *The Transcendent Individual: Towards a Literary and Liberal Anthropology*. London: Routledge

Rapport, N. 2003. *I Am Dynamite: An Alternative Anthropology of Power*. London ; New York : Routledge

Rapport, N. 2008. *Of Orderlies And Men: Hospital Porters Achieving Wellness at Work*. Carolina Academic Press

Rabinow, P (ed). 1984. *The Foucault Reader: An Introduction to Foucault's Thought*. London: Penguin

Reed, A. 1993. Anticipating Individuals: Modes of Vision and Their Social Consequence in a Papua New Guinea Prison. In *The Journal of the Royal Anthropological Institute*, Volume 5, No. 1, pp. 43-56

Reed, A. 2003. *Papua New Guinea's Last Place: Experiences of Constraint in a Postcolonial Prison*. Oxford, New York: Berghahn Books

Reed, A. 2005. "'My Blog is Me': Texts and Persons in UK Online Journal Culture (and Anthropology)". In *Ethnos*, Volume 70, No. 1, pp. 220-242

Reed, A. 2006. "Documents Unfolding". In Riles, A (ed). *Documents: Artifacts of Modern Knowledge*. Ann Arbor: University of Michigan Press

Riles, A. 2001. *The Network Inside Out*. Ann Arbour: University of Michigan Press

Riles, R. 2004. "Property as Legal Knowledge: Means and Ends". In *Journal of the Royal Anthropological Institute*, Volume 10, No 4, pp.775–795

Riles, A (ed). 2006. *Documents: Artifacts of Modern Knowledge*. Ann Arbor: University of Michigan Press

Roberts, A. 2004. "A Partial Revolution: The Diplomatic Ethos and Transparency in Intergovernmental Organizations". In *Public Administration Review*, Volume 64, No. 4, pp. 410-423

Roberts, A. 2006a. *Blacked Out: Government Secrecy in the Information Age*. New York: Cambridge University Press

Roberts, A. 2006b. 'Dashed Expectations: Governmental Adaptation to Transparency Rules'. In Hood, C. and Heald, H. (eds.) *Transparency: The Key to Better Governance?* British Academy: Oxford University Press

Robertson, K. G. 1999. *Secrecy and Open Government: Why Governments Want You To Know*. Basingstoke: Macmillan

Rogers, A. 1997. *Secrecy and Power in the British State: A History of the Official Secrets Act*. London: Pluto

Scull, A. 2007. *Madhouse: A tragic tale of megalomania and modern medicine*. Yale University Press

Shore, C. and Roberts, S. 1995. "Higher Education and the Panopticon Paradigm: Quality Assessment as Disciplinary Technology". In *Higher Education Review*, Vol. 27 No.3, pp.8-17

Shore, C. and Wright, S (eds). 1997. *Anthropology of Policy: Critical Perspectives on Governance and Power*. New York: Routledge

Strathern, M. 1992. *After Nature: English Kinship in the Late Twentieth Century*. Cambridge: Cambridge University Press

Strathern, M. 1999. *Property, Substance and Effect: Anthropological Essays on Persons and Things*. London: Athlone Press

Strathern, M. 2000a. "The Tyranny of Transparency". In *British Educational Research Journal*, Volume 26, No 3, pp. 309-321

Strathern, M. 2000b. *Audit Cultures: Anthropological Studies in Accountability, Ethics and the Academy*. London: Routledge

Strathern, M. 2004. *Commons and Borderlands: Working Papers on, Interdisciplinarity, Accountability and the Flow of Knowledge*. Oxon: Sean Kingston Publishing

Strathern, M. 2004. *Partial Connections* (Updated Edition). Oxford: AltaMira Press

Strathern, M. 2005. *Kinship, Law and the Unexpected: Relatives Are Always a Surprise*. Cambridge University Press.

