

FREEDOM OF ACCESS TO INFORMATION: A PARADIGM FOR THE INFORMATION PROFESSIONS

Paul Sturges

Chapter commissioned for a book that was not published (other authors failed to deliver their chapters).

AN INTELLECTUAL FREEDOM PARADIGM

An occupation (such as library and information work) can scarcely claim to be a profession without a certain theoretical underpinning. This chapter will take the position that the key paradigm for public sector information work is situated in the idea of freedom of access to information, and will go on to draw out some of the broader implications of this position. Approached from a slightly different direction, the paradigm can be described as based on intellectual freedom, which gives it antecedents stretching back to the philosophy of the Ancient Greeks and offers a well-argued rationale for considering freedom of access to information a worthwhile principle to drive a professional and academic sector. Intellectual freedom provides the circumstances in which rational and well-informed human beings can conduct the debates that are the essential stuff of a democratic society. In a democratic society the welfare of all can be pursued as the main project of governance, whilst at the same time appropriate scope is offered to the creativity and enterprise of individuals. Seen in these terms, the information society of the twenty first century is a product of intellectual freedom.

The idea of intellectual freedom is deeply embedded in the concept of human rights and we can look to a series of declarations, charters, international conventions, national constitutions and codes of law for clear expressions of the elements of human rights. The first really influential legal expression of the principle came in 1791 in the USA where a Bill of Rights was ratified that contained the First Amendment to the American Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

This is not usually quoted in full, and as a group of rights, this does not entirely cohere in modern terms. Yet the eighteenth century political preoccupations it reflects and the legal language in which it was couched have not prevented it attaining iconic status in American judicial practice and public debate.

It is in the UN Declaration on Human Rights, which was proclaimed by the United Nations General Assembly in 1948, that we find the key statement. There in Article

19 is a clear and powerful formulation of the right to information that has since become generally accepted as the way to state it. Article Nineteen says that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Although set out as a right to opinion and the expression of opinion, it contains within it the right to freedom of access to information, expressed as the rights to seek, receive and impart information. Article 19, and its various re-statements in subsequent documents, provides a solid basis for a system of freedom of access to information, if supplemented by further legislation, regulation and professional practice. It is almost as complete a statement as we have of the paradigm that guides this chapter. Only a few legal enactments, notably the new Article 100 of the Norwegian Constitution adopted in 2004, provide an even more generous definition of the right. (Norwegian Ministry of Justice and the Police, 2005) The Constitution now recognises a positive obligation on the state not merely to protect freedom of expression, but to provide means for its practice. Article 100 ends with the statement that:

The State authorities shall create conditions that facilitate open and enlightened public discourse.

Before pressing on to deal with the implications of the intellectual freedom paradigm in detail, it is necessary to outline a countervailing paradigm.

AN INTELLECTUAL PROPERTY PARADIGM

Freedom of access to information is often spoken of as if it were simply a response to the control and censorship of information practised by states and belief groups, both religious and political. In the context of information science and information management it is more practical to contrast it with what we might call the intellectual property paradigm. This is the dominant philosophy of the private sector information environment, in which corporations and other self-contained entities, such as private societies and even faith groups, claim ownership of information to use for their own collective benefit. A caution is needed here. Although it is possible to describe the intellectual property paradigm to sound as if it were a direct counter principle to the intellectual freedom paradigm, this is obviously not quite the case. The creativity that fuels the successful corporation is clearly the product of intellectual freedom in the wider community and, arguably, it could not thrive in the same way outside a society that offered public access to rich knowledge resources through its educational, cultural, communication and information systems

The paradigm encompasses the idea of formalised secrecy, which goes back to the priest-protected rituals of ancient religions, can be seen in the 'mystery' of the craft-skills of the medieval guilds, and surfaces in almost parodied form in the rites of the free masons, lives strongly today in the practices of corporations. Technical innovations, new products, market strategies and business practices are developed, as far as possible, in conditions of secrecy. The law of many countries recognises this

industrial and commercial secrecy and offers it a certain degree of protection through the laws of confidentiality. Contractual agreements that seek to protect information shared within the organisation are the chief means of applying confidentiality. Security of information systems, using technical devices, encryption and the development of rigorous administrative practice is a major concern of the private sector so as to prevent the inadvertent disclosure of information to interested rivals. At the same time, the intellectual property paradigm also encompasses vigorous programmes to render the secrecy of rivals ineffective. Corporations are intensive collectors of competitive intelligence, using techniques such as the scanning of media, and data mining for the lessons embedded in large publicly available data sets. The use of high-tech surveillance and illegal methods of data gathering are not unknown as extensions of this approach to information management.

