

Using FOI in research projects : opportunities and constraints

RIN conference, September 2008

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The uses of FOIA

- 1. Public requests for information
 - 2. Journalists – esp. exposes
 - 3. Political parties and groups
 - 4. Historical research
 - 5. Creating evidence-based policy
 - 6. Assessing policy change over time
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Perceptions of FOIA

- Uses up time on frivolous issues (see handout)
- Sustains political point-scoring
- Sustains journalistic sensationalism
- Not largely used by academics or policy makers
- All valid points BUT > > > >
- Can be seen as side effects of defensible freedoms, which stem in part from the nature of the Act.
- Counter view: FOIA has helped hold people to account and encourages transparency.



Main lecture aims

- To provide an example of FOIA-influenced research.
- To suggest the limitations of the current circumstances
- BUT ALSO
- To stress the importance of working with archivists to exploit FOIA.
- To suggest that devolution has allowed Welsh archivists to be different in implementing FOIA
- To stress the importance of further changes in FOIA to improve history/policy analysis.



FOIA experience: devolution

- Withheld material 1960s : Home Office, re Investiture of Prince Charles 1969
 - Material at TNA: Welsh Office devolution files 1976-79
 - Welsh Office: 1981-1997
 - Direct and indirect experience of FOIA and its impact at archives across England and Wales.
 - Use of material generated by others.
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Home Office

- Request made for 6 files February 2006.
 - No response until 11 May. Promised report on progress. Deadline not met
 - Told files were 'lengthy and sensitive'. Promised decision by 31 July. Deadline not met.
 - End August. Letter stating limited release only.
 - September. Receive xerox material (% unknown) from files 1, 3, 6.
 - Impossible to basis project around material which may emerge so slowly and in unknown quantities.
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Explanation from Home Office

- Section 24 public interest test
 - 'although the documents concerned date from the 1960s . . . Their disclosure could undermine current efforts to safeguard national security'
 - Section 31
'It would not be in the public interest to disclose police tactics for dealing with terrorist threats in the past as disclosure would undermine current and future operation for dealing with similar threats'
- (reasonable desire to protect families not used)



What were police tactics in Wales during in 1960s? Did they work?

- (Evidence from published letters of bombers, oral history etc).
- Bugging public telephone boxes
- Attending public meetings
- Infiltration of groups
- Bring in external forces because local police suspected of being sympathetic/incompetent



Longer term impact?

- Police tactics seen at the time as 'fascist'
- Seen as an 'excuse' to spy on nationalists
- Opponents of police seen as heroes
- Protest escalated: 'everyone can understand and sometimes sympathize (with actions) they cannot approve' (Ned Thomas, Planet 1971)
- 'We were blown out of inertia'
- Lessons: CRAZY to reuse tactics adopted in the 1960s e.g. with suspected 'Islamic' radicals.



Material in TNA: Welsh Office 1976-79


Multiple FOIA requests prompts pro-active release. 1976-79

- Briefings of ministers
- Consultations with public bodies
- Comments on political position
- Comments on legal / constitutional issues



1976-79 Welsh Office papers:


- How valuable?
- No previous discussion of issues raised
- Opposition of English ministers / MPs not primarily associated with devolution
- Opposition of significant public bodies esp. County Councils
- Opposition of Civil Service
- Relevance to discussions over devolution 1995-2006
- Strength of Britishness



1976-79 Welsh Office papers: limitations of material

- Little on public opinion: all on elite opinion
- No simultaneous access to cabinet discussions
- Little sense of the confusion apparent from other sources
- Bernard Donoughue (policy advisor) diary entry on devolution discussions 10 Sept 1975:

'Healey went on and on, saying that the Cabinet had never agreed to devolution. . . Jenkins obviously was embarrassed by Healey's crude style but agreed with his argument. Ross was booming away at the end of the table that it was too late to object, devolution was a fact of life. HW was trying without success to restore order. For 20 minutes it was like a monkeys' tea party'




Devolution since 1979: the approach in Wales (Wales Office staff)

- Approached re Conservative policy 1980s
- Proactive release requested and rejected: insufficient staffing. Needed to ask for file lists – unhelpful and unexplained.
- Complain (informally) – given explanation by more senior staff. Given help. Receive papers.
- BUT – all named redacted (see handout)
- Use CFI for information to oppose redaction. Informal request, not an appeal. Successful.
- Sent material with most names restored
- BUT – material obtained by others from WO more recently has all names redacted!



