In the Experience of Information Commissioners

The Information Commissioners' International Exchange Network Survey 2014

November 2014

Centre for Freedom of Information

About the Centre for Freedom of Information

The Centre for Freedom of Information was jointly established by the University of Dundee and the Scottish Information Commissioner and is based in the School of Law, University of Dundee, Scotland. The CentreFoI is focused on the implementation, interpretation and enforcement of laws which provide rights to information .

About the International Advisory Board

The CentreFoI's International Advisory Board consists of

- James Popple, Information Commissioner, Australia
- José Eduardo Romão, Ombudsman - General, Brazil
- Suzanne Legault, Information Commissioner, Canada
- Alejandro Ferreiro Yazigi, Information Commissioner, Chile
- Anamarija Musa, Information Commissioner, Croatia
- John Fresly, Vice-Chairman, Information Commissioner, Indonesia

The Executive Director of the Centre, Kevin Dunion, is the former Scottish Information Commissioner

About the Information Commissioners International Exchange Network

The CentreFoI seeks the active involvement in the ICIEN of those who have a formal appellate or mediating role in dealing with appeals and complaints, with regard to access to information requests. Commissioners, Ombudsmen etc. at any level -- national, state, provincial or municipal are entitled to be part of the Network.

This work is assisted by funding from the Open Society Foundations.

About this Survey

This 2014 survey is the third conducted under the auspices of the Information Commissioners International Exchange Network (ICIEN). Direct comparisons between the results of this survey and those conducted in 2013 are not made. (The number taking part in this survey is greater. Some of those who participated in 2013 did not do so this time. By contrast a significant number of Commissioners who contributed to this survey had not responded to either of the surveys conducted last year.) However some limited reference is made to previous results for the purposes of illustration.

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1. FINANCIAL RESOURCES OF COMMISSIONERS/ OMBUDSMEN

1.1 How budgets for 2014 compare to 2013

Commissioners had mixed expectations as to their financial budget this year. Half expected their budgets to remain the same, whilst the remainder were evenly split as to whether their budgets would increase or diminish.

Table 1.1 - How will your financial budget for this year (2014) compare to the last financial year (2013)?

Increase	25%
Stay the same	50%
Decrease	25%

1.2 Are resources sufficient?

Last year (2013) the overwhelming percentage of Commissioners (84.5%) were of the opinion that their financial and staff resources were insufficient for fulfilling the responsibilities of their office. Whilst a majority of Commissioners in this 2014 survey still maintain that they have insufficient resources, the percentage saying so (59%) drops markedly and only 5.4% regard their resources as being not at all sufficient compared to nearly a quarter (22%) last year.

Table 1.2 --- In your opinion, how sufficient are your financial and staff resources for fulfilling the responsibilities of your office

	2013	***2014***
Wholly sufficient	3.0%	**3.6%**
Sufficient	12.5%	**37.5%**
Insufficient	62.5%	**53.6%**
Not at all sufficient	22.0%	**5.4%**

2. APPEALS

2.1 Volume of appeals

Most Commissioners expect the number of appeals/complaints which they receive this year to increase.

Table 2.1 - This year (2014), do you expect the number of appeals you receive to:

	Response %	*Response Count*
Increase substantially	**26.4%**	**14**
Increase slightly	**39.6%**	**21**
Stay the same	**28.3%**	**15**
Decrease slightly	**1.9%**	**1**

2.3 Most and fewest appeals

The actual number of appeals received varies greatly. As might be expected it partly this depends upon population in the Commissioner's geographical jurisdiction. However it may also depend on the nature of the cases received by Commissioners. If for example requests for personal information come within the scope of freedom of information laws then this may increase the volume of appeals, compared to those which exclude personal information requests.

