

JOURNALISTS' USE OF FREEDOM OF INFORMATION IN TASMANIA

A thesis submitted in fulfilment of the requirements for the award of the Masters
in Journalism and Media Studies degree

by
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Declaration of original authorship

I hereby certify that the work presented in the thesis is, to the best of my knowledge and belief, original and my own work, except as acknowledged in the text, and that the material has not been submitted, either in whole or in part, for a degree at this or any other university.

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Abstract

Tasmania's journalists have not been educated in use of the *Freedom of Information Act 1991*, and they have never embraced it as a journalistic tool. Undergraduate studies addressing journalists' use of Freedom of Information legislation (Fol), beginning just five months after the Act was first implemented in 1993, have consistently shown that journalists are under-educated in Fol usage; they find the process complicated and plagued by time delays; they are discouraged by the expense; and governments use contentious issues management to frustrate them.

In 2004 things have not improved. Government support for Fol users has diminished: the Fol Unit has been absorbed into the under-resourced and pre-occupied Ombudsman's Office, the Fol Users' Guide is no longer printed, and the discouraging effects of contentious issues management have taken a toll. Following a brief period of optimism when the Act was first introduced, most Tasmanian journalists have given up on Fol. When it comes to the media, the legislation is on its last legs in Tasmania.

But there is hope. A resurgence of usage can be seen nationally in a few high-profile users and attention to the successes of interstate journalists could prompt Tasmanian journalists to take up the Fol tool that has always rated as an important feature of their journalistic toolkit (even though they have never used Fol to its full potential).

Tasmanian journalists need support if there is to be renewed confidence in Fol. They need to be educated by journalists who have had success using Fol, develop an understanding of what the legislation is, what their rights are, and learn some tips and tricks to make it work for them in the current climate. It is important in a small state like Tasmania that is dominated by the public service, that journalists provide the community with the chance to understand the processes of government – not just the aspects to government that spin doctors want to promote, but all aspects of government, aspects that can be revealed by journalists' skilled use of Fol legislation.

Additional publications by the candidate relevant to this thesis

Bildstein, Taylor. "Alice in Fol land: student experiences with the Tasmanian Fol Act." *Freedom of Information Review* 110 (2004): 14-20.

Bildstein, Taylor. "Freedom of Information: who is paying whom for what?" *Togatus* 75.2 (March 2004): 13-18.

Bildstein, Taylor. "The Secret State? (2) An interview with Rick Snell." *Tasmanian Times* (the articles). October 2004. Available: www.tasmaniantimes.com

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Chapter One: Introduction

In 2003 postgraduate journalism by coursework was taught at the University of Tasmania for the first time. Coursework components include Freedom of Information and other research techniques. That year the author of this study lodged her first Freedom of Information request to the Tasmanian State Government. The result of that request and subsequent ones revealed that the theory and reality of using Freedom of Information in Tasmania are vastly different. The main problems were extreme delay and over-application of exemptions. In 2004 it was documented that Fol also didn't meet the research expectation of other postgraduate students in Tasmania (Bildstein, *Fol land* 14–20).

This small series of negative Fol outcomes is in contrast to the results obtained by some national journalists who have used Fol effectively or enthusiastically, for example: David Marr, Marian Wilkinson, Michael McKinnon and Jack Waterford. Using similar legislation to that found in Tasmania (Evans 9) these talented journalists have investigated and written powerful and important stories.¹

¹ See for example David Marr and Marian Wilkinson's book "Dark Victory"; and Michael McKinnon and other journalists' Fol yarns on *The Australian's* Fol webpages. Jack Waterford is reported to have sent in about 600 FOI requests to the Australian Government when the Commonwealth Fol Act came into effect (Ricketson and Evans).

To the author's knowledge, there are no postgraduate studies addressing journalism issues in Tasmania. While there are a couple of journal articles that refer to Freedom of Information in Tasmania, these do not look at journalists' use of the legislation².

The intention of this research is to find out whether journalists use Freedom of Information legislation in Tasmania, if so how often, and whether they value it as an investigative research tool. It aims to compare the Tasmanian experience with those of other states of Australia, where possible. To put the Tasmanian Fol journalism experience in context, this research aims to compare Tasmanian results with current Fol theories, and explore journalism culture in Tasmania.

Considering the limited literature, this is no small task because collecting original information was often the only way to collect background information.

Because the aims of this research are so broad, the main emphasis is to develop an understanding of journalists' use and attitudes towards the legislation as a research tool in Tasmania. Other aspects to the research, necessary to understand the main aim properly, are explored with secondary importance. Secondary

² With the exception of Nick Clark's one-page review of his first two years of experience as a journalist using Tasmania's Fol laws (Fol Review 97).

research considerations cover journalism culture in Tasmania, the activities of spin doctors, an historical perspective and other aspects. This information is mostly found in the appendices.

Chapter two describes Tasmania's demography, and compares the characteristics of the state's main news organisations. This chapter briefly describes Tasmania's FoI Act and its history.

Chapter three reviews available literature from other states of Australia and international literature, in the absence of local journal articles or postgraduate studies on the topic. Studies by University of Tasmania undergraduate students put interstate and international findings into local context and provide a basis for the design of a Tasmanian study.

Chapter four reviews a West Australian study that addresses similar research aims to the Tasmanian study and provides guidance for Tasmanian research design.

Chapter five describes the Tasmanian study design, which is comprised of interviews with key Tasmanian journalists, a questionnaire, and analysis of FoI and Ombudsman's annual reports. This method is not only designed to achieve the

main aim of this thesis, but also to fill in the gaps in background local knowledge.

Chapter six presents the results.

Chapter seven discusses the results in reference to literature from other states and internationally, while Chapter eight articulates the findings of the thesis.

The nine appendices, which are referred to in the main body of the thesis, provide supplementary information to support the main thesis.

Chapter two: About Tasmania

Tasmania is an island state south of the mainland of Australia. It has a population of 480,000 people (Treasury and Finance iii, 20). Its main media is comprised of three newspapers, each covering its own geographic area; and the ABC, which covers all of the state. Table 1 provides an overview of the characteristics of these media organisations.

	ABC	<i>The Advocate</i>	<i>The Examiner</i>	<i>The Mercury</i>
Coverage	Statewide	North-west	Weekly: north and north-east; Sundays: west	South
Readership / audience	22.3 per cent of Hobart's radio audience. ³ 30 per cent of evening TV news audience. ⁴	78,000 ⁵	Mon-Fri 84,000; Sat 101,000; Sun 107,000. ⁶	Mon-Fri 130,000; Sat 155,000; Sun 136,000. ⁷
Total journalists	36 ⁸	23 ⁹	22 ¹⁰	36 ¹¹

Table 1: A snapshot of Tasmania's three main newspapers and the ABC.

³ In 2002, 936 ABC Radio held 22.3 per cent of Hobart's radio audience. During peak rating time (5am-9am) the station holds 28.8 per cent of the audience (Walsh).

⁴ ABC-TV 7pm news in September 2004. Average audience is 53,000 during the week. Peak audience is 65,000 viewers on weekends (Fisher).

⁵ (Advocate online).

⁶ (Examiner).

⁷ (Mercury). The Sunday figure is for *The Sunday Tasmanian*.

⁸ The ABC employs 26 full-time, eight permanent part-time, and two casual journalists (Wilson).

⁹ *The Advocate* employs 33 full-time, one part-time and one casual journalist. Of the 33 full-time journalists about ten of these are full-time subeditors, so about 23 are full-time information-gathering journalists. (Hill).

¹⁰ (Southwell).

¹¹ (Baily).

The ABC also has a special requirement to engage in investigative journalism that the commercial media do not.¹²

Freedom of Information in Tasmania

Tasmania's *Freedom of Information Act 1991* was introduced with the objective to improve democratic government in the state by increasing the accountability of the executive to the people; and increasing the ability of the people of Tasmania to participate in their governance (Fol Act, S.3).

The intention of Parliament, as stated in the Act, is for discretions in the legislation to be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.

The Act covers Tasmanian Government departments (ie the Department of Premier and Cabinet), prescribed authorities (ie Hobart Ports Corporation) and councils (ie Hobart City Council) (for a complete list see: Fol Annual Report 2003: 25–28).

¹² "The ABC does not simply report: it also works within the best traditions of investigative journalism, to which it has made major contributions. While it remains independent of sectional interests, it is well placed to pursue issues of public concern systematically through innovative and reliable journalism and to contribute uniquely to the freedom of information that is essential to a democratic society... The Corporation is also required to be innovative and to pursue recognised standards of excellence in the gathering and provision of news." (ABC Editorial 6.2.1 and 6.3.2)

Tasmania was the fifth state, along with South Australia, to introduce the Act. Today, all states and territories in Australia have Fol Acts (Evans 9)¹³.

In 1996 a review of the effectiveness of the legislation was held. The Tasmanian Government's Submission to the Legislative Council Select Committee on Freedom of Information Report recommended:

- a) increasing fees and charges (32, 40, 44);
- b) removing fee waiver clauses¹⁴ (45)
- c) that no detailed public interest test be adopted (31);
- d) limiting prescribed authorities covered by the Act (36);
- e) extending decision time on requests from 30 to 45 days (41);
- f) restricting the Ombudsman's powers (48);
- g) extending the scope of exemption clauses (49–62).

While many of these recommendations were not enacted, the Legislative Council Select Committee's report on Fol did recommend that Forestry Tasmania, TT Line and other government business enterprises receive exemptions from the Act (Sections five and 32A).

¹³ Since Evans wrote *Use by Journalists*, the Northern Territory Government has enacted Fol legislation (Lamble *CAR and Fol* 166).

¹⁴ Fee waiver clauses the government wanted removed were S17 1f (routine request) and 1g ii (general public interest or benefit).

Forestry Tasmania's exemption from the Act has been an ongoing cause of public concern¹⁵ and on 30 August 2004 the Tasmanian Minister for Infrastructure, Energy and Resources announced that the exemption will be removed (Green).

¹⁵ See for example Lord of the Forests (Four Corners, 16 February 2004) and The Logging of Tasmania's Old Forests (Australia Talks Back, 19 February 2004).

Chapter three: Subject Review

Chapter three reviews the limited literature from Tasmania, and the more prolific literature from wider Australia. This chapter reviews the factors the literature suggests discourage journalists from using Fol and wherever possible applies these to the Tasmanian situation. There is also a brief review of documentation about Australian journalism culture.

Definition of terms

Throughout this thesis and unless otherwise indicated, the Tasmanian *Freedom of Information Act 1991* is often referred to as “Fol” or “the Act” or “the legislation”.

Unless indicted otherwise, these terms always refer to the Tasmanian legislation.

“Fol” and “Freedom of Information” are also used as general terms to describe legislation that grants access to government information, even though in other countries such legislation goes by other names¹⁶.

Literature Review

To the author’s knowledge, there are no postgraduate studies addressing issues in journalism in Tasmania; just two journal articles have been found that address Freedom of Information in Tasmania that are of significance to this research: an

¹⁶ For example, in Canada it’s called “Access to Information” legislation (Lamble, Fol surveyed).

analysis of FoI annual reports and Ombudsman's reports from 1996–1999 (Snell and Tyson); and a study of five jurisdictions including Tasmania and four island nations that addresses the accountability of government business enterprises (Hubbard). Snell and Tyson's study is of limited use to this research, as they conducted a broad analysis of requests and decisions based upon overall numbers, but do not address journalists' use of the legislation. Hubbard's study of government business enterprises (GBEs) is of interest because two of Tasmania's GBEs, Forestry Tasmania and TT-Line, that have not been covered by the Freedom of Information Act at all since 1997, have frustrated local journalists.

One PhD thesis has been identified, by Lamble (*CAR and FoI*), which briefly addresses FoI use by the media in Tasmania.

Administrative law undergraduate studies addressing Freedom of Information and the media in Tasmania have been useful in filling the void of background information.

Tasmania’s *Freedom of Information Act 1991* was modelled on the Commonwealth Act (1982), as were those of the other states and territories¹⁷ that have Fol Acts (Evans 9). The limited studies that have been conducted elsewhere in Australia about Freedom of Information and the media are therefore of value to a Tasmanian study – these, plus other literature about Freedom of Information in Australia more generally, fill in the remaining background to this pioneering local study.

Lamble’s online survey

Lamble’s used media websites to search for Fol requests that resulted in articles, news reports, commentary or mentions of Fol in the Australian media. His Tasmanian results were as follows¹⁸:

Newspaper	State & local gov requests lodged by media outlet	Federal gov requests lodged by media outlet	Requests lodged by opposition political parties	Criticisms of Fol laws and rules or other comments	Other references to Fol
<i>The Mercury</i> and <i>The Sunday Tasmanian</i>	11		1	10	27
<i>The Examiner</i>	1			1	9
Total	12		1	11	36

Table 2: Online survey results, 31 March 2001 to 31 March 2002 (Lamble, *CAR and Fol* 366–367).

¹⁷ Since Evans wrote *Use by Journalists*, the Northern Territory Government has enacted Fol legislation (Lamble *CAR and Fol* 166).
¹⁸ Lamble didn’t survey media organisations that didn’t have a publicly searchable website (Lamble, *CAR and Fol* 362). Presumably this was the case for *The Advocate*.

Lamble's results show that of the two newspapers surveyed *The Mercury* is the biggest user of FoI in Tasmania, and neither media organisation used the commonwealth legislation.

Undergraduate research

Undergraduate students began looking at journalists' use of the Tasmanian FoI Act just five months after it took effect, in 1993, and have been writing at regular intervals ever since. Their results show that journalists in Tasmania didn't ever embrace the Act as an investigative research tool.

The studies show there was a brief period of optimism for the application of Freedom of Information by journalists in Tasmania, in the first year of its introduction. But as the effects that are present today¹⁹ crept into the system journalists' enthusiasm waned and they engaged in more passive modes of information gathering. They generally haven't been committed enough to appeal. The undergraduate studies also suggest there is not an emphasis on investigative journalism in Tasmania.

¹⁹ Discouraging factors seen today include delays, over-use of exemptions, expense, and discouraging techniques from spin doctors. See later in this chapter for more about these factors.

While many educational courses were available when Fol legislation was first introduced in 1993, no courses specifically for the media had ever been provided in Tasmania (Bantoft and Speers 10). As journalists' Fol requests attract special attention and the enactment of contentious issues management (Snell, *Dry rot* 62–65), it was obvious they required specialist training in effective use of the Act.

Regardless of the fact that journalists have hardly used Fol, and when they have they've been unhappy with the result, there has remained an attitude among journalists that Fol is an important investigative tool. For a full analysis of eight undergraduate assignments about journalists' use of Fol see appendix three.

Brief historical review

Access to quality information is fundamental to quality journalism and access to information via Fol represents both a right and a responsibility.

The Australian Press Council's Charter recognises Australia's endorsement of Article 19 of the Universal Declaration of Human Rights, endorsing the right to the free flow of information to enable news and opinion of public interest to be freely available to the citizens of Australia. The Charter underpins the Press Council's own approach to policy development with the aim of preserving the independence of the press from government regulation (Australian Press Council, Charter).

The fifth principle of the charter states: "It is the responsibility of the press to protect the people's right to know and to contest encroachments upon that right by governments, groups or individuals" (Australian Press Council, Charter).

All journalists interviewed by Evans (10) recognised that Fol, in principle at least, is ultimately beneficial for journalists, as part of their broader democratic and accountability role.

Freedom of Information legislation provides the media with a valuable tool to meet its responsibility, as stated in the Australian Press Council's Charter, as it offers independent access to government information. But available literature suggests the legislation has not been adequately utilised to protect the people's right to know, or to contest encroachment by governments.

On a countrywide scale, Ricketson commented: "In recent years editors and senior journalists have complained about the difficulty of using Fol, but appear to have done little to campaign for change." (Cry Freedom).

Lamble reports that not one of the 18 individuals who made submissions to the Australian Senate's all-party Legal and Constitutional Legislation Committee

hearings in 2002 was a journalist or representing a media organisation, even though the proposed changes would have increased transparency in the public service and introduced greater accountability in government (Fol surveyed 8).

In Tasmania, Wayne Crawford²⁰ was the only Tasmanian journalist to make a submission to the Legislative Council Select Committee on Freedom of Information in 1996 (*Committee report* 113).

This shows that Tasmanian journalists, with the exception of Mr Crawford and *The Mercury*, have not fulfilled their responsibility to contest encroachments upon the people's right to know as stated in the Australian Press Council's Charter.

Mercury journalist Nick Clark was one of the first Tasmanian journalists to gain information using Fol (97). His first experiences with bureaucrats in 1993 were more helpful than expected, and he had received answers to his requests within a couple of weeks. This was in contrast to his experience in 1995, by which time he was commenting that the 30-day response time was being completely ignored (97)²¹. He noted that costs were also increasing. "Tasmania's *Freedom of*

²⁰ Wayne Crawford's position at that time was associate editor and columnist with *The Mercury*.

