

# **Beyond the International Freedom of Information Index – an audit of FOI reform**

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## ABSTRACT

True and independent access to quality, un-spun government-held information is at the core of proper political accountability – few would argue with that statement. Yet study after study find that information access often exist in word (and law) only – not in practice.

This paper is based on earlier international comparative studies assessing the practical functionality of Freedom of Information (FOI) systems in a number of countries (Australia, Sweden, USA, South Africa and Thailand). One of these studies laid the foundation for the first International Freedom of Information Index which ranks the assessed countries according to how well they deliver on their legislative FOI promises.

One of the most important findings of the FOI Index pilot study was that some of the established democracies, and supposedly information rich countries, performed poorly in offering independent access to government-held information to journalists. Indeed, one of the emerging democracies out-scored one of the established FOI systems. This indicates that in spite of a growing information divide **between** countries, some emerging democracies are beating the established systems at their own game when it comes to information access.

Since the initial project changes to the FOI regimes in the countries of study have occurred. This paper will re-visit and audit some of the changes and discuss that most illusive of parameters underpinning FOI – the political will to make FOI work in practice.

## Introduction

At times there is a tendency to view mature liberal democracies as homogenous systems built on and sharing a common set of values. At a superficial glance this seems to be the case. However, at a closer look examples of significant differences appear. One such example is access to and flow of government-held information.

This paper is about what could be one of the most potent political accountability tools available – if it worked properly. In the last two decades the numbers of Freedom of Information Acts (FOI) around the world have increased dramatically. Currently 68 plus<sup>1</sup> nations have enacted FOI laws (Banisar, 2006). Most mature liberal democracies have some form of FOI regime, as do many emerging democracies. Passing FOI laws is the easy bit, the trick is to make them work in practice. So, how do they measure up from a user's perspective? The research question for this project was: **to what extent, if any, are the promises made by FOI legislation borne out by the practice in the countries of study?** Another way of putting it is that the study evaluates and describes the relative **health** of the FOI systems in the countries of study. It will be shown that there is a consistent gap between the promise and the practice of FOI in the evaluated countries and that FOI has deteriorated into dysfunctionality in one of the 'template' systems.

FOI seldom makes it onto the mainstream political agenda. One possible reason for this is that general awareness and interest for FOI issues among the public is low. Hence, it seemed important to find a way of presenting the data and findings in this project that could be easily digested. Although the FOI Index was not the primary goal of the study, it became increasingly clear during the course of the project that the study provided a very good opportunity to explore the possibilities of constructing a prototype of the FOI Index. Like all

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<sup>1</sup> The number is in a state of flux as new FOI laws are being passed and implemented continuously.

prototypes it needs further refinement and more data to determine its validity and reliability.

It should be made clear from the outset that this study is concerned with third party access (in particular FOI requests lodged by journalists) to government held information only. It does not evaluate access to personal/individual information. Because of the differences in political systems between the countries of study, the laws evaluated are the federal/national FOI Acts to allow for true comparisons between the different FOI systems.

The genesis of this, by now five-year project, was my puzzlement with the differences between the practical functionality of Swedish and Australian FOI. Working as a journalist in Sweden from 1989 to 1998 FOI provided the base for most journalistic practice. This is not the case in Australia. This was explored in a previous comparative study that concluded, among other things, that the extensive Swedish FOI regime provides the base for ‘everyday investigative reporting’, whereas investigative reporting in Australia is seen as something much more exclusive where FOI does not necessarily play a role (Lidberg, 2003: 91). The first study led to the second more extensive one presented in this paper. The second study covered five countries and incorporated a number of sub-studies further discussed in the methodology section.

The FOI Index project has been described in a number of publications (Lidberg, 2008: ; Lidberg, 2006). However, one dimension has thus far remained largely un-explored – the possible reasons for the great differences between FOI systems between countries that seemingly share similar values.

This paper will summarise and discuss FOI reform attempts in the US, Australia and Sweden since the study was made. The paper will also revisit ‘the spin’<sup>2</sup> study to seek answers to the differences in FOI functionality between countries.

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<sup>2</sup> This study has since been renamed ‘the attitudes’ as this name better reflects the aims of the study.

The description of the methodology and the literature review has been kept to a minimum. Readers that want more detail on this are referred to the publications above.

## **Methodology**

The study design comprises three sub-studies each with its own sub-set of research questions. The primary aim was to determine whether there is a gap between the 'promise' of Freedom of Information Legislation (that is, what the legislation has as its aims) and what it delivers in 'practice' in the countries of study (ie. the level of public independent access to government held information).