Strathern, M. 2006. "Bullet-Proofing: A Tale from the United Kingdom". In Riles, A (ed). *Documents: Artifacts of Modern Knowledge*. Ann Arbor: University of Michigan Press

Tefft, S. 1980. *Secrecy: a cross-cultural perspective*. New York, N.Y.: Human Sciences Press

Toren, C. 2006. "Introduction to *Mind, Materiality and History*". In Moore, H. L. and Sanders, T. (eds) *Anthropology in Theory: Issues in Epistemology*. Oxford: Blackwell Publishing

Tsoukas, H. 1997. "The Tyranny of Light: The Temptations and Paradoxes of the Information Society". In *Futures*, Volume 29, No. 9 pp. 877-843

Vattimo, G. 1992. *The Transparent Society*. Cambridge: Polity Press

Vincent, D. 1998. *The Culture of Secrecy: Britain 1832 – 1998*. Oxford: Oxford University Press

Wagner, R. 1975. *The Invention of Culture*. Chicago: University of Chicago Press

Wagner, R. 1977. "Scientific and Indigenous Papuan Conceptions of the Innate: A Semiotic Critique of the Ecological Perspective". In Bayliss-Smith, T. and Feachem, R. G. (eds) *Subsistence and Survival: Rural Ecology in the Pacific*. London, New York, Chicago: Academic Press

Weiner, J. 1995. *The Lost Drum: The Myth of Sexuality in Papua New Guinea and Beyond*. University of Wisconsin Press

West, H. and Sanders, T (eds). 2003. *Transparency and Conspiracy: Ethnographies of Suspicion in the New World Order.* Duke University Press

Wilson, D. (ed). 1984. *The Secrets File: The Case for Freedom of Information in Britain Today.* London: Heineman Educational Books

Wright, S. 1994. 'Culture in anthropology and organizational studies'. In Wright, S. (ed). *Anthropology of Organizations.* London: Routledge

Wright, S. 1998. The Politicization of 'Culture'. In the *Journal of the Royal Anthropological Institute.* Vol 14, No. 1, pp. 7-15

Appendix

Legal Terms in FOISA

The SIC

The Scottish Information Commissioner is appointed by the Scottish Parliament to enforce and promote FOI law in Scotland. He is also charged with enforcing and promoting the Environmental Information Regulations ('EIRs') in Scotland that provide citizens with a right of access to environmental information.

The EIRs

Environmental information has been accessible in the UK for over 12 years. The Environmental Information Regulations 1992, which were amended in 1998, gave the public the right to ask for information which 'relates to the environment' and which was held by a 'relevant person'.

In 1998, the UK signed the Aarhus Convention from which an EU Directive was derived. The new Environmental Information (Scotland) Regulations 2004 ensure that Scotland complies with the Convention and the Directive. There are separate regulations for the rest of the UK.

The IC and DPA

Unlike his UK counterpart, the UK Information Commissioner ('IC'), the SIC is not charged with implementing and enforcing the Data Protection Act ('DPA') in Scotland, which gives people a right of access to their own and prohibits the disclosure of other people's personal information.

This rests with the IC, who is charged with enforcing and promoting DPA in the UK *and* DPA in Scotland as well as well as FOI in the UK. The DPA covers the whole of the UK including Scotland, whereas the FOI Acts only cover their respective jurisdictions. The SIC and IC work closely together, and have established a working memorandum.

Figure 6. The Scottish Information Commissioner's website

OSIC

The SIC has an Office, currently in St Andrews, which is generally referred to as the Office of the Scottish Information Commissioner ('OSIC'). OSIC's website (figure 6) offers comprehensive guidance on how to use the FOI Act, and what using FOISA entails. On the main page of his website is a link[39] to pages that offer advice on how to ask for information, which I summarize here:

Citizens and What they can ask for…

Anyone can ask for information held by a Scottish public authority, whether they live in Scotland or elsewhere in the world, (referred to in the legislation as 'the applicant').