The legal protection of intellectual property is clearly central to this paradigm. Patent protection is vigorously pursued for practical industrial knowledge generated within the corporation, once it is ready for exploitation. Copyright law is called on to protect the products of knowledge-based corporations. Because its provisions are less powerful than patent law, copyright law is the subject of a wide-reaching enhancement campaign by the corporate sector in which the role of contracts and licences is central. Intellectual property lawsuits to break the hold of rivals of profitable products or avert threats to ownership are likewise an important focus of corporate involvement. It is possible to see all of this as part of a globalisation process, driven by the major trans-national corporations. This is talked of by some as a programme designed to commodify information and reduce the public sphere to insignificance (Rikowski, 2005). It has its counter principle in the open access movement. This covers not merely the idea of creative commons licences as a substitute for copyright, open archives of electronic publications, and open source software, but also collaborative projects like Wikipedia.

A NATIONAL INTEGRITY SYSTEM

Rather than stressing the cultural institutions (universities, academies, publishers, museums, libraries and many others) that are the usual focus of discussions of environment for intellectual freedom to develop and flourish, this chapter will concentrate on political systems. The argument behind what will be presented here is that community-wide freedom of access to information can only fully emerge in the context of an open and democratic political society. The institutions of such a society can be conceived of as a total national integrity system.

The National Integrity System is the sum total of the institutions and practices within a given co... address aspects of maintaining the honesty and integrity of government and private sector institutions ...' (Pope, 2000)

First of all, this requires an elected legislature, distinct from the executive arm and supported by an independent and impartial judiciary. Parliamentary scrutiny of the executive through the opportunity to question and debate the decisions of ministers in the legislative chamber, and a system of non-partisan specialist review committees are essential. The meetings of not merely the legislature, but the committees that work of specific issues are open to the public. Government financial accounting can be

expected to be full and promptly delivered. Planning documentations, and minutes of decisions are all open to public inspection and consultative forums are called as a matter of course whenever appropriate. A system of ombudsmen permits the citizen to follow up cases of mal-administration. The same systems and standards are also applied to the workings of local government, and privatised government agencies. This offers accountability in which there is:

Higher authority vested with the power of oversight and supervision, a measure or criterion used by the higher authority to assess compliance or performance of mandated activities, and an explicit reporting mechanism for conveying information to the higher authority. (Kearns, 1996, p.36)

In financial matters, the global lending and regulatory bodies demand that governments make detailed financial information public. The International Monetary Fund (IMF) has, for instance, laid down principles of government fiscal transparency that include:

- full and timely information on past, current and projected fiscal activity;
- the policy objectives of the budget and their policy basis;
- classification of budget data to permit analysis; and
- the subjecting of fiscal information to independent public scrutiny.

The IMF has worked with member governments to develop a view of what constitutes effective transparency in national accounts. The IMF Code of Good Practices on Fiscal Transparency, which was updated in March 2001, places a heavy stress on transparency as a contribution to good governance. The idea is that a better-informed public debate on fiscal policy should be made possible, with consequent greater government accountability for the implementation of policy.

In the UK, the National Audit Act of 1983 reformed the system for modern needs, with a new National Audit Office set up to support the existing post of Comptroller and Auditor General. The changes recognised a need for the capacity to expose for comment the value for money achieved by government spending, rather than simply seeking to identify irregularities in expenditure. According to the National Audit Office, value for money audit at government level involves examining and reporting on what it calls the 'three Es'. (National Audit Office, 2005) The information generated by the National Audit Office enters a cycle of accountability that begins with its reports to Parliament's Committee of Public Accounts. Further investigation of what these reveal may follow, and Government is obliged to make a timely response to the recommendations of the Committee of Public Accounts. Not only does the National Audit Office create its formal reports, which are then seen by Parliament and become public documents, but the Office also responds directly to queries from Members of Parliament. The Audit Commission, which was founded in 1982, extends the official audit capacity of the UK beyond the central audit facility directly reporting to the Comptroller and Auditor General. (Audit Commission, 2005) Together the National Audit Office and the Audit Commission introduce a substantial degree of transparency throughout the financial affairs of the United Kingdom's government and other official bodies.

Contributions to this process include flows of information from that the regulatory systems that oversee the operation of particular sectors of a national economy. For instance, the UK financial services industry has long been regulated and since 2001 this has been the responsibility of the Financial Services Authority (FSA), which draws its powers from the Financial Services and Markets Act of 2000. The main objectives of the FSA are to maintain market confidence, protect the customer and fight financial crime. Alongside these is a fourth objective in which the information-related aspect of regulation is obvious: to promote public understanding of the financial system. The FSA works through, and in association with, a number of other bodies. The Office of Fair Trading (OFT), for example, which has responsibility for consumer protection and encouraging competition. Amongst its objectives is an explicit role in empowering customers by giving them access to information.

Recognising that for the individual the system may not deliver the outcomes that it seems to promise, a system of ombudsmen may provide a kind of last resort for the citizen seeking redress for grievances. Although first of all not designed as a means of revealing information, as the most important British ombudsman, the Parliamentary and Health Service Ombudsmen, explains, the office is committed to working as openly and transparently as possible. They publish as much information as they can about their policies, procedures and activities, thus making the operation of the office transparent in itself. But there are limitations to the information they will release relating to their investigations.