²¹ For example, the request he was waiting on at that time, which he described as uncomplicated, was pending 54 days after submission. In 1995 Clark had waited 60 days, seven weeks, and 13 weeks for other requests (Clark 97).

Information Act has undergone an unfortunate transformation since it was introduced on the 1 January 1993.” (97). He concluded: “The Tasmanian *Fol Act* has reached the stage where the perseverance required to respond to deliberate delays is making the Act unworkable, more notably so for the journalist.” (97).

Media apathy for Fol in Australia

The role of the media in the effectiveness of the Freedom of Information legislation has been widely acknowledged²².

However it is also accepted that the media never fully embraced the potential of Freedom of Information legislation in Australia, as demonstrated by the following comments:

“It is by now generally agreed, I think, that Fol has been a considerable disappointment so far as its use by journalists has been concerned... We all know, don’t we, that it doesn’t really work” (Waterford).

“There is a culture of secrecy when there should be openness that prevents journalists from doing their jobs properly and from providing public accountability” (Coulthart, quoted in Evans, B. 2003: 12).

“Australia’s media generally seems to have given up the fight in relation to Fol.” (Lamble, *Fol surveyed* 8).

²² Lidberg and McHoul (33) for example: “...in theory, any and every member of the public could set out to scrutinise government by using Fol. However, in practice, this task is most often undertaken by journalists... individual citizens will rarely have the time or energy to scrutinise the agencies via Fol. Instead, some sort of representative is needed to find (and supply citizens with) relevant information to enable them to participate to a greater extent in political processes.”

"Individual users have no collective power, so you rely on the media. But most of them have taken their bat and ball and gone home" (Snell, quoted in Ricketson, *Cry Freedom*).

"(The New Zealand system) stands head and shoulders above the politically manipulated sham that Fol has degenerated into for journalists and consumers of news in Australia..."²³ (Lamble, *Fol surveyed*, 8).

"Australian journalism has tended to undervalue, under-use and underestimate the potential of Fol" (Snell, *Diminishing Returns*).

Lamble's quantitative survey of thousands of news stories in Australia and other countries found more articles published in Australian newspapers critical of the administration of Fol than there were stories resulting from Fol applications (*Fol surveyed* 8).

Politicians use Fol more often than journalists in Australia, and few Australian journalists use Fol requests as a news gathering tool (Lamble, *Fol surveyed* 5).²⁴

Journalists and editors are generally cynical about how far Fol can be used to access documents revealing government processes, particularly those documents dealing with high-level or politically sensitive government deliberations or decisions (Evans 9).

²³ Of Australia, New Zealand and Canada, Lamble concluded that Australia has the least workable Fol system (*Fol surveyed* 7).

²⁴ This is with the exception of two key news organisations. 100/162 requests for state and local government information surveyed that resulted in stories, surveyed by Lamble (*Fol surveyed* 5), were generated by just two publications: Queensland's *Courier-Mail* (87 requests) and Victoria's *Herald-Sun* (20 requests).

A common criticism among journalists is that the obstacles they face in using the Act to access documents means its practical value as an investigative tool is minimal if existent at all. It was suggested that the resources, both in costs and time, to make a viable request are often not justified by the expected results, particularly when other sources of information are available, such as leaking of documents or government contacts (Evans 10). Australian journalists tend to overlook Fol as a first port of call investigative tool, in favour of leaks or government public relations units (Evans 11).

With the exception of one or two journalists, like *The Australian's* Michael McKinnon, journalists have a fragmented approach to Fol use (Evans 11).

Waterford said it's true that journalists have made very limited use of Fol. He said the reasons reflect as badly on journalism as on alleged inadequacies of the Fol Act. Kearney (33) agrees that journalists should share the blame.

Compliance analysis

Snell wrote that journalists have a largely latent capacity to positively influence public service commitment to the principles of FoI by the construction of their stories and the ends to which their tales are directed (*Diminishing Returns* 188).

When senior management in government encourage secrecy and non-release, or when they lead by example and avoid FoI by not writing down minutes of meetings, only writing in part or using Post-it® Notes²⁵, for example, the community of FoI users, such as journalists need to be vigilant in education and skilled usage of the legislation. They need to attribute the information received through FoI when their request is successful, and lobby for administration in the spirit of the legislation. He says this is as important as the stories about late-night shredders and cunning spin doctors (*Diminishing Returns* 202–3).

Discussions with FoI officers revealed that certain activities of FoI users can cause significant shifts in compliance (Snell, *FoI officers* 70).²⁶

²⁵ Post-it® is a registered trademark of 3M (Australia Post).

²⁶ In 2001 Snell commented on wider compliance trends: "In each jurisdiction there is a constant stream of official reports, public statements by formal review bodies and academic studies that depict an alarming level and magnitude of non-compliance." (Snell, Admin compliance 26; referring to Roberts, Limited access). Administrative compliance analysis suggests that within agencies, between agencies, and over time, the patterns or levels of administrative compliance will vary from enthusiastic pursuit of the social purposes of the Act, to the extreme of activities (many illegal or unethical) designed to undermine both the intent and requirements of the

Specific attributes of FoI that have the capacity to provoke negative or non-compliant responses from administrators, of interest to journalists, are:

- It is unpredictable in terms of type of request, timing and outcome,
- Government information management techniques are apt to be portrayed as excessive secrecy or cover-ups,
- Key FoI administrators operate in an environment of diminishing training, resources and pressures promoting non-disclosure (Snell, *Diminishing Returns* 188).

Time delays

The editor-in-chief of *The Australian's* Canberra bureau argued that the efficacy of FoI as an investigative tool for journalists is determined by how quickly information can be accessed (Evans 11).

There is a perception among journalists that some agencies use time delays to discourage use of the FoI process, for example by responding to requests at the end of the prescribed 30-day time limit or extending time periods unnecessarily (Evans 11). Studies of contentious issues and the interference of spin doctors,

legislation (Snell, *Diminishing Returns* 189). Definitions of the five categories of administrative compliance are included in appendix nine.

explored later in this chapter, show that these journalists' concerns are not unfounded.

Expense

...recalcitrant public servants and secretive governments have found that imposing outrageous charges, or even just preparing astronomically expensive quotes, is an effective disincentive that discourages media requests generally, and especially requests which are potentially embarrassing (Lamble, *FoI surveyed* 8).

The threat of high fees (as opposed to their actual imposition) in New South Wales and the Commonwealth is used as a crude means of deterring and/or delaying particular applicants, especially journalists and non-government organisations (Snell and Tyson 34).

In Tasmania there is no application fee, and fees are capped at \$400. Charges can also be negotiated and appealed (*FoI Act 1991*).

One journalist from a large newspaper commented that "while application and processing fees do not represent much of a hurdle for larger news organisations, for smaller organisations or those with lower budgets the costs would be a significant obstacle." (Evans 11). As Tasmania's three newspapers can all be considered small media organisations, and it is well acknowledged at the moment that the ABC nationally is short of funding, this obstacle is of significance to the Tasmanian situation.

Exemptions

There are too many clauses exempting documents from access, which severely limits the range of documents available (Ricketson, *Cry Freedom*).

Snell noted that when it comes to conclusive certificates, Tasmania has an advantage over other jurisdictions:

Some jurisdictions, Tasmania being a prime example, have abolished conclusive certificates with no apparent outbreak of risky or unwarranted disclosure of sensitive information by the external review body. (*Invisible blight* 10).

Terrill also provides an example where openness has not caused problems for a government agency (*Secrecy and Openness* 24–5).²⁷

Evans (9) writes that in order to avoid the voluminous exemption²⁸, “journalists need to spend time framing their request to make it as specific as possible.”

²⁷ In the early 1990s the Queensland Electoral and Administrative Review Commission, which was charged to reform the state (and therefore dealt with delicate issues), made virtually all incoming and outgoing correspondence, as well as most other information, almost immediately available for public scrutiny. Computer access terminals were located in the foyer of one of its premises and were checked every morning by journalists. (*Secrecy and Openness* 24). Terrill asks: why is this example and its obvious lessons relatively unknown? Government, it appears, has a predictable tendency only to present the negatives associated with openness (Terrill, *Secrecy and Openness* 25).

²⁸ In Tasmania the voluminous exemption is section 20: requests may be refused if the work involved in providing the information “would substantially and unreasonably divert the resources of the agency from its other work.” (Fol Act 1991)

Journalists said they were concerned about the growing use of commercial-in-confidence exemptions as grounds for refusing access to documents, and that a liberal use of the exemption by agencies opened it to abuse (Evans 11).

Government business enterprises

According to Hubbard, the scope of legislative exemptions available for commercial information undermines accountability (8).

Hubbard and Snell's (*Rethink*) analyses, detailed in appendix four, shows what commercial and social losses can be suffered by lack of GBE accountability. The two GBEs in Tasmania that are not subject to Fol are significant to the Tasmanian Government and Tasmanian people, as TT-Line and Forestry Tasmania are involved with substantial amounts of public money and other public assets (ie old-growth forests and landscape integrity). If Hubbard's conclusions are correct, Tasmania is suffering the effects of anti-competitive, distorted and inefficient markets, the costs of which are transferred to the economy at large.

Lidberg's discussion about the placement of Fol in the Swedish constitution (18) shows just how fragile Fol legislation in Tasmania is.²⁹

Contentious issues management

Journalists are interested in subject matter that is controversial and while requested information itself may not cause harm to the government agency, it may simply not form part of the public relations strategy, or some other relatively minor form of inconvenience (Waterford). Or, in many cases, it might reveal something more embarrassing.

Lidberg and McHoul (101) commented on the present information climate "...in which governments, the corporate sector and others are increasingly trying to control and sanitise both information flow and content."

Lamble commented that in Australia it is common for government media advisers to be informed by public servants when 'difficult' Fol requests that might embarrass ministers or governments are lodged:

All too often those advisers and their ministers subsequently play a part in thwarting the release of information, or at least delay release until the

²⁹ Swedish Fol is a series of four separate laws, which makes changing Fol legislation in Sweden a complex and lengthy process. Changes must be passed by two separate parliaments: in practice, a general election must be held before the laws can be changed (Lidberg 18).

newsworthiness associated with a particular request is delayed by the effluxion of time. (Lamble, *FoI surveyed* 8)

Lamble commented that deliberate bureaucratic delays in Australia have developed into a virtual art-form (*FoI surveyed* 8).

Contentious issues management occurs where certain FoI requests are managed differently to other requests either because of the type of information being requested (high profile, politically and policy sensitive) and/or the type of requesters (ie journalists). The problem is the subjecting of the processing and final determination of the request to political and information management considerations instead of the legal and public interest considerations required by the legislation (Snell, *Dry rot* 62–5).

Snell noted that commercial-in confidence is an area that quickly deviates from normal handling processes to ones specifically construed to hide information likely to be requested (Snell, *Dry rot* 62).

Snell (*Dry rot* 63) provided an example of contentious issues management at work in Tasmania. When journalist Ellen Whinnet routinely followed-up a FoI request in 2002, she was told the FoI officer was waiting on a response from the government's media unit. Her story provoked a letter to the newspaper from the former head of the media unit under the previous government, Kay Chung:

Both in my positions within government departments and as the head of the Media Office, my tasks included advising a secretary or minister against the release of certain Fol material. This advice was always based on potential negative media rather than what might have been in the public's best interest... There were certainly times when a journalist was on to a good story but it was generally fairly easy to put them off the track with some creative delaying tactics... (Letters page, *Sunday Tasmanian*, 3 March 2002, quoted in Snell, *Dry rot* 63)

Snell said this letter was a dispassionate presentation of a view of public administration that allows the public interest to be dismissed for pure political opportunism (*Dry rot* 63).

In some Australian jurisdictions it has become practice to provide ministers with a list of applicants (Snell, *Diminishing Returns* 193).

Ross Coulthart, an investigative journalist with the Sunday programme, said use of Fol is a sign of defeat. "It's putting government on notice of what they want and it can only be used as a last resort. Most of the time Fol is a complete waste of time in terms of its practical application." (quoted in Evans 10)

Snell said the problem with contentious issues management is that it shifts compliance towards adversarialism and clearly impacts upon processing times, decisions about exemptions and fee determination. Contentious issues management works to undermine the informational value to the requestor,


whether it be for a news story, or other purpose (*Diminishing Returns* 193). When contentious issues management is instigated in the context of a Fol request it transforms into a technique which undermines citizens' rights to information (*Diminishing Returns* 196)

Spin doctoring

Snell remarked that the increased involvement of spin doctors in the administration of the Act hampers the fourth estate role of journalism (*Diminishing Returns* 187. See also appendix five).

As spin doctors have moved closer towards central stage in the operations of government, their impact on Fol has become potentially greater and more negative. Snell comments that a number of the activities of spin doctors are counterproductive to Fol and/or are catalysts in shifting administrative compliance towards non-compliance or adversarialism. But while the general impact of spin doctoring is negative upon Fol, the legislation does offer some capacity for journalists to limit or moderate the influence of spin (*Diminishing Returns* 194).

In appendix five Snell outlines some of the ways an effective Fol system can break down the monopoly of government spin doctors as a key source for news stories.



Waterford comments that Fol's potential to reveal information that doesn't agree with a government agency's public relations strategy, or something more embarrassing, drives the activities of the spin doctor. "Officials fight to keep documents of this sort out of the public record. If they lose, they campaign to weaken the legislation to make sure that it cannot happen again" (Waterford).³⁰

External review: role of the Ombudsman

In Tasmania the Ombudsman forms the only independent and determinative administrative review mechanism for the Act. (Sheridan and Snell 107).

Tasmanians have a low level of rates of appeal (Snell and Tyson 34).³¹

In analysing the Tasmanian Ombudsman's reports from 1996 to 1999, Snell and Tyson noted a decrease in the levels of full disclosure, which they described as a disturbing trend. It was noted that most Tasmanian agencies had officers whose Fol duties were allocated as extra duties and tended to give Fol requests low

³⁰ Waterford's attitude that the government can "lose" in a Fol request is what Snell describes as "adversarialism": viewing requests as an 'Us-Them' environment (Diminishing Returns 190). Although Snell uses the term adversarialism and other definitions of degrees of administrative compliance to describe the behaviour of the Fol officer and the wider government, the relationship between journalist and Fol officer can be viewed as a two-way relationship that requires give and take from both sides (Kearney 32). From this perspective it is easy to envisage that an adversarial approach from the journalist will produce an adversarial outcome from the Fol officer.

³¹ Snell and Tyson commented: "The continued low volume of reviews in Tasmania is an enigma... The Ombudsman's office has been low key in the promotion of external review although this in no way explains the low volume of internal review requests" (Snell and Tyson 34).

priority. It was also noted that Tasmania continually recorded a relatively high level of requests for policy and other non-personal affairs information compared to most other Australian jurisdictions (Snell and Tyson 33). They noted that resources constraints are the explanation.³²

Yet resource constraints don't tell the full story, according to Sheridan and Snell.

Cost considerations were a factor in the selection of the Ombudsman model of external review in Tasmania (Sheridan and Snell 107). The dangers of the Ombudsman external review model over others such as the Information Commissioner model adopted in Western Australia, include greater concentration of power and greater possibility of bias (Sheridan and Snell 107).

The pivotal role of this office in determining access to government held information is not only subject to the constraints of staffing and resources, but also to the mindset of the particular reviewer (107).

³² Snell and Tyson wrote: "Resource constraints have plagued the Ombudsman's Office since taking on the FoI review role (the government had promised a 50 per cent increase in staff but instead imposed a 33 per cent reduction)... (which has restricted) the annual reports to a compendium of bare statistics, compared to the types of reports produced by the Information Commissioners in Western Australia, Queensland, Canada and Ireland." (32). "The allocation of resources, the staffing and administrative arrangements and capacity of the Ombudsman's Office and FoI unit send a message that the Labor government is not interested in rejuvenating the system." (35).

Sheridan and Snell expressed concern that the Ombudsman's discernable predisposition towards non-disclosure, and said failure to seriously tackle openly and fully the issue of public interest deliberation has critically weakened any attempt to achieve the objectives of the legislation (108).

The Tasmanian Ombudsman failed to properly describe reasoning behind external review decisions to applicants, compared to the West Australian and Queensland information commissioners, and the Tasmanian Ombudsman's interpretation of the Cabinet exemption (Section 24) has strongly favoured agencies seeking to restrict access to government-held information (Sheridan and Snell 109).

If the Ombudsman continues to endorse an expansive interpretation of the cabinet exemption, said Sheridan and Snell, the accessing of any remotely sensitive information will be virtually impossible in Tasmania (109).