Table 2.2.1 - Most appeals – those receiving more than 1200 in 2013

United Kingdom	**5151**
Chile	**2321**
Canada	**2081**
Distrito Federal, Mexico	**2078**
New Zealand	**1453**
Ontario, Canada	**1285**
Brazil	**1219**

Table 2.2.2 - Fewest appeals – those receiving fewer than 20 in 2013

Indonesia – East Kalimantan	**18**
Malta	**14**
Azerbaijan	**12**
Ecuador	**12**
Georgia	**10**
El Salvador	**2**

3. INVESTIGATIVE AND DECISION-MAKING PROCESSES

3.1 Compliance with Commissioners Decisions

One of the fundamental distinctions in the appeal process is the nature of the decision taken by Commissioner/ Ombudsman. Is it binding upon the authority and has to be complied with, or is it a recommendation only?

As Table 3.1.0 shows, more than one-third of the respondents to this survey issued decisions which were recommendations only.

Table 3.1.0 - When determining an appeal, what is the nature of your decision?

	Response %	*Response Count*
The decision has to be complied with	**62.3%**	**33**
The decision is a recommendation only	**37.7%**	**20**

The likely crucial matter for appellants is the extent to which decisions, including recommendations, are actually complied with (particularly if it requires the release of information or is otherwise adverse to the authority).

Respondents were asked to indicate the degree to which their decisions were complied with (see Table 3.1.1). Overall it would appear that the appellate process is reasonably effective. Nearly 70% say that their decisions are always complied with or compliance occurs in a significant majority of cases. However in nearly a quarter of cases, compliance occurs in just a majority of decisions.

Table 3.1.1 - Are your decisions complied with:

	Response %	*Response Count*
Always complied with	**34.0%**	**18**
Significant majority complied with	**35.8%**	**19**
Majority complied with	**22.6%**	**12**
Majority not complied with	**5.7%**	**3**
Significant majority not complied with	**1.9%**	**1**

For a few Commissioners/ Ombudsman there are clearly problems in acting as an effective appellate body. In Georgia, the Republic of Kosovo and Czech Republic a majority of decisions are not complied with, and in Bangladesh a failure to comply affects a significant majority of decisions.

3.2 Requirement or recommendation- does it make a difference?

Does it makes it make any difference to the response by authorities if decisions issue from a Commissioner who makes recommendations only, as compared to those from Commissioners which require to be complied with? Looking at the underlying data in detail it would appear that it makes a significant difference, (see Table 3.2 below).

- Only Commissioners whose decisions require compliance report that they are always complied with (which is achieved by 55% of such Commissioners). None of the Commissioners who make recommendations only have all of their decisions complied with.

- 85% of Commissioners whose decisions require compliance report that all or a significant majority of their decisions are indeed complied with.

- By contrast only 45% of those Commissioners who make recommendations secure compliance with a significant majority of their decisions.

Table 3.2 - Compliance with Commissioners decisions which are requirements as compared to those which are recommendations

Answer Options	Commissioners decisions which are requirements % Compliance	Commissioners decisions which make recommendations % Compliance
Always complied with	55%	0%
Significant majority complied with	30%	45%
Majority complied with	12%	40%
Majority not complied with	0 %	15%
Significant majority not complied with	3%	0%
Never complied with	0	0

On the basis of these figures it is clear that that there is a much greater degree of non-compliance with decisions which are issued by Commissioners/Ombudsmen who can make recommendations only. This is likely to reinforce the view that when drafting new access to information legislation appeals against refusal by authorities to disclose information should be determined by bodies which issue decisions requiring compliance, as opposed to those which make recommendations only .

3.3 Conducting Investigations

In coming to a decision Commissioners often have to conduct an investigation. We know this is likely to involve viewing the information which has been withheld from the requester. Our previous survey showed that this is always or usually done by 88% of Commissioners prior to coming to a decision. However there are a variety of other investigative powers and sanctions which may be employed. In this survey we have sought to establish the nature of such powers and the frequency with which they are used by Commissioners.

