Chapter 5

:: Public Sector Information ::

Government information is key to most of the work undertaken by lawyers. Not only "black letter" law from OPSI and the courts, but also "grey" matter published on departmental and agency websites are (or should be) consulted frequently to keep abreast in particular fields and advise clients effectively. The internet has transformed the availability of such information. But as that information has proliferated and become easier to access, so too have our expectations risen. Surely, having paid for its collection through our taxes, it should all be available for free to us for all purposes? And with the recent advances in internet techniques and technologies, should government remain Big Brother or should it not accommodate and take advantage of what citizens can do to participate?

In this chapter **Nick Holmes** reviews the current options for accessing public sector information and describes the developments that are opening up public sector information and laying the foundations for "Gov 2.0".

Access to public sector information

The vast majority of mainstream information produced by central government and most government agencies since the late 1990s is now published on the web and all government services of any significance are online. However, the information and services are spread over literally thousands of websites.

As part of its Transformational Government strategy (see further under Towards Gov 2.0, below), most of these websites will close in the near future. Almost all citizen and business e-services will migrate to Directgov (www.direct.gov.uk) and Businesslink (www.businesslink.gov.uk) and all e-transactions will be provided through these two primary websites. All government departments will have one corporate website, utilising shared infrastructure, and all other sites will be closed.

Thus it is envisaged that Directgov and Businesslink will transform from portals to supersites serving citizen and business needs respectively; most "hard" government information will remain on or migrate to the core departmental websites but these will be restructured.

Accessing online public sector information

Readers are no doubt reasonably conversant with the key legal government websites, but accessing "grey" materials from departmental and agency websites — green and white papers, consultations and other reports and policy documents — is subject to the vagaries of the various sites. Pending the promised rationalisation of this information, what other avenues for access are there?

Portals and collections

For detailed and comprehensive coverage of government news, consultations and reports, the following is a selection of sites that will be of use:

- The Government News Network (GNN) (www.gnn.gov.uk) provides departmental, national and regional government news for the public sector.
- Wired-Gov (www.wired-gov.net) offers a comprehensive point of reference for official UK government and public sector news with live feeds from more departments, agencies and organisations than any other news service available. The service is free to the public sector, with annual subscription fees for the private sector, starting at £125 per annum for a single user.
- Official Documents (www.official-documents.gov.uk) from TSO is the official reference facility for command and departmentally-sponsored House of Commons Papers. All command and House of Commons papers, as well as key departmental papers, from 2005 onwards are available for free access on the site in PDF format.
- DBERR's Better Regulation Executive provides a useful list of all government consultation pages at www.cabinetoffice.gov.uk/regulation/consultation/government/.
- Info4local (www.info4local.gov.uk) is a one-stop information gateway for local public services.

Search

Government websites utilise a variety of structures and search tools which are often confusing and unsatisfactory and you will usually achieve quicker results consistently using your favoured web search engine. To search a specific website, use the site search parameter: for example, prefixing a search with **site:justice.gov.uk** in Google will find results only on the Ministry of Justice site.

Google now offers a Custom Search Engine (CSE) facility (www.google.com/coop/cse/) which provides an easy way to search simultaneously a specified selection of websites or subsites. I have created an example of a simple such CSE to search key government departmental and agency sites on infolaw at www.infolaw.co.uk/cse/bygov.htm.

RSS

Increasingly government websites are providing RSS feeds to deliver latest information, thus avoiding the need for you to continually revisit the websites themselves to keep abreast of developments. Some currently provide feeds only of their latest press releases: for an aggregation of these feeds, see www.infolaw.co.uk/lawfeeder/allfeeds.asp?lwfct=Government+Departments. Others, however, provide a wide range of feeds of latest news and policy documents in specific areas of activity. For example, the Department for Communities and Local Government provides separate feeds of news and consultations in all its areas of responsibility: see the list of feeds at www.communities.gov.uk/corporate/newsroom/feeds/.