The nature of our work entails the collection of a great deal of sensitive and confidential information in the course of our investigations. The release of this information may cause real harm to the individuals involved or it may prejudice the final outcome. This means we must balance our wish to operate transparently with our duty to look after the privacy of personal and other confidential information. (Parliamentary and Health Service Ombudsman, 2004)

Despite this explicit limitation the ombudsman function does effectively remove concealment from bad and dishonest practice and is thus a contribution to good public information.

IMPLICATIONS FOR GOVERNANCE

A system of national integrity might be seen as merely as a set of safeguards intended to prevent the delivery of services by government becoming prey to corruption inefficiency and waste. In fact, a government that operates in the interests of the people naturally seeks better methods of delivery and e-government offers the potential to provide just that. E-government, in turn, can offer more than just a set of effective means of delivering services: it carries with it the potential for a broader e-democracy based on freer access to information. The World Bank defines e-government in terms of the benefits it brings, including

Better delivery of government services to citizens, improved interactions with business and industry, citizen empowerment through access to information or more efficient government management.' (World Bank, 2006)

Clift (2004, p.38) makes this even more explicit.

E-democracy represents the use of information and communication technologies and strategies by democratic actors (governments, elected officials, the media, political organisations, citizen/voters) within political and governance processes of local communities, nations and on the international stage. To many e-democracy suggests greater and more active citizen participation enabled by the Internet, mobile communications, and other technologies in today's representative democracy as well as through more participatory or direct forms of citizen involvement in addressing public challenges.

Citizens' portals or community portals, such as UK Online, allow the citizen to interact directly with the providers of public services rather than having to deal with officials who mediate their enquiries through the system and often still administer manual systems.

E-government may seem to be only viable in those highly developed countries where Internet access in the home has been obtained by a majority of the population. This is not exactly the case. Even in a country like Canada where Internet take-up in the home is high, use of the government's online portal is little over 10%. Training is crucial and citizens who visit government offices are offered instruction in how to use the portal. Despite the reluctance of users in developed countries to switch to e-services, the governments of many less developed countries have decided, despite low levels of access in the home, not to allow the advantages of e-government to be lost to their people. India provides the best examples. (Prabhu, 2004) The government of India intends that all ministries and departments should have their own website providing information and facilities such a downloadable forms. These websites, however, should share a common interface, standardised domain names at the state level, and encourage the use of email as the main mode of official communication with citizens. An Indian National Centre for E-Governance has been set up to lead the development of e-government facilities and encourage discussion and learning between all those likely to be involved.

This is an enormous project. Electronic citizen service centres or kiosks are provided so as to allow any citizen to obtain the necessary access to take advantage of e-government services. It is true that such facilities cannot be called particularly widespread, but the idea is already established and moving beyond the experimental stage in many parts of the world. They are a logical development from the creation of one-stop centres where utility bills can be paid, questions regarding government projects and programmes answered and authentication of documents or issue of certificates based on data held on government databases. For instance, in Kerala, the creation of a reliable database of for the Public Distribution System that issues food and other benefits to the poor has been extended by attempts to develop a smart ration card. The e-shringla network of electronic kiosks to provide Internet access and e-government facilities in the villages of Kerala promises to allow services of these kinds to be provided universally. (Kumar, 2003) This, and a host of similar examples, connects up to the ambition of civil society campaigners to provide every village in India with public Internet access. (Garai and Shadrach, 2006)

STRUCTURES FOR FREEDOM OF ACCESS TO INFORMATION

The cornerstone of open government is freedom of information legislation. In Sweden there has been a law in force since 1766 granting free access to all official documentation. These rights go far beyond what is offered by the freedom of information legislation of most other countries. In fact the European Commission recently accused Sweden of infringements of Community Law because Commission documents regarded as confidential were released to enquirers under the Swedish law. The best-known freedom of information is probably the US law of 1966 that has been used to expose political scandals, throw light on the administrative process, and also provide corporations with valuable business intelligence held in government files. The information obtained under the law is deep and wide-ranging: hygiene records of publicly-inspected restaurants, observance of medical ethics in experiments using hospital patients, details of radiation leaks from nuclear plants, and even numbers of children lost by airlines when travelling as unaccompanied minors. Freedom of information laws cut against both the secretiveness of those in power and the laxity of record keeping in official bodies. The UK Freedom of Information Act 2000 did not come into force until January 2005 because the process of bringing record keeping and pro-active disclosure up to standards capable of providing the information that enquirers might require was considered so big a task that implementation could only follow a lengthy delay. (Brooke, 2004)