A secondary aim of the project was to investigate whether it was possible to compile a prototype International Freedom of Information Index based on the data collected in the project.

**It is very important to point out that the FOI Index table is meant to provide an overview of the data and serve as an indication as to how well the FOI regime in question works in practice in providing independent access to information to the public. To appreciate the whole picture the Index score needs to be complemented by the qualitative comments and analysis of the system.**

## **Countries of study**

From an early stage it was decided that the study needed to be comparative to create both breadth and depth of data. Conducting the study within one country (eg. comparing the state and federal FOI legislations in Australia) was considered too narrow a scope for the project. The countries of study needed to represent a spread based on a number of parameters:

- Longevity of FOI regime
- Political system

- Level of democratisation
- Level of economic prosperity

A spread in relation to the above parameters was considered important as it was hypothesised that this would generate a spread in data useful for FOI Index purposes.

As the 'parents' of most other FOI systems, Sweden and the US were a given on grounds of maturity. They also represented mature liberal democratic systems with high levels of economic prosperity. Australia is also a mature democracy with a strong economy, with a relatively old FOI system (the federal FOI Act was passed in 1982), but with a very shaky FOI track record (Waters, 1999). The country also represents a mix of the Westminster and federal political systems. South Africa was picked as a newcomer to the FOI family (the Official Information Act was passed in 2000) with a very interesting Act since it in part applies to the private sector. South Africa was also considered interesting since it is a young, emerging democracy with social issues and big divides in prosperity. Initially Indonesia was the preferred fifth country. It was hoped that it would pass its FOI Act in time to be included in the project; however, this was unfortunately not the case. Instead Thailand was picked as a replacement (the Official Information Act was passed in 1998). Thailand represents a country with a lower level of prosperity compared to the US, Sweden and Australia. It is a semi-mature democracy with some issues relating to freedom of the press and freedom of speech and the role of the military and politics as we saw again in 2006 when the military removed Prime Minister Takshin Shinawatra from power. Thailand is also significant in that it is one of few East Asian countries that have implemented FOI

Given the timeframe and financial resources of the project five countries were considered to provide a realistic spread for this initial survey which would comprise 15 studies in all (5x3 sub studies).

## Literature review

The literature shows that while a number of comparisons of different FOI regimes have been made, these studies have focused on comparing the 'letters of the law' rather than the practical outcome - what the FOI laws deliver in actual access to information.

A study published by the Soros foundation backed Open Society Justice Initiative, OSJI, is the only one that deals with what FOI delivers in practical information access on a larger international scale. The project is quite impressive. It maps and evaluates 140 requests in 14 countries<sup>3</sup> of study (seven with FOI laws, seven without), in total the database holds 1926 requests for information (Darbshire, 2006: 11). Interestingly the OSJI study was conceived and implemented at the same time as the FOI Index pilot study, however the researchers were not aware of each other's studies. Some of the methodology is similar as are some of the aims of the projects.

The main differences are that the FOI Index focuses on the promise and the practice of FIO and whether the quality of information obtained is relevant from a political accountability perspective. The focus in the OSJI study is to evaluate whether countries with FOI laws have a higher level of access compared to non-FOI countries, to map consistency when multiple requests seeking the same information are lodged and whether the nature of the requestor (eg. journalist, non-affiliated person, business person, etc.) plays a role in the outcome of the request. Another important difference between the two studies is that the FOI Index also includes an evaluation of the protection of media whistleblowers.

So, based on the above the FOI Index is unique in three respects: firstly, it is the first project to systematically focus on journalistic use of FOI to fulfil its fourth estate role by tracking actual FOI requests on an internationally comparative basis. Secondly, it is the first study to evaluate and take into

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<sup>3</sup> One of the countries evaluated in the OSJI study is South Africa. The overall findings of the study and the findings for South Africa will be dealt with further below in the data presentation and analysis section.

account the protection and legal situation of media whistleblowers and the journalists they choose to work with. Thirdly, it lays the foundation for a future comprehensive International Freedom of Information Index.

## **Sub-study 1: The Practice**

The objective of ‘the practice’ sub-study was to track freedom of information requests. The research question to be answered was: **In practice, does FOI supply journalists (and media organisations) with independent access to government held information?** The method used was a combination of observation and semi-structured interviews.