Accessing off-line or unpublished information

Given the ease of publishing information online nowadays, the assumption might be that if certain public sector information is not available online, the government is deliberately withholding it. However, before firing off a Freedom of Information Act request for the required information, one should first pursue the following avenues:

Publication schemes

Under the FoIA all public authorities are obliged to adopt and maintain a Publication Scheme specifying:

- the classes of information which they publish or intend to publish,
- the manner in which the information is or is intended to be published, and
- whether the material is or is intended to be made available to the public free of charge or on payment.

The purpose of the publication scheme is to ensure that a large amount of information is made readily available to members of the public, ie without the need for specific consideration under the FOIA, and to inform the public of the extent of material that is available.

Publication schemes are usually accessible from government websites via a direct, main menu link or via its FoIA section.

FoIA disclosure logs

Many public authorities also maintain disclosure logs, listing and providing access to previously-made FoIA requests. These are often part of the authority's publication scheme but are not required by the Act. A useful list of disclosure logs is on the UK Freedom of Information Act Blog site (www.foi-directory.org/).

The Information Asset Register

The Government's Information Asset Register (IAR) (www.opsi.gov.uk/iar/) is a database of information resources held by the UK Government, concentrating on unpublished resources. It enables users to identify, from one single source, the information held in a wide variety of government departments, agencies and other organisations. It will help identify what information a department holds, how useful that information is and how to access it. Each department is responsible for creating its records within its own departmental asset register. These are then submitted to the central IAR at HMSO which covers all government departments and other Crown bodies.

Re-use of public sector information

The supply of public sector information does not automatically give the recipient of the information the right to re-use it. Most PSI, being produced by Crown bodies, is subject to Crown copyright, and that produced by Parliament is subject to parliamentary copyright, both of which are administered by HMSO (now part of OPSI), and permission may be needed to reproduce it. OPSI publishes a series of Guidance Notes designed to guide, alert and advise on a range of publishing, copyright and access issues in relation to Crown and Parliamentary copyright materials: see www.opsi.gov.uk/advice/crown-copyright/copyright-guidance/.

Fair dealing and Crown copyright waiver

In general, brief extracts of most materials may be reproduced under the fair dealing provisions of the Copyright, Designs and Patents Act 1988 (sections 29 and 30) for the purposes of research for non-commercial purposes, private study, criticism, review and news reporting. Further,

the copyright in many materials has been waived, meaning you can reproduce this material freely. These materials include government press notices, legislation and explanatory notes on the legislation, ministerial speeches, consultation documents, documents featured on official websites (except where expressly indicated otherwise), headline statistics and unpublished public records.

Click-Use licensing

For material that does require licensed permission, OPSI implement a "Click-Use" licensing scheme (www.opsi.gov.uk/click-use/). There are three types of Click-Use licence:

- the PSI Licence which covers Public Sector Information other than "value-added" information
- the Valued Added Licence which covers value-added Crown copyright information
- the Parliamentary Licence which covers Parliamentary copyright information.

"Value Added" is the term used by OPSI relating to PSI that incorporates additional data or functionality that goes beyond what it considers to be its public duty. There is no charge for the PSI Licence or the Parliamentary Licence. There may be a charge for the Value Added Licence depending on the type and amount of Crown copyright information being re-used.

The EU Directive on the Re-use of Public Sector Information

Public sector bodies collect, produce and disseminate a huge amount of information, accounting for between 15 per cent and 25 per cent of the total data used in e-commerce trading. The value of this industry in Europe has been estimated at €496 billion.

The European Commission views the exploitation of the public sector information in Europe as having huge commercial potential, and to realise this potential decided that there would need to be EU-wide legislation in order to harmonise the currently disparate legislative provisions across the different member states. As a result, in 2003 the European Union passed Directive 2003/98/EC on the Re-use of Public Sector Information whose aim is to regulate the exploitation of public sector information resources and to harmonise the rules across the European Union. The Directive provides a minimum set of standards across the EU Member States. The Member States are, however, free to create a more extensive framework of rules to allow for a greater range of re-use.

The Directive aims to remove obstacles that stand in the way of re-using public sector information and, in doing so, to stimulate the development of value added products and services across Europe. The UK has already moved a long way down the path of assisting this process by making most central government information available for re-use at marginal cost, in practice usually for free. There are some clearly delineated exceptions to this charging policy, particularly for trading funds such as the Met Office and Ordnance Survey, but the rules are generally clear and well understood by both the public sector and industry. The UK has been recognised by the European Commission as being one of the most advanced, and coherent, member states in terms of its policies on the re-use of public sector documents.