The current state of right to information legislation throughout the world varies greatly, as a survey of the legislation worldwide reveals (Mendel, 2003). Where they do exist, these laws contribute a central structure for the operation of transparency. Yet they are far from guaranteeing it unaided, and what is more, they are frequently hampered by over generous exemptions allowing administrators and politicians to avoid inconvenient revelations. Daruwala (2003) illustrates aspects of the way that these laws are implemented in practice in the (British) Commonwealth countries, and the difficulties involved do emerge from this. Many countries (Malawi 1994 and Thailand 1997) have actually included freedom of information provisions in new constitutions. Legislation has been seen as necessary, even where constitutions support FOI. Since 2000 FOI laws have been passed in Bosnia, Jamaica, Kyrgystan, Poland and South Africa. Guatemala, and Indonesia. The world's biggest democracy, India, passed a new law in 2005. Despite suggestions that it would prove ineffective, it offers a process that is simple, time-bound, inexpensive (no fees for those below the poverty line) and has only seven categories of exemption (compared with 13 in the US law). Unfortunately, laws ostensible dealing with FOI may actually not be all they seem. Zimbabwe's Access to Information and Privacy Act (date) is actually an illiberal measure designed to suppress information and control the press despite its title.

Laws with a publication scheme provision facilitate the proactive disclosure of information – taking the pressure off the FOI system. The number of requests is reduced, fewer staff and resources are needed and, incidentally, the work of the authorities is positively publicised. A proposal (Excell, 2005) for model for publication schemes under the Jamaican law would require them to:

- Conduct an audit of the information held by the public authority;
- Identify classes of document which will be made available routinely
- identify within the publication statement those classes of documents that may contain exempt material and those that do not,
- ensure that documents are made available in a variety of formats (eg print and electronic)
- set out clear guidelines on the charges that will be levied for each format,
- consult with the public on the information they want'
- monitor and update schemes accordingly.

A little discussed, but significant, extension of open government is a local scrutiny process, such as was introduced in the UK by the Local Government Act 2000. It has produced little press comment, but it has been quietly introducing greater transparency into the work of local councils ever since. Councillors are required to face scrutiny panels and answer questions about the conduct of local affairs. The model on which this is based is clearly that of the parliamentary select committees and US congressional committees. It has already been suggested that the in the UK system,

Scrutineers have shown that they can have a real impact on the improvement of public services if they use their powers and get the right level of resources and support. (Wainwright, 2004)

AUDIT AND ACCOUNTABILITY

If the more exclusively public sector character of what has been discussed so far seems to suggest that the introduction of openness has no significance for the private sector, then that would be wrong. The concept and practice of audit is the main response to the need for supervision of the activities of companies and other financial entities such as cooperatives, voluntary societies, partnerships, and, indeed, even the state and its agencies. Audit places the oversight of the dealings of an organisation in the hands of trusted intermediaries who are required to use their expertise to provide a view of its finances, and place their reputation behind the opinion that they form. No elaborate definition is required, and the leading modern theorist of audit merely says that:

For companies which are financed by shareholders, a form of accounting has evolved which allows a check, or what is called an audit, to be made of the activities of the company. (Power, 1997 p.3)

In the United Kingdom, the Companies Act of 1948 required auditors to give an opinion as to whether the financial statements of an organisation were 'true and fair'. The 'true and fair' requirement produces a message both to the company and to the public, but it is a limited one. The way in which it can fail to expose blatant wrongdoing is illustrated by the Enron case, which has become a byword for company-wide fraud, and its exposure. The company was an immensely successful and aggressive player in the US energy market that during the period 1999-2001 began to transfer losses to shell companies and show investment capital as profit.

Watkins (2004, p.62) the Enron whistleblower, says that the reason why this was accepted was that,

Surely an executive would not want to ask questions and show his or her lack of intelligence. Intimidated by complex structures and by overbearing accounting and financial experts, many at the company fell victim to a group-think mentality, accepting an accounting structure that they didn't understand.

The whole situation was compounded, indeed made possible, by the complaisance of the company's auditors Arthur Andersen. Without an effective external audit, Enron was able to continue trading in a fundamentally fraudulent way that eventually led to the complete collapse of the company at the end of 2001 with the loss of thousands of jobs and millions of dollars of investors' money.

There are new developments in audit springing from a variety of sources. Broadly there is a restructuring of governance, including corporate governance, around an audit model. Changes in public administration, sometimes described as the new public management pointed in the same direction, and globally accepted accounting standards have been developed as a response. The International Accounting Standards (IAS) have been widely accepted for the cross-border reporting of company data. All publicly traded companies in the EU must, since Jan 1st 2005, prepare their accounts according to the standards. Generally coupled in the same breath with IAS are the International Financial Reporting Standards (IFRS). These set out to be global standards for the way in which the income, expenditure, assets and liabilities of companies are reported. They standardise the reporting of matters like the depreciation of assets, the capitalisation of research and development costs and the expenses associated with share options. The US Sarbanes-Oxley Act 2002 sets out to restore confidence in the auditing process after the Enron and WorldCom collapses. It introduces reforms in accounting, financial reporting and corporate governance. It includes enhanced disclosure obligations for public companies, regulates the accounting profession and sets out parameters for auditors.