In each country of study three experienced investigative journalists were recruited and asked to submit one FOI request each. Parameters included in the evaluation instrument that tracked the FOI requests included, among others: turn around time, processing costs, attitudes encountered among public servants, the quality of the information obtained (if any) and the appeals process. Copies of ‘the practice’ research instrument, and the other two instruments, are available from the author on request.

### **FOI topics**

It was vital to make sure that the topics chosen for the FOI requests were as similar as possible to make for a true comparison between the countries of study. The journalists were asked to pick one topic each from the three available:

1. The Prime Minister’s/President’s travel/expense account for 2002, 2003 or 2004.
2. A list of all weapons and munitions trade (import and/or export) or other relevant topic related to the defence force.
3. Refugee issues, such as: deaths/suicides in detention, number of entry refusals at border, etc.

The topics were intentionally kept quite general to allow for them to be adapted to suit the individual journalist and country. Although generating information for the reporter that could be used in a story was not an aim in itself, it was a very useful drawcard when recruiting journalists to the study. It was also necessary to allow for some variations between countries to draw up FOI requests that had a real chance of generating information. For instance: Australia has mandatory detention for refugees so one Australian journalist framed a request for reports on suicides and self harm in custody. Sweden does not have mandatory detention, but there were issues arising out of the common refugee policy formulated by the European Union. The Swedish request was based on these issues.

Each reporter submitted his or her request in writing (to allow for a 'paper-trail') asking for specific information. Below is one of the Australian requests lodged with the Department of Immigration, Multicultural and Indigenous Affairs.

Request for Information under the Federal Freedom of Information Act

Further to the provisions of the federal FOI Act, the x [program name suppressed to maintain confidentiality] Program on ABC Radio National would like to formally request the following information:

A copy of all reports/summaries into self-harm and attempted or successful suicides at all Australian detention centres for asylum seekers between 1990 and 2003. If you propose releasing the information with the names deleted of the people involved in the reports we accept this.

Any reports/estimates/summaries/calculations done on the total cost of the 'Pacific Solution', ie the Australian detention centre on Nauru between 2001 to present date.

I look forward to receiving your decision and the schedule of documents as soon as possible.

When the request had run its course, ie. when the agency had delivered a decision (in one case the decision was appealed and hence the evaluation left

pending until the appeals process had finished) an interview was conducted with the reporter based on ‘the practice’ evaluation template.

## **Sub-study 2: The Spin**

The task of interpreting and implementing FOI legislation falls on the public servants in government agencies. The public servants are in turn influenced by the senior political heads of departments who direct them in relation to policy issues. Hence it was vital to capture the attitudes towards FOI among senior politicians and public servants. To the greatest extent possible, the same or similar questions were asked in ‘the spin’ questionnaire as in ‘the practice’ evaluation template, staying true to the idea of triangulating the data.

The research question for ‘the spin’ was: **What are the attitudes towards FOI and protection of journalistic sources among leading politicians and public servants?**

Another important part of ‘the spin’ concerned the public servants’ and ministers’ attitudes towards whistleblower protection. This was not covered by ‘the practice’, since it was not possible to simulate such a situation in real life.

## **Sub-study 3: The Promise**

The third sub-study was the most straightforward of the three. The research question was: **What are the aims of the different legislations and what do they promise to deliver in terms of information access?**

Again the evaluation template used was firmly based on the first two studies and attempted to answer the same set of questions which covered, among other parameters, turn-around time for requests, lodgement fee, processing costs and avenues for appeal. In essence ‘the promise’ was a comparative content analysis of the five FOI laws that identified the issues that can inhibit the publics’ independent access to information such as long turn-

around times, non-regulated processing fees, poor scope for appeals and costly appeals processes.

## **The Freedom of Information Index**

Each sub-study generated a score for each country of study. The score was generated via a Likert scale-type coding, meaning that reply a) to each evaluation parameter/question received the score 4, b) 3 etc down to reply e) that was allocated the score 0. For instance: Sweden generated the following scores: 'the promise': 63, 'the spin': 65 and 'the practice'<sup>4</sup>: 47. Added up these total 175. The total maximum score achievable was 212 (68+76+68). The index was calculated by dividing the total score for each country by 212. In Sweden's case 175/212. The index scale ranges from 0.0 to 10.0 where 10.0 is a totally functional FOI system scoring top on all evaluation parameters across all three sub-studies. 10.0 is not a utopian score. It is quite achievable, but requires a very far-reaching FOI system including extensive legal protection of media whistle blowers and with public servants and politicians acting as information access facilitators. Sweden's score is 8.2 out of 10.0. Table 1 (starting on the next page) summarizes the scores and most important qualitative data.

