



## ADVISORY PANEL ON CROWN COPYRIGHT

### *Aligning the FOI and PSI Initiatives in the UK* (Version 2.0, 12 February 2004)

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1. The purpose of this paper is to draw attention to the overlaps, and to encourage closer collaboration, between two important government initiatives – the implementation of the Freedom of Information Act 2000 and the implementation of the European Directive on the re-use of public sector information (2003).
  2. The Advisory Panel on Crown Copyright (APCC)<sup>1</sup> believes that there is an urgent short term need for greater communication and collaboration between these two initiatives; and, in the longer term, that the overall management of public sector information should be subject to a single, coherent set of policies. Today, the approach across the public sector is too fragmented and piecemeal.

#### **Background**

3. Considerable effort is currently being expended within Government in the implementation of two closely related bodies of law. One is The Freedom of Information Act 2000 (“the FOI Act”) which is to be fully implemented by 1<sup>st</sup> January 2005. The other is the European Directive (“the PSI Directive”) on the re-use of public sector information; the deadline for implementing this in the UK is 1<sup>st</sup> July 2005. <sup>2</sup>

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<sup>1</sup> The APCC is a non-departmental public body, set up by the Cabinet Office in April 2003. See [www.hmso.gov.uk/apcc](http://www.hmso.gov.uk/apcc)

<sup>2</sup> The APCC is conscious that, in respect of Scotland, many of the issues discussed in this paper are devolved matters. Nonetheless, the central messages, it is suggested, apply equally to Scotland.

4. The FOI Act confers a general right of access to information held by public authorities. The PSI Directive seeks to establish a minimum set of rules governing the re-use of public sector information. Although UK officials are keen to maintain a distinction between access and re-use, the distinction is far from clear. In practical terms, huge bodies of the same public sector information are subject to both regimes, although the obligations imposed and entitlements conferred are by no means the same. And, although they are not co-extensive, both instruments do apply, broadly, to UK public sector bodies.
5. Although the subject matter (public information) and the broad scope (public bodies) of these instruments are similar, the underpinning policies are quite different. The FOI Act seeks to promote greater transparency and openness in the conduct of public affairs, while the PSI Directive recognises the value, and aims to encourage the commercial exploitation, of public information. The focus of the FOI Act is enhancing the rights of individuals in a democratic society. At the heart of the PSI Directive is the smoother running of the internal market; the stimulation of the European information industry so it can compete more effectively in the global marketplace.
6. The implementation of the FOI Act is the responsibility of the Department for Constitutional Affairs (DCA), while the FOI Act itself will be regulated by the Information Commissioner. The implementation of the PSI Directive is the joint responsibility of DTI and HMSO. They have recently completed a partial regulatory impact assessment of the implementation of the Directive and have conducted a consultation exercise to determine whether interested parties favour a regulatory or less formal approach. Policy responsibility for the PSI Directive will stay with DTI and HMSO, at least until a different regulatory or other solution is proposed and agreed.

## **Implications**

7. The FOI Act and its implications are fairly widely appreciated across the public sector and in the private sector too. In contrast, the PSI Directive and its

ramifications are hardly recognised, other than by a few Government departments and agencies and by the private sector information industry. This is understandable: officials have been addressing FOI since 1997 as a major manifesto commitment; whereas PSI is a relatively new topic of concern.

8. It is a principal contention of the APCC that the implementation of the PSI Directive will transpire to be as fundamental in its impact as the FOI Act. In the Directive, “re-use” is defined very widely, referring to any use “for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced”. Forthcoming work of the APCC will show that the Directive can and should lead to a systematic and pervasive effort to harness and recycle, on an ongoing basis, the collective intellectual capital of the public sector in the UK. Crucially, this may be driven from beyond the public sector – for example, by UK companies invoking the provisions of the PSI Directive.
9. The implementation of the FOI Act and the PSI Directive will require public bodies to change the way in which their information systems are set up; to change some of their working practices; indeed to change their very culture. Whereas, in the past, there was a presumption in favour of public sector information being for official use only, these two regimes combine to reverse that position. Instead, FOI confers a right of access to information, while PSI imposes an obligation to make many public materials re-usable and available in electronic form. Public bodies will need to change accordingly.
10. There are other government initiatives that also overlap considerably with FOI and PSI. These include electronic records management, e-government, knowledge management within government, data protection, the implementation of the Environmental Information Regulations 2004 (EIR), national statistics, and, importantly (given its considerable scope and potential), the re-development of the Government’s Information Asset Register (IAR).

## **Concerns**

11. Although the histories, underlying policies and respective responsibilities of the FOI and PSI initiatives are quite different, their effects on public sector bodies overlap considerably.
12. It is therefore surprising to the APCC that there has not been more “joined-up thinking” in this area and greater communication or collaboration between the teams and departments managing the implementation of the two regimes. Further, it is also surprising that there is no single body taking an overarching, strategic view of the combined demands that are soon to be imposed (through FOI, PSI and other initiatives, as noted in paragraph 10) on those who are responsible for information management within public bodies.
13. In practice, public bodies need to change at least some aspects of their information systems, working practices and culture to comply with the new FOI and PSI regimes. However, the demands imposed by each will be subtly different. A main concern of the APCC is that the necessary changes will be brought to the public sector bodies’ attention in two stages – first, for FOI and later for PSI. This is likely to be inefficient and frustrating; and will appear piecemeal and ill-coordinated to those affected.
14. For example, those who are responsible for running the information systems in public sector bodies will need to introduce new procedures, practices and systems to enable these bodies to fulfil their obligations under the FOI Act. Having made such changes, it will be galling for them, but a few months later, to have to embark upon a further set of refinements to comply with the PSI Directive. It would surely be more prudent, if practicable, to implement all changes at once. And the same argument applies to changes in working practice and in culture.
15. At a policy level, the FOI and PSI regimes (and the other initiatives noted in paragraph 10), as suggested, will combine to bring about an entirely new

landscape for the management and control of information in the public domain. It is far from clear that senior officials and politicians are alive to the cumulative shift in policy and practice. Nor is there evidence of analysis of the long-term implications of these changes.

16. It is the view of the APCC that FOI and PSI together will be the fundamental building blocks of so-called “information age government”. This is not merely about making formal Government publications available online. It is about capturing, nurturing and maintaining all information generated by public sector bodies as a common and easily accessible good for all of society.

### **Recommendations**

17. The recommendations of the APCC, at this stage, focus only on bringing together the Government’s initiatives on FOI and PSI, initiatives that, it is submitted, should be mutually supportive and certainly not in conflict.
18. For the short-term (during 2004), the APCC recommends that a joint working party should be set up to steer this co-operation and meet on a monthly basis to discuss progress on both initiatives, to identify overlaps and potential conflicts, and to set up collaborative projects, if appropriate. A small working party is proposed, perhaps with one person from each of DTI and HMSO and two from DCA. This working party would need to consult with other interested parties across the public sector.
19. In respect of the longer term, the APCC recommends that a group of senior officials from across relevant Government departments are asked to formulate one single, cost-efficient, coherent long-term policy and strategy for information management within the UK public sector. This would embrace not only FOI and PSI but also electronic records management, e-government, knowledge management, data protection, EIR, national statistics and IAR. This work would include consideration of how the ongoing management of FOI and PSI might be aligned; and whether there is merit in all information management being brought under the umbrella of a single (possibly new) department.

20. The APCC would be happy to help with either or both of these initiatives; and intends to undertake further work, in particular, on the possibility and desirability of establishing a new department with overall responsibility for the management of public sector information.