More recently the expansion of the audit concept has included what might in the past have been called data gathering and research, or monitoring and evaluation.

In addition to the regulation of private company accounting by financial audit, practices of environmental audit, value for money audit, management audit, forensic audit, data audit, intellectual property audit, medical audit, teaching audit, and technology audit emerged and, to varying degrees, acquired a degree of institutional stability and acceptance. (Power, 1997, p.3)

To take Power's first example, environmental audit is a term that can be applied at various levels. First of all, it is often used to cover only the immediate property or facility that an organisation occupies. Secondly, it can be used to indicate an assessment merely of an organisation's compliance with environmental regulations. Some broader definitions can, however, be found, that stretch to include an organisation's environmental policies, practices and controls. A Canadian definition includes the following.

An environmental audit is a methodical examination that may involve sampling, tests, analyses and confirmation of the practices and procedures of an operation. An environmental audit verifies that these practices and procedures comply with criteria prescribed by legislation, internal policies or accepted industry standards, (Treasury Board of Canada Secretariat, 2000)

Taking ownership of the audit concept in this way and using it to improve the ethical standing of the organisation forms a basis for a realignment of policy towards corporate social responsibility. To some extent the corporate social responsibility movement comes out of an ethically-driven renewal of accounting, in which companies are encouraged to develop ethical policies, monitoring and training. This movement is given greater substance by the development of international standards, such as the guidelines for codes of conduct developed by the International Federation of Accountants. (International Federation of Accountants, 2003). Another source of a more formalised approach to corporate social responsibility is the pressure on companies to provide the same kind of information that they provide for external audit also to their employees. Under the EU Information and Consultation of Employees Regulations, 2004, which came into force during the period 2005-8. Under the Regulations employers can create a consultation process that provides employees with information about the business. However, if they fail to do so and at least 10 per cent of the workforce requests them to do so, they are obliged to agree. Employee representatives must then be provided with information on recent and likely future developments in the activities and economic situation of the business. Plans that are likely to affect employment, lead to changes in the business organisation or the company's contractual relations must be included.

DISCLOSURE

So far, what has been described is a pervasive but comparatively disconnected set of policies and procedures that cumulatively offer the citizens of any state in which they can be found a favourable environment for intellectual freedom. What most effectively draws the effects of all these disparate parts together is the activity of a free and energetic media. The newspaper press, radio, TV and the book publishers together form a substantial part of what Article 100 of the Norwegian constitution calls 'conditions that facilitate open and enlightened public discourse' and the philosopher Habermas (1962) calls 'the public sphere'. Most of what emerges from the processes described in previous sections would remain in limited circulation reports, useful for the political classes, but not coming to the direct attention of the general public, unless it were for the media. However, modern mass media are not automatically a force for freedom of access to information. The owners of the media set their own agendas for their newspapers, magazines, TV channels and radio stations and where there is a single owner of many outlets, such as Silvio Berlusconi or Rupert Murdoch, the control they can exercise is immense. A determined government, such as that of the People's Republic of China can apply a censorship that quite effectively excludes disruptive ideas and information. Even in conditions of legal freedom, and a more distributed ownership a lazy editorial preference for what the public is perceived to want can limit the effectiveness of the media.

High standards of journalism are therefore important, and the role of the investigative journalist is crucial. One definition of investigative reporting is that it produces:

Stories that contain original work, not leaked investigations from law authorities: show a pattern of systematic problems, not just one isolated incident affecting one individual; right a wrong; explain complex social problems; reveal corruption, wrongdoing or abuse of power. (Fleeson, 2000)

Although the image of the investigative journalist may have been that of an individual, teamwork is likely to be much more important these days, and a team of reporters will be very dependent on lawyers, researchers and librarians. This is because, on the one hand, the highest levels of factual accuracy are essential to prevent the discrediting of a story because it contains errors. On the other, exploiting freedom of information laws requires special skills, and where there is freedom of information legislation journalists can be found using it to the full. Alongside the highly professional journalism of the formal media, however, there is a burgeoning amateur sector producing Internet web logs, or 'blogs'. Many of the millions of blogs are tedious hobbyism read by hardly anyone, but the sector also includes blogs that are as likely to contain important revelations as the best formal journalism. (Gillmor, 2004) In fact, the more forward-looking editors and media managers, at the UK's Guardian for instance, currently take blogging very seriously and are experimenting with delivering the news in electronic and print mixes.