An applicant can ask for any kind of **recorded information** held by a Scottish Public Authority, which is information that is recorded on paper, computer files (including e-mail), video and microfiche. An applicant *cannot* ask for information that is not recorded, for example, someone's opinion that has not been put on record.

Examples of what someone might ask for include:
 -- Why decisions were made to cut back some services at a local hospital, or to combine local primary schools?
 --- How public authorities decide who gets priority on waiting lists for services such as health or housing?

What does the Act cover? A Scottish Public Authority (see figure 7)

Scottish public authorities ('SPAs') covered by the Act include **local government, the National Health Service and the police**. Scottish public authorities or office-holders from which an applicant can ask information are listed in the Act. A public authority might set up more than one company to manage its activities on its behalf, for example, local development projects or commercial activities, and if wholly owned by one or more public authorities, then it is this company that the applicant should approach for information.

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[39] Source: http://www.itspublicknowledge.info/YourRights/YourRights.asp
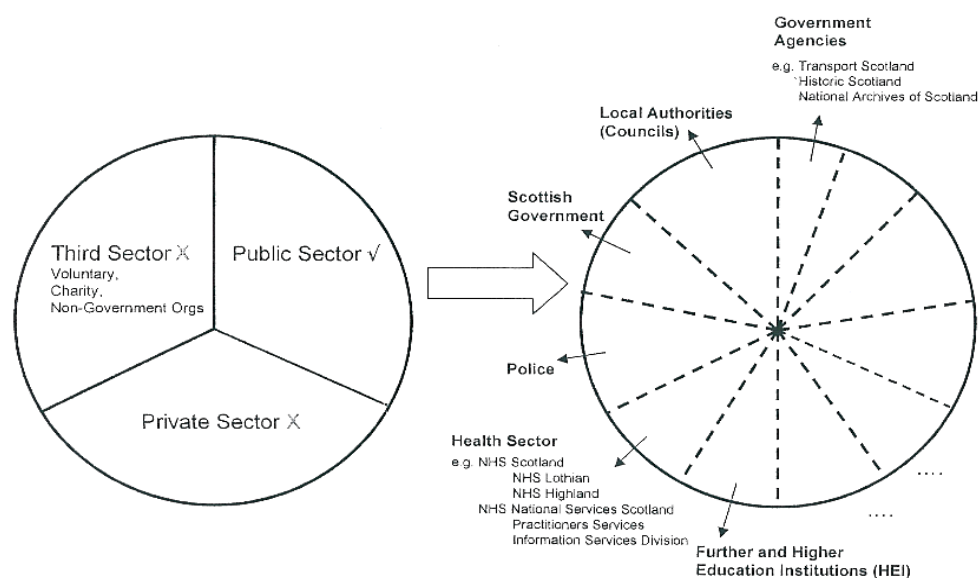
Figure 7. What is a public authority and what does FOI cover?

Publication Scheme

All Scottish public authorities are required to produce a **publication scheme** (figure 8), which is a bit like a library catalogue. It lists the information that is available and that an authority holds in written or electronic or another form or that it intends to make available, and where this information can be found. It also lists **whether information is free of charge or available on payment of a fee**. Some information that the authority holds will be available in the form of a link on its publication scheme.

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DEFINING MOMENTS IN HISTORY

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Freedom of Information Publication scheme

National Archives of Scotland Freedom of Information Publication Scheme

Produced as required by the Freedom of Information (Scotland) Act 2002

1. The National Archives of Scotland
2. What is the publication scheme?
3. Freedom of Information requests
4. Information in the publication scheme
5. Information in the archives
6. Environmental Information Regulations
7. Exempt information
8. Copyright under FoI
9. Records Management
10. Data Subject requests
11. Contacts
12. Classes of information
    12.1   Corporate administration
    12.2   Financial information
    12.3   Corporate policies
    12.4   Corporate procedures
    12.5   Records policies
    12.6   Information on using the archives
    12.7   Information on the archives

Appendix A   How do I access information in the archives?

