

Sunlight and Storm Clouds: The Relationship between Privatization and Freedom of Information

Background

Freedom of information legislation exists in over 90 countries. It allows the public to make requests for information from public bodies. FOI laws are considered an important part of democratic society as they support freedom of expression, facilitate participation, and potentially expose corruption. As American Supreme Court Justice Louis Brandeis once said, a little “sunlight is the best disinfectant.”

My research examines what happens to the public’s ability to access information when public services are transferred to the private or voluntary sectors. The global trend towards privatization and outsourcing means that many of the organisations now responsible for delivering public services are not covered by FOI legislation. Does privatization act as a cloud, blocking out the “sunlight” provided by FOI legislation?

Research Questions

1. How does privatization affect access to information under FOI legislation in the United Kingdom? In the United States?

2. Which potential legal mechanisms can be introduced to help preserve information access?



Audience Participation

Lift the clouds below to learn more about privatization, outsourcing, and access to information under FOI.

1. The UK National Health Service

Since 2012, £8 billion worth of NHS services have been privatized. The Freedom of Information Act 2000 (FOIA) applies to public bodies, but not to private contractors. Therefore, there is growing concern that reduced transparency will make it difficult to track public expenditure and to hold decision makers to account. Should the FOIA be extended to cover private contractors?

2. Free Schools

Introduced in England in 2010, the free schools policy allows groups to apply for funding from the Department for Education to set up schools. Like charter schools in the United States, free schools are supported by public funds but are not managed by local authorities. Free schools are a controversial issue, but researchers seeking information on the application process have been refused by the DfE, citing *inter alia* commercial confidentiality. How can the public interest in disclosure be balanced with commercial confidentiality?

Preliminary Findings



Is FOI the chicken or the egg? The current literature suggests that privatization threatens access to information under FOI, but an examination of the historical development of FOI shows that the relationship is more complex. Has FOI legislation been used to legitimate the spread of neoliberal initiatives, including privatization?



There are two dominant narratives surrounding the purpose of FOI legislation: the human rights and consumerist arguments. Although not necessarily incompatible, these different justifications have different implications when considering which legal mechanisms are most suitable to address the challenges posed by privatization.

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