Throughout the world journalists are threatened, sued, assaulted and even murdered for their success in opening the murky secrets of those who hold power. To be an investigative journalist requires courage, but that is also true of the individual whistleblower inside an organisation who comes to believe that something about that organisation needs to be publicly revealed against the organisation's will. (Calland, R. and Dehn, G. (2004) The law in a few countries provides some protection for these brave individuals. A landmark judgement in the English courts (*Gartside v Outram*, 1856) used biblical language to declare that there 'is no confidence [or confidentiality] as to the disclosure of iniquity'. Protection of disclosure can be also seen as a practical expression of good state and corporate governance. Public interest disclosure laws exist in only a small number of countries. The earliest examples are from the USA, with a False Claims Act passed during the American Civil War usually described as the first. Since then the USA has passed many relevant laws generally offering protection whether whistleblowers report a concern to their employer, a regulatory authority or Congress.

A rather different approach is adopted by what is generally regarded as a standard-setting measure, the UK Public Interest Disclosure Act (PIDA) of 1998. The policy principle behind the PIDA had earlier been set out very clearly by the UK Committee on Standards in Public Life, which suggested that:

Placing staff in a position where they feel driven to approach the media to ventilate concerns is unsatisfactory both for the staff member and the organisation. We observed that it was far better for systems to be put in place, which encouraged staff to raise worries within the organisation. (UK Committee on Standards in Public Life, 1996)

This sets the PIDA solidly in the structure of UK employment law. The employee can initiate a claim of victimisation in the employment tribunal system or civil courts if disadvantaged by a hostile response to the disclosure. The approach chosen in the Australian and New Zealand laws is different, providing for criminal charges to be brought against employers who victimise whistleblowers, or whistleblowers who do not follow the procedures set out in the laws.

THE LIMITS OF FREEDOM OF ACCESS TO INFORMATION

Any formal statement on rights of access to information is likely to be qualified by the identification of exceptions: national security and the protection of personal privacy are the most common examples. Ironically these two principles are increasingly in conflict with each other as the demands of the guardians of national security lead to heightened pressure to open more and more of the activities of the individual to official surveillance. However, if we treat them separately as limits to social transparency, they reveal two different areas of human rights that call for carefully balancing by governments that take such rights seriously. Privacy quite simply sets one human right against another (access to information) and calls for government to find equitable ways of reconciling the two. National security, on the face of it, sets the power of government up against the right of access to information. Advocates of transparency and accountability in the workings of the state may well be suspicious of the extent to which national security is invoked as a reason for who categories of limits to access.

National security measures have two kinds of effect, the first is simple imposition of secrecy on a range of matters of public concern, the second is to subject the activities of the citizen to surveillance in the interests of crime prevention and particularly the prevention of the subversion of the state. In the UK the Official Secrets Act, 1989, potentially places a swathe of official business under an absolute protection from revelation by those involved. The phrase ‘Signing the Official Secrets Act’ is a way of describing the process of imposing this ban on government employees. At the same as the Official Secrets Act imposes secrecy, a range of measures, beginning with the Regulation of Investigatory Powers Act, 2000, and the Anti-terrorism, Crime and Security Act, 2001, define broad powers by which the authorities can obtain details of the telecommunications activities of individuals from the service providers. In the USA a related measure, the USA PATRIOT Act 2001, has been determinedly opposed by the American Library Association because it is capable of exposing details of the library use of individuals to the scrutiny of the security services. This duality of official secrecy – citizen disclosure is found throughout the world. It both defines a limit to what most governments will permit by way of access and turns a rights-based principle on its head in a way that actually places a second right, that of personal privacy, is placed under threat.

Personal privacy protection may indeed appear in the catalogue of human rights, as in Article 12 of the Universal Declaration, but legislative support for this right is not universally available. A country like France has in Article 9 of its Civil Code a law passed in 1970 that offers a wide measure of privacy protection (France, 2005) but the UK has two imperfect forms of protection to offer. The first is the Data Protection Act 1998, and the second is the law on breach of confidence. Both actually protect information already shared with others: for privacy, as such, UK law offers an

imperfect, though evolving, zone of protection. Data protection sets out eight principles that should be respected by those, both in the public and private sectors, which in the normal course of their business collect and keep information about the people with whom they deal. It allows citizens to find what information is kept about them and provides mechanisms by which they can ensure that it is accurately and properly treated. The law of breach of confidence allows redress for those whose information, shared with another, is subsequently revealed without their agreement. Although it seems to have originally been a means to protect the individual, in fact it is much more used by business corporations, in their guise as artificial individuals, to protect business and industrial secrecy. The law of confidentiality thus forms a clear interface area between the two paradigms – intellectual freedom and intellectual property - identified at the beginning of this chapter.