Figure 8. Scottish Public Authorities are required to have a 'Publication Scheme'

Figure 9. Some Scottish Public Authorities have for their own records, a 'Disclosure Log'

Disclosure Log?

A public authority also keeps for its own records, a **disclosure log** (figure 9). This is a list of all the requests for information that it has received, and information that it has given out in response. A disclosure log occasionally contains the names of applicants, those who have made requests for information under the FOI Act, although different authorities have different policies on whether people's names (in association with their request) constitutes personal information and should be made available. Some public authorities make their disclosure logs available to the public on their website and keep a second version running for themselves with details of open and closed requests, any note of delays, and who within the authority is handling which request.

How to make a request?

Some public authorities have an online FOI request form available on their websites to be used to submit an FOI request to them (figure 10). FOI requests are more generally made in the form of written letter or e-mail (or by fax or audio or video tape) (figure 11). When someone makes a written request for information, the authority must respond (generally in the same recorded form). It is not possible to make a verbal request for information, by telephone or in person.

An applicant need not give a reason for asking for information, although it sometimes helps the authority to provide the information if a person can tell them what they are looking for and why. Nor does an applicant have to say that they are using their rights under Freedom of Information.

Importantly, an applicant **must give his or her name and a contact address** (for example, an e-mail address). If they do not provide a name or contact information, the authority does not have to respond to their request. This was a turn-around for the SIC who originally stipulated that the use of pseudonyms were acceptable, although a closer examination of the legislation suggested that they were not.

The authority also has a duty to '**advise and assist**' an applicant with their request. One way in which it might do this is by describing the information that an applicant has available to them. It seemed that the different ways in which authorities categorized information caused some people difficulty when describing the information they sought.

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Freedom of Information Form

About you

First name *

Surname *

House no. and/or name

Street name

Town

Postcode

Country

Telephone

E-mail *

Please enter details about the request

What information would you like to receive?

Data Protection

By submitting this form I understand that any personal data collected through this website will be treated as confidential under the principles of the Data Protection Act 1998.

Submit details

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http://www.edinburgh.gov.uk/internet/council/council_business/council_forms/FOI.htm   Page 1 of 1

Figure 10. Some Scottish Public Authorities have an online request form for people to use to submit their request

Main Identity

From: <FOiCorporateServices@edinburgh.gov.uk>
To: @btclick.com>
Sent: 07 April 2005 14:32
Subject: RFI Assignment
Peter - Is this one for you? Debbie

The following service request has been assigned to you:

Service Request Number: 1-9653147

Date Received: 07/04/2005 02:20:13 PM

Target Date: 05/05/2005 02:20:13 PM

Description of Request : [part of a letter or complaint sent to   ]

Can you provide me with information regarding the
percentage of vacancies filled by internal candidates? This will indicate
whether or not appointments are foregone conclusions. The council will have this information.

Ken

Ken
         @cibt-hq.org.uk

[EMail Addr]

Response Format : permanent form

＊＊
This Email and files transmitted with it are confidential and are intended for the sole use of the
individual or organisation to whom they are addressed. If you have received this Email in error
please notify the sender immediately and delete it without using, copying, storing, forwarding or
disclosing its contents to any other person. The Council has endeavoured to scan this Email message
and attachments for computer viruses and will not be liable for any losses incurred by the recipient.
＊＊

Figure 11. FOI requests are more generally made in the form of a written letter or e-mail (forwarded to the relevant FOI Officer in the authority)

Charging for Information

An authority can **charge for information**. If the cost of to the authority is more than £100 but does not exceed £600, the authority can charge 10% of the cost of providing the information. The first £100,

however, is always free. The maximum the authority can change in most situations is £50 (that is, if the cost to the authority is £600).

A public authority is required to provide the applicant with a **fees notice** that tells him or her the estimated cost due, how this has been calculated and informs this person of how to appeal against the fee.

