Making Freedom of Information Work

An evaluation of an interactive approach to teaching journalism students how to use it effectively

Pedagogical Research Paper

Dr Colm Murphy

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Abstract

Freedom of information legislation has given unprecedented access to over 130,000 public organizations in the United Kingdom and Ireland. But using it effectively requires constantly updated training for journalists representing an ongoing challenge to educators. The legislation has many flaws. The media, however, does use it daily and patterns of their use and issues around it have emerged since it became effective in England, Wales and Northern Ireland in 2005. This research tracks two cohorts of journalism trainees in two countries who trained in FOI use, eight and 11 years ago. The findings outline novel teaching techniques the graduates found helpful, such as online interactive resources and an action-based project. It identifies areas for improvement such as incorporating the importance of the informal FOI request system, key exemptions, costing structures and the appeals process. It also examines the scope for better utilising the act such as exploiting newer types of databases being created by public authorities.
INTRODUCTION

Freedom of Information (FOI) presents both an opportunity and challenge to journalism educators. The legislation is complex and despite the act opening up for media use in 2005 in the UK there is still an unsettled pattern of how it works in practice. To use the act effectively, journalism students require a detailed knowledge of how to identify who holds which records, how to write effective requests, avoid charges, make appeals for non or partial disclosure and finally translate this information, if appropriate, into news stories. Teaching this and instilling into a student a strong commitment to make the legislation work in the public interest.

But with the records of over 130,000 bodies with state funding subject to the act in the UK (Hayes 2009, p11) the opportunity for story generation is unprecedented. It allows completely new types of news stories and a new level of accountability of public decision-making. But for journalism educators the challenge is threefold – how to incorporate this into an already overloaded curriculum? How to teach the next generation of journalists to use the act to the greatest benefit of the public interest? How to equip the students with the skills and knowledge that they need to mount successful challenges to information refusals?

Given declining newsroom resources and the growing freelance nature of the journalism workforce (NCTJ 2013, pps6-9) the success of the act relies on the commitment of highly motivated, well trained journalists and activists. This is the experience in America, Australia and Ireland, where similar legislation has been in place for much longer. The practice in these countries was that after an initial flurry of interest by educators, only a minority continued to teach the act thoroughly in the longer-term.

This research paper analyses the effectiveness of a freedom of information teaching project. The learning outcomes of a mix of e-learning and an action-based approach to teaching journalism students freedom of information usage were measured over both a seven and 10-year-period. This was to assess the long-term impact that the experimental teaching methods had on the eventual use the graduates made of freedom of information legislation. There is a growing body of literature on e-learning and action-research, but what this project aimed to do was to assess, in practice, its long-term benefits and applicability to journalism education.

RESEARCH QUESTIONS

The key research questions for the study were: Will students: (a) Learn to use freedom of information legislation more effectively by using online interactive learning materials followed by real-life exercises. (b) Use their knowledge once graduated and the online resources to make effective freedom of information requests and appeals. (c) Based on the graduates’ experience of using freedom of information for over seven years what changes, if any, are required to what and how it is taught.

REASON THE RESEARCH WAS UNDERTAKEN

The research was undertaken to allow comprehensive FOI training to be incorporated into already busy curricula in journalism schools in a cost and time effective manner. It was also to create a resource which students could refer to in class but also the workplace after graduating. This resource had to have the capability of being updated regularly as case law and government guidance on FOI emerged. This resource would act in future years as a reference point for existing students. Finally, to get feedback from graduates to ensure the training is relevant and to identify areas for enhancement.

LITERATURE REVIEW

Before commencing the project a literature review was undertaken. Firstly it looked at the historical background of freedom of information acts internationally. Then an assessment was undertaken of the experiences of teaching freedom of information to journalism trainees in other common-law countries. Then there was a review of the literature relating to action-based learning and e-learning.