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<sup>4</sup> The Swedish 'spin' score was calculated as follows: the individual scores of the 21 replies to the questionnaire were added to a total of 1362, then divided by 21 to produce the average score of 65. The individual score for the three cases in 'the practice' were similarly added up to a total of 140 and divided by 3 to arrive at the final score of 47. 'The promise' generated only one score, so no average calculations were needed.

<b>Table 1 The FOI Index</b>	Sweden Score	Sweden Comment	SA Score	SA Comment	US Score	US Comment	Australia Score	Australia Comment	Thailand Score	Thailand Comment	Overall Analysis
<b>The Promise (Max score 68)</b>	63	<p>Very far-reaching promise</p> <p>FOI system part of constitution</p> <p>Extensive legal protection of sources</p> <p>All information perceived public and accessible within days at very low or no cost</p> <p>No processing costs</p> <p>No agencies exempt from Act</p> <p>Act does not apply to private sector</p>	31	<p>Relatively ambitious legislation FOI system <b>explicitly</b> backed by constitution</p> <p>No legal protection of sources</p> <p>Most information perceived public within 30 days</p> <p>Processing costs</p> <p>No agencies exempt from Act</p> <p><b>Act applies to private sector</b></p>	31	<p>Relatively ambitious legislation FOI system backed by constitution</p> <p>No legal protection of sources</p> <p>Most information perceived public within 20 days</p> <p>Processing costs</p> <p>Several agencies exempt from Act</p> <p>Act does not apply to private sector</p>	12	<p>Very low legislative ambition</p> <p>This Act is not on the users' side. This is clearly illustrated by the 'conclusive certificate' function which effectively allows a minister to block most requests</p> <p>The evaluation showed that this Act was never meant to work. It cannot deliver on its aims and objectives in its current form</p> <p>12 agencies exempt under the Act</p> <p>Very high processing costs</p>	18	<p>Very low legislative ambition</p> <p>Act delegates much of the interpretation to the 'Information Board' consisting of the Permanent Secretaries to the most influential departments</p> <p>The Act is very non-specific on key issues such as turn around time and processing costs</p> <p>1 agency exempt</p> <p>No legal protection of sources</p> <p>Act does not apply to the private sector</p>	<p>One important reason for Sweden's high score is the extensive legal protection for media whistleblowers.</p> <p>The US and SA scores are close to 50% and must be regarded as a pass.</p> <p>Two things stand out: Sweden's source protection regime and that the SA Act applies to the private sector.</p> <p>The Australian and Thai FOI systems fail the test. These two legislations were never meant to work, not even in theory. They promise little and deliver poorly.</p>

<b>Table 1 continued</b>	Sweden Score	Sweden Comment	SA Score	SA Comment	US Score	US Comment	Australia Score	Australia Comment	Thailand Score	Thailand Comment	Overall Analysis
<b>The Spin (Max score 76)</b>	65	<p>Result backs 'the promise' virtually no gap 'promise' – 'spin'</p> <p>Respondents see themselves as access facilitators and hold information on behalf of the public</p> <p>Very positive attitudes towards source protection</p>	54	<p>Gap between 'promise' and 'spin' indicating a 'spun' version of how FOI works in practice</p> <p>Respondents see themselves as access facilitators and hold information on behalf of the public</p> <p>Very positive attitudes towards source protection</p>	48	<p>Gap between 'promise' and 'spin' indicating a 'spun' version of how FOI works in practice</p> <p>Respondents see themselves as access facilitators and hold information on behalf of the public – but more hesitant to this concept compared to Sweden and SA.</p> <p><b>Great hesitancy towards source protection</b></p>	49	<p>Extensive gap between 'promise' and 'spin' indicating a very 'spun' version of how FOI works in practice</p> <p><b>Majority of respondents say that the government own the information and do not see themselves as information access facilitators</b></p> <p>Great hesitancy towards source protection</p>	56	<p>Greatest gap between 'promise' and 'spin' in the project. Very hard to conceive how such a weak legislation could deliver the level of access indicated by the result of 'the spin'</p> <p>Respondents see themselves as access facilitators and hold information on behalf of the public</p> <p>Very positive attitudes towards source protection</p>	<p>Only Sweden shows consistency between 'promise' and 'spin'. All other countries display gaps to various degrees. A high spin score and low promise score indicates that the respondents are projecting a 'spun' version of FOI that the Act does not back up.</p> <p><b>What really stands out is that the Australian 'spin' is the only one were most respondents thought that the government owns the information This is crucial in explaining Australia's poor Index score.</b></p>