The Tasmanian Ombudsman's approach toward the "internal working documents" exemption (Section 27) unintentionally constructs a non-disclosure haven within which most agencies can significantly avoid access to policy information (Sheridan and Snell 110).

The Tasmanian Ombudsman's approach, concluded Sheridan and Snell, was to give the benefit of the doubt to the Executive on key exemptions (159).

Speaking from a national perspective, Waterford recommended that, when refused access, one should not automatically appeal – one should look at the reasons and see whether they stand up. If the journalist believes that reasoning is inadequate then, he said, they should appeal to a higher official in the agency; then to the Ombudsman or Information Commissioner; and be prepared to challenge the assertions of the agency and use their own materials to challenge their point-of-view (Waterford 10). As noted in appendix two, journalists from *The West Australian* have learnt to appeal as part of their use of Fol.

However, Sheridan and Snell's findings suggest that external appeal may not be a worthwhile prospect in Tasmania.

Australia's integrity

The United States Center for Public Integrity rates countries on an integrity index, which includes assessments of public administration. Australia's rating on the index, included in appendix six, is far from perfect.³³

Journalism culture in Australia

While a lot of journalists like to think of themselves as investigative reporters, most are writing instant material, reactive to some other instant event, and without much background. Moreover, few have much of an understanding of how an administration works (Waterford 3). "Journalists have a not-unnatural tendency to want to beat up something which they think is being held secret and rather less of a tendency to scrutinise that which is on the record," said Waterford (4).

Waterford said it's surprising that few journalists understand their rights under the FoI Act, or even have a passing idea of how a request might be framed, what sort of documents might be available and what they might expect.

According to Deuze (4), "on-the-job training" is relied upon more in Australia than university education.³⁴ While journalists in other countries feel more comfortable

³³ Coulthart writes about the disturbing trend within the public service to be increasingly politicised, learning "that the best path to career advancement is to suppress, cover up and lie... (to) support their minister at all costs, including, probably, the cost of truth." (Corruption).

³⁴ Thirty-five per cent of Australian journalists hold a B.A or M.A. degree.

opting for forms of deception³⁵ (Deuze 8), Australian journalists who don't adopt those information avenues need to find other, legitimate ways to gather information if they are to perform as effective journalists, such as Freedom of Information legislation.

Resurgence of Fol usage

There is a resurgence of interest in Fol in Australia (Snell, *Diminishing Returns* 198) but journalists are ignoring needed reforms or the necessity to maintain a defence against the return of secrecy (199).

Although journalists and editors remain hesitant to make regular use of Fol, increased Fol activity from a few key journalists and some newsrooms may indicate that journalists are becoming more aware of how to make the process work for them as a research tool (Evans 13).

Chapter three has shown that while no postgraduate study addressing journalists' use of Freedom of Information in Tasmania is available to provide background to this thesis, and identified journal articles do not address this topic directly; available literature from other states of Australia and international literature pieced

³⁵ Australian reporters rated their adversary role in society as high (Deuze 7), but are apprehensive about opting for forms of deception, such as going undercover or not disclosing that they are journalists when gathering information for a story (Deuze 8).

together provides adequate background from which a Tasmanian study can be designed and results compared. Literature from University of Tasmania undergraduate students support the observations and conclusions of researchers in other states of Australia, and suggest the Tasmanian situation is similar. For a variety of reasons described in this chapter and associated appendices, Tasmania is home to a media that is performing seriously beneath its potential when it comes to Fol usage.

Chapter four: Review of West Australian Study

Chapter three described how literature in Australia shows that journalists' generally don't look on Fol favourably. They have problems with the legislation and a lot of the current literature focuses on those problems and looks for ways to fix Fol in Australia. Chapter three also showed how journalists could have a role in Fol's resurrection.

Chapter four focuses on one recent Masters in Arts (Media Communication and Culture) study, by Johan Lidberg.

In 2002 Lidberg published a study about journalists' use of Freedom of Information legislation in Western Australia, and his findings were compared with results he obtained from Swedish journalists.

Lidberg's study is one of the few postgraduate studies about Fol usage by journalists in Australia.³⁶ Lidberg's masters thesis addressed the issue from a state perspective, and provided research that can be used to draw a comparison between states.

³⁶ Evans' study for the Australian Press Council addressed journalists' use of Commonwealth Fol legislation. This was conducted while she was an undergraduate journalism and law student (Evans 14)

Lidberg found that it's unusual for journalists at *The West Australian* newspaper to use Fol to acquire information, but when they do, information gained using Fol carries more credibility and independence (Lidberg and McHoul 111).

Western Australian journalists used Fol mostly for access to documents relating to politics and health (Lidberg and McHoul 116).

Although Lidberg's research pointed out many similarities between the areas and the newsrooms studied in Australia and Sweden (Lidberg 40–43), there are also many fundamental differences.³⁷ Considering such differences, the dissimilarities Lidberg found in journalistic use of Fol and associated culture in WA and Sweden were predictably vast.

Comparison between two Australian states, such as Tasmania and Western Australia, can be expected to yield more similarities than differences, and reveal subtleties that would be lost in a comparison as general as Western Australia and Sweden.

³⁷ Differences between Lidberg's study jurisdictions include the fact that the regions have different languages; Sweden's Fol legislation was the first legislation to be introduced worldwide over 240 years ago (Lidberg 33), and West Australian legislation was relatively recently introduced, just 12 years ago (Lidberg 27). Sweden is not a Commonwealth country and, unlike Australia, its legislation is part of the Swedish constitution (Lidberg 18). Lidberg is also comparing national legislation in Sweden with state legislation in WA.

Lidberg's study design

Lidberg collected information about Fol use in two West Australian newsrooms (one radio, one newspaper), and also performed a content analysis of the newspaper. Lidberg aimed to find out to what extent journalists in WA and Sweden use Fol as a journalistic tool and what their attitudes were towards Fol. Lidberg adopted a triangulated approach³⁸, involving three research techniques: journalist interviews, journalist surveys and content analysis.

Critical review of Lidberg's study design

Lidberg prepared a questionnaire for chiefs of staff (COS) as well as journalists. However COS' are not the main information-gatherers in the newsroom, journalists are. The COS' influence, if any, would be if they encourage Fol usage in the newsroom or facilitated in-house training about Fol. This can be established by asking journalists if this is the case.

Lidberg assumed that the 900 members of the Australian Journalists' Association's West Australian branch represented the total survey population of journalists in that state (46). The breakdown of journalist numbers in Tasmania, using a different collection method³⁹, suggests this was an incorrect assumption.

³⁸ Triangulation is the term applied when more than one research method is applied to measure research questions (Evans and Gruba 91).

³⁹ See chapter two for a breakdown of the number of journalists in Tasmania and the source of this information.

The Advocate employs 33 full-time journalists. If these 33 journalists were members of the AJA, they would be registered with the union as journalists. However about ten of these journalists actually operate in the role of sub-editor, which does not involve news-gathering. So at *The Advocate* about 30 per cent of journalists are not news-gatherers. If this proportion is applied to Lidberg's figure of 900 AJA members in WA, then the total survey population of news-gathering journalists in that state is about 627.

While Lidberg chose just two media organisations to represent Western Australia, the chosen representative WA organisations were both located in the capital city. While a majority of the state's activity can be expected to occur in the capital city, there are many stories that could be revealed, of interest to a regional or outback audience, through skilled use of Fol.

Use of the legislation beyond Tasmania's capital city is of interest to this research. A comparison between Western Australia and Tasmania would not be perfect, as it would compare state-wide Tasmanian journalistic practice with capital-city-based West Australian practice. But considering the alternative, this does appear to be the best option. For example, if the journalistic practice of each state's two largest (capital city-based) papers were to be compared, those results would also render

an imperfect comparison.⁴⁰ Table 3 shows the demographic difference between WA and Tasmania.

Table 3 shows that each of the Tasmanian newspapers dominates its geographic area, while the West Australian newspaper shares its audience with more of the competing media. Western Australia is many fold larger than Tasmania, both in terms of its capital city population and total population. Population in WA is concentrated in the capital city, while Tasmania's population is more spread across the state. Tasmania's small size makes it an excellent choice as a case study: the population of journalists is small enough so that most can be approached, yet the issues affecting Tasmania are similar to those that could be expected to be found in larger states.

⁴⁰ The maximum comparative circulation shows the fundamental disparity well: *The West Australian* (West Australian) has a Saturday circulation six times larger than *The Mercury* (Mercury) (385,000 compared to 63,550). When adding together the figures for all three Tasmanian newspapers and comparing them with those for *The West Australian*, the WA paper still dominates, any way the comparison is considered.

Tasmania	Western Australia
<i>Total population, approx. (ABS, 2003)</i> 480,000	Two million
<i>Total population as per cent of Australia's⁴¹</i> 2.4 per cent	10 per cent
<i>Population of capital city, approx. (ABS, 2003)</i> Hobart: 200,000	Perth: 1.4 million.
<i>Capital city population as per cent of whole state</i> 42 per cent	70 per cent
<i>Newspaper readership as per cent of the population/audience in the region.</i> <i>The Advocate</i> 91 per cent, north-west. (<i>Advocate</i>) <i>The Examiner</i> 79 per cent, <i>Saturday Examiner</i> in north, north-east. 44 per cent, <i>Sunday Examiner</i> , north-west. (<i>Examiner</i>) <i>The Mercury</i> 67-79 per cent of the southern region. (<i>Mercury</i>)	<i>The West Australian</i> 18 per cent (Lidberg & McHoul, WA & Sweden)

Table 3: Demographic comparison, Tasmania and Western Australia

While Lidberg and McHoul (105) describe access to information in WA as a costly and time consuming process, costs in Tasmania are capped at \$400 and there is no application fee (*FoI Act 1991*). This means that while the smaller size of

⁴¹ Australia's population is 19.9 million (ABS, 2003).

Tasmanian newspapers would be expected to discourage Fol use, the lower legislated costs should encourage use compared to Western Australia.

Lidberg conducted extended interviews with journalists and spent time shadowing them in the newsroom and as they did their rounds (49). Journalists from the *West Australian* gave Lidberg copies of their Fol requests and provided examples of stories they had written.

Lidberg's results

Lidberg experienced enthusiastic responses from journalists at the *West Australian*, and negative responses from those at the ABC (50).

He received 14 surveys back from WA journalists, including four from the ABC, a response rate that he described as very low (Lidberg 51).

Chapter four has described Lidberg's West Australian study design and results, with its potential as a model for the Tasmanian study in mind. Chapter five brings the information presented in previous chapters together and describes the Tasmanian study design.

Chapter five: Tasmanian Study Design

Chapter three reviewed Australian literature about journalists' use of Fol and Chapter four looked at Lidberg's WA study, which presents research that is suitable for comparison with Tasmanian results. Chapter five describes the Tasmanian study design and reasoning behind these choices.

Because of the lack of information about journalists' use of Freedom of Information legislation, either locally or nationally, this thesis is viewed as baseline research. It is hoped that future researchers build upon the findings of this study. The study design is therefore intentionally broad.

With such intentions in place, the reality of the constraints upon this project must be considered. This is not a large study project: it is equivalent only to an honours project, without a budget, and is six-months part-time in duration. Without a travel budget it wasn't possible to visit each of the newsrooms and speak to Tasmanian journalists face-to-face about Fol and the intention of this project, as Lidberg did in WA (46). Time constraints were also a factor – for those journalists based in Hobart, the interviews themselves aren't the most time-consuming aspect to interview-based research: transcription is. Therefore due to time and budgetary constraints, it wasn't possible to interview each journalist in Tasmania, or even scope their suitability for an interview via an informal face-to-face discussion.

It was not possible within the constraint of time to adopt Lidberg's more complicated, triangulated approach for this study. Even so, it was important to work within these constraints and design a research method that looked at the research aim from a variety of angles, so the conclusions of this study could be stated confidently, and there was enough baseline information collected to provide a springboard for future research.

For such a topic as this, where virtually no research had been done in the past, an action research⁴² method was chosen as the approach that would yield more informative results than a single round of questionnaires or interviews.

Comparisons between states: Lidberg's WA study

In contrast to Lidberg's study design, which assessed just two media organisations in Western Australia, the Tasmanian research design encompassed four media organisations across the state and therefore provided the opportunity to participate to most journalists in Tasmania. This more inclusive approach was expected to provide better understanding of overall FoI usage among journalists in

⁴² Action research is an adaptive methodology. It involves continuously refining methods, data and interpretation in the light of the understanding developed in earlier research cycles. It is an emergent process that takes shape as understanding increases; and an iterative process that converges towards a better understanding. (Dick).

Tasmania than a survey of Tasmania's capital-city newspaper (*The Mercury*) and the ABC.⁴³

However the constraints of this study suggest that not all media organisations in Tasmania should be included in the study design. Journalists not pursued for this study were those working for AAP, the commercial television stations, SBS (which doesn't have any staff in Tasmania), country and suburban newspapers.

As noted in chapter three, the obstacles to FoI use by journalists are especially problematic for smaller news organisations or those with lower budgets, and all four of the Tasmanian media organisations chosen for this study can be considered in that category. It was therefore judged very unlikely that journalists at the smaller Tasmanian news organisations, including the television stations, would use the legislation. The ABC also has a special requirement to engage in investigative journalism that the commercial television stations do not (see chapter two), which makes ABC journalists more likely to have FoI experience.

⁴³ For example, if *The Mercury* had a policy of FoI usage but *The Examiner* and *The Advocate* did not, then results for *The Mercury* would create a false impression of overall usage if it was considered representative of the wider print media. It is not the intention of this research to gain understanding of just one news organisation's usage, the aim is to understand FoI usage by Tasmania's wider media.

Searches of newspaper articles using the Hobart Lending Library's TALIS search engine showed many examples where information sourced via Fol was presented in the Tasmanian press. It was therefore not necessary to ask "do journalists in Tasmania use Fol", as Lidberg had done. A more appropriate question for Tasmania was "Is Freedom of Information legislation a useful investigative tool for journalists in Tasmania?"

This question, which addresses the main aim of the research⁴⁴ also leads on naturally to the secondary aims of the research as stated in chapter one.

Using Lidberg's survey as a model, the Tasmanian questionnaire started with closed questions and lead on to more open questions that required written answers about journalists' experiences with, and attitudes towards Fol as an investigative research tool. Each questionnaire was designed to take approximately 20 minutes to complete, depending upon the level of detail in journalists' answers.

Unlike Lidberg's study design, no questionnaire was prepared for Tasmanian chiefs of staff, for reasons explained in chapter four.

⁴⁴ The main aim of the research, as stated in chapter one, is to develop an understanding of journalists' use and attitudes towards Fol as a research tool in Tasmania.

Journalism in WA and Tasmania: a personal perspective

While Lidberg used journalist surveys to gauge the results of interviews, the Tasmanian design adopted the opposite approach.

By the time Chris Johnson won a Walkley award for coverage of suburban or regional affairs in 2001, he had been employed in senior editorial roles by all of Western Australia's major regional publishers (Walkey website). Now one of Tasmania's top journalists, Johnson was able to provide a comparison between Tasmania and Western Australia based upon personal experience. This interview was one of two in-depth interviews conducted. Because the constraints of the study dictated that it was not possible to interview all journalists who had used Fol in Tasmania, and also because journalists are notoriously busy people and therefore unlikely to be available, Chris Johnson alone was chosen to provide in depth background.

Johnson's insights are valuable because he is personally able to compare the Tasmanian situation to that in Western Australia. As chief political reporter for *The Examiner*, he is a high-level journalist dealing with matters of government and has reason to have used Fol.

An historical perspective on Tasmanian journalism

An interview with Wayne Crawford is the second of two in-depth interviews conducted for this study. Wayne Crawford was selected to provide an historical perspective on news-gathering methods and culture over time in Tasmania. Mr Crawford's experience as a reporter began in 1968 and he was able to recall the stories his peers told him when he began his career, stories which extended back to the 1950s, long before FoI was introduced to Tasmania. Mr Crawford was a political reporter, intimately involved in scrutinising government and government processes. Mr Crawford is the best choice to provide an historical perspective because of his experience and past political role in the media.

Incorporating current theories: Snell and others

Because there is no literature yet about journalists use of FoI in Tasmania⁴⁵, the questionnaire is designed to test a variety of current theories, such as journalists' views on Snell's theory that they can affect administrative compliance by the way they write their stories (*Diminishing Returns* 188, 203), how journalists rate administrative compliance in Tasmania⁴⁶, and their views on levels of interference by spin doctors. These lines of inquiry tie into the intention of this research, as

⁴⁵ With the exception of undergraduate studies.