The Freedom of Information Act 2000 represented the culmination of several decades of pressure for a statutory right to records in England, Wales and Northern Ireland (Wadham, Griffiths and Rigby 2001, p1). Scotland has its own and very similar act. It was part of the ‘New Labour’ programme to allow greater openness. Similar legislation is now in force in over 70 countries, with a particular growth since 2000 after it was introduced in the UK (Wadham, Griffiths and Rigby 2001, p2).
From the cradle to the grave we are governed by administration (Wadham, Griffiths and Rigby 2001, p2), so the records they keep are of significant importance to individuals. The significance of the legislation was outlined on his first day in office in 2009 by American President Obama (Obama 2009). He told his new Whitehouse staff: “The way to make government responsible is to make it accountable. And the way to make it accountable is make it transparent so that the American people can know exactly what decisions are being made, how they’re being made, and whether their interests are being well served. The Freedom of Information Act is perhaps the most powerful instrument we have for making our government honest and transparent.”

In England, Wales and Northern Ireland the act provides a right of access to information held by public bodies from the cabinet to parish councils. The right, however, is subject to 24 exemptions. Seven of these exemptions, such as those designed to protect information provided in confidence, court records, information on MI5 and MI6 and personal information, have absolute exemption. This means they cannot be appealed on public interest grounds. The majority of exemptions, however, are only permissible where the public interest in withholding the record is outweighed by the public interest in disclosure. Appeals can be made to the Information Commissioner and then an Information Tribunal. In exceptional cases, on points of law, it can go to a superior court.

The next area of the review was to examine literature on models for effectively teaching freedom of information legislation in other countries. Differences exist in the legislation but generally the acts in America, New Zealand, Australia and Ireland are the closest to that in the UK. So, for instance America, where the act was introduced in 1966, there were many examples of best practice from journalism schools but no studies as to their effectiveness. The template that proved most useful was how it was taught to student journalists in Columbia University, New York. Contact was made with tutors there. The course suggested by America’s Society of Professional Journalists (Cuillier, 2002) was also seen as best practice. Both included the requirement for students to make a Freedom of Information request.

Other countries have freedom of information acts too, for instance, Sweden has legislation since 1766, France since 1978, Denmark since 1970, Greece since 1986, Italy since 1990, Spain since 1992 and Portugal since 1993. But again there was no literature as to the effectiveness of training journalists in its use.

In the UK, there are three main books on the topic, Freedom of Information (Birkinshaw, 2002), Freedom of Information: A practical Guide to Implementing the Act (Smith, 2004) and Your Right to Know (Brooke, 2004). The earlier too are written from a legalistic perspective while Brooke’s is more from the requestor viewpoint. But generally there were no books dedicated to journalistic requestors. The area of journalism that Freedom of Information falls into is investigative journalism. There is little consensus, however, amongst journalism scholars as to a definition of investigative journalism. Some argue that all journalism should be investigative. They (Spark 2003, p1, Randall 2000, p99) agree on four of its distinguishing features: (a) It is original research by a journalist which established facts. (b) It is on an issue relating to the welfare of the public. (c) Vested interests are opposed to its publication. (d) It is more protracted than regular day-to-day reporting.

Randall (2000, p100) states that investigative journalism starts where day-to-day journalism ends. “It does not accept the secrecy and the refusal of officials to give the information. It finds out for itself.” Richard Keeble (1994, p188) defines it as reporting through one’s own work and initiative, matters of importance which some persons or organizations wish to keep secret. Its other important attribute, alluded to by Keeble, Spark and Randall, is that it is time consuming with no guarantee of an end product. The difficulty, as Keeble, (1993, p189) points out, is that on average investigative journalism is nine-tenths drudgery, shifting through meaningless documents, protracted negotiations with defensive bureaucrats and lawyers, meetings with dry sources and occasionally heady success. Spark (2003, pp9-31) through interviews with over 30 experienced journalists and Randall (2000, p103) had identified how important an in-depth knowledge of disclosure law was to reporters.