Table 3.3 - Do you have any of the following statutory powers and if so how frequently have you used them? (Figures shown are numbers of responses, not percentages)

Powers	*No*	*Yes*	*Used Often*	*Used Sometimes*	Never Used
a). Compel individuals to give evidence or make an oral statement	25	28	8	14	4
b). Take statements under oath	34	18	1	10	6
c). Conduct public hearings	24	27	8	8	9
d). Conduct a search of premises	25	26	3	10	1
e). Seize documents/equipment etc.	28	24	4	8	7
f). Go to court to enforce	31	20	2	9	8
g). Enforce compliance with your decisions directly (e.g. by imposing a penalty)	32	17	6	7	3
h). Impose a fine or other penalty	37	14	2	9	3
i). Recommend disciplinary action	21	29	5	15	9
j) Settle appeals/ complaints using mediation, (instead of formal determination)	17	35	21	13	0

Legal searches and taking of statements - The more intrusive powers are not often used by Commissioner even where available to them. Only Bangladesh often takes statements under oath; premises and equipment are said to be often searched by Azerbaijan, Malta and Campeche (Mexico); documents and equipment are said to be seized often by Campeche and Michoacán (Mexico), Honduras and Denmark. In Michoacán and Indonesia Commissioners often go to court to enforce their decisions.

Sanctions - Some Commissioners have the power of sanction. Fines or other penalties are often imposed in Honduras and Aguascalientes (Mexico). In Azerbaijan, Honduras and Aguascalientes, Michoacán and Distrito Federal (Mexico), Commissioners often recommend disciplinary action against officials.

Informal resolution - The most common and most frequently used power does not concern compulsion or sanction. It occurs when Commissioners seek to resolve disputes, including through mediation, without requiring formal decisions to be made. Surprisingly perhaps Commissioners who have the power to require compliance are just as likely to settle cases as those who can only issue recommendations. In fact, exactly 40% of Commissioners in both categories report that they often settle appeals using mediation rather than issuing formal determinations.

Veto - Where Commissioners do issue formal decisions, these can often be legally challenged at a Tribunal (or other administrative appeal body) and/or to a Court. However in some instances Governments have reserved the right to veto the decisions of Commissioners, without the need to go to Court. The survey asked if such a power existed and how often it was used.

Only 4 countries reported that the power of veto was available to Ministers/ Government. In Scotland and New Zealand, the power of veto had never been used in the past 5 years. Only Estonia and the UK reported that the veto had been used in the past 5 years and even so, this was done rarely.

Nevertheless even where the veto is only used rarely it can be controversial. In the UK it was used 7 times[1] between February 2009 and January 2014 to block disclosure of:

- contents of the legal advice on military action against Iraq (2009)
- Cabinet Sub – Committee Minutes relating to devolution (2009)
- the National Health Service Transitional Risk Register (2012)
- extracts from Cabinet minutes on the military action against Iraq in 2003 (2012)
- correspondence from Prince Charles to Government departments (2012)
- documents relating to HS2 (a high speed rail project) (2014)

[1] 'FoI and Ministerial vetoes', Oonagh Gay and Ed Potton, House of Commons Library Standard Note SN/PC/05007 19 March 2014 http://www.parliament.uk/business/publications/research/briefing-papers/SN05007/foi-and-ministerial-vetoes

4. VALIDITY OF INFORMATION REQUESTS

As modes of communication with public authorities expand, so the conceivable means by which an individual may seek to make a request is also growing. Requests made by letters and e-mails are commonplace – but what about the use of social media? If authorities have Facebook pages or Twitter accounts could valid requests be submitted through these platforms? To what degree are requests made orally – either in person or by telephone – accepted as valid requests?

4.1 Oral requests

Table 4.1 - Under your access to information law, if a request for information is made orally (i.e. in person or by telephone) is this regarded as a valid information request?

Yes	**39.2%**	**20**
Yes, but only in limited circumstances*	**15.7%**	**8**
No	**45.1%**	**23**

Nearly half of Commissioners report that their laws do not regard oral requests as being valid.