The Re-use of Public Sector Information Regulations 2005

The UK has implemented the EU Directive through the Re-use of Public Sector Information Regulations 2005 (SI 2005 No. 1515) which came into force on 1 July 2005. The Regulations do not

impose any obligation on public sector information holders (PSIHs) to license re-use but regulate the conditions under which they do so. Thus PSIHs may impose conditions on the re-use of information, providing the conditions do not unnecessarily restrict the way in which a document can be re-used or restrict competition, and it must not discriminate between applicants who make a request for re-use for comparable purposes (or between an applicant's and the public sector body's re-use). HMSO's "Click-Use Licence", mentioned above, is the standard form for such conditions.

The Regulations prohibit public sector bodies from entering into exclusive arrangements unless this is necessary for the provision of a service in the public interest and any exclusive arrangement already in existence that does not satisfy the public interest test must be terminated by 31 December 2008.

There is no obligation on public sector bodies to create or adapt documents in order to comply with a request to re-use information. PSIHs can leave documents in the format and language in which they were created and there is no obligation to provide extracts from documents where this would involve disproportionate effort.

The charges that may be levied are strictly regulated. In particular, the total income from the charge for re-use must not exceed the sum of the "cost of collection, production, reproduction and dissemination of the documents" and "a reasonable return on investment". The latter is left open to interpretation, but the scope for large profits will be limited and charges will need to be justified. If possible PSIHs must establish standard charges for re-use, in accordance with applicable accounting principles and based on a reasonable estimate of demand, and make these charges available to the public.

Finally, aggrieved applicants, having been through the PSIH's internal complaints procedure can appeal, culminating in reviews by OPSI and finally by the Advisory Panel on Public Sector Information.

Opening up public sector information

The re-use regulations are all well and good. But how level is the playing field currently?

The Office of Fair Trading, in its market study on *Commercial use of public information* published in December 2006 (www.oft.gov.uk/advice_and_resources/resource_base/market-studies/public-information), found that more competition in public sector information could benefit the UK economy by around £1 billion a year. Of most value are mapping data collated by Ordnance Survey, weather observations collected by the Met Office, property information held by Land Registry and family records held by the National Archives. The underlying raw information from these sources is vital for businesses wanting to make value-added products and services.

PSIHs are usually the only source for much of this raw data, and although some make this available to businesses for free, others charge. A number of PSIHs also compete with businesses in turning the raw information into value-added products and services. This means they may have reason to restrict access to information provided solely by themselves.

The study found that raw information is not as easily available as it should be, licensing arrangements are restrictive, prices are not always linked to costs and PSIHs may be charging higher

prices to competing businesses and giving them less attractive terms than their own value-added operations.

The report also found that much of the legislation and guidance which aims to ensure access to information is provided on an equal basis lacks clarity and is inadequately monitored. As a result the full benefits of public sector information are not being realised.

The OFT concluded that PSIHs should make as much public sector information available as possible for commercial use/re-use; ensure that businesses have access to public sector information at the earliest point that it is useful to them; and provide access to information where the PSIH is the only supplier on an equal basis to all businesses and the PSIH itself.

The DTI (now DBERR) finally responded to the study in June 2007. While welcoming the recommendations and "able to accept the majority at this point", the DTI felt that "there are some that require further work". In particular, it is wary of tampering with the trading fund model, under which – according to the OFT – the government bodies compete unfairly with the private sector through monopolistic supply of "refined" products which are expected to provide a return to the Treasury.

There is an ongoing campaign run by *The Guardian* aimed at pressurising the government into opening up access to raw public sector information and levelling the playing field for commercial licensing. The Free Our data campaign uses a blog as its central repository and communications point, so it is easy to add more information to the cause (www.freeourdata.org.uk/blog/). *Information World Review*, the leading publication for information professionals, has recently joined the campaign as an official partner.

The Department for Constitutional Affairs (as it then was) took an unlikely lead in this. As we saw in Chapter 1, the "freeing" of the Statute Law Database marked a sea-change in the general thinking about the way government information becomes available.