The review of teaching in other countries identified that the hardest part for trainee journalists was to draft the information request correctly, not too broad or too narrow. The other important aspect was to understand how the fees system works and learn how to avoid or reduce them. You are also teaching students how to identify possible stories, so paying close attention to a public body’s publication scheme and disclosure logs is also a critical skill to impart (Hanna and Dodd, 2012).
These initial findings from the literature were supported by research conducted in 2009 by Hayes as also being also applicable in the UK. Hayes (2009, p19) identified a knowledge of public authorities covered by the act, their publication schemes, disclosure logs and the scope of the exemptions as being key for the requestor. Advice provided by Hanna and Dodds (2012) also generally concurred with this.

This review indicated that most of the disputes between journalists and authorities over records' release are in the area of the qualified exemptions. The act provides little guidance and no definition of the public interest, on which appeals for qualified exemptions hinge, so it can be a difficult area to appeal. The absolute exemptions are less ambiguous. The act states that qualified exemptions apply where: "...in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information” (Freedom of Information Act, 2000). The other issue on qualified exemptions is that, if applied, it replaces the 20 working day limit for disclosure with "such time as is reasonable in the circumstances” (Freedom of Information Act, 2000, s.10 (3)). This can obviously affect the value of a story as news is a highly perishable commodity.

It means that tactical issues are also important to teach. For instance, it can often be more efficient to make a request through the press office rather than as an FOI request. This is because once an FOI request goes in the public authority has 20 working days to process it. While this is a maximum most now use this as a minimum. Press offices generally answer queries quicker albeit they are not legally required to make full disclosure. It has also been shown that in some cases public authorities treat requests from journalists different to those from the public (Hanna and Dodds, 2012). Evidence of this is the ‘clearing house’ system which was established to handle certain requests to central government departments in 2004. One of the criteria laid down for departments to refer requests to the ‘clearing house’ was if there was likely to be significant media interest. In 2005, 10% of all requests to central government departments were handled this way with the majority being media requests (Hayes 2009, p 11). The Northern Ireland Executive has a similar central tracking system largely for journalists’ requests. This is despite the fact that the legislation is supposed to be blind as to the reasons for the requests.

Fees charged for certain non-personal information can also be a deterrent to journalistic use of the legislation. This was evidenced in the Republic of Ireland were in 2004 only 8% of requests come from journalists. They comprised 16% of requestors before fees on every request by journalists were introduced in 2003. In the UK, a study carried out for the Department of Constitutional Affairs in 2006, estimated that journalists, editors and producers accounted for 16% or at least £3.9m of the cost of FOI delivery (Hayes, p 11). It was also estimated that five per cent of requests took-up 45% of FOI casework time (Hayes 2009, p8). It is these costs that have led to repeated threats by government to introduce mandatory application charges. But even without charges the tricky rules around how information can be released, too, can be viewed as an additional means of denying the release, argues Hayes (2009, p7). In the UK, for example, if the cost of processing a request exceeds £450, or £650 in the case of central government, then it can be refused.

The other major issue in FOIA training is explaining the complex appeals procedure. Although in general in the UK about 80% of requests are granted in full (Office of the Information Commissioner, 2006), requests by journalists internationally have a lower success rate. But given you do not have to disclose your profession when making a request, statistics on this are unreliable. Of those cases not granted in full and appealed to the Information Commissioner, 30% of appeals are granted (Office of the Information Commissioner, 2006).