However in many jurisdictions requests can be made orally, and as in Croatia and Iceland there is a statutory duty on authorities to write down such requests on behalf of the requester. (In Cayman Islands authorities have to similarly assist those people who may not be able to read or write English or those with a mental or physical disability.) In some cases the law obliges oral requests to be accepted only in very limited circumstances. In the UK the statutory requirement to accept oral requests applies to environmental information, (which are subject to regulations complying with an EC Directive) but not to general FoI requests. In New Brunswick (Canada) only oral requests for personal health information require to be accepted. In Slovenia authorities can accept oral requests for the reuse of public sector information, but even then these are treated as informal requests and not part of the statutory framework.

4.2 Using Social Media

Table 4.2- In your view, can valid requests be made to a public authority using social media (e.g Twitter or Facebook) under your access to information law.

Generally requests using social media are regarded as valid	**34.9%**	**15**
Generally requests using social media are not regarded as valid	**9.3%**	**4**
Requests using social media can never be valid	**30.2%**	**13**
Do not know	**25.6%**	**11**

Opinion was divided amongst Commissioners as to whether social media provided a platform to make information requests. 30% of respondents were firm in their view that requests made via social media can never be valid, and a further 9% thought that, in general, they would not be valid. However over one- third thought generally social media requests were acceptable. A quarter of Commissioners still did not know whether they may be valid or not.

In coming to an opinion, some Commissioners were giving their interpretation of the law, but with as yet few if any cases having been determined. Croatia, Cayman Islands, Brandenburg relied on the fact that their laws permitted requests to be made in an electronic form as being sufficient to encompass social media.

Others were more cautious in expressing an opinion on this basis. Canada, Ireland, British Columbia and Western Australia took the view that it would depend upon whether such requests were regarded as being " in writing", but noted that a disputed case has yet to be determined. In Brazil whilst it would appear that the law allows such requests, in practice the Commissioner is not aware if, or how, authorities have responded to any request made via social media.

Indeed it is perhaps surprising that at this stage so many Commissioners have still to be confronted with appeals relating to requests made using social media. Even in the USA it is the survey response said that "requests using social media have not come up as a legal issue."

The clearest expression that social media requests can be valid came from the UK which has issued guidance which says "If the authority subscribes to a social media site such as Twitter or Facebook, then any request it receives through that site will be valid". However the request still has to meet certain basic criteria set out in FoI law, so must include the requester's name and an address for correspondence (which may be an e-mail address) and describe the information being requested.

4.3 Unreasonable requests

It is often claimed that the right to information is open to misuse. Some laws contain provisions so that authorities do not have to respond to requests which are regarded as abusing the right to information. These requests may be described in the FoI law as 'vexatious', 'unreasonable', 'excessive', 'disproportionate' 'burdensome'. Nearly three – quarters (72%) of the Commissioners responding to this survey reported that their law contained some of these or similar provisions. [2]

[2] This is probably overstated. Some of the grounds for refusal cited by Commissioners were instead normal exemptions allowed to protect commercial confidentiality or personal privacy, rather than because the request was unreasonable *per se.*

In many cases the test of unreasonableness was largely limited to consideration of the impact on the authorities' time and resources in responding to the request.

Examples of these were given by:

- Indonesia ("if the request involves an unreasonable quantity of documents);
- Azerbaijan (highly time consuming and so impedes principle obligations of the authority)
- Ireland (substantial and unreasonable impact on the work of the body)
- Denmark (disproportionate).

In Estonia, "A holder of information may refuse to comply with a request for information if compliance with the request for information would require a change in the organisation of work of the holder of information, hinder the performance of public duties imposed thereon or require unnecessarily disproportionate expenses due to the large volume of requested information."