⁴⁶ For definitions of levels of administrative compliance see appendix nine.

described in chapter one, because the success of journalists' Fol requests in the past is likely to have influenced whether they've continued to use the legislation again in future, and whether they would be likely to recommend it as a research tool to other journalists. So in this way administrative compliance and interference by spin doctors, or at least journalists' perceptions of these factors, are important in understanding the motivations and experiences behind the primary aim of this research.

Analysis of Ombudsman's and Fol annual reports

It is a requirement of the Fol Act in Tasmania that an annual report be prepared on the operation of the Act. In 2001 Snell and Tyson looked at these reports and noted concern about trends in full disclosure, failure to meet the statutory time limit, and the low priority given to Fol requests by governmental staff. Sheridan and Snell's work was also critical of the Ombudsman's fulfilment of its role as the sole avenue for external review.

This study looks at the Fol annual reports again, in greater details and with focus on those sections of the reports that document or have impact on the activities of journalists in Tasmania who use Fol. The analysis looks at the full period of ten years, 1993 to 2003, noting changes in authorities covered by the Act, analysis of

wording of foreword sections, introductory paragraphs, changes to the Fol Unit, reports on fees and charges, revisits the statistics and draws some new ones.

Questionnaire distribution

The questionnaire was designed in three parts, based upon Lidberg's design and including reference to current theories.⁴⁷ It was accompanied by an information sheet and a consent form.⁴⁸

The questionnaire was distributed to Tasmanian journalists via a variety of methods. First, chiefs of staff at the four news organisations were telephoned, the study was explained to them and they were asked to distribute the questionnaire to journalists via internal email lists.

Although all COS' were obliging, not one reply was received.

A variety of different methods were then used to try to elicit some responses. The Fol Editor of *The Australian* was coming to Hobart for a conference and to speak to *Mercury* reporters about using Fol. He was asked to hand out questionnaires to the *Mercury* reporters after the talk, which he agreed to do.

⁴⁷ The full questionnaire, along with a full account of the results, is in appendix nine.

⁴⁸ A copy of the information sheet and consent form is in appendix one.

At *The Examiner* and *The Advocate*, chiefs of staff and editors were asked which journalists they thought were likely to have used Fol, and these journalists were then approached directly.

As the author works at the ABC, journalists at the broadcaster were asked directly whether they had used Fol and if so, asked to complete a questionnaire.

A list of award-winning Tasmanian reporters was requested from the Australian Journalists' Association⁴⁹, so they could be targeted as well. When approached a second time, some journalists said they had lost the original emails, so they were sent hard-copies and stamped, addressed envelopes.

So that proportions of journalists who use Fol could be determined, a staff member from each newsroom was asked how many journalists were employed at the news organisations, as this figure is difficult to obtain by any other method.

Chiefs of staff and journalists were encouraged to contact the author with any questions about the study and their participation in it.

⁴⁹ Andrew Muthy of the Australian Journalists' Association (Tasmanian branch) organises the annual Tasmanian Media Awards.

One recently retired journalist was contacted via a third party. When she agreed to participate she was telephoned at her home and the questionnaire was conducted verbally.

Follow-up work included a telephone conversation with one journalist about information received in the questionnaire, submitting a Fol request to a government agency, and contacting the agency directly to verify information received from one of the respondents.

Chapter five has detailed the research design. It is a design that incorporates a questionnaire, two in depth interviews and an analysis of the Fol annual reports for the last ten years. The research design builds upon the work of Snell, Lidberg, Terrill and others in such a way that Tasmanian results can be compared with another state of Australia and thereby examined in context, and current theories can be applied, and accepted or rejected in Tasmania.

Chapter six: results

Chapter five described the study design, which consisted of four different but complementary techniques to achieve the research aims stated in chapter one. It described how the study was designed to achieve these aims within described constraints.

Chapter six reveals the results obtained from the application of the design, and makes comparisons between Tasmania and Western Australia. Current theories that were incorporated into the questionnaire are accepted or rejected by Tasmanian journalists. Results from the interview with Chris Johnson are incorporated into the sections of chapter six that report on the findings of the questionnaires.

Questionnaire responses were received from nine Tasmanian journalists⁵⁰. This low number is considered approximately representative of the number of Tasmanian journalists who use Fol, as supported by the literature.⁵¹

⁵⁰ Including Chris Johnson's verbal replies to some but not all questions on the questionnaires.

⁵¹ As described in chapter five, chiefs of staff were asked which journalists were likely to have used Fol, award-winning journalists were targeted and TALIS news archives were searched to help target journalists who were likely to have used Fol. Based upon information collected via these methods the author suspects there are just two more Fol users, both with *The Mercury*, who did not contribute to this research.

Questionnaire Part I: Journalists' attitudes towards Fol in Tasmania.

Tasmanian journalists generally think Fol is an important journalistic tool, even though they don't think it's easy to use, and they don't think public servants are helpful in assisting Fol requests from journalists. One commented: "The length of time (it takes to receive the result of a Fol request) has been excruciating at times."

They admit journalists generally don't have a good knowledge of how to use Fol. They say they should use it more, but they need more training.

They all strongly agreed that well-functioning Fol legislation is an important part of the democratic system.

Questionnaire Part II: Practical use of Fol by journalists in Tasmania.

The results show that no journalist in Tasmania uses *Freedom of Information* legislation more frequently than once per month.

Of the few journalists in Tasmania who use Fol from time to time, the two most frequent users used it once per month.⁵² The third most frequent user submitted a request about once every two months, and the rest only used it sporadically.

⁵² One of these two journalists is now retired.

The two most frequent active users of Fol both work at *The Mercury*. They both generally have as many stories using Fol-sourced information published as the number of requests they put in, which indicates that they are utilising the information well. Other respondents have use information from Fol in their stories less frequently or regularly.

While those Tasmanian journalists who use Fol use it up to 12 times per year, West Australian journalists use Fol up to four times per year (Lidberg 53⁵³). Those Tasmanian journalists who do use Fol therefore use the legislation more frequently than West Australian journalists.

Six of eight Tasmanian respondents made use of up to six instances of information obtained through Fol by other sources (eg lobbyists, opposition ministers) in the previous financial year, two didn't.

Only one journalist said she would always use Fol when researching a story of a more investigative nature, and she is now retired. She commented that it wasn't because she always got the information she wanted that drove her to continue to use Fol. She said: "That's how you get information that you can't access any other

⁵³ Page numbers for Lidberg's thesis are cited as PDF page numbers because there is a formatting error on the page numbering system.

way... I have (had some success with it) on occasions, but I've certainly had some duds as well."

When researching a story of a more investigative nature, four journalists often use Fol, and three seldom do. A respondent who seldom uses it for investigative stories said she doesn't always remember or think about it. No journalist answered "never"⁵⁴. This is similar to the West Australian response (Lidberg 52).

Half of the respondents said their editor or chief of staff didn't encourage Fol usage and half said they did. At least one respondent from each media organisation said they were encouraged to use Fol, except for the smallest of those surveyed, *The Advocate*.

These results therefore suggest that Tasmanian journalists have more encouragement to use Fol than West Australian journalists (Lidberg 52).⁵⁵ While West Australian ABC journalists told Lidberg they didn't use Fol and weren't encouraged to do so (Lidberg 52), both Tasmanian ABC journalists said they did receive encouragement to use the legislation.

⁵⁴ This is probably because all respondents were Fol users.

⁵⁵ For more detail see appendix nine, part II, question 6.

An ABC journalist said the current affairs heads in Sydney would sometimes demand Fol was used. One newspaper journalist said during downtime, for example after Christmas when there's not a lot of news coming in, they will put in some Fol requests: "...very much at the insistence at times of the editor... he is really keen on it."

About half of journalists thought the appointment of a Fol editor at their news organisation would benefit their journalistic practise. Two journalists pointed out that resource constraints at their news organisations would make such an appointment a practical impossibility. One commented that the media shouldn't have to go out of their way, with appointments of special positions, to make the legislation work for them.

For those journalists who pursue Fol requests on their own, so too do they pursue appeal alone. Most journalists seemed to appreciate the importance of appeal and would be willing to do it. All but two said they would appeal to the Ombudsman.

All bar one respondent said they or their news organisation would be willing to follow a story for as long as it takes, depending on what the story was.

How Tasmanian journalists use Fol

Journalists generally use Fol when they don't think there is any other way to get the information they want, and when the government media office won't help them. One said he'd use it: "Only if I couldn't get moles and snouts to talk."

But just under half said they use Fol as a first port of call for information when they want statistics or raw data. This is similar to a comment by a West Australian journalist, who said Fol is a good tool for detailed tables and lists of information, rather than for particular documents (Lidberg 55).

Journalists also commented that they usually use Fol to confirm things they've already been told, or to substantiate an avenue of inquiry.

Journalists use the results of *Freedom of Information* requests sometimes as the core basis of stories, and sometimes as background only. For other journalists the story normally centres on the fact that they can't get the information they want via Fol:

If I think I'm being stonewalled... then that becomes the news as far as I'm concerned – whether it's Fol, whether it's the government press office, whatever, if they are delaying giving the information then I'm happy to write a story about that. And more often than not it helps you get the story you want in the end anyway.

One Tasmanian respondent said he follows-up on the results of a first Fol request, with a second request.

Tasmanian journalists used Fol for stories about health, police, forestry, trade, environment, and political issues.

Tasmanian journalists usually take about an hour, and always under five hours, to put a Fol request together (this is less time than it takes West Australian journalists). Two of them commented that they always do their research first so they know exactly what to ask for (Lidberg 53).

Media attitude towards Fol in Tasmania

Most journalists believed Fol to be a fundamental research tool. Of the two respondents that didn't hold that view, one is also Tasmania's most frequent journalist user. He thinks it is worthwhile, but not fundamental. This journalist used Fol more like a routine journalistic tool than other journalists did, and he conveyed awareness that his way of approaching journalism is unusual or special.

Another journalist commented that while worthwhile, Fol is also always frustrating.

All respondents bar one said their use of FoI has increased in the last five years.⁵⁶ They said the increase in use was because they are more aware of it and its power, they have greater interest in investigative work, or that they needed to get a competitive edge because of their non-central geographical location.

One respondent has decreased FoI use in the last five years because she moved to Tasmania from Adelaide, where she'd used it more frequently, and found the Tasmanian system exasperating.

Time delays

The median time to access information using the legislation was about one to three months, which (like Western Australia⁵⁷) is more than the statutory deadline of 30 days.

One reporter stood out when she said her requests took "a couple of weeks" to process, and in her experience departmental staff were helpful in the administration of FoI requests. This respondent has been a journalist for the least amount of time of all respondents (four years) and has always worked in Tasmania, so she doesn't have the same level of long-term perspective as the other

⁵⁶ Some Tasmanian journalists who have used FoI in the past (but not recently) declined to participate in this study. This skews the answers to this section of the questionnaire because only journalists who have used FoI more recently are tending to participate in the questionnaire.

⁵⁷ The statutory maximum in Western Australia is 45 days. A majority of journalists in Western Australia also had to wait longer than the statutory maximum (Lidberg 53).

respondents and wouldn't be able to compare Fol today with Fol in the past. If past experiences were better than the experience today then journalists with past experience can be expected to hold more negative attitudes towards Fol than someone without experience of better times. Nor was she in a position to compare Fol between states.

All respondents said time delays are a deterrent to using Fol. One commented:

I've seen them, just in my short period (two years) here, taking longer and longer. Sometimes they're taking months. You can get some of them back in a few weeks but that doesn't seem to be the case much anymore, it's taking a long time.

He said time delays are sometimes caused by government agencies writing to applicants to ask them to reword their requests, sometimes due to minor points. This re-sets the statutory clock and extends the time taken to receive the information.

Expense

No journalist had a horror story to tell about the expense of Fol. Journalists guessed that their organisations would be willing to pay up to \$5,000 for information, if it was important. One said that with the type of information sought, money has been the least of the problems.

The most frequent Fol user said he didn't know what the company's upper limit was for Fol expenses because he hasn't had to pay yet. He said he'd used the "two per year rule", whereby government agencies give applicants two free Fol requests per year. The "two per year rule" is not legislated in the Act.

To follow up on this comment, a Fol request was submitted to the Tasmanian Department of Premier and Cabinet.⁵⁸

Fees were not charged for the request⁵⁹ (Millington 17 August 2004). The resulting information did not allude to a "two per year" rule, and showed that no internal discussion has occurred regarding reform of the *Freedom of Information Act* 1991.

⁵⁸ The request asked for policy and/or briefing documents describing internal procedures and protocols in the administration of the Act, excluding information contained in the Act itself, held by that department and/or by the Department of Economic Development, including instructions to Freedom of Information Officers about their duties and the administration of their duties, and any information, including emails, addressing or mooted reform of areas of the Act (Bildstein, DED: 28 July 2004).

⁵⁹ However the author of this thesis was warned that after the administration of three requests over 14 months, involving the waiver of about \$63 of charges, future requests were likely to incur a fee. \$63 for three requests (average: \$21 per request) over three financial years does not strike the author as an unreasonable expense. As the Act allows government agencies to charge \$25 per hour for information searches (*Freedom of Information (Fees) Regulations 1992*, section 4), this average represents less than an hour's work for the Fol officer per request. Such charging indicates that the requests were clearly worded, not too broad, and the information could easily be located. Therefore another explanation may be applicable, other than that the administration of these requests placed an unreasonable demand upon the agency: one of the previous requests regarded a controversial issue and resulted in an appeal to the Ombudsman. The Ombudsman's decision on this case was criticised in the media by Fol Review editor Rick Snell, who said that the external review decision was poorly considered and drew attention to the extended amount of time the Ombudsman took to make the decision. It is therefore suspected

A letter was then written to the Department of Premier and Cabinet asking whether a “two per year” rule existed (Bildstein 31 August 2004), and a reply stated that it did not (Millington 2 September 2004).

Fol officers, GBEs, contentious issues management and spin doctoring

All respondents think government agencies delay Fol responses on purpose and their comments indicated that they believe the delays are part of a contentious issues management regime.

Three respondents think delays are because Fol officers are under-resourced, three think Fol officers cause delays due to instruction from their superiors, and five think government media advisors cause the delays⁶⁰. One journalist commented that government departments do this because they feel they can delay with impunity, and another said delays come from the top down: “it’s in the culture of secrecy within government.”

An example was given where contentious issues management was suspected, so a political journalist used a general member of the public to put in a Fol request for

that contentious issues management is the cause of the administration of fees, as a result of criticism of the agency's and the Ombudsman's decisions.

⁶⁰ Some journalists chose more than one answer to this question.

the media, to increase the likelihood of receiving useful information. The journalist commented:

When the media put in an Fol, the alarm bells start ringing. (The government is) asking 'why do they want this' and then they really scrutinise what they're releasing. Whereas maybe they don't just with the regular person – which is how it seemed to be with this Fol over Maria Island. The stuff that was being released – I had a political analyst look at this who said 'I can't believe it, that they let this stuff out' and I'm sure they wouldn't have if the Fol inquiry had come from a journo or a politician.

The information has been harder to get than it was a couple of years ago. Just from talking to others I believe when the Fol legislation first came in here it was relatively easy (to get information), compared to what it is today... To the point that it's almost become redundant – the legislation – irrelevant. It's just not that useful anymore... They seem to be getting better at stonewalling and delaying tactics.

Two respondents commented they had experienced pre-empting⁶¹. Another journalist commented that he's received phone calls from spin doctors inquiring about his intentions with a Fol request:

They'll be trying to put out the fires before they happen. But we're not going to tell them what our real intent is, are we?... I'll say that we're just making this inquiry and there's some superficial reason that we're looking at it. But if there's something that's deeper than that then they can figure it out for themselves, and they can usually figure it out.

He said that's often happened with the Tasmanian Department of Police and Public Safety (DPPS). But another journalist made an effort to praise DPPS for their helpful Fol officers:

⁶¹ See appendix five: spin techniques.

I have always found police FoI to be efficient, timely and helpful. They have provided statistics cheerfully and quickly, and even rung to help me out. This is the only FoI unit in Tasmania I have ever encountered with this approach.

However this experience didn't extend across to other departments. The same journalist also commented that departmental staff, other than DPPS, prefer information not be released.

One other reporter also said that in her experience departmental staff were helpful in the administration of FoI requests. All other respondents said departmental staff were not helpful. They commented that reasons for the unhelpful attitude were that there is an anti-FoI attitude within the wider government and the legislation is seen as an annoyance; FoI is treated as a low priority and time is spent on it begrudgingly; and requests are stalled on purpose. This is a similar finding to that in Western Australia (Lidberg 53).

One respondent commented further on the level of government control seen in Tasmania: "... what annoys me is how up in arms the government gets when we do uncover something..."