<b>Table 1 continued</b>	Sweden Score	Sweden Comment	SA Score	SA Comment	US Score	US Comment	Australia Score	Australia Comment	Thailand Score	Thailand Comment	Overall Analysis
<b>The Practice (Max score 68)</b>	47	Information generated and released within days in two cases  Very high FOI knowledge level among public servants  Last case was appealed and reached the Highest Admin court within a year at no cost to appellant – information not released	0	<b>The requests generated no information</b>  All three departments that received the FOI requests in severe breach of the time frame for decision making as set out by the Act. At the end of the study the breaches varied between 1 and 6 months	0	<b>The requests generated no information</b>  All three departments that received the FOI requests in severe breach of the time frame for decision making as set out by the Act. At the end of the study the breaches varied between 6 and 9 months	12	<b>The requests generated no information within the framework of the Act</b>  Two requests were terminated after very costly processing costs were quoted  <b>Last request received incomplete access after 9 months</b>	Incomplete  ttl	The reason for the incomplete score for Thailand is that the three journalists necessary to implement ‘the practice’ could not be recruited. The recruitment attempts went on for close to a year and exhausted all available contacts and channels. This indicates a great hesitancy among Thai journalists towards using FOI.	<b>The most important finding is that only the Swedish requests generated any information.</b>  Had the US and SA requests generated information, or even been handled according to the Acts, these two countries would have scored OK
<b>FOI Index score Out of 10.0</b>	<b>8.2</b>		<b>4.0</b>		<b>3.7</b>		<b>3.5</b>		<b>Incomplete</b>		

## **Main findings and conclusions**

Because of the failed recruitment of reporters in Thailand (see table above) a total of 12 FOI requests were lodged (three in each country of study). Disappointingly only two (both in Sweden) generated any information within the framework of the legislations. This clearly illustrates the very poor state of FOI in three of the countries where the studies were completed.

It is surprising how quickly the federal FOI system in the US has deteriorated from being one of the best functioning as late as the second half of the 1990s, to the sorry state illustrated by the 3.7 FOI Index score. The study clearly shows that the two 'template' FOI systems, Sweden and USA have gone down opposite paths since September 11 2001. The US has effectively become more secretive and does not facilitate access to information the way it used to. The shift can in part be traced to a memorandum put out by the then Attorney General, John Ashcroft immediately after the September 11 terrorist attacks in the US. The Memo is added to the FOI Act as guidance for implementation of FOI and is dated October 12, 2001. After initial assurances that the Attorney General is committed to FOI it gets down to business:

I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a

sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records (The Freedom of Information Act, 1966)

The messages to federal government agencies are clear: *be much more restrictive in releasing information. If you refuse applications and they are appealed you can count on legal assistance from the Attorney General's department.* This memo is possibly the worst blow to US federal FOI since its inception in 1967. Because the US is one of the two 'model' FOI systems, what it does in terms of FOI is of particular importance.

In June 2002 the Swedish government finished its 'Open Sweden' campaign that sought to spread information and educate the public (particularly young adults and immigrants) and public servants about FOI and openness in general. The aim of the campaign was to make Sweden into an international role model of transparency and openness in governance. Interestingly the report identified the lack of a reporting system on the functionality of Swedish FOI as a problem (Sweden, 2002: 13). This study has also identified this as a problem. The Open Sweden campaign was used to launch the attempts to export Sweden's FOI system to the European Union. Although critics point out that Sweden has slowed down the flow of information, in comparative terms its FOI regime still works well in practice, as indicated by its 8.2 FOI Index score. Unfortunately, because the US is a super power, its change will have a much greater impact on FOI globally than the Swedish attempts to become a role model in transparency.

The study clearly showed that the SA FOI legislation is quite progressive and that there is very strong support for the FOI concept among leading politicians and public servants. However, there is a major awareness and educational problem. The main reason appears to be that the agency responsible for overseeing the implementation of the FOI systems, the South African Human Right Commissions, is grossly under funded to the extent that it cannot do its job. This indicates that, although FOI is officially supported by the SA government, in practice it is not given priority. The SA findings in this study

are very similar to those in the OSJI project (described above in the literature review), where SA also performed poorly (Darbishire, 2006).