PROFESSIONAL IMPLICATIONS

Freedom of access to information is not a phenomenon principally driven by the information professions, but it has enormous implications for librarians, information scientists, archivists, records managers and others whose task includes providing users with access to content. The information professions have historically tended to place their emphasis on the content that is their responsibility: its acquisition, storage, organisation, and preservation. It is not a complete calumny to say that there have been many librarians and archivists who have almost resented the need to give users access to their lovingly cared for resources. It is now a truism that the empowerment of the 'end user' through information technology, and in particular the Internet, has led to a process of disintermediation, whereby the role of the information professional is diminished or even eliminated. Whilst the full implications of this process are far from being fully apparent, it is important to point out that the access mentality that is the subject of this chapter springs much more from an ethical impulse rooted in human rights concepts than it does from a response to technology. Most of its implications offer scope for the use of technology, e-governance in particular, but others call for new approaches from information professionals.

Records management, the least prominent and certainly the least attractive of the information professions, is the chief beneficiary. If information held by public authorities is to be made available to people on request, as freedom of information laws and associated measures require, then that information has to be made retrievable. In other words, throughout the countries that embrace freedom of access principles there has to be a vast project to organise information resources in the vaults of governmental and quasi-governmental bodies that have previously never had to be put in good order. In the UK, the interval between the passing of the Freedom of Information Act 2000 and its coming into force in 2005 has sometimes been seen as foot dragging by a government reluctant to accept the consequences of its own legislation on access. There is probably some truth in this, but the ostensible reason for the period of grace was that it was needed to put order into information resources that had always been shamefully neglected. In support of this, one can point to the fact that UK plans to modernise government contain not merely a broad e-governance agenda including freedom of information law, but also explicit electronic records management elements. (Chissick and Harrington, 2004) Externally advertised recruitment of staff to manage records for public authorities may not have been

sufficiently apparent as to reveal substantial growth, but internal appointments and big programmes of appropriate training have effectively increased the size of the records management employment sector. What remains to be done is for this sector to become more professionalised through the development and recognition of appropriate educational qualifications.

Interestingly a similar process can be observed in less obvious environments. The utterly chaotic nature of record keeping in the institutions of many developing countries has recently been alleviated somewhat by the employment of greater numbers of trained personnel. Universities with programmes that include records management, such as the University of Botswana and Moi University in Kenya, are finding their graduates are highly employable in both public and private sectors. There is also indication that in some countries, Ghana for example, there is competition to hire competent records managers and insufficient numbers of people with suitable training and qualifications (Akussah, 1996). Although this may not be specifically attributable to freedom of information legislation, it has its basis in the same sense that both the citizen and the private organisations need better access to information if a country is to function effectively in a globalised knowledge-based economy. The evidence suggests that records management's day has come.

Archive science is a beneficiary in much the same way. The role of the archivist is perhaps generally seen as that of a guardian first, and a facilitator of access second. Although progressive archives will argue strongly against the fairness of this view, it is true that the historian is the chief client of the archivist and other users of archival material are much fewer in number and the intensity of their activity. However, this risks trivialising the archival mission by identifying it solely with an academic interest in the past. In an important sense the archival record also exposes the record of governments and individuals to scrutiny, even if this often applies to earlier periods than do more current records. The tradition of creating what Cox and Wallace (2002, p2) call 'records-specific accountability-focused studies' is not a strong one, but they are able to show through an impressive number of cases how accountability is at the least an emerging theme in archival practice. This reveals the need for archival practice, which necessarily involves the destruction of those records not selected for archiving, to build a base of trust in the professional integrity of the archivist. Responding to this need arguably contributes to a new socially-oriented professionalism in archive science and, at the same time, allies the archivist with civil society campaigns for greater accountability in both public and private sectors.

Librarianship, because it is identified so closely in the public mind, and in the mind of more traditional practitioners, with providing access to the printed record, may seem to have little that is new to offer to a more comprehensively defined access paradigm of information work. There was some truth in this. The library has not been, however, an obvious venue or forum for a broader type of access. Yet the printed record is, and always has been, a major aspect of people's search for fresh and revealing insights and information. Two things have reinforced this potential, the first is the recognition that libraries have to provide electronic access to digital metadata, digitised sources, and the Internet, and second is the user-focused ethos of modern librarianship. Many public libraries were already collecting and disseminating the more ephemeral print formats in which 'community information' was to be found, long before they became centres for public Internet access.

It may not be obvious what specific role the library can perform in the context of freedom of information systems, for instance, but that ignores the way that the search activities of the individual necessarily cross the boundaries of published print, Internet content, and the unpublished documentation obtainable from an archive or via a freedom information request to a public authority. Certainly, user-oriented multi-format libraries are much more like a freedom of access institution than the stereotype of a comfortable and unchallenging leisure facility. This is clearly the view of librarians throughout the world. They show passionate interest in the two most prominent core activities of IFLA, Copyright and other Legal Matters (CLM) and Freedom of Access to Information and Freedom of Expression (FAIFE). These are precisely the IFLA activities through which the world library community engages with the issues raised by the intellectual freedom and intellectual property paradigms of information work. (IFLA, 2006)

REFERENCES

Akussah, H. (1996) Records management in Ghana: an overview. *African Journal of Library, Archives and Information Science*, 6(2) 101-106.