On behalf of the USA it was pointed out that the "The basis for denying a request in such a situation is extremely limited and does not take into account "vexatious," "excessive," etc. Under US law, when a request involves voluminous records or records that are located in field offices, a court may take into consideration a requester's refusal to "reasonably modify the request" or to work with the agency to arrange for an alternative time frame for processing."

Many other laws also contain within their definition of 'unreasonable' the notion of excessive demands on the authority. But often the law goes further and challenge the nature of the request. In Queensland the Commissioner can refuse to deal with applications which are "frivolous, vexatious, misconceived or lacking substance". In New Zealand a request may also be refused if it is "frivolous or vexatious or the information requested is trivial".

In Tasmania the request can be refused "If the information sought is the same or similar to information sought under a previous request and doesn't on its face disclose a reasonable basis for again seeking access to the same information. (b) The request is vexatious or remains lacking in definition after negotiation has been entered into by the public authority with the requester."

The grounds for refusal may question the motive or behaviour of the requester. Instances of this include when:

- the applicant … manifestly misuses its right to access public information (Slovenia)
- the request is "deliberately issued on order to thwart the authority's work". (Brandenburg)
- "requests are made disrespectfully" (Aguascalientes, Mexico)

4.3.1 How frequently are requests deemed unreasonable?

Are authorities seizing upon such provisions to deny requests, and are they justified in doing so? Commissioners were asked for their opinion frequently authorities use the power to refuse unreasonable requests, if such a provision exists in their law.

Somewhat reassuringly three – quarters (74.4%) felt that using unreasonableness as grounds for refusal was not often or very rarely used by authorities.

Table 4.3.1 - In your experience how often do authorities deny request as being unreasonable or similar?

Very often	**0.0%**	**0**
Quite Often	**25.6%**	**10**
Not Often	**38.5%**	**15**
Very rarely	**35.9%**	**14**

4.3.2 Are authorities justified in regarding requests as 'unreasonable'?

To what extent are authorities justified in making such a claim? It may be open to requesters to appeal to the Commissioner if they felt that the law itself was being misused or misapplied by the authority. So Commissioners were asked how often they supported the position taken by the authority when it came to an appeal.

Table 4.3.2 When you receive appeals/complaints, how often do you agree that the authority was justified to regard the request as unreasonable?

Nearly always agree with the authority that the request was unreasonable	**9.4%**	**3**
Usually agree with the authority that the request was unreasonable	**43.7%**	**14**
Usually do not agree with the authority that the request was unreasonable	**31.3%**	**10**
Hardly ever agree with the authority that the request was unreasonable	**15.6%**	**5**

The outcome is rather equivocal, with Commissioners roughly evenly split (53-47%) as to whether they *nearly always* or *usually agree* with the authority as opposed to those who have found that they *hardly ever* or *usually do not agree* with the authority that the request was unreasonable.

If authorities quite often claim that requests are unreasonable, only for the Commissioner to usually or nearly always disagree with them, this may be indicative of a problem. Looking at specific responses to this survey, such an outcome occurs in in South Australia and Chile (*usually do not agree*) and in Hungary and Slovenia (*hardly ever agree*).

4.4 Information Request Portals

In a relatively recent development, requests are being electronically transmitted to authorities through on-line portals. Perhaps the most prominent early adopter was IFAI, the Mexican Federal Commissioner, whose SISI system, subsequently replaced by INFOMEX, attracted much attention and influenced many others other Commissioners and Governments.

Such initiatives were not just taken by other Commissioners and Governments. In the UK a portal, called *What Do they Know?* established by a civil society organisation has proven to effective. Although initially some authorities were resistant to processing requests received from this source and in particular objected to their responses and information provide being made publicly available, it now appears to be well- established. The *WhatDoTheyKnow?* website contains information for over 15000 public authorities and details of more than 225000 requests made to them.

The capacities of the portal system include:

- searchable database of public authorities
- submission of requests directly to the authority via the portal
- monitoring progress of request e.g. whether a response has been given in time, late or at all
- searchable database of responses by authority, topic etc.