It is hard to take the Thai 'spin' data seriously because of the great gap in scores between 'the promise' and 'the spin'. However, as long as 'the practice' is pending, it is not possible to comment further on Thailand.

In many respects Australia is the worst case in the study. Not only did it score lowest, it also projects what turns out to be a misleading and even false image of having a functioning mature FOI system as part of a mature democracy. The study clearly shows that the federal Australian FOI regime is completely dysfunctional and not worthy of a country that prides itself of being a mature liberal democracy.

The most common response to FOI requests in this study was no response (all six requests in the US and SA were met with silence and one of the Australian requests had no response for three months). This was also the most common outcome in the OSJI study where 47 per cent of the lodged request drew a 'mute refusal' (Darbishire, 2006: 38). This indicates that there is a great need for vigorous use of FOI by not only journalists but every constituency to drive home the point that this is not an acceptable performance. Interestingly the OSJI study shows that newcomers to the FOI family such as Armenia outperform mature FOI countries such as France (ibid).

For further discussion and analysis regarding the 'promise and practice' gap and reliability and validity the reader is referred to Lidberg, 2008.

## **FOI reform since the pilot study**

The audit of developments in the countries of study since 2005 will start with the two 'template' systems the United States and Sweden.

After years of stalling the federal FOIA Reform Bill passed the US Senate in August 2007 (Freedominfo, 2007). It is important to note that the delay was partly caused by a hold on the Bill placed by the Republican Senator Jon Kyl on behalf of the Department of Justice (the same department that

added the memo above that is credited with the breakdown of federal FOI in the US post September 11, 2001).

The most important changes and amendments are as follows:

Agencies will be subject to a penalty if they delay processing a FOI request.

A requestor can claim attorney's fees and other costs for appealing a rejected application.

Tracking number will be assigned to requests that take longer than ten days.

Most importantly: the Bill stipulates the creation of a FOI Ombudsman situated with the National Security Archives and Records Administration, not the Department of Justice. The main task of the Ombudsman would be to offer alternatives to litigation in the form of mediation between requestors and agencies (*ibid*).

The President signed off on the Bill at the end of 2007. However, it should be noted that the Bush administration is attempting to house the new Ombudsman with the Department of Justice for reasons obvious in the discussion above (*Editorial, 2008*).

The implementation of the reformed fed US FOI law is still being discussed and debated. However, changing the law is one thing making it work in practice is an entirely different matter as this study has shown time and again. Most commentators seem to agree that little will change in the US until the administration changes at the end of the 2008 (*Freedominfo, 2007*). However, it is worth pointing out that the reform Bill does have bi-partisan support and that it is a step in the right direction.

Little has changed in Sweden since the pilot-study. There is, however, potentially a considerable change underway to the two core FOI laws, Tryckfrihetsförordningen (TF) and Yttrandefrihetsgrundlagen (YGL). The laws

are under review as they are seen not to adequately cover new electronic media such as websites and films downloaded via the web. The parliamentary review committee has put forward a few far-reaching suggestions such as:

- collapsing TF and YGL into one law
- abolishing TF and YGL and allow the European Union equivalent law to cover FOI

These suggestions would seriously undermine the far-reaching Swedish FOI system, however, judging from the debate and discussion the above recommendations will not be made law. It seems far more likely that the current laws will stand and that a few minor amendments will be made to accommodate new technology (Fisherström, 2007).

There is still debate about the Secrecy Act. This Act is not part of the constitution like the other FOI laws. This makes it possible for the incumbent government to change the act to limit the extent of the FOI system. Some researchers and FOI advocates have been calling for the inclusion of the Secrecy Act in the constitution (Svenska Journalistförbundet, 2008).

The new Kevin Rudd Labor government made far-reaching promises of FOI reform during the 2007 Australian federal election campaign. He committed to reviewing the very long turn-around times, excessive request processing costs and, most importantly, investigate the prospects of a federal FOI Commissioner (on similar grounds as the US FOI Ombudsman described above). The party also promised review of the current draconian public disclosure laws (Acts, 1914) under which public servants can be prosecuted for any information passed on to a journalist under any circumstances. No public interest test currently applies to this arcane legislation.