Most of the media stories written from information released following FOI requests tend to be more related to statistics on the performance of public authorities than on how policy decisions have been arrived at (Hayes 2009, p36). This may be because records relating to policy formulation are generally exempted from release (Hayes 2009, p36). Once the initial enthusiasm settled down, most of the journalistic use of the act has tended to be specialist correspondents or dedicated freelancers who have specialised in it (Hayes 2009, p36). But interest was spectacularly re-ignited with the release in 2009 of the Telegraph’s expose of MPs expenses (see Winnet and Rayner, 2009). It had its geneses in a Freedom of Information request and subsequent appeals from FOI campaigner Heather Brooke and two other journalists. It is interesting to note, however, that MPs in 2012 claimed more than before the scandal and 155 of them employed family members (Telegraph 2013).
Even without these high profile cases independent research has shown the benefit of the act. Those agreeing that freedom of information “increases knowledge of what public authorities do” rose from 54% in 2004 to 84% in 2008 (Office of the Information Commission, 2009).

In the Republic of Ireland, where the act has been in place for 15 years, the benefits were summed-up as follows by its Information Commissioner, the former journalist Emily O’Reilly: “In terms of knowing what public bodies are doing on our behalf, FOI has been used extensively both by private individuals and by the media to see how public inspectorates or regulatory bodies are performing - for example, in relation to private nursing homes, child care facilities and schools - or how our key public services are performing - for example, in relation to hospital waiting lists or the prevalence of hospital acquired infections or in the conduct of public procurement procedures (Office of the Information Commissioner [Ireland], 2008, p1).

The final part of the literature review examined the research on the benefits of action-based learning. Watkins and Hattie (1985) pointed out how the use of projects and open-ended assessment promotes independence and deeper strategies of understanding. Vernon and Blake (1994) provided evidence that the use of problem-based approaches can foster deeper learning styles. Race (1994) from his questioning of learners summarized four ways people learn. He concluded that they needed to want to learn; that learning by doing is powerful, so too is learning from feedback and digesting what has been learnt. His further probing of when and where showed that people liked to learn at their own pace, often with fellow learners around and wanted to feel in control. These aspects were fed into the methodology following.

**METHODOLOGY**

This research project used two sample groups of journalism students. The first was an undergraduate class of single honours journalism degree students in the Republic of Ireland who were taught in 2002 at Dublin Institute of Technology, the longest established journalism programme in the country. The second cohort was Masters’ in Journalism students at University of Ulster who graduated in 2005. Each cohort was taught the Freedom of Information Act relevant to their own jurisdiction. The two cohorts were given access to a specially developed online interactive course about the act and asked to complete this and quizzes at the end of each section before the class started. They were given a template for making Freedom of Information requests and asked to bring to class a draft of a request. They were also assigned a publication scheme of a public authority relevant to the local area to find and summarise. From the publication scheme they had to try, in so far as possible, to identify records for which they could draft an FOI request.

The class contact time was spent as a workshop refining each request which was then sent. This was done before application fees were introduced in the Republic of Ireland, so if repeated again this method might require to be changed. The assessment exercise was for students to make a freedom of information request for some records and then write a story for publication, if applicable. If their request was refused in full or part they needed to appeal it and keep a log of the correspondence. This appeal and the log could be submitted instead of the story. They were also given a rejection scenario and asked to decide whether to appeal and if so on what grounds. They had to draft an appeal. They were also left with access to the learning materials on the website after graduation and contact details for the lecturer with an invitation to consult for assistance on complicated appeals. Usage of the site was tracked using Statcounter software. For both cohorts a small number did use it, however, only for about a year after graduating. Three students, however, phoned the tutor for more specific advice on drafting appeals. The level of detail they required was very specific and had not been included on the site.

Students’ personal e-mail addresses were retained, with their permission. In 2012 the former students were contacted by e-mail and asked the following questions: Are you working as a journalist or a related profession? If so, how many times in the past two years have you made an FOI request? How would you improve the training you received? Several students were then followed-up with a telephone interview for a more in-depth picture of their usage and how they felt training in the act could be improved.