He commented that the Tasmanian Government isn't always accountable to the opposition in Tasmania and this adds to the need for the media to keep the government accountable.

In parliament, so many times the opposition get up and congratulate the government on something. And it's The Greens that are really going the government, which is good to see, but sometimes I feel in this state it really does fall on the media to be the opposition to the government yet the media doesn't fulfil that role at times either.

Resurgence or reform?

Six out of eight respondents think the Fol process needs reform in Tasmania. In line with the views of West Australian journalists (Lidberg 56), Tasmanian journalists said they needed:

- More assistance from Fol officers, less political interference and obstruction, a faster reaction from departments, and for government departments to take Fol more seriously;
- All GBEs must be subject to Fol.
- To see Fol legislation linked with whistleblower legislation.
- Fewer exemptions.
- No involvement by spin doctors.
- A front-end loaded system where documents are classified early in the process.

Journalists said changes to the Act would make them more informed and independent, providing more accurate and vital information in a timely way, which

would mean stories would be more likely to be published; and it would make for stronger stories and make governments more accountable.

Questionnaire Part III: Incorporating current theories, measuring administrative compliance.

The third section of the questionnaire had the lowest response rate. Three journalists didn't answer Part III.

The two respondents (a newspaper journalist and a broadcast journalist) who used FoI ten years ago had very different compliance⁶² experiences.

The newspaper journalist was the most positive of all respondents to this section, describing compliance ten years ago as proactive. He perceives compliance to have degraded over time.

The broadcast journalist offered the most negative appraisal of compliance of all respondents, describing it as bordering on malicious non-compliance ten years ago.

⁶² See appendix nine for compliance definitions.

The broadcast journalist's perception is opposite to that of the newspaper journalist: she believes administrative compliance has improved over time, remaining stably non-compliant for the last five years.

Another broadcast journalist also doesn't think compliance has changed over the five years she's observed administration of the Act. She rates it as adversarialism.

Most respondents think administrative compliance today can be classified as administrative non-compliance. That is, access is undermined with deficient administration and/or lack of resources. They commented:

Ten years ago there was probably a lot of shredding going on. There is still a reluctance. It's probably a misunderstanding of the purpose of Fol. People (government administrators) are still a bit fearful of Fol in some circumstances.

Generally, acknowledgment of an Fol request is speedy but the process of actually receiving the information you want quickly becomes bogged down in bureaucratic buck passing.

Most respondents said they wouldn't write positive stories about Fol in order to counter the perception that the media only use Fol to get information that's used for negative and critical stories about the government. An example comment:

The media should not feel compelled to "justify" its access more or less than anybody else.

There was also some middle ground:

A story about Fol compliance would be unlikely to get published. However, the information received should be treated on its merits – whether “positive” or “negative”.

Another journalist agreed that if there were more positive stories about Fol, government agencies wouldn’t be as eager to stop release of information.

[B]ut then it comes back to – are we managing the news or are we reporting the news? I’m not interested to give Fol a good spin so that the process can work better for us, I’m interested in the news. And the news so far, in most cases, is that the legislation isn’t working here to any great extent... I don’t want to start doing good news stories about Fol just so we can get a better run, that’s just manipulating the whole process... I don’t want them to think that if they make it harder for us, we’ll be nicer to them in the hope of getting more information. That doesn’t work for me.

Comparison of questionnaire results: Tasmania and WA

Based upon 14 survey responses (five more than in Tasmania), Lidberg (53) found

Fol in WA is largely considered a specialist tool reserved for investigative reporting.

The Tasmanian results also support this view. While Tasmanian journalists considered Fol to be an important journalistic tool, and an important contributor to democracy, only a select few journalists use it more than once or twice per year.

Even among the most frequent Tasmanian users, Fol is not used as a routine every-day or weekly investigative tool. It is used only on occasion, for select purposes. For those journalists whose COS or editor encourages use, there seems

to be little requirement to use Fol. The exception is *The Examiner*, where Fol usage in the Hobart newsroom is actively encouraged over the quiet Christmas period. At

The Mercury Fol use results from the independent initiative of two journalists.

There is evidence of only limited Fol experience at the ABC and *The Advocate*.

Lidberg (56) found suspicion towards the usefulness of Fol as a journalistic tool among WA journalists, even among those who used it, and they wanted sweeping changes to Fol. This was also found in Tasmania, where journalists don't think Fol will work for them, as they have experienced the frustrating interference of spin doctors and crippling time delays.

An historical perspective on Tasmanian journalism

Wayne Crawford has been a journalist in Tasmania since 1968, over which time he said he's watched journalism change completely. When he was a roundsman in the early 70s, political journalism in Tasmania was a more personal experience – press conferences were held in a minister's office with just three reporters; journalists visited ministers' offices to collect press statements (faxes and email weren't used) and they would pick up political gossip in the corridors along the way. Journalists had the chance to speak off the record with the Premier and other politicians when they drank together at the Parliamentary bar after late sittings, where journalists could really get to know Tasmania's political players. Sometimes, late at night after a few drinks, politicians would let slip some information that would lead to a story in the media. Over the years Mr Crawford has watched press releases become more frequent, while access to politicians has retreated. It was roughly at the same time as personal access to politicians retreated and press releases began to

dominate journalists' relationships with government, that Fol was phased into Australia. Mr Crawford said press releases really started to dominate at the end of the 70s, while Fol was introduced to the Commonwealth in 1982. Press releases and spin doctors then had about a decade to become established in Tasmania before Fol was introduced in 1991.

For the complete interview with Wayne Crawford, please see appendix seven.

Analysis of Fol annual reports

The personal experience of one of the questionnaire respondents was in agreement with the conclusions of Sheridan and Snell, that the Ombudsman was under-resourced. He had a matter before the Ombudsman that was at least three months old.

The demotion of Fol as a government priority can be seen via a variety of indicators in the Fol annual reports over the last ten years:

- The Freedom of Information Unit was established within the Department of Premier and Cabinet in 1992, but was relocated to the Office of the Ombudsman (Department of Justice) in 1996.

- In the first two annual reports the Premier signed his name by personal assurances in the foreword sections that his government remained committed to the objects of the Fol Act. Thereafter there were no such personal assurances, and from 1998 the Premier no longer introduced the reports.
- There are subtle changes in the wording of the object of the Act in the reports' introductions. In the 1990s the introduction referred to a person's *right* to information. In 2003 the object is rephrased to refer to *access* to information.

Requests denied access have increased over the last three years. The only year when more requests were denied access than granted access was 2003.

In 2003, 17 per cent of requests took greater than the statutory time limit to be processed (not including those that negotiated an extension).

Fol annual reports show that government agencies do not make much money from Fol requests. The keeping of records of fees ceased in 2001. From the records that are available, the proportion of waived fees ranged in total from 41 per cent to 82 per cent. For more detailed analysis see appendix eight.

The results obtained in this study address and answer the questions posed by the aims in chapter one. Journalists use Freedom of Information legislation in Tasmania, but only a select small number do. Those who use it do so up to once per month, but most users are requesting information irregularly and infrequently. Only about four journalists use Fol as an investigative research tool but they all value it for that purpose. One journalists' experience said that Fol is unusable in Tasmania compared to South Australia. The rest of the results show that there are more similarities than differences between Tasmanian and West Australian journalists, but there are some clear differences. The Tasmanian situation generally complies with modern theories. Journalism culture in Tasmania, at least when it comes to Fol, is dominated by the rise of the spin doctor and a depersonalisation of the journalist–politician relationship.

Chapter seven will review what has been discovered and articulate the significance of these findings.

Chapter seven: Discussion

Chapter seven examines the results described in chapter six in light of the existing literature as detailed in chapter three. This leads to recommendations for educational facilities, which could take a variety of forms. Chapter seven leads directly to the chapter eight conclusion.

Wider and suspected Tasmanian trends confirmed

With one or two exceptions, journalists have failed to make Fol work. This failure is shared with the government, which has muddled the process by applying contentious issues management. Journalists perceive reluctance from government agencies to release information in the spirit of the Act, described as an “anti-Fol attitude” and a “culture of secrecy in government”. The fact that Fol doesn’t generally work for journalists is a blow to democracy not only because it restricts the media’s ability to fulfil its role as the fourth estate, but is enhanced by the observed situation that the opposition is not fulfilling its role of keeping the government accountable. Failures of the opposition make the media’s role more important, and yet the undergraduate studies (chapter three) suggested there is not an emphasis on investigative journalism in Tasmania.

As stated in chapter three, according to the Australian Press Council’s Charter of Free Press it is the responsibility of the press to protect the people’s right to know

and to contest encroachments upon that right by governments, groups or individuals (Charter). By allowing themselves to be discouraged into not using Freedom of Information legislation in Tasmania, or by not learning how to use it, journalists are neglecting that responsibility and allowing an important research tool and democratic safeguard to be eroded.

Some of the undergraduate findings were supported by the results of this research:

- Journalists in Tasmania haven't embraced the Act as an investigative research tool and the media is performing seriously beneath its potential when it comes to Fol usage.
- Tasmanian journalists are often satisfied with passive modes of information gathering, as are Australian journalists who tend to overlook Fol as a first port of call investigative tool, in favour of leaks or government public relations units (Evans 11). The results of this research show that Tasmanian journalists also prefer other information collection methods over Fol, such as well-maintained contacts, "snouts" and "moles".

- There is not an emphasis on investigative journalism in Tasmania⁶³ and journalists do not use Fol as an everyday investigative tool in Tasmania. There are two main journalist users in Tasmania, both utilise the information they receive from Fol in their stories. Tasmania's most prolific user said he uses the legislation to gain a competitive advantage over other, more centrally located journalists at his media organisation. While other journalists can get by without mastering Fol, he uses it because he needs to.
- Time delays continue to be excessive and discouraging.
- Journalists and editors are generally cynical about how far Fol can be used to access documents revealing government processes, particularly those documents dealing with high-level or politically sensitive government deliberations or decisions (also shown by Evans 9).
- With only a few exceptions, journalists have a fragmented approach to Fol use (also found by Evans 11).

⁶³ See Townley, Hasan and Campbell, and McKenzie and Goodman.

- While journalists told Evans (11) they were concerned about the growing use of the commercial-in-confidence exemption as a ground for refusing access to documents, and that a liberal use of the exemption by agencies opened it to abuse; Tasmanian journalists also think GBEs, which are subject to commercial exemptions, are over-protected. Hubbard's analysis that GBEs can deal with most requests cheaply by applying commercial exemptions could apply to the Tasmanian situation, especially considering the findings of Snell and Sheridan; as journalists have been found to avoid external appeal in most cases, even though in theory they say they would appeal.

As described in chapter three, Sheridan and Snell (108) reported on the Ombudsman's preference for non-disclosure, and failure to tackle seriously the issue of public interest deliberations. The combined findings of Sheridan and Snell, and Hubbard, provide two layers of protection against disclosure for GBEs within the system. If the factors external to the system are also considered (ie journalists' reluctance to appeal) that's three levels of protection against accountability for GBEs. It is therefore little wonder that Tasmanian journalists think GBEs are over-protected.

The results of this study generally agree with the broader Australian literature about journalists' FoI use. *Advocate* journalists had the least experience with FoI.

This supports the idea that small news organisations are more easily discouraged than larger ones. In all Tasmanian media, budgets are tight. This can be seen by the amalgamation of the offices of *The Examiner* and *The Advocate* in Hobart in 2004, and ongoing national funding battles at the ABC. Routine investigative journalism isn't observed in Tasmania at the moment, with the exception of one or two key journalists, who also operate under budgetary, time and competing priorities.

Of those Tasmanian journalists who do use Fol, they don't use it to search for news. Tasmanian journalists use Fol to verify and support research they've already done on a topic, or (like West Australian journalists: Lidberg 55) they prefer to use the legislation for raw data like statistics or tables over other documents.

Journalists have provided evidence that spin doctors are at least sometimes directly involved in the Fol process at the state government in Tasmania. No other Australian literature that was consulted in preparation for this Tasmanian study has documented such direct involvement by a spin doctor as phoning the journalist up to ask their intention with a Fol request. It is therefore not known whether this also occurs in other states and territories of Australia or internationally.

This blatant interference in the Fol process is contemptuous of the objectives of the Fol Act, to improve democratic government in Tasmania by increasing the accountability of the executive to the people of Tasmania (*Fol Act 1991*, S3). It is the spin doctor's job to minimise the amount and impact of negative publicity⁶⁴, which can be completely the opposite objective to ensuring accountability if the results of a Fol request could cause the departmental minister or government agency embarrassment.

While spin doctors' involvement in Fol has been condemned by academics (see chapter three), there seems little that can be done about it apart from making it public that this is the case.

Most journalists agree with the principles of Fol and value its existence, even though they don't use it much, if ever.

⁶⁴ See the letter from former head of the government media unit, Kay Chung, in chapter three for example.

Wider and suspected Tasmanian trends disputed

Some of the undergraduate findings were contradicted by the findings of this research:

- Journalists in Tasmania aren't being over-charged for Fol requests yet journalists at most media organisations still think expense is a deterrent. Therefore expense is a *perceived* deterrent for most journalists. However it does also seem that fees are applied by the government selectively and strategically.
- Tasmania's media hasn't fully given up the fight in relation to Fol. A few key journalists continue to use it. Those Tasmanian journalists who do use Fol use it more frequently than West Australian journalists, although encouragement and usage in both states is low. Until similar comparisons are made with other Australian states, it is difficult to distinguish whether the differences found between Western Australian and Tasmania constitute a "difference" or the findings are too similar to be so labelled, and should instead be labelled "similar".

These results also suggest that journalists in Tasmania use Fol more often than Lamble's online analysis did (Lamble, *CAR and Fol* 366–367). This finding suggests that online analyses, while useful, may provide incomplete

representation of actual usage. However, as mentioned in the next point, it may be a good indicator of relative usage between organisations.

- While journalists at *The Examiner* and the ABC are encouraged to use Fol, that encouragement doesn't extend as far as specialist training in how to use the legislation. This has been the case for all four news organisations. However encouragement is not the key factor that ensures Fol use by journalists as it is the personal initiative of the two main Fol users, both at *The Mercury*, that has brought them Fol success. The findings show that journalists aren't working as a team when it comes to Fol, not even within their own organisations. They therefore don't enjoy the advantages of collective memory and wisdom, espoused by Terrill.

The finding also confirms Lamble's website-based research, which also found *The Mercury* to be the biggest user of Fol in Tasmania.

Theories explored

While journalists are prepared to make some strategic moves when it comes to Fol, like writing a story about government secrecy when they are being stonewalled; they haven't engaged in other strategic moves, like writing positive stories about Fol. Until a Tasmanian media organisation makes an attempt at such a strategy,

there will be no evidence available to suggest whether a neutral or positive Fol awareness series in the media would make Fol officers and the government generally more amenable to journalists' Fol requests. While undergraduate papers⁶⁵ pushed the idea that the media have a role in educating the public about the existence and the purpose of the Fol Act in Tasmania, Tasmania's media are wary of this idea and aren't aware that they should hold such a role. There were two examples provided in chapter six where journalists have received help from Fol officers, which could have been used in a positive Fol story.

The Department of Police and Public Safety (DPPS) has received special mention, for opposing reasons. The DPPS is arguably one of the state's most experienced departments when it comes to the administration of Fol. Analysis of the Fol annual reports showed that DPPS received more Fol requests than any other government agency in the first few years of the Act's life, which makes it more practised in administration of Fol requests than any other department. The majority of Fol requests to DPPS were made by lawyers and were routine in nature, so Fol administration staff at that department would be practised in administering Fol requests without expecting the outcomes of the release of information to be particularly controversial. DPPS staff may therefore be less suspicious of the Fol

⁶⁵ See appendix three.

process generally. A decision made in the 1990s to release much of the routine information that was being sought by lawyers without the need to go through the Fol process may represent a different way of looking at Fol at DPPS compared to other government agencies, as no other such decision is known of.

In contrast, a government agency that routinely does not receive a single Fol request from year to year⁶⁶, or receives few requests, may be more suspicious of the Fol process, because it is unknown and therefore perceived to be threatening.