For this survey, Commissioners were asked whether requests are being made through such information portals in their country, state or province.

The responses (Table 4.4.0) show that request portals are operating in 60% of jurisdictions, 11% of which are operated by Commissioners themselves – in Chile, Honduras, Guatemala, Banten (Indonesia), and Jalisco and Campeche (Mexico)

Table 4.4.0 - Are requests being made through information portals in your country/ state/ province?

Yes, through portals operated by the Commissioner	**11.3%**	**6**
Yes, through portals operated by the government	**32.1%**	**17**
Yes, through portals operated by civil society	**24.5%**	**13**
No, requests cannot be made through portals	**39.6%**	**21**

Even if Commissioners do not operate the portals, many apparently also use government or civil society portals to monitor the progress of requests and performance of authorities.

Table 4.4.1 - do you use the portal, as Commissioner, to monitor the progress of requests and performance of authorities?

Yes	**48.6%**	**18**
No	**37.8%**	**14**
I have no access to the portal	**13.5%**	**5**

5. PRIVATE BODIES CARRYING OUT PUBLIC FUNCTIONS

5. 1. Background

In the last survey we noted that "increasingly a number of public functions and services, such as in health, education, transport, household waste disposal, social housing, are being delivered by private companies or non- governmental charities and trusts set up for that purpose. These bodies are often in receipt of significant amounts of public funds to deliver these services." We asked Commissioners about the extent to which access to information laws in their area of jurisdiction apply to private bodies carrying out public functions. Over half of the Commissioners reported that, to some degree, access to information laws do apply to bodies which are not public authorities

However the reported scope of coverage differed substantially. In some countries the law applies to a small number of companies which traditionally have been established by governments or enjoy quasi-monopolies. These are often in transport, energy, communication and health sectors.

Elsewhere however the law potentially applies to a wider range bodies which meet certain criteria as set out in the statute. Broadly, it may be said, the basis on which the access to information law applies depends upon whether the body delivers public functions or is in receipt of significant public funds (or a combination of both of these.) These could go beyond quasi – governmental bodies or commercial contractors providing public services, to include NGOs. An example given was the Distrito Federal in Mexico, where the access to information law applies to "individuals or entities that receive public funds, for example, trade unions, non- governmental organizations (NGOs), civil society organizations (CSOs), foundations, etc. receiving public funds, which must account for their use."

It appeared that in countries with more recent laws, such as Brazil , Estonia, Macedonia the legislators anticipated changes in the way public services are being delivered, and so drafted statutes intended to be future –proof against such changes. Instead of applying only to specific types of public bodies the scope of the law extends to whatever institutions deliver public services or in which public funds were spent.

5.1 Should the right to information be extended

In this 2014 survey we approached the issue from another perspective and asked Commissioners opinion as to whether their are any private or non- governmental organisations (NGOs) carrying out public functions, or receiving public funds, which they think should be made subject to the access to information law in their country. In response 63% said there were such bodies. (Table 5.1)

Table 5.1 are there private bodies/NGOs carrying out public functions or receiving public funds, some of which should be made subject to the access to information law?

Yes- there are private bodies/NGOs carrying out public functions or receiving public funds, some of which should be made subject to the access to information law,	**62.7%**	**32**
No - There are private bodies/NGOs carrying out public functions or receiving public funds, but they should not be made subject to the access to information law,	**11.8%**	**6**
No - All private bodies/NGOs carrying out public functions or receiving public funds are already subject to the access to information law	**25.5%**	**13**

In support of their opinion some argued that the law should generally apply where it involved the delivery of public functions or expenditure of public funds. Ireland proposed that "Bodies to which public functions are outsourced (such as bin collections, operation of swimming pools/leisure centres, etc.) and charities" should be required to provide information. The Cayman Islands took the sought to follow the money by arguing "Any private bodies that receive public funds should be covered by the FOI Law, at least to the extent of their coverage (e.g. if the funds are for a particular project, the project information should be covered). This concerns for instance schools, churches and civil society groups."