Problems: volume of material/access to that material

- 73 files on Welsh Language Act 1993 identified. Material being released slowly. Valuable: BUT cannot apply for funding until can judge the records. One year project 2008-9 to identify.
- 35 documents on establishment of Welsh language Channel 4 1980, obtained via WO website.
- Value: no indication of file number/scope of other material. Wider evidence suggests conclusions drawn from this material alone are debateable.
- Conclusion: only snapshot of complex picture possible through limited release. Encourages sensationalist/politicised conclusions.



Devolution since 1979: the approach in Wales (archivists) - NLW

- Welsh archives association and NLW organise studies of FOIA and its significance
- NLW proactively writes to depositors November 2004 on implications of FOIA
- Argues can no longer close material just at depositor's request
- Allows access to hitherto 'restricted'
- New deposits open unless clearly exempt under FOI/Data protection etc.
- Working with the spirit of the Act.



Impact

- Access to papers of (most) Welsh Secretaries since 1976
- Access to papers of Conservative and Labour activists
- Welsh Labour and Plaid Cymru archives already open
- Far better understanding of recent politics than ever before



Devolution since 1979: the approach in Wales (archivists) – Wales Office Records managers

- 120 relevant files identified so far, 1983-98
 - Full list given – proactive release
 - Telephone to discuss way forward
 - Explanation of file numbers and abbreviations
 - Full access via supervised attendance at Wales Office records store
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The approach in Wales (Welsh Language Board)

- FOI request made
 - Telephoned to discuss
 - Supervised access given to uncatalogued papers
 - Papers since deposited in NLW
 - Further material placed on the web
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A model?

- Scottish Office website shows material on Scottish devolution is being requested; perhaps more in Scotland and Wales than is identified in evidence to 30 year rule review (handout).
- Welsh interpretation of FOI more liberal than that in England.
- Survey of specialist archives in England: too few staff to proactively release papers under FOIA; unable to release staff to catalogue recently deposited collections; concerned over the terms connected with the original deposit (limited access); fear that papers will be withdrawn.

- Major archives use (contestable) exemptions to limit access. Researchers do not to appeal.

- Opening of archives can be held back by slow pace of Cabinet Office approval.



Limitations of FOI

- Hard to plan research in the face of these obstacles.
- Current access position can make research very difficult. Encourages sensationalism/ snapshots of circumstances
- Can not access sources to show relations with UK government or with Cabinet.
- Proactive release and working with archivists vital to create volume: but still cannot see catalogues in full, choose freely.
- Assessment of policy/evidence based policy? Volume vital to weigh up evidence properly, assess policy constraints, identify whether things have changed over time. Too difficult to access this at present.



Ways forward

- Reduction of 30 year rule – key need
- Volume of material vital : focus on release of Cabinet papers misplaced?
- Until then 30 year rule reformed: promote support for the spirit of the Act.
- Promote use and understanding of FOIA amongst researchers.
- Promote archivist/researcher collaboration.
- (Sadly) need to challenge archive's decisions on non-release of materials.
- Resource public archives to make compliance with spirit of FOI easier.



Further information

- DMT and others in Andrew Flinn and Harriet Jones (eds) Open access or closed archives? (Routledge, 2008)
- 'A researcher's guide to using FOIA': to be written following AHRC funded postgraduate training in modern and contemporary history, 2008-9.