Closely connected to this is the matter of shield laws for journalists. There has been a number cases in Australia where journalists have refused to reveal their sources in court proceedings (most commonly where public servants have been taken to court based on Section 70 in the Federal Crimes

Act) and been put in jail and/or fined large sums of money. The most recent case in 2007 where two journalists were threatened with jail and finally fined AU\$ 7000 each for not revealing a source in a case of the highest public interest (ABC, 2007). This led to the passing of federal shield laws for journalists based on the version used in the state of New South Wales. Just like the NWS law, the federal one has been criticised for leaving too much up to the judge on how and when to implement the shield law protection.

However, as has been pointed out above, FOI reform is easy to promise and hard to deliver. The jury is still out on the extent of the federal FOI reforms in Australia. The previous Howard government had a blue-print for change put together by the Australian Law Reform Commission (ALARC) in 1996. The ALARC put forward 106 recommended changes to federal FOI (ALARC, 1996). Most of the changes are still valid. The Howard government acted on none of the core recommendations. At the time of writing there is still no evidence whatsoever that the Rudd government will either.

Towards the end of the pilot-study data collection phase a military coup removed the then Prime Minister of Thailand, Thaksin Sinawatra, from power. Needless to say, FOI has not particularly flourished since in the country.

There has been little change in South Africa since the pilot study. The South African Human Rights Commission (SAHRC) oversees the compliance with the Act and says in its 2007-07 annual report:

Not much progress has been made in instilling a culture of openness within the public sector since the enactment of PAIA [Public Access to Information Act] (SAHRC, 2007: 9).

The Act demands that all agencies (including private companies) that fall under the Act submit an annual report to SAHRC. The commission is worried about the lack of reporting.

In essence, the Commission has found that the number of reports submitted have not reached the ceiling anticipated. The cause for alarm has not been restricted to non-compliance by any one sector of public sector, it is instead directed at almost all public bodies across the board (ibid: 106).

This last point clearly connects to one of the overarching themes of comparative FOI research – political will. FOI can be reviewed, monitored and changed to eternity and back (which in some cases it has been), but little will change in terms of practical functionality until there is a serious and long-term commitment to change the attitudes among those that administer and interpret FOI.

The survey study, 'the attitudes', in the pilot project clearly illustrated the vast differences in attitudes between countries towards FOI. One of the most important questions asked in the questionnaire was:

7) Which of the following statements is closest to the attitude held by yourself and your staff?

- a) the government holds information on behalf of the people and I should endeavour to deliver the information requested as soon as possible
- b) the government holds information on behalf of the people but it is not my role to serve as an 'information facilitator' for an FOI applicant
- c) the government owns the information but increased openness and transparency is good
- d) the government owns the information and decides who will have access
- e) the government owns the information and decides who will have access and increased openness and transparency is not good

This is the analysis of the Australian and Swedish responses to this question:

The score 55% [Australia] can be interpreted as an acceptable score, a slim majority, but still a majority. However, if you look at the individual responses you note that only ONE of the Australian respondents picked a). The other four picked c) and d). This indicates that a majority of respondents hold the attitude that the government owns the information, not the public. This is a crucial difference to, for instance, the Swedish score where all but 3 of the Swedish respondents picked reply alternatives a or b. This clearly shows that Swedish public servants and politicians take the view that the government does not own the information. The importance of this mindset cannot be overemphasised. (Lidberg, 2006: 180)

Although very descriptive, the differences in responses do not explain why the differences in FOI functionality exist. This brings us back to the genesis of

the project – why is it that in some countries FOI works well, while in others, that are seemingly very similar in terms of values and with mature liberal democratic systems, FOI is largely dysfunctional?

## Values and the FOI Index

The above question inevitably leads to the issue of values. It is tricky and at times dangerous to generalise about the values that underpin how countries and different political systems function. After an evaluation of various attempts to capture and evaluate different value systems, it was decided that Hofstede's five 'Cultural Dimensions' provides the most cohesive and comprehensive assessment to date (Hofstede, 2001).

Hofstede's initial value survey was conducted using large sample groups from the large number of nationalities represented among the employees of the IBM Corporation in the 1960s. Since then the surveys have been replicated outside IBM numerous times to include most countries.

In sum: using questionnaires Hofstede formulated four 'Cultural Dimensions' that could be used to describe the differences in values between countries (Hofstede, 2008).

**The Power Distance Index (PDI)** is the most important of the dimensions. The PDI is 'the extent to which the less powerful members of organizations and institutions (like the family) accept that power is distributed unequally (ibid).' The higher the index score the more acceptance for unequal distribution of power.