Over the previous 10 and seven years many had changed their e-mail address. However, the graduates had largely remained in contact with each other over Facebook and latterly Linkedin, so it was possible to utilise this network. Three attempts were made to contact and get a response from each graduate. The findings were tabulated and analysed. Each response
was classified into one of three categories. The first was that they were working in an area where FOI use was no longer relevant. The second was that they had used it in the past but not the previous 24 months. The final category was for those who had used it once in the past 24 months.

ANALYSIS OF THE CASE STUDY DATA

The two cohorts were asked informally for feedback on the e-learning and action-based learning in 2002 and 2005 as part of the module feedback form on the last day of the module. Surprisingly this showed that when many completed the course online they printed it off, albeit they were told they could logon again. They were unused to learning online and also wanted to have a permanent copy. Some students, particularly the mature ones, found the navigation difficult and spent considerable lesson time fiddling with this rather than doing the lesson. Several students wrote that they enjoyed the instant feedback on questions and the short lessons. In relation to drafting and making the FOI request, many informally at the time felt it did focus them and give them confidence to use the act. Writing the appeal they found to be quite complicated.

A more detailed online survey of the two cohorts of students was undertaken again in 2012. The survey of the year 2002 graduates of Dublin Institute of Technology was responded to by 38% of the class of 27. Of these 10 respondents, two were working in an area where it was no longer relevant to them. Four were in journalism related jobs like public affairs and did not use the act in the past 24 months but could do in the future. Four, however, did use the act, two being very significant users with an average of over 20 requests a year. One graduate has won several national awards for his journalism, several which involved extensive use of the act. These two in particular had become specialists in it and had used it frequently to break stories. These two felt that they used the act more than older colleagues who had not benefited from training in it. They found it difficult to suggest areas for the improvement in training as they tended to look-up the relevant exemptions when it became an issue e.g. they had a disclosure request refused, or, more likely a record was partly blanked-out. They viewed certain government departments and organizations, like the Health Service Executive, (Irish equivalent of the NHS) as particularly slow at building their own diary of the type of records available and when as many are created on an annual basis. Thus, they learned from disclosure logs and monitoring others’ use of the act. They learnt, for example, from looking at the type of records being released in the UK. They could then follow-up with their own requests. It was very much a case of ‘learning by doing’.

An important point too, stressed by one reporter, was the teaching of legal issues around documents released. While the public servants who wrote the records had legal privilege from defamation, a reporter printing the same information did not. So you needed to watch for libel. Their other concern was the length of time appeals took particularly with the Information Commissioner. So teaching skills to fast track requests was important.

The 2005 University of Ulster cohort had a slightly higher response rate of 41%. Of these, one was no longer directly involved in reporting and several others were in allied fields such as sub-editing, documentary making, public relations, event management or public affairs. They had not used the act in the past
24 months. Of those working as reporters, those in sports reporting, broadcasting and another in magazines, used it the least – less than once in the previous 24 months but had used it previously. Another was working for a national newspaper in another European country and was using the act in that country which was quite different to the act in Ireland or the UK. However, her views were added as she felt there were some generic issues. Only two, however, had made multiple requests in the previous 24 months. One was a political reporter and another was a news and investigations reporter, both working for Belfast-based national Northern Ireland newspapers. They were both happy with the initial training they had received on the act. They particularly liked the novelty of the interactive element and having to make a request in class under guidance, viewing it as giving them confidence.

Their concerns about the operation of the act were remarkably similar to the graduates in the Republic of Ireland, albeit it less on fees. It was principally about the length of time it took to process requests, the undue delay in adjudication of appeals by the Assistant Information Commissioner for Scotland and Northern Ireland and the zealous use of exemptions by certain organisations. They both singled out the Police Service of Northern Ireland and several health trusts as having the worst delays and applying the most exemptions.