Towards Gov 2.0

The report *Transformational Government: Enabled by Technology,* published by the Cabinet Office in November 2005 (www.cio.gov.uk/transformational_government), was commissioned by the Prime Minister who prefaced it as follows:

> The world is changing around us at an incredible pace due to remarkable technological change. This process can either overwhelm us, or make our lives better and our country stronger. What we can't do is pretend it is not happening. Government has to respond to keep up with the hopes and aspirations of citizens and business, to remain efficient and trustworthy.

The report set out an ambitious vision for the delivery of public services in the 21st century, using the power of new technologies to change the way government works. Achieving that vision will require three key transformations:

- services designed around the citizen or business, not the provider, and provided through modern, co-ordinated delivery channels
- a shared services culture with efficiencies released by standardisation, simplification and sharing

- a broadening and deepening of government's professionalism in its delivery.

In its Progress Report, published in January 2007, as already mentioned at the beginning of this chapter, many of the plethora of government websites are to be closed — 551 are slated for closure in the initial round — with only 26 core websites certain to be retained: the core Departmental websites plus DirectGov and Business Link to which services from the closed websites will migrate.

This move is "the natural next step for Government as citizens shift their interest to 'supersites' such as … Directgov". While one may question whether we are indeed more interested in supersites, there is no doubt that there is much overlap and uncertainty, that many government websites are vanity websites, serving no useful purpose, and that some rationalisation is long overdue. The decision gives effect to the earlier proposal by Sir David Varney in his review, *Service transformation: A better service for citizens and businesses, a better deal for the taxpayer*, commissioned by the Treasury, that:

> by 2011, almost all citizen and business e-services migrate to Directgov and Businesslink.gov and all e-transactions are provided through these two primary websites. This means that all departments will have one corporate website, utilising shared infrastructure and all other sites will be closed.

Citizen participation

The Power of Information is an independent report commissioned by the Cabinet Office to ensure Government acts as a leader in understanding changes in communication and information technology. Launching the report in April 2007, Tom Steinberg, founder and Director of mySociety, who authored the report with Ed Mayo, Chief Executive of the National Consumer Council, said:

> Around the world, the first phase of Government use of the internet is coming to an end with public services and information largely online. We are now at the start of a new era, where Government starts to learn how to support citizens' own ways of making, finding and re-using information online.

The report (www.commentonthis.com/powerofinformation/) argues that government could now grasp the opportunities that are emerging in terms of the creation, consumption and re-use of information. Current policy and action is not yet adequate to grasp these opportunities.

It identifies the rise of two new groups of citizens exploiting developments on the internet. The first comprises people who create public service information on the internet, such as Netmums (www.netmums.com), an online community for parents or expectant parents, and TheStudentRoom (www.thestudentroom.co.uk), mainly about homework and university applications. The second comprises those who take information from various sources, including government, and mix it together to make new tools and services — more colloquially and widely known as "data mashers". This group includes businesses, non-profit organisations and normal internet users who want to mix and combine information to generate valuable new forms of information and new services.

The report recommends a strategy in which government:

- welcomes and engages with users and operators of user-generated sites in pursuit of common social and economic objectives;

- supplies innovators that are re-using government-held information with the information they need, when they need it, in a way that maximises the long-term benefits for all citizens; and
- protects the public interest by preparing citizens for a world of plentiful (and sometimes unreliable) information, and helps excluded groups take advantage.

The Cabinet Office has responded positively to the report, saying that the Government will engage in partnership with user-led online communities, not attempt to replicate them:

The Government should work in partnership with the best of citizens' efforts, not replicate them. If we really want to deliver better public services, the best way to do that is bottom up. Change is driven by better feedback, open information and more ways in which citizens can make their voices heard about what matters to them. The challenge is for all public bodies to think about how they can respond to the challenges described here.

Citizens themselves are already helping each other in online communities. If 30,000 parents were meeting in a park or football stadium to share information and tips about parenting, government would take notice. That they are doing it online simply means we have to find different ways to take their efforts just as seriously.

Nick Holmes is joint editor of the Legal Web series of e-books. His full biography and contact details are in the preliminary pages.