The Tasmanian Greens and the Tasmanian Conservation Trust are relatively frequent suppliers of Fol-sourced information to journalists. These organisations fit the description provided by Terrill (*Individualism* 31) of public interest bodies

⁶⁶ Government agencies that did not receive a Fol request in 2002–3 were: Ben Lomond Skifield Management Authority, Chiropractors & Osteopaths Registration Board, Cradle Coast Water, Dental Board of Tasmania, Dental Prosthetists Registration Board, Forests, Forest Industry Council, Guardianship and Administration Board, Health Complaints Commissioner, Hobart Ports Corporation, Hobart Water, Inland Fisheries Service, Medical Radiation Professionals Registration Board, Mental Health Review Tribunal, Nursing Board of Tasmania, Office of the Tasmanian Energy Regulator, Optometrists Registration Board, Pharmacy Board of Tasmania, Physiotherapists Registration Board, Plumbers and Gasfitters Registration Board, Podiatrists Registration Board, Port Arthur Historic Site Management Authority, Port of Launceston Pty Ltd, Printing Authority of Tasmania, Public Works Tender Board, Rivers & Water Supply Commission, Royal Tasmanian Botanical Gardens, Southern Regional Cemetery Trust, Stanley Cool Stores, State Emergency Service, Tasmanian Audit Office, Tasmanian Building and Construction Industry Training Board, Tasmanian Grain Elevators Board, Tasmanian International Velodrome Management Authority, Tasmanian Museum and Art Gallery, Tasmanian Public Finance Corporation, TASSAB, TOTE Tasmania, Transend Networks P/L. That is, 38/63 or equivalent to 60 per cent of prescribed authorities did not receive a Fol request that year. Only two of 29 councils (equivalent to seven per cent) did not receive Fol requests: Central Highlands Council, Circular Head Council. Presumably councils are likely to be asked regularly for personal information (Fol Annual Report 2003, appendices 2–3)

that have developed expertise in Fol usage and provide collective knowledge to individual applicants. In more than one example in this small sample of journalist Fol users, a particular NGO has supplied the journalist with Fol-sourced information, rather than the journalist having to engage with the Fol process personally. In those cases the NGO has absorbed the frustrations associated with Fol: they have waited the months it often takes to get the information, they have dealt with the administration of the request and absorbed any administrative charges. Once all the hassle and fuss has been taken care of by the NGO, the NGO simply hands over the information obtained under Fol to the journalist. From the journalist's perspective this is easy work. They are handed what can be a great story, using credible and solid documentation, with minimal effort. If the journalist had attempted to obtain the information themselves using Fol they may have run greater risk that the government agency's decision-making process would be distorted by interference from media minders.

If Fol was viewed as a substitute for the personal contact that journalists enjoyed with politicians in the past, then the low levels of usage show that journalists are much worse off after this cultural transition, as they have not used Fol as effectively as they previously used personal access to politicians⁶⁷.

⁶⁷ As described by Wayne Crawford in appendix seven.

Individualism, education and support

Terrill writes that individual access to government information via FoI legislation represents a strategic weakness for the individual, and suggests collective arrangements for access:

FoI typically involves applications by unconnected individuals who frequently possess little knowledge of the process, and government departments that have the advantage of familiarity with the system and contact with similar players. Collective action by those seeking information is possible, but rarely occurs. The individualism of FoI is confined to applicants; individualism is not a characteristic of government assessors. (*Individualism* 30).

Terrill wrote that governments have the advantage of institutional memory, specialised expertise, and have a longer term interest in influencing the evolution of case law. FoI architecture is atomised and individualised both for applicants and for documents, he says, and makes suggestions for improvement:

- Encouraging repeat players, which become a core body of skilled users;
- Providing collective knowledge to individual applicants: from FoI material sourced by public interest bodies. Terrill comments that although such bodies are often restricted by funding, the potential contribution of such intermediaries is considerable;
- Promoting long-term advocates for progressive change within the system, such as a well-funded Ombudsman with a charter to maintain an interest in the health of the legislation;

- Making the results of one application available to all. Without such a move, precedents aren't established and there is plenty of room for inconsistent decision-making. (*Individualism* 31).

Given that access under Fol is granted irrespective of an applicant's standing (theoretically), Terrill says there is no reason why access by one should not automatically translate to access to all. The results of successful Fol applications should be made generally and readily available (*Individualism* 31). A public interest body could provide this service (see below).

In 1985 Paul Chadwick wrote a Fol users guide for journalists. That was eight years before Fol was introduced in Tasmania. Tasmanian journalists are long overdue for an update or an altogether new users guide, and/or some one-on-one training for using the Act from a journalistic perspective. Tasmanian journalists recognised their needed to be educated about Fol. An education agenda could have reference to Terrill's recommendations, and include:

- A comparison between Fol in Australia and other countries such as New Zealand, the United States, Canada and Sweden;
- Identify the frustrating elements that have discouraged journalists' use of Fol in Tasmania in the past, so journalists can be aware of them and well-

placed to recognise them in future. Such a list could also contribute to any legislative review that occurs in future;

- Introduction to Commonwealth legislation with a view to encouraging use;
- Identify the unfounded myth of excessive cost;
- Identify the techniques that have worked for journalists in the past and some of the theories about what journalists can do to facilitate administrative compliance;
- Create some type of support mechanism, whether it be an informal email chat-list or something more formal operating from the University of Tasmania or the Australian Journalists' Association. A FoI hotline as suggested by undergraduates (Hasan and Campbell, and Hall) is one option, but others should also be explored. A more organised body may be able to get help from government agencies and get copies of file titles or broad details on what type of information each government agency holds. This would help journalists understand government processes better and, as suggested by Waterford, they could adopt the technique of consulting publicly available information as a starting point, using FoI as a complimentary resource. According to Waterford, if journalists understand how government processes work in normal circumstances, they can then recognise when they deviate. Such an agency could also:

- Lobby for an accessible archiving system to be managed by the government agencies and for all information previously released under Fol legislation to be put online in PDF format so that repeat Fol requests can be avoided and the amount of information that is publicly available is increased.
- Encourage all journalists to get involved with Fol as a research tool, to exercise the Act and learn about Fol through usage. When appropriate appeal decisions of the government authorities and take the appeal to the Ombudsman;
- Provide the opportunity for journalists to meet with Fol officers and talk face-to-face about common problems that Fol officers have encountered when administering Fol requests from journalists, so these can be avoided from the outset, minimising time, fuss and costs. This approach would probably be supported by Kearney, who said that Fol officers should be treated like any other source, and that means give and take (*Working sources* 32).
- Discuss the journalist's relationship with the Fol officer and some factors to consider when talking with the Fol officer.
- Encourage all members of the Fol community, including journalists, other users and Fol administrators, to place pressure on the Ombudsman to fulfil her statutory duty to review decisions within

the prescribed 30 day period, and properly and independently review decisions; for the Ombudsman to consult other FoI external review bodies around the country and around the world and adopt best practice to maximise available resources, for example, by using techniques employed by the Western Australian Information Commissioner and referring to the modern and well-considered decisions of the Queensland Information Commissioner, who writes the best judgements in Australia (Waterford), that are searchable online.

Lack of FoI usage in Tasmania has resulted in lack of FoI skills. That erosion of skills is a downward spiral because unskilled journalists who attempt to use the legislation on an infrequent basis will achieve less useful results from their FoI request than someone who uses it frequently, with precision and skill. Those unskilled and infrequent users are more likely to give up on the legislation as an investigative research tool because in their experience it just does not work. In an undergraduate assignment (appendix three) Townley wrote:

At this stage there is no indication that use of FoI by the Tasmanian media will increase... It seems probable that the Tasmanian media's hesitance in using FoI stems more from a preference for alternative sources, or a reluctance to undertake investigative journalism as opposed to reporting via press releases. (Townley 5-6).

Townley's finding has been confirmed by this research.

Snell said there is a need for journalists to tell stories that help the public learn how to improve Fol (*Fol officers* 71), but a respondent said stories about Fol are unlikely to get a run. It would take education and a change in attitude from chiefs of staff and editors to change this, but it also needs to be recognised in the academic arena that journalists don't see themselves as part of a public relations vehicle for the Fol Act, or any other cause. If the Act started to work for journalists, providing more information and that was released as a finding, that would be a genuine story worthy of a run.

Forestry and TT Line

Forestry Tasmania and TT-Line have both been subject to blanket exemptions under the Tasmanian Fol Act. The Fol Act was introduced in 1993, but it wasn't until the mid-1990s that structural changes occurred in government that saw the privatisation of government enterprises such as these, and Hydro Tasmania⁶⁸. The Act therefore wasn't designed to accommodate these quasi-government organisations. After pressure on Forestry Tasmania turned national and intensified in early 2004, it was announced that the GBE will be subject to the Fol Act (Green).

⁶⁸ See Fol annual reports.

The government said it wanted to negate the public perception that Forestry Tasmania has something to hide. This move towards more accountable government should be applauded, but it should also be noted that lobby groups were working hard to make forestry activities in Tasmania a federal election issue. Environmental lobby groups like the Wilderness Society pointed a spotlight on the unaccountable activities of Forestry Tasmania during the 2004 federal election campaign. But when it comes to TT-Line and other GBEs, who will lobby for accountability?

As things stand today, no-one seems motivated to lobby for general GBE accountability in a directed and strategic fashion, as environmental groups did for Forestry Tasmania.

Research design

It was difficult to get journalists to participate. They are very busy, often over-worked, people. Some journalists only completed half the questionnaire. While the more passive, bulk email, questionnaire distribution technique conclusively didn't work, discussions with COS and editors about which journalists used FoI and who best to ask, did work. The action research method has yielded good results for this broad, baseline study. Members of the media who discussed this project with the author generally expressed interest in the outcomes of the research, and it seems

that outcomes from the genesis of journalism research in Tasmania will be of interest to practicing journalists. For example, there have been many requests to read this completed thesis, and it is possible that continued focus on journalists' use of Fol may spark greater interest in the legislation.

Mercury journalist Nick Clark's attitude should be applauded – being a long time user of the Act since its inception. Clark has also found the time to contribute in undergraduate studies about the effectiveness of the legislation for journalists and in doing so has provided continuity and honest feedback about the joys and frustrations of working with the Act as a journalist. Without considered input from journalists like Clark and others over time, there would be less value in this current evaluation of the effectiveness of the Act and little basis upon which to suggest a way forward. This masters study is a snapshot of the problems that have always been present but have ossified into quite a dire position. It is hoped that the recommendations of this research will be adopted and this, plus the increased attention to the power of the Act, plus renewed vigour from undergraduate and postgraduate journalism programmes will result in a resurgence of use, that the Act will be resurrected and its original stated aims can be realised.

Journalism Fol role models like Jack Waterford and Michael McKinnon show how dynamic and exciting Fol can be as an investigative research tool, and their

extremely high level of usage⁶⁹ demonstrate how virtually non-existent Fol usage is in Tasmania.

Future research

In chapter seven, the differences or similarities between findings in Western Australia and Tasmania were discussed and the question was posed: how can a conclusion be made about whether the findings are similar or different when there aren't results from other states to compare them to? The answer to this question is that a conclusion can't be made until further research is done. It is interesting to note that the Northern Territory (NT) is only just enacting Fol legislation. The advantage for NT is that Fol-journalism research is just beginning to emerge in other states of Australia, where the legislation has been in existence for over ten years. If this research continues it not only provides the vital information needed from which a change of direction can be rendered in those states that are examined; it also gives new Fol jurisdictions like NT the chance to learn about and avoid the mistakes of jurisdictions with more experience, like Western Australia and Tasmania.

⁶⁹ At peak times, Waterford had about 200 active requests, and 20 or 30 active AAT appeals (Waterford, 1999).

It will be interesting to revisit journalism culture in Tasmania in ten years and observe what effect journalism research may have had on journalistic practise in Tasmania. The journalism postgraduate programme at Murdoch University where Lidberg studied, for example, has been operating for at least 13 years (Smyth); it would be interesting to compare journalists' attitudes to postgraduate study in Western Australia today with those in Tasmania.

The Tasmanian media's interaction with government agencies is an interesting topic for further research, both in associated areas to that explored in this thesis, and also more broadly. This research has barely touched on the media's willingness to put their own slant on stories, the personal nature of any criticism in Tasmania, or the relationship between the media and the government (excluding FoI).

More research would provide the Tasmanian media with the opportunity to learn about and critique its own newsgathering techniques and culture. This would be an important step towards understanding how journalism can be different, open constructive evaluation of how well the systems work and what changes could be beneficial to the free flow of information, and the flow-on effect of such changes on the democratic system in the island state.

Lamble's research identified a pressing requirement for more research to define and document the methodology of journalism as an academic discipline (*CAR and FoI* 6). This is acutely so in Tasmania.

The conclusions of this research are given in chapter eight.

Chapter eight: Conclusions

This research has shown that Fol is theoretically valued by journalists in Tasmania, but generally not used very often, if at all.

Until further research is done in other states and territories of Australia, it is difficult to draw conclusive statements from the comparison between Western Australia and Tasmania, but there appear to be more similarities than differences between the states.

Those journalists who continue to battle with Fol work in an atmosphere of administrative non-compliance and contentious issues management. Numerous mechanisms in the system stop useful information being released from an increasingly outsourced and commercialised government, which is protectively covered by commerciality exemptions, and this has been a major contributor to the extremely low levels of usage found.

Journalists in Tasmania do not engage in routine investigative journalism. While in the past, journalists have had greater personal access to politicians, the Fol substitute for such access has not been put to work and journalists are left at the mercy of government media minders.

There is need for reform from both sides. If journalists were educated about Fol and used it more, the government (including the Ombudsman) would be under greater pressure to be more accountable. If changes were made in the way the Act was administered so that more useful information was released in a timely way, then journalists would be more likely to use Fol. Until some changes are made the Freedom of Information Act in Tasmania will continue to atrophy.

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Appendix one: Information sheet and consent form

The following consent form and information sheet accompanied the questionnaire that was sent to journalists.

Questionnaire Consent Form

Name of unit: HEJ702, Major Research Project, part-time.

Name of assignment: "Is Freedom of Information legislation a useful investigative tool for journalists in Tasmania?"

School of English, Journalism and European Languages. University of Tasmania.

1. I agree to provide information via a questionnaire for the purposes of the student assignment named above.
2. I understand the purpose and nature of the questionnaire, and I have read the assignment and/or information sheet as provided by the student (see over page).
3. Any questions I have asked about the purpose and nature of the questionnaire and assignment have been answered to my satisfaction.
4. Please choose a), b) or c):
 - a) I agree that my name may be used for the purposes of the assignment only and not for publication.
 - OR
 - b) I understand that the student may wish to pursue publication at a later date and my name may be used.
 - OR
 - c) I do not wish my name to be used or cited, or my identity otherwise disclosed, in the assignment and any other future publication.

Name of interviewee_____

Signature of interviewee_____

Date_____

5. I have explained the project and the implications of being interviewed to the interviewee and I believe that the consent is informed and that he/she understands the implications of participation.

Name of interviewer: Taylor Bildstein

Signature of student_____ Date_____

Information sheet

Dear journalists,

My name is Taylor Bildstein and I am a Masters in Journalism and Media Studies student at the University of Tasmania. My major project thesis topic is:

"Is Freedom of Information legislation a useful investigative tool for journalists in Tasmania?"

While a small number of studies have been undertaken to assess the effectiveness of Freedom of Information legislation as an investigative research tool for journalists in other states of Australia, no post-graduate study has yet been undertaken in Tasmania.

My research seeks to assess the question posed above by conducting a questionnaire and possibly also an interview with journalists in Tasmania about your experiences using Fol. The results will be compared with a similar study recently conducted in Western Australia as well as other available literature.

If you have used Fol to gather information, or if you have made use of information obtained through Fol from another source, *even just once*, please complete the questionnaire and return it to me in the reply-paid envelope.

If you have any questions about my study, I am very happy to answer them. You can email any questions to me at Bildstein@bigpond.com, or we can arrange a time to have a chat.

The information you provide is valuable information and I do appreciate your time.

If you prefer, you can opt to answer the questions verbally and for your comments to be recorded electronically. This may be a faster option, while the take-home questionnaire may be a better option for journalists who are not available for a taped interview.

Thank you for your time and consideration. I am looking forward to hearing from you.

Taylor Bildstein

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Appendix two: Contentious Issues Management in Canada

Canada and Australia have tended to follow each other relatively closely in their openness practices and legislation (Terrill, *Secrecy and Openness* 26). Considering the scarcity of literature available in Australia and the resentment that contentious issues management has evoked in Tasmanian journalists when using Fol, it is useful to study the Canadian analyses and consider those findings in an Australian context.

Snell writes that Ontario's information and privacy commissioner accused the provincial government of political interference aimed at thwarting freedom of information requests from journalists and other users (*Diminishing Returns*). Snell quotes the Commissioner:

...certain access requests that are determined to be 'contentious' are subject to different response and administrative procedures... [I]f an access request is made by certain individuals or groups (ie media...), and/or the request concerns a topic that is high profile, politically sensitive or current, ministry Freedom of Information and Privacy Coordinators must follow the contentious issues procedures. Once designated into this category, the process requires the immediate notification of the Minister and Deputy Minister, along with the preparation of issue notes, briefing materials, etc. Cabinet Office is often involved in this process.