**Individualism (IND)** refers to the degree 'to which degree individuals are integrated into groups (ibid).' The counter pole to individualism is collectivism. In this indicator collectivism 'has no political meaning: it refers to the group, not the state (ibid).'

**Masculinity (MAS)** requires a more lengthy definition.

'MAS versus its opposite, femininity refers to the distribution of roles between the genders which is another fundamental issue for any society to which a large range

of solutions are found. The IBM studies revealed that (a) women's values differ less among societies than men's values; (b) men's values from one country to another contain a dimension from very assertive and competitive and maximality different from women's values on the other side, to modest and caring and similar to women's values on the other. The assertive pole has been called "masculine" and the modest, caring pole "feminine". The women in feminine countries have the same modest, caring values as the men; in the masculine countries they are somewhat assertive and competitive, but not as much as the men, so that these countries show the gap between men's values and women's values (ibid).

**Uncertainty Avoidance Index (UAI)** 'deals with a society's tolerance for uncertainty and ambiguity (ibid).' A high index score indicates that the public is more open to change compared to a country with a low score.

During the rise of the South East Asian 'tiger economies' in the 1990s, Hofstede added a fifth dimension: **Long Term Orientation (LTO)**. However, data is not available for all countries, hence this indicator will not be addressed in this paper.

In table 2, the Cultural Dimensions scores for the countries in the FOI Index pilot study can be seen (please see next page).

<b>Table 2</b>	PDI	IND	MAS	UAI
Sweden	35	77	7	23
USA	45	95	58	42
Australia	42	95	67	47
South Africa	52	70	68	42

Source: Hofstede, 2008

**PDI:** The low Swedish score displays low tolerance for un-equal power distribution. This manifests itself in flat organisational structures compared to the other countries. To make a flat structure work, there is great need for information sharing and accountability – this could be one possible explanation for the well functioning FOI system in Sweden.

**IND:** the higher the score, the less collectivistic a society is. All countries if study in the FOI Index pilot are quite individualistic, however, more so Australia and the US. As Sweden and South Africa are quite close, it is hard to see how this indicator could have any bearing on the FOI Index scores.

**MAS:** this is where it gets really interesting. Sweden clearly stands out with its extremely low MAS score. This indicates that caring and nurturing values are very strong in Sweden. This is exemplified by an extensive well-fare system. This could be relevant to the FOI Index score insofar as the caring and nurturing values manifest themselves in an open and transparent system of governance.

**UAI:** Again, Sweden is the odd one out with a low uncertainty avoidance score indicating a high tolerance for societal change. This could also be relevant to the functionality and acceptance of a far-reaching FOI that constantly needs up-dating and changing to adapt to rapid changes within society.

The use of the Hofstede indexes to seek possible explanations for the differences in FOI functionality between countries is in its infancy, however, based on the analysis above there could be great scope for further exploration.

## **The future**

It is important to keep in mind that the FOI Index is a prototype. What is needed now is to run the studies in as many countries as possible to allow for cross analysis of reliability and validity. Indeed it is highly desirable to increase the number of data points collected in all three sub-studies. 'The practice' could do with between 5-20 journalists lodging requests in each country of study. In the case of 'the spin' it is probably preferable not to extend the sample group, but it would be highly desirable to increase the response rate by re-sending and perhaps e-mailing the questionnaires as a follow up. Another possible avenue would be to complement 'the spin' with in-depth interviews with leading politicians and public servants.

Imagine implementing the above in 68 countries. It is a rather large project, but in the end most certainly worth it. Think of the database that could be created. It would be the first of its kind and it could be used for a multitude of purposes: as an indicator of the level of transparency in a political system, a practical guide for international investigative journalists, detailed comparison and analysis of why some FOI systems work and others do not. When the index gains momentum, perhaps countries will aspire to getting a good score. In this way the index could become a powerful tool for international FOI advocates.

However, a project of this magnitude requires extensive international collaboration. The Open Society Justice Initiative study solved this by working with a few prominent civil society groups/organisations in each country of study.

This is certainly one possible avenue, however, I propose to broaden this to include academic institutions and other non-government organisations with an interest in the development and monitoring of FOI. So, I close this paper by extending an invitation to help build the first comprehensive International Freedom of Information Index.<sup>5</sup>

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<sup>5</sup> For more information on research collaboration, please see my research homepage on: [wwwstaff.murdoch.edu.au/~jlidberg/](http://wwwstaff.murdoch.edu.au/~jlidberg/).

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