Exemptions

The right of access to information held by a Scottish public authority that FOISA provides is **subject to a number of exemptions**, some of which are absolute, some of which are class or content exemptions (see figure 12—summary of exemptions at the Bill stage)[40]. An **absolute exemption** is one where the public interest test is not applied. A public interest test is where a test of whether the public interest in disclosure outweighs any substantial prejudice likely to result from its disclosure.

In general, a Scottish public authority may withhold information, which is information that: an applicant can reasonably obtain other than by requesting it under section 1 of the FOI Act; the disclosure of which is prohibited by or under an enactment or would constitute or be punishable as a contempt of court (section 26); is confidential information obtained from another person (section 36(2)); constitutes court records (section 37), and personal information (section 38(1)).

A **class exemption** is where a whole category of information is protected. For example, there is a class exemption created by section 29 of the Act, relating to the formation or development of government policy. However, class exemptions are still subject to a form of the public interest test. The information must be disclosed unless the public interest in *maintaining* the exemption outweighs the public interest in *disclosure*. In a somewhat similar manner, a content exemption means that a public authority must disclose information unless disclosure of its contents will cause 'substantial prejudice' to the interests of those who are the subject of or hold information. In other words, the balance of substantial prejudice lies between the public and the persons 'disclosed'.

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[40] Source: SPICe research paper 01/17, p. 10

accessible – or recognising existing legal obligations and enactments – for example, existing statutory bars on disclosure or the Data Protection Act 1998 (which deals with access to certain personal data)." [17]

Thus, a Scottish public authority may withhold any information falling within one of these exemptions without applying a public interest test. Section 2(2) of the *FOI Bill* lists the provisions in Part 2 that create absolute exemptions:

- Information which the applicant can reasonably obtain, other than by requesting it under section 1 of the *FOI Bill*, even if payment is required for access to it (section 25).
- Information whose disclosure by a Scottish public authority: is *prohibited by or under an enactment*; is incompatible with a Community obligation; or would constitute, or be punishable as, a contempt of court (section 26).
- Confidential information obtained from another person (section 36(2)).
- Court records, etc. (section 37).
- Personal information (section 38(1)).

(d) Summary of exemptions

The following table summarises the matters subject to exemptions in the *FOI Bill*, stating whether the exemption created is content, class (but not absolute) or absolute.

SUMMARY OF EXEMPTIONS

Section	Subject matter of exemption	Type of exemption
25	Information otherwise accessible	Absolute
26	Prohibitions on disclosure	Absolute
27	Information intended for future publication	Class
28	Relations within the United Kingdom	Content
29	Formulation of Scottish Administration policy, etc	Class
30	Prejudice to effective conduct of public affairs	Content
31(1)	National security	Class*
31(4)	Defence	Content
32(1)(a)	International relations	Content
32(1)(b)		Class
33(1)(a)	Commercial interests and the economy	Class
33(1)(b)		Content
33(2)		Content
34	Investigations by Scottish public authorities and proceedings arising out of such investigations	Class

Section	Subject matter of exemption	Type of exemption
35	Law enforcement	Content
36(1)	Confidentiality	Class
36(2)		Absolute
37	Court records, etc.	Absolute
38(1)(a)	Personal data relating to applicant	Absolute
38(1)(b)	Other personal data	Absolute**
38(1)(c)	Personal census information	Absolute
38(1)(d)	Deceased person's health records	Absolute
39(1)	Health, safety and the environment	Content
39(2)		Class
40	Audit functions	Content
41	Communications with Her Majesty, etc. and honours	Class

* Section 31(2) would allow a member of the Scottish Executive to certify conclusively that information is exempt on this basis.
** The exemption is only absolute in certain circumstances.

Figure 12. Summary of exemptions in the FOI Bill: a 'class' exemption refers to a whole category of information; a 'content' exemption to its contents; an 'absolute' exemption is where information is exempt and the public interest test is not applied. (Source: SPICe research paper 01/17)

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