



Commonwealth Human Rights Initiative

NGO in Special consultative Status with the Economic and Social Council of the United Nations

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Executive Committee
B.G. Verghese
Chairperson &
Treasurer

The Rt Hon. Baroness Ashton of Upholland
House of Lords
London
SW1A 0PW
United Kingdom

26 October 2006

Maja Daruwala
Director

Dear Lady Ashton,

Members

R. V Pillai
Anu Aga
K. S Dhillon
B. K Chandrashekar
Mool Chand Sharma
Harivansh
Bhagwan Das
Poonam Muttreja
Sanjoy Hazarika
Nitin Desai

Re: Concerns regarding plans to amend the *Freedom of Information Act 2005*

I am writing from the Commonwealth Human Rights Initiative (CHRI), an independent, non-partisan, international non-government organisation mandated to ensure the practical realisation of human rights in the lives of the people in the Commonwealth. CHRI's Right to Information programme assists Commonwealth member states to develop strong right to information laws and to implement them effectively.

I am writing to express serious concern at reports in the press that the Department of Constitutional Affairs (DCA) intends to introduce additional fees for requests made under the *Freedom of Information Act 2005* (FOI Act). It is my understanding that the new fees proposals have arisen in response to concerns within the bureaucracy about the alleged large number of frivolous requests being made under the FOI Act and the costs of dealing with such enquiries.

CHRI strongly urges you not to amend the Act in any way that would, in practice, operate to curb the number of requests being processed under the new law. In CHRI's experience across the Commonwealth, fees provisions have commonly operated as a mechanism for reducing the effectiveness of an FOI law and will be counterproductive to the FOI Act's fundamental goal of promoting open governance. Ireland provides a salutary example of the debilitating effect of the imposition of fees on the use of freedom of information laws by the general public – where the introduction of application fees led to a 75% reduction in the use of the act by the Irish general public.

Rather than reworking the fees regime to enable bureaucrats to reject more applications on procedural rather than substantive grounds, CHRI would urge DCA to consider training staff to adopt a more cooperative approach with applicants and focus more on talking with requesters to assess whether requests can be narrowed while still achieving their purpose. This approach constitutes international best practice. From the perspective of CHRI, a Commonwealth organisation, it is imperative that the UK implement best practice and set a good example from other Commonwealth member states. To do less could provide justification for the weakening of FOI regimes throughout the Commonwealth.

With regard to the particular proposals that have been suggested, CHRI makes the following recommendations:

(1) Do not charge for time taken by staff to consider requests

It is deeply troubling that DCA is considering permitting the inclusion of the cost for time spent by staff in reading materials and consulting other staff when considering a request as part of the overall processing fee. Charging for staff time will substantially add to the cost of making a request and in reality, will severely curtail the amount of information released to the public. In particular, in a bureaucracy that has already exhibited its resistance to disclosing information, such provisions could easily result in prohibitive costs if bureaucrats take their time when collating information in order to increase fees above the limit. The reality of course, is that the most sensitive information requested will request the most senior officials to make a decision, which will incur the highest “staff fees” – with the result that such applications will be rejected for process reasons before they can even be considered on their merits. This is deeply troubling considering the importance of the new FOI law to ensuring public accountability at the highest levels of government.

(2) Do not aggregate charges for multiple requests from single institutions or applicants

It is understood that the DCA is also considering plans to aggregate charges for multiple requests made by the same person or organisation and permit applications to be rejected if their combined cost exceeded the £600 or £450 limit. This move is completely contrary to best practice throughout the world and deeply troubling in its apparent intent to discourage regular requesters – such as media organisations, journalists, academics and MPs – from making applications. There appears little justification for permitting the rejection of multiple requests simply because they come from the same applicant. In any case, CHRI suspects that this will only lead to unnecessary machinations by requesters to ensure that different people are named on applications to practically circumvent such an onerous and unnecessary procedural requirement.

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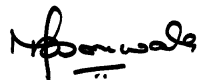
In August, the Office of the Information Commissioner, the appeals body under the Act, found that 72% of the public surveyed had more confidence in public authorities because of freedom of information, compared with only 55% in spring 2005, when the Act was new. It also found that three-quarters of individuals (74%) questioned thought that the Act helped to promote accountability and transparency in public authorities, up from just over half in 2005.

CHRI believes that the new proposals will not only reverse the large numbers of information requests submitted by the public - which only reflects strong public demand for *more* open and transparent governance and *not* for less - but will also risk the reversal of rising confidence in government. At the international level, the DCA's plans would severely harm the UK's reputation as a standard bearer of freedom of information and open governance in the Commonwealth, where only eleven other states are currently operating FOI laws.

To this end, CHRI reiterates that it strongly encourages the UK Government, Parliament and civil society to reject these plans which will severely curtail the effectiveness of the Act and its objective to promote open governance, accountability and greater public participation in the democratic processes of government.

If you wish to discuss this letter, please feel free to contact me by email at majadhun@vsnl.com or Mr Jeet Mistry, Project Officer, Right to Information Programme at jeet@humanrightsinitiative.org, or telephone on +91 11 2685 0523 or +91 9810 199 754.

Yours sincerely



Maja Daruwala
Director

CC:

- The Rt Hon. Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor, House of Lords, London, SW1A 0PW United Kingdom.
- Secretary, Department of Constitutional Affairs, Selborne House 54 Victoria Street London, SW1E 6QW United Kingdom.
- Maurice Frankel, Campaign Director, Campaign for Freedom of Information, Suite 102 16 Baldwins Gardens London EC1N 7RJ United Kingdom.
- David Hencke, FOI Desk, The Guardian, 119 Farringdon Road, London EC1R 3ER United Kingdom.