In Northern Ireland too they found some very small organizations, which were covered by the act, very slow at responding to requests even though it was the law. Larger organizations, with full-time trained FOI officers, were much better. But still they used 20 working days, suppose to be the maximum length of time for record release, as the standard time. With regard to improvements in training, they again were similar to graduates in the Republic of Ireland. They indicated that a good deal of information is released without going through the act by informal requests to the press or FOI officer. Drafting of requests too was a critical area and knowledge of the exemptions. Like their counterparts many suspected that their requests were treated differently to those of others in many cases. In fact, this was confirmed by one student now working as a press/FOI officer.

They also stressed about the benefit of receiving information released under FOI from lobby groups and political researchers. Also that only a fraction of the information they received ever made it to press. An important point too, they emphasised, was an understanding of the data protection legislation as this was often cited for non-release. They did see potential, however, in Environmental Information Regulations, which had less exemptions and charges. Interestingly they were not against so-called trawling exercises e.g. getting the expenses for all MLAs etc. The graduate pointed out: “Ian Paisley Jnr resigned as a junior minister in 2008 over information revealed by a trawling FOI request followed-up by further investigations.”

FINDINGS AND CONCLUSION

The key research questions for the study were will the students: (a) Learn to use FOIA legislation more effectively by using online interactive learning materials and followed by real-life exercises. The conclusion from the respondents was that this technique was very effective and novel.

The second research question (b) Did students use their knowledge and the online resources to make effective Freedom of Information requests and appeals once graduated? The analysis of the test results between the two student cohorts indicated consistency here – that it did but in the long-term it depended on their job requirements. Although only a handful from the two cohorts was still using FOIA regularly, this would conform with media use in general.

The third question was: (c) Based on the graduates experience of using FOI for seven years or more what changes, if any, are required to what and how it is taught. The scope of the responses here was large albeit they only came from a small number of graduates who had become significant users of the legislation. They felt that while training was important the effectiveness of it largely rested with the ingenuity of journalists – something difficult to teach. However, the areas they felt there could be more instruction on was explaining how the act had evolved to work in practice via an informal route and third parties. Knowledge of exemptions and how to phrase appeals under the public interest clause was stressed too.

An important point made by two was that journalists did not seem to use the act to its full potential. With the increasing use of technology within public bodies a whole raft of new electronic records were being created that would be very useful to reporters. For instance, you could track from hospital admission records, albeit with their personal details excluded, trends such as the number of those aged under 18 admitted drunk to Accident and Emergency. They
were mixed on guidance to be giving on ‘trawling’ as they felt some good information had come from these exercises.

SUPPORT FOR CONCLUSIONS

The sample size was small and thus the findings could not be generalized to the entire population of journalists or journalism students. In addition the experiment was only undertaken twice albeit in two jurisdictions. It would need to be repeated several times before definitive conclusions could be made. It does, however, produce some interesting results and a basis for amending and augmenting some of the advice and training given to trainee journalists.

The experience of designing and having students use e-learning, including making notes accessible after graduation, proved successful and something the respondents felt helped their learning. Making them ‘learn by doing’ in class by formulating an FOI request, did bear fruit in that all the respondents felt comfortable using the act, even if their current role did not require it. Several commented that graduates from some other courses had not done this training and were thus not using the legislation.

To conclude, Freedom of Information legislation, despite its many flaws, has proved a useful investigative tool for journalists. In preparing students to use it real life exercises and the use of online support materials helps make them comfortable with it. It is not possible to teach them all its aspects but through real-life exercises you can show them how to research aspects of it themselves to prepare requests and appeals. It is also useful to provide a history and rationale of the act, explain the various procedural issues relating to the right of access, fees, the absolute exemptions, qualified exemptions and the appeals procedure. In addition, explaining how the act works in practice – informal requests, tactics played by public bodies in delaying release, use of other people’s FOI requests are important too. Case studies and examples of FOIA stories are useful too. But the most important factor, those using the act regularly felt, was that students had to be instilled with a sense of mission to be public watchdogs. They would then use the act effectively as part of this duty.

- Example of the online FOI support materials
Bibliography