Bethesda Principles (2003). Available at <http://fos.openlib.org/bethesda.htm>. [Accessed 21.04.2005]

Brooke, H. (2004) Your right to know: how to use the Freedom of Information Act and other access laws. London: Pluto Press.

Calland, R. and Dehn, G. (2004) Whistleblowing around the world: law, culture and practice. Cape Town: Open Democracy Advice Centre and London: Public Concern at Work.

Canada, Treasury Board of Canada Secretariat (2000) Environmental audit. Available at <http://www.tbs-sct.gc.ca/rpm-gbi/lexicon-lexique/term-terme.asp> Accessed 4.07.05

Chissick, M. and Harrington, J. (2004) E-government: a practical guide to the legal issues. London: Sweet and Maxwell.

Clift, S.L. (2004) E-government and democracy: representation and citizen engagement in the information age. Available at www.publicus.net [Accessed 13.4.2005].

Cox, R. and Wallace, D. (2002) Archives and the public good: accountability and records in modern society. Westport, Conn: Quorum.

Daruwala, M. (2003) ed. Open sesame: looking for the right to information in the Commonwealth. New Delhi: Commonwealth Human Rights Initiative.

Excell, C. (2005) The development of a publication scheme for Jamaica. E-news Access to Information 3, May-June. Available via cartercenterja@mail.infochan.com.

- Fleeson, L.S. (2000) Dig deep and aim high: a training model for investigative reporting. Washington: International Center for Journalists.
- France (2005) Embassy in the USA. French legislation on Privacy. Available at www.ambafrance-US.org/atoz/privacy.asp [Assessed 21.4.06].
- Garai, A. and Shadrach, B. (2006) Taking ICT to every Indian village: opportunities and challenges. New Delhi: OneWorld South Asia.
- Gillmor, D. (2004) We the media: grassroots journalism by the people for the people. O'Reilly.
- Habermas (1962) Structural transformation of the public sphere. Trans. T. Burger. Cambridge, MA: MIT Press, 1989.
- International Federation of Accountants (2003) Rebuilding public confidence in financial reporting. New York: IFAC.
- IFLA (2006) Activities and services. Available at <http://www.ifla.org/act-serv.htm> [Accessed 21.4.06].
- International Monetary Fund (2001) Code of Good Practices on Fiscal Transparency. Available at <http://www.imf.org/external/np/fad/trans/code.htm> Accessed 10.03.05
- Kearns, K. (1996). Managing for accountability: preserving the public trust in public and nonprofit organisations. San Francisco: Jossey-Bass
- Kumar, A. (2003) E-government and efficiency, accountability and transparency. Electronic Journal on Information Systems in Developing Countries 12(2) 1-5. Available at <http://www.is.cityu.edu.hk/research/ejisdc/vol12/v12p2.pdf> [Accessed 14.05.2004].
- Mendel, T. (2003) Freedom of information: a comparative legal survey. Paris: UNESCO.
- Norwegian Ministry of Justice and Police (2005) There shall be freedom of expression: proposed new Article 100 of the Norwegian Constitution. Official Norwegian Reports NOU 1999: 27. Ministry of Justice and Police.
- Pope, J. (2000) Confronting corruption: the elements of a national integrity system. In TI Source Book, 2000. London: Transparency International. Available at [Http://www.transparency.org/sourcebook/index.html](http://www.transparency.org/sourcebook/index.html). [Accessed 17.6.04].
- Prabhu, C. (2004) E-governance: concepts and case studies. New Delhi: Prentice Hall of India.
- Power, M. (1997) The audit society: rituals of verification. London: Oxford University Press

Rikowski, R (2005). Globalisation, information and libraries: the implications of the World Trade Organisation's GATS and TRIPS agreements. Oxford: Chandos Publishing.

UK Audit Commission (2005) Minimising bureaucracy, maximising impact on public services. Available at <http://www.audit-commission.gov.uk/aboutus/index.asp>
Accessed 4.07.05

UK Committee on Standards in Public Life (1996) Second Report p.22

UK National Audit Office (2005) About us. Available at <http://www.nao.org.uk/about.htm> Accessed 4.07.05

UK Parliamentary and Health Service Ombudsman (2004) Access to information. Available at http://www.ombudsman.org.uk/about_us/policies/access_to_information.html [Accessed 7.4.2005].

Wainwright, M. (2004) Quiet revolution catches voters' imagination. Guardian [UK] 24th June.

Watkins, S. (2004) The Emperor's new clothes: my Enron story'. In: Calland, R. and Dehn, G. eds. Whistleblowing around the world: law, culture and practice. Cape Town: Open Democracy Advice Centre. Pp.61-72.

World Bank (2006) Definition of e-government. Available at <http://www.worldbank.org/publicsector/egov/> [Accessed 21.4.06].