(Ontario Information and Privacy Commissioner 2001, quoted in Snell, *Diminishing Returns*).

Roberts' study about this topic in the province of British Columbia (BC) provides more detail (*Sensitive requests*)⁷⁰. BC operates a single government-wide database that can be used by each ministry to record its work on Fol requests and monitor its overall performance in meeting its Fol requirements (*Sensitive requests* 2).

This system also improves the BC government's capacity to track politically sensitive requests. The database allows each ministry to give a 'sensitivity ranking' – high, medium or low – to each new request. Each ministry can search the database for requests received by that organisation using a number of search criteria, including the type of requester and sensitivity of request, and authorised

⁷⁰ Roberts, Alasdair. "Treatment of Sensitive Requests under British Columbia's Freedom of Information Law." *Fol Review* 109 (2004): 2–4.

users can undertake the same searches on a government-wide basis. For example, the request tracking system could generate a list of requests from media sources in a specified period, which meet a certain level of sensitivity or address a specified topic (*Sensitive requests 2*).

Using the database, Roberts analysed over 6,000 non-personal Fol requests. He found that much of the material labelled as sensitive relates to core policymaking activities of government, and political parties and journalists are most likely to have their requests tagged as sensitive (*Sensitive requests 3*). The tracking system training guide recommends that any request from a political party or the media should be recorded as “high sensitivity”, but Robert’s analysis shows that this guideline is not always followed.

Roberts found disparity in the time taken to process sensitive requests compared to non-sensitive ones.

As in Tasmania, the statutory deadline to process a Fol request in BC is 30 days, and this can be extended in certain circumstances.

Roberts found a clear disparity in the type of requests that breached the 30 day deadline: only 36 per cent for requests with low sensitivity, but 62 per cent for requests with high sensitivity. Also, the additional time taken after the expiration of the statutory deadline is longer for more sensitive requests (*Sensitive requests 4*).

Roberts found that requests that are tagged as “highly sensitive” by BC ministries take an average of 81 days to process. This is in contrast to “low sensitivity” requests, which take only 46 days (*Sensitive requests 3*).

There is no documentation or other evidence suggesting that Tasmanian Government agencies have adopted or are considering embracing such databases for tracking Fol requests in Tasmania.

The BC tracking system analysed by Roberts is much more formal than the systems used in Tasmania. We have found that contentious issues management is applied in Tasmania, but no formal data exists yet in Tasmania to measure the effects of the practice. Snell and Tyson (35) found in 2001 that a majority of requests were being handled within the 30 day timeframe, but this finding doesn’t shed any light on whether those requests that exceeded 30 days were largely contentious requests. It is therefore helpful to look to the Canadian example to develop an understanding of how much of a disparity in processing times contentious issues

management may be causing in Tasmania. Roberts found that “highly sensitive” requests take almost twice as long as “low sensitivity” requests to be processed. In the absence of local research, this disparity may be considered a broad approximation of the disparity that exists as a result of contentious issues management in Tasmania.

Appendix three: Review of Undergraduate Student Reports About Journalists' Use of Freedom of Information in Tasmania, 1993–2000.

Ron Fraser⁷¹ (5) comments that literature generated by Rick Snell's undergraduate and graduate projects at the Universities of Tasmania and Woollongong as part of their administrative law courses can provide a lot of useful information. As literature about journalists use of Fol in Tasmania is limited⁷² eight undergraduate assignments about the media's use of Fol are reviewed here to fill in the gap in background knowledge.

Students began looking at journalists' use of the Tasmanian Fol Act just five months after it took effect, in 1993, and have been writing at regular intervals ever since. Their results show that journalists in Tasmania never embraced the Act as an investigative research tool, and the reasons for this parallel those demonstrated in studies conducted in other states of Australia and the Commonwealth: time, complication, frustration, actual or perceived cost, and over-use of exemptions.

1993: Townley

Townley⁷³ found that in the first five months of operation of the Act, the majority of journalists had failed to use the Fol Act. While some journalists had attended Fol courses at the Department of Premier and Cabinet that were run at the time, her survey indicated that journalists had made only minimal use of the Act, with the exception of Nick Clark of *The Mercury* (Townley 4). Similar to the attitude of Ross Coulthart (chapter three), Townley found that several Tasmanian journalists considered Fol to be a last resort, to be used when other sources had been exhausted. A few journalists believed the breadth of exemptions would mean they wouldn't get access to valuable information.

⁷¹ Fraser, Ron. "The Need for Fol Renewal – Digging in, Not Giving Up." *Fol Review*.103 (2003): 2–8.

⁷² Two of the three articles identified that address Freedom of Information in Tasmania (Snell and Tyson, and Hubbard) do not address journalists' use of the legislation; the third by Clark is a one-page review of his two years of Fol experience in Tasmania to 1995; and Lamble's PhD thesis about Fol only briefly addresses Tasmania.

⁷³ Townley, Helen. "Keeping the Bastards Honest... The Tasmanian Media and Fol." Advanced administrative law undergraduate assignment. University of Tasmania, 1993.

Townley wrote:

At this stage there is no indication that use of Fol by the Tasmanian media will increase... It seems probable that the Tasmanian media's hesitance in using Fol stems more from a preference for alternative sources, or a reluctance to undertake investigative journalism as opposed to reporting via press releases. (Townley 5-6).

When analysing reasons for lack of use of the Act by Tasmanian journalists, Townley cited lack of resources to undertake investigative work.

Townley concluded that even some journalists doubted that they were fulfilling their watchdog role and keeping the government honest: "If increased media use and coverage is not forthcoming... it is unlikely that the Tasmanian Fol Act will achieve its aim of improving democratic government in Tasmania". (Townley 15).

1993: Lacey

Lacey⁷⁴ found that eighty per cent of surveyed journalists agreed Tasmanian media organisations were under-staffed and under-resourced. Sixty per cent of Lacey's respondents agreed that the Tasmanian media was largely inexperienced, naïve, insular, and operated on a 'pack mentality' (Lacey 6).

Lacey reported there was "a good deal of competition between journalists to break a story" (Lacey 7).

She found that investigative journalism was largely supported by the editorial staff of many organisations. One journalist said Fol was a handy tool for stories that had no immediacy, and so its use therefore was not merely restricted to major investigative pieces. Lacey was told by a journalist:

Fol is becoming more important as we come to grips with it. Lack of time and resources to use it properly are being addressed, and on an informal basis, much information is coming out because lines of communication are being made within departments. (Lacey 16).

Lacey (17) was told by the Fol Unit that the media in Tasmania was becoming a major user of Fol in 1993.

⁷⁴ Lacey, Wendy. "Fair Facts or Political Rhetoric? The Tasmanian Media, Democracy and Fol." Administrative Law undergraduate research paper. University of Tasmania, 1993.

1995: Hasan and Campbell

By 1995 things had changed according to Hasan and Campbell⁷⁵, who found that Fol was not well-utilised by the Tasmanian media. They reported that investigative journalism in Tasmania was at a minimum.

More than half of respondents (n=9) had used Fol before, and up to four times (although some use was indirect). Most of Hasan and Campbell's respondents had used the legislation just once (6).

Complaints in the media about using Fol in Tasmania in 1995 were similar to those reflected in the Australian media today: that it took too much time, exemptions were used to deny access, and it was expensive (Hasan and Campbell 7).

Mercury journalist Nick Clark, who has consistently used the Act since it commenced, commented that it had "got to the stage whereby the deliberate delays and perseverance required are almost making use of the Fol Act too much trouble for the journalist" (Hasan and Campbell 8).

On a more positive note, Hasan and Campbell found that none of the journalists who had used Fol considered cost to be a problem (11).

Hasan and Campbell gave examples of contentious issues management in practice. They reported that a radio journalist who used Fol on a police story was from then on denied access to the Deputy Commissioner.

Rocking the boat in this small state can result in ostracism which could damage a career. Politicians and the media need to work with each other on a regular basis... many journalists find it is not worth the trouble it causes to use Fol to reveal a sensitive issue... it is an inherent problem of Tasmania's media community in that it is not a large enough body to be able to rely heavily upon contentious issues in fear of reprisals from the parties concerned and therefore possibly damage the relationship with a necessary source of information for future reference. (Hasan and Campbell 13)

In contrast to Lacey's results, Hasan and Campbell reported that investigative journalism was under-supported by editorial staff and that the bulk of a journalist's work in Tasmania is the reporting of day-to-day events. They

⁷⁵ Hasan, Kate a Campbell, Fiona. "Freedom of Information and the Media." Undergraduate research paper. University of Tasmania, 1995.

concluded: "The media is content in taking a passive role in the system and relying upon other interested parties to obtain the information desired" (15).

When asked "do you think Fol legislation is an important tool of investigative journalism?" Hasan and Cambell's respondents commonly answered "yes" but when asked how many times they had personally accessed information through the Fol process, the overwhelming majority had never done so (16).

1996: Fisher

By 1996 it was apparent that Fol was hardly used at all, especially by Tasmanian journalists. Alison Fisher⁷⁶ summarised: "it would appear the government is the source of obstruction and even appeal avenues cannot counteract its power all of the time. After all it is in the government's best interest to restrict information being released." (Fisher 1).

All of Fisher's sources were unanimous in confirming Fol was not utilised in 1996 to its full potential by journalists (2). Fisher conferred with Lacey's 1993 finding, and wrote that all Tasmanian newsrooms in 1996 were understaffed.

Fisher cited information obtained by Snell⁷⁷ from the Tasmanian Department of Premier and Cabinet, that in 1993–4, fifty of 1,275 Fol requests (under four per cent) were from the media (Fisher 5). Fisher noted that costs in Tasmania were often wavered (8).

One *Mercury* journalist thought the existence of Fol, even if not used by journalists, opened up the Tasmanian government and made it more accountable, because of the potential for Fol to be used (Fisher 11).

1996: Hall

When Hall⁷⁸ compared the print media's use of Fol in Western Australia and Tasmania in 1996, she found that Tasmanian journalists were less likely to use Fol, with Tasmanian usage being about one quarter of that in WA (9).

⁷⁶ Fisher, Alison. "Journalists' Lack of Use of Foi in Tasmania; Why Does It Occur and Is It Justified?" Principles of law undergraduate research paper. University of Tasmania, 1996.

⁷⁷ Snell, R. (1995). The walls of Jericho; under threat from paper swords? Submission to the Select Council of the Legislative Council. Hobart, University of Tasmania

⁷⁸ Hall, Sarah-Jane. "The Use of Fol by the Print Media: A Comparative Study between Tasmania and Western Australia." Undergraduate research paper. University of Tasmania, 1996.

Hall attributed the difference to an inherent culture of Fol within newsrooms in WA, where journalists can draw on greater resources for support. Hall showed that relatively few applications were made by media organisations, particularly smaller ones. Hall wrote that extra support at the *West Australian*, in the form of lawyers and librarians who could offer advice on Fol, may be the reason why those journalists were more likely to write stories about Fol and follow through with appeals (Hall 11).

Journalists appreciated having someone they could refer to with questions about Fol (Hall 15).

West Australian journalists appealed more often than Tasmanian journalists when dissatisfied with the result of an internal review (Hall 4). A senior *West Australian* journalist said the paper had “learnt” to appeal as part of its use of Fol (Hall 10).

Wayne Crawford, then associate editor of *The Mercury*, submitted the following to the Legislative Council Select Committee on Freedom of Information (1995) that:

[T]he more secretive a government is, the more powerful and repressive it becomes. Conversely, the more open a government is and the more that its information is freely available to the electorate lends its hand to a more democratic and accountable system (quoted in Hall 3).

All of Hall’s respondents agreed with the statement that there needed to be an acceptance by editors and management for a proportion of a journalist’s time to be spent on longer term stories (Hall 14).

Hasan and Campbell, and Hall promoted the idea of a Fol hotline, like that developed by the US Reporters Committee for Freedom of the Press.

1997: Bantoft and Speers

In 1997 Bantoft and Speers⁷⁹ found that radio and television journalists were using the Act least, and use was limited across the media, but journalists said they would consider using the legislation in future. Journalists said they thought Fol was an important investigative tool, even though they hardly used it (Bantoft and Speers 5).

⁷⁹ Bantoft, Nicole and Speers, Meghan. “Tasmanian Fol and the Media: A Critical Evaluation.” Principles of public law undergraduate research paper. University of Tasmania, 1997.

Where information concerned more sensitive topics, in 1997, bureaucrats gave the scantest attention to deadlines imposed by the Act. However, one journalist recommended not exercising the statutory right to refer to the Ombudsman when the time taken to process a request breached the 30-day limit, rather, to consider long-term working relationships and grant some leeway (Bantoft and Speers 6).

While many educational courses were available when Fol legislation was first introduced in 1993, and this was on-going in 1997, no courses specifically for the media had ever been provided (Bantoft and Speers 10). As journalists' Fol requests attract special attention and the enactment of contentious issues management (Snell, Dry rot), it was obvious they required specialist training in effective use of the Act.

2000: McKenzie and Goodman

In 2000 McKenzie and Goodman⁸⁰ collected information about journalists' use of Fol in the two major newspapers in Tasmania, Western Australia and Queensland, and found higher usage in Western Australia than the two other states. Reasons for the disparity, they concluded, were a lack of culture promoting use of Fol, willingness to use Fol in newsrooms and fewer resources. Journalists in Western Australia were better educated, due to the Information Commissioner's proactive role. Lack of education resulted in complicated and time-consuming Fol experiences for journalists in Tasmania and Queensland (McKenzie and Goodman 1).

Like other undergraduates before them, McKenzie and Goodman (4) stated that the media has a role in the advancement of Fol, in ensuring public awareness of the legislation as well as performing a watchdog role over Fol.

They quoted *The Mercury's* Martine Hayley who said there were only three journalists at that paper who even attempted to use the Fol Act as a source of information when reporting, two of whom had only used it a maximum of three times over the past year (McKenzie and Goodman 8). She said there was one journalist who used Fol at *The Examiner* (McKenzie and Goodman 22), so that's a total of three in the Tasmanian print media in 2000.

⁸⁰ McKenzie, Alistair and Goodman, Fiona. "Freedom of Information and the Print Media: A Comparative Analysis of Tasmania, Western Australia and Queensland." Undergraduate research paper, University of Tasmania. 2000.

Hayley said she had not been charged for any requests (McKenzie and Goodman 19).

McKenzie and Goodman commented that democracy was suffering in Tasmania due to lack of Fol usage (8), the Tasmanian media lacked independence and lacked investigative journalism (28). West Australian journalists set their own agendas to a greater extent than Tasmanian journalists through their more extensive use of Fol (McKenzie and Goodman 13–14).

A copy of McKenzie and Goodman’s results (16) on the number of Fol articles and their use in WA and Tasmania are included in the following tables:

Table 4: Tasmania

1st August 1994 – 30th September 2000

	Total Fol articles
<i>The Mercury</i>	80
<i>The Examiner</i>	57
Total	137

Table 5: Western Australia

1st August 1994 – 1st September 2000

	Total Fol articles
<i>The West Australian</i>	259
<i>The Times and The Sunday Times</i>	12
Total	271

These tables shows approximately double the Fol usage by journalists in Western Australia compared to Tasmania, over six years.

It’s interesting that McKenzie and Goodman’s results showed higher usage in WA than in Tasmania, when WA legislation requires a \$30 payment in order to lodge a request, and the Tasmanian Act does (McKenzie and Goodman 19). It is worthwhile noting here that *The West Australian* is a much larger newspaper than *The Mercury* (chapter four) and application of fees presents a bigger hurdle to smaller news

organisations like those in Tasmania (chapter three) than to larger organisations, which are likely to have larger budgets.

So while the wider literature cites costs as a deterrent to journalists have consistently using Fol, those who used the legislation in Tasmania in 2000 weren't part of this chorus. *The Mercury's* Martine Hayley supported the concept that costs are only a perceived barrier to usage, telling McKenzie and Goodman that poorly informed journalists in Tasmania have fuelled the conception that Fol is expensive (20).

While the literature consistently points to time delays as a strong discouraging factor to journalists' usage, McKenzie and Goodman (20) point out that response time in WA is longer (45 days) than in Tasmania (30 days) – yet, WA usage is higher. However, McKenzie and Goodman acknowledge Clark's experiences in Tasmania, whereby he said that Tasmania's legislated 30-day response time was being completely ignored (97) and he was experiencing consistently late responses, up to 13 weeks. So while the two states' Acts indicates that WA's response time is longer than Tasmania's, if Tasmania's bureaucrats aren't complying with the statutory time period as well as WA bureaucrats then it may well take longer in Tasmania for a journalist to access information using Fol than in WA.