In New Zealand and Australia, it was noted contracting out public services does not necessarily preclude access to information regarding that service. "The Australian FOI Act requires an agency that is entering into a contract for the provision of public services on behalf of government to require in the contract that the contractor will provide relevant documents to the government agency if an FOI request is received by the agency." A similar provision exists in New Zealand, where information held by independent contractors, and unincorporated bodies set up by Ministers or agencies to assist, advise or perform functions connected with the Minister or agency is deemed to be held by the Minister or agency.

However the New South Wales Commissioner takes the view that even though NGO's are subject to information access laws through contractual arrangements when conducting work for a government. entity, formalising this arrangement in legislation may assist in promoting access.

Some of the Commissioners gave examples of the specific organisations or types of bodies in their countries to which access to information should apply.

- Canada: NAVCAN (Canada's Air Navigation Service Provider), Canada Health Infoway (an independent not-for-profit corporation created by Canada's First Ministers in 2001, and funded by the Government of Canada, which collaborates with the provinces and territories to facilitate and invest in a network of electronic health record systems across Canada)

- British Columbia : Spin-off companies owned by public post-secondary institutions.

- Nova Scotia : Society for the Prevention of Cruelty to Animals, Nova Scotia Power, Career Colleges

- Berlin : Liegenschaftsfonds Berlin, (a mainly publicly owned enterprise which is in charge of administration and sale of public buildings)

- Indonesia: television companies allocated a frequency to broadcast by the government to broadcast

- Azerbaijan: Press Council , Municipalities

- United Kingdom: Contractors providing refuse collection and waste management functions, etc. Those responsible for transport infrastructure (Network Rail) Housing associations (social landlords)

- Western Australia: Private sector operators of public health facilities

- New Zealand: partnership schools

Commissioners have made representations to government regarding the need to extend the scope of the right to information- often in circumstances where existing or previous rights have been lost.

The New Zealand Ombudsmen has argued in the past that some state-owned companies that were partially privatised should remain subject to the official information legislation. In so doing they said " In our view the proprietary rights of the public in the MOM [mixed-ownership model] companies, coupled with the impact their activities have on the lives of individual members of the public, suggest that the current measure of accountability should remain, and not be limited to such rights as are accorded to ordinary shareholders in the private sector."[3]

The Scottish Information Commissioner has also in the past argued, (with some limited success), against the public's loss of freedom of information rights when publicly –owned facilities are transferred to charities or contracted-out to commercial contractors. She is currently preparing to lay a special report before the Scottish Parliament on the issue of designation.

Finally, in Chile the Commissioners have forced the issue of whether the law should apply or not . There are some private bodies called "Corporaciones Municipales" which receive a substantial amount of public funds from the local government to carry out specific public functions related to education, sports and culture. The Commissioners report that "Although these organizations are not subject to the law, we have processed requests anyway and the Court has supported our decisions."

[3] http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/344/original/mixed_ownership_model_bill.pdf?1346369992

Appendix - Information Commissioners International Exchange Network Surveys 2014 --- Participants

Australia: - Commonwealth, New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia

Azerbaijan

Bangladesh

Brazil

Bosnia and Herzegovina

Canada: - Federal, British Columbia, New Brunswick, Nova Scotia , Ontario,

Cayman Islands

Chile,

Croatia

Czech Republic

Denmark

Ecuador

El Salvador

Estonia

Finland

Germany : - Federal, Berlin , Brandenburg

Georgia

Guatemala

Honduras

Hungary

Iceland

Indonesia : - Central, Banten, East Kalimantan, Jakarta Province

Ireland

Kosovo

Malta

México:- Aguascalientes, Campeche *, Distrito Federal, Jalisco,•, Michoacán *

New Zealand

Peru

Slovenia

Sweden

Switzerland

United Kingdom : UK, Scotland

United States of America

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