

## *Freedom of Information Act 2000 as a Research Tool in the Social Sciences*

On 01 May 2019 the Centre for Law and Society hosted an afternoon symposium on the *Freedom of Information Act 2000 as a Research Tool in the Social Sciences* as part of the *Methods and Methodologies* section of the Centre's activities. The purpose of the event was to increase awareness of the availability of the FOIA 2000 as a tool for social scientists, to consider the benefits and limitations of research conducted under the Act, and to reflect on the practical challenges of undertaking FOIA-based research.

Four papers were delivered at the event followed by a roundtable Q&A discussion to address practical questions as regards conducting FOIA research, and to think about how to take the research discussion forward in the future.

The first paper, given by Jennie Bunt (Cardiff), was entitled 'Freedom of Information Requests: An Accessible Window to the Perceptions of Local Government'. It considered Jennie's previous work using the FOIA in the context of local authority debt enforcement processes, including the use of bailiffs and other coercive enforcement methods in relation to, for example, council tax. Jennie's project made FOI applications to all of the local authorities in Wales.

The second paper was delivered by Siobhan Weare (Lancaster) on 'Gathering Data on s.4 of the Sexual Offences Act 2003 from Police Forces in England and Wales'. This explored data Siobhan had obtained from 37 police forces in England and Wales covering a 13-year period, on the SOA 2003 section 4 offence of engaging in penetrative sexual activity without consent. Whilst data pertaining to other sexual offences (e.g. rape, assault by penetration), is routinely publicly reported, data on the section 4 penetrative offence is not.

The third paper, given by Russell Ashmore (Sheffield Hallam), 'Are Mental Health Trusts in England Implementing de facto s.17 Leave for Informal Patients? An Analysis of Local Policies' used the FOIA to obtain data from 57 NHS trusts in England providing inpatient care. 'Informal' patients can be differentiated from 'formal' patients in that they are not subject to section powers under the Mental Health Act 1983. The regulation of leave from secure care applied to formal patients by the Act is not intended for application to informal patients – nonetheless, Russell's research found that restrictive practices were being implemented in a number of organisations. 31 organisations were found to have some form of leave policy in place.

I delivered the fourth paper, 'Mapping the Hospital Managers' Discharger Power using the Freedom of Information Act 2000'. The project gathered data from 74 NHS trusts in England and Wales with the aim of determining the extent to which, and by whom, the hospital managers' s.23 Mental Health Act 1983 discharge power, is used. While the exercise of the s.23 power bears many procedural similarities to the Mental Health Tribunal, statistical information on its decisions and members is not, unlike the Tribunal, routinely published.

Each of the papers reflected on the practical challenges of conducting a multi-organisation FOIA-based project, as well as addressing the substantive findings of their research. Along with discussions arising out of these papers, and the Q&A session that took place at the end of the day, a number of key observations about FOIA-based research arose:

1. Becoming familiar with the legislative framework, the researcher's rights as a requestor, and the expectations researchers should have of the respondent organisations are important.
2. Formulating the initial request in a clear way, being willing to compromise and negotiate with respondent organisations to obtain *some* data and information, planning for delays in response

time, and keeping track of large numbers of response timelines, all represented key practical challenges for researchers.

3. Thinking about how to store information provided in a variety of formats and layouts, and with varying degrees of clarity and detail needed to be considered at the outset.
4. Recognising that, because FOIA-provided information was *not* gathered with a researcher's questions in mind, it will inevitably struggle to provide concrete answers.
5. Similarly, especially in relation to national-scale projects, it should be noted that each organisation is likely to take a different, local approach to data gathering that could impact the researcher's ability to provide general conclusions.

These considerations and challenges should be counter-balanced by the benefits of using the FOIA, which include:

1. Access to otherwise inaccessible data and documentation.
2. Cost-efficiency (for researchers), because the information requested is sought and collated by the respondent organisation, not the researcher.
3. The ability to map out the existence of an anomaly, problematic practice, or other issue of research interest as the basis for a future, larger-scale project.
4. The possibility of connecting with key staff members in the respondent organisations that may facilitate future research activity, engagement opportunities, and knowledge exchange.

The speakers, and other attendees also considered the ethical challenges of making FOIA requests. For example, the burden on public services of providing information where their resources are limited. This can be compared with the different ethical challenges of relying on public servants to provide data and time on an unregulated, goodwill basis.

It was also noted that the FOIA presents some difficulties for the usual ethical review processes in universities, since the FOIA provides a statutory right to information, has its own mechanisms for regulating the release of that information, and, ultimately, places released information in the public domain. In the future, thinking about what it means for researchers to use the FOIA ethically will be important.

In summary, the FOIA provides researchers with the opportunity to obtain a wide range of data and other information (e.g. policy documents) from public organisations. As with all research projects, conducting FOIA research at any scale presents a range of practical challenges. Use of the FOIA framework also raises ethical issues that need to be considered as a methodology around FOIA use continues to develop. However, it also offers a range of opportunities as regards access to information, engagement, and the development of research projects in a cost efficient way.

Delegates at the event were keen to explore future collaborations, seek funding to bring a wider range of researchers together, and possibly pursue a book project combining the insights of FOIA researcher-requestors and institutional-responders.

The event was attended by staff from the Law School and the Faculty of Arts and Social Sciences, colleagues from the Library and Information Governance Office, and external speakers.