

Freedom of Information

Volume 13, Issue 5

May / June 2017

Headlines

- True FOI remains elusive in Italy, says campaign group, p.18
- Liberal Democrats and Labour Party make FOI promises, p.19
- EU makes Brexit negotiations transparent, p.20

Contents

Expert comment	2
Same thing, different gravy? The EIRs Part II	4
How will the GDPR affect FOI law?	8
Records management in (and out) of the health sector	11
Recent decisions of the Commissioner and Tribunals	13
FOI news	18

FOI leaks could become a criminal offence

Disclosing documents obtained by FOI requests could soon be a criminal offence, because of Law Commission proposals that suggest lowering the threshold for prosecutions.

Currently, if a leak of information is 'likely to damage' a range of issues (from international relations to law enforcement), an individual can be prosecuted. However, the Law Commission has proposed reducing this to just 'capable' of causing harm.

The proposal has led to considerable backlash. Campaign group Article 19's Executive Director, Thomas Hughes, said:

"The Law Commission's proposals would move the clock backwards, undoing improvements in the UK's 1989 official Secret Acts, and setting a dangerous example of eroding freedom of expression protections, which may be copied by oppressive regimes globally."

Maurice Frankel, the Director of the Campaign for Freedom of Information, said that:

"These proposals are not only oppressive but unworkable. It is beyond common sense to make it an official secrets offence to leak information which anyone could obtain under FOI."

Frankel added that the FOI changes were also a global threat.

In a joint response to the Law Commission proposals, Article 19 and the CFI raised the following specific concerns:

- whistleblowers and

[\(Continued on page 18\)](#)

Commissioner: 'It's time for a drastic rethink'

Scotland's freedom of information law is due a 'radical rethink', Information Commissioner Rosemary Agnew said in a special report published upon her departure from office at the end of April.

Ms Agnew, who is to become the next Scottish Public Services Ombudsman, reflected "I increasingly find myself questioning whether, by itself, the current FOI regime will achieve true transparen-

cy, and, indeed, whether the approach is sustainable in the long run."

The Commissioner questioned whether the duty to publish should be given equal emphasis in the law to the enforceable right to request information.

"As it stands there is a clear imbalance", Ms Agnew stated. "The current law places the emphasis on the right to ask, with the effect that it virtually

demands that authorities focus their resources on responding to requests, the volume of which is increasing year on year.

"The publication duty, so essential to transparency, is falling behind. This is in an environment where society and technology continue to change rapidly."

[\(Continued on page 18\)](#)