Hayley said that in order for Fol legislation to be used most effectively the journalist must know exactly what information they want and the terminology needed in the request (McKenzie and Goodman 21). She said that journalists' status as being "poorly informed" was one of the main reasons there were only three journalists using Fol.

A staff member with the Ombudsman's office at that time told McKenzie and Goodman (21) that journalists' ignorance is fuelled by Tasmania's isolation, size and lack of resources, making Fol education more difficult than in larger jurisdictions. McKenzie and Goodman noted though that a seminar was conducted on the use and potential benefits of Fol for print media journalists, attendance was minimal (21).

McKenzie and Goodman reported that because there are more available to West Australian journalists, who use Fol more, the process is less complicated and less time consuming there than in Tasmania (21).

In Tasmania, journalists who repeatedly push for sensitive Fol material can be ostracised, resulting in journalists abandoning obtaining this type of information (McKenzie and Goodman 22).

McKenzie and Goodman reported that over the lifetime of the Tasmanian Fol Act, to 2000, only three external appeals were received by the Ombudsman's office from journalists. Comparable numbers from the Western Australian Information Commissioner were not reported.

The Ombudsman's office staff member interviewed by McKenzie and Goodman said the Ombudsman model of external review promotes a greater concentration of power and a greater possibility of bias (27).

McKenzie and Goodman concluded that for Fol to become fully utilised in Tasmania journalists need to become more aggressive and challenge exemptions to the Act; they need to develop a culture that promotes investigative journalism and engage in comprehensive education programmes.

Summary

These undergraduate studies shows there was a brief period of optimism for the application of Freedom of Information by journalists in Tasmania, in the calendar year when it was introduced. But as the effects that are present today crept into the system – delays, over-use of exemptions, perceived expense and discouraging techniques from spin doctors – journalists' enthusiasm waned and they engaged in more passive modes of information gathering. They generally haven't been committed enough to appeal. The undergraduate studies also suggest there is not an emphasis on investigative journalism in Tasmania.

Regardless of the fact that journalists have hardly used Fol, and when they have they've been unhappy with the result, there has remained an attitude among journalists that Fol is an important investigative tool.

Appendix four: Government Business Enterprises

One of the identified discouraging factors for journalists when considering using Fol is over-use of exemptions.

Government business enterprises are organisations where we would expect to find commercial exemptions applied frequently. However such an analysis is outside the scope of this research project. Hubbard has examined the contradictions inherent in GBEs as accountable government agencies, and his work is useful background when considering the Tasmanian situation.

In Tasmania two GBEs are exempt from the Act altogether, so obviously Freedom of Information is incapable of achieving its object in these cases. However, even if a body seems covered, it may escape real disclosure through reliance on exemptions relating to commercial information (Hubbard 4).

Hubbard, who conducted a comparative analysis of Fol legislation from Tasmania and three countries, says the main problem with legislation in Tasmania and elsewhere lies in the scope of exemptions available for commercial information. He says, “the scope of legislative exemptions seem to undermine accountability.” (Hubbard 8).

State-owned enterprises (government business enterprises, public-private partnerships, joint ventures, contracting-out of government services, and other quasi-government enterprises) don’t fit neatly within Fol law and present challenges to existing public and private notions of accountability (Hubbard 1–3). These enterprises in the accountability “grey area” aren’t insignificant: a 1993 Industry Commission report estimated government business enterprises accounted for 10 per cent of Australia’s gross domestic product (Ricketson, *Cry Freedom*).

There has been a trend in the last two decades towards privatisation and corporatisation, while freedom of information regimes were largely designed before this reinvention of government (Hubbard 2).

Hubbard points out that management in quasi-governmental organisations, such as GBEs, may not see themselves as public servants and so it is futile to discuss public service values, ethics and culture when addressing GBEs and Fol. While executive accountability and participation in governance is a stated purpose of Fol

in Tasmania, it is difficult to see how these ideals could hold much weight in organisations that refuse to be described as governmental (Hubbard 7).

Attempting to control information protects under-performing management and enterprises and the lack of transparency forms the basis for systematic corruption (Hubbard 8).

Secrecy provides a shield against being accused of making a mistake (Stiglitz, quoted in Hubbard 9). Either the mistake will never be found out, or if it is, blame can be avoided. While in a traditional government department, the Minister would take responsibility for any mistakes, in a GBE, blame is likely to fall on the management, and could effect the viability of the enterprise as a whole. So there are both personal and systematic reasons why GBEs may perceive advantage in withholding information. Withholding information also allows enterprises to maintain competitive advantage against competition (Hubbard 9).

Without a large and informed freedom of information constituency, prepared to appeal dubious refusals and attract attention, a quasi-commercial enterprise could probably deal with most requests quite cheaply by refusing release based upon the broad commercial exemptions in the Act. Even if an appeal finds against the enterprise, there is no penalty to be paid (Hubbard 10).

The costs of GBE secrecy is transferred to the economy at large (Hubbard 11). Corrupt behaviour, like secrecy, distorts the market and hampers efficiency (Hubbard 11). Improvements in information flow are able to reduce the scope for such abuses. Hubbard asserts that much corruption occurs at the interface between the public and the private sector.

He says freedom of information may be better at preventing corruption from taking root, rather than weeding it out. This is because once information becomes incriminating, the value in withholding it sky-rockets. Hubbard says a request for this information would most likely result in malicious non-compliance (see appendix nine for definition). (Hubbard 11).

Chris Finn (1999, quoted in Snell, *Rethink*) also writes that commercial-in-confidence is over protected from disclosure under contemporary Fol legislation. Viewed solely in economic terms, he says, the existing levels of protection for business information appear hard to justify:

Finn says it should not be sufficient to justify exemption as is currently the case, either that the material is of a commercial nature, or that its release will cause

some harm to the individual enterprise (Finn 1999, quoted in Snell, *Rethink* 69). Hubbard (7) suggests strengthening the presumption of disclosure. Rather than relying on sections of the Act, agencies should articulate an outline of foreseeable harm.

Hubbard's compares the "older approach" used in Tasmania, whereby government agencies that are covered by FoI legislation are listed (see FoI Annual Report, 2003: appendices 1, 2 and 3), with the "newer approach" which adopts a government ownership test. In Tasmania the interests of third parties may be outweighed by public interest considerations (Hubbard 5).

Hubbard and Snell's analyses highlight the commercial and social losses to be suffered by lack of GBE accountability. Considering the significance of TT-Line and Forestry Tasmania to the Tasmanian Government and Tasmanian people, and the GBEs involvement with substantial amounts of public money and other public assets (ie old-growth forests and landscape integrity), then if Hubbard's conclusions are correct, Tasmania is suffering the effects of anti-competitive, distorted and inefficient markets, the costs of which are transferred to the economy at large.

Hubbard's analysis that GBEs can deal with most requests cheaply by applying commercial exemptions is likely to apply to the Tasmanian situation, as journalists have been found to avoid external appeal in most cases, even though in theory they say they would appeal.

Appendix five: Spin Techniques

The influence and impact of spin doctors at both the political and organisational level is a major advantage to governments over the media and citizens (Snell, *Diminishing Returns*).

The extent, dimensions and degree of spin doctors’ influence has significantly increased on the political or administrative landscape (Snell, *Diminishing Returns* 194).

Snell draws upon the work of Gaber (2000), Coulthart (1999), Little (2001), Tempest (2001), Wegg-Prosser (2001), Kent (2001) and Underwood (1999), and outlines some of the ways that an effective Fol system can break down the monopoly of government spin doctors as a key source for news stories. He writes that spin-doctors use the following techniques to achieve their aims:

Spin-doctoring technique	Definition	Relationship to Fol
Consistency	Making sure politicians stay “on message”.	Fol undermines this technique because information may be released that doesn’t comply with the politician’s message.
Exclusives	Giving selected journalists a string of related stories, and in doing so, somewhat controlling the news.	Fol gives journalists another source of government information, other than the spin-doctors.
Construction of a firebreak	Creating a diversion to distract the media from an embarrassing story.	This technique undermines the effort, resources and time devoted to particular Fol requests.
Stoking the fire	Providing material to keep an opponent’s awkward story running.	Less directly relevant to Fol except demonstrating how proactive agencies can be if they perceive benefit for their minister. Journalists will often be directed to files relating to the previous administration for interesting stories.
Pre-empting	Confirming the substance of a	This won’t prevent a Fol

	story before the details and evidence are published.	story from being published, but it does diminish the likely impact and duration of the story.
Throwing out the bodies	Releasing bad news stories on days when there is another high impact story to diminish attention to the bad news story. Snell quotes Tempest's (2001) example, whereby a UK spin-doctor issued an email memo suggesting it was 'a very good day to get out anything we want to bury' on September 11, 2001.	More techniques to reduce the impact of stories that are perceived unfavourable or embarrassing by the government.
Laundering	Finding a good news story to release alongside a bad news story.	
Ins and outs	Creating an "in-group" of favoured journalists and an outer group who find themselves excluded from sources of information, bullied and intimidated.	Fol reduces the journalist's reliance upon the spin-doctor as an information source, so the journalist is less easily manipulated.

(*Diminishing Returns* 194–6)

Appendix six: Integrity Assessment

The Public Integrity Index, published by the Center for Public Integrity in the United States, rates government integrity in 25 countries: reporting on corruption, openness and accountability. It is of interest to this study to look at Australia's comparative administrative compliance status, as compliance affects the outcome of journalists' requests and subsequently their enthusiasm for the legislation.

Australia gets a "strong" rating in the index, but it's not a perfect score:

Australia may enjoy a global reputation for integrity in its government, but the public's ability to investigate and expose what corruption does occur is being severely curbed by unnecessary restrictions on access to information. (Coulthart, *Corruption*)

On an international scale Australia ranks overall third of 25 countries. This appears a good ranking, but when it comes to "Administration and Civil Service", Australia ranks "weak". In this category Australia ranks eighth on a world scale. The cost of obtaining information under the Freedom of Information Act increases steadily. (Center for Public Integrity, *Global*)⁸¹. Ross Coulthart writes:

An increasingly politicised public service is learning that the best path to career advancement is to suppress, cover up and lie. As one retired major-general complained publicly this year, "The political staff will support their minister at all costs, including, probably, the cost of truth."

The Australian media... need to become far more aggressive in enforcing their rights of access to information—in demanding to know why documents or data cannot be released. It is also incumbent on the big media organisations to use the existing freedom of information laws in a far more proactive way. A declining commitment to investigative journalism in Australia means too much is staying in the dark (Coulthart, *Corruption*).

John Uhr⁸² says state governments seem more vulnerable to corruption than the national government, as there is a higher degree of concentrated powers at the state level.

⁸¹ *Global Integrity: An Investigative Report Tracking Corruption, Openness, and Accountability in 25 Countries*. The Center for Public Integrity. 8 Sept. 2004. Website. Available: <http://www.publicintegrity.org/ga/default.aspx>.

⁸² Uhr, John. *Integrity Assessment*. Center for Public Integrity. 8 Sept. 2004. Webpage. Available: <http://www.publicintegrity.org/ga/country.aspx?cc=au&act=notebook>.

These comments reflect the findings of undergraduate law students, featured in appendix two, that journalists are not vigilantly and proactively protecting the important investigative tool of Fol, and that investigative journalism is on the decline.

Appendix seven: An Historical Perspective of Tasmanian Journalism. Interview with Wayne Crawford.

Something would be amiss if a study was conducted about journalists' use of Freedom of Information legislation in Tasmania, and associated factors like the activities of spin-doctors, without considering the traditions of the profession and changes in journalism culture over time.

Wayne Crawford⁸³ has been a journalist in Tasmania since 1968. He started in his mid-20s as an assistant to one of *The Mercury's* roundsmen, moved on to become political reporter, and in 1972 earned a Walkey Award for best newspaper reporting. In the early 80s he moved on from the political reporter's position. Since then he has continued to write as a columnist for *The Mercury*.

In Mr Crawford's experience, spin-doctors and media managers have always been around. In the days of Eric Reece, there was only one press secretary for the whole government. He explained how it worked:

Journalists doing the government round would meet at the Premier's office of an afternoon and start the round from there, do the rounds of the various offices to see who we could see and who was available. Ministers in those days didn't have press secretaries so you were relying on private secretaries to give you access if you wanted access. There was only one press secretary and he was attached to the Premier. (Crawford).

Press statements and media releases put out by the government –there were far fewer in those days, says Mr Crawford – were put out by the Premier's press secretary. This was in the same, "information gatekeeper" style as can be seen today (Crawford).

Mr Crawford says that if a journalist called around to the Premier's office to see if he was available, the press secretary would often call the Premier on an internal phone and ask: "oh you *don't* want to see the press today, do you boss?"

But then again, a lot of the time, Eric Reece would actually come out and have an impromptu press conference which would last for an hour, most of which would be him telling jokes. I mean he could be quite accessible if he wanted

⁸³ Crawford, Wayne. Telephone interview 17 Mar. 2004.

to, but he could be quite inaccessible if his press secretary thought it was a good idea that he not be. (Crawford).

From 1969 to 1972, when Angus Bethune was Premier, Mr Crawford says it was a very exciting time because there was a minority government.

In those days Angus Bethune sometimes had two press conferences a day, which was pretty much – some believed – his downfall, because he was too open. He'd comment on anything, anything going on in the nation, the world... (Crawford).

Mr Crawford says the different styles of Bethune and Reece when dealing with the media came down to personality.

In Eric Reece's day, journalists would seek access to ministers via their personal secretaries, because there were no press secretaries. But personal secretaries often took on the roles of press secretaries, sometimes putting out statements. Mr Crawford recalls the stories he was told by experienced *Mercury* journalists about news culture, when he started in 1968: "Back in the 60s it was not entirely uncommon for Eric Reece to wander in to the *Mercury* office on a Sunday night, plonk himself down at a desk in the reporter's room in front of a typewriter and type his own press statement." (Crawford).

Merv Everett had worked as a journalist for *The Mercury* in his youth for a brief time before moving on to become deputy premier, attorney-general, and eventual Senator (Crawford). Mr Crawford recalls that Mr Everett would sometimes call a press conference in his office and dictate a story for the press, including full-stops, commas, and attribution. "It wasn't necessarily what you did write, but it was what he was hoping you'd write. He was making it as easy for you as possible, he'd put in the punctuation, the paragraph marks and the lot." (Crawford).

Mr Crawford doesn't compare Mr Everett's dictations to modern day press releases, because media releases were already on the government-journalism scene at the time.

No, that was just Merv's style... another trick was to get half way through telling you something and then he'd say "now put your pencils away boys, this is off the record." But he'd already told you so you were faced with the dilemma of what to do, whether you just got up and walked out, because you didn't want to take it off the record, or accept it on his terms as an off the record briefing. Eric Reece was pretty handy at that too.

Mr Crawford noted that when Eric Reece moved on and Bill Nielsen entered the scene as Premier, journalism culture in relation to the government and information gathering changed again. It was a major change because at about that time press secretaries began being appointed to individual ministers.

In Mr Crawford's early career, when few press releases were put out, he recalls that journalists really did "do the rounds".

Journalists would gather at the Premier's office and then collectively visit the ministers' offices, and try to see the minister. If the minister had anything to announce more likely than not he'd see you to announce it rather than put it out by press statement. (Crawford).

But in the late 60s, and increasingly in the early 70s, press statements began to appear in great quantities.

Mr Crawford said there were three main news organisations in those days – *The Mercury*, *The Examiner* and the ABC. Channel Six (now WIN) didn't have a news room, nor did any of the radio stations apart from the ABC. *The Mercury* also covering for *The Advocate*. So it was just three journalists doing the rounds. Press conferences were small and personal and usually held in the minister's office.

I was also involved in the coverage of parliament in the days when there was a parliamentary bar and you'd drink into the early hours of the morning with some MP or some ministers or go and have a pizza with them, or whatever after parliament finished. But they were also the days when parliamentary sitting times were a lot different, they'd start at 2:30 in the afternoon and finish routinely at about 11 or 12 at night and more often than not at 2:30 in the morning. So you were sort of living and breathing parliament house most of the time, probably eating and drinking there, as well as working there – virtually living there. And living at the same time with the MPs with whom you quite often develop quite close professional relationships in hence of being able to have a drink with the Premier and being able to talk off the record on issues. I don't know how often that happens now. These days they have family-friendly sitting hours and start at ten in the morning and finish at six and everybody goes home. There's no getting on the booze in the parliamentary dining room until three in the morning anymore I don't think... That's how you got your stories, yeah, over the bar. Whispers over the bar... it operated more in the way that the Canberra gallery operates, where there was a close association between the politicians, the staff and the journalists by virtue of the fact that you were spending so much time together, cocooned in parliament house.

Sometimes you'd get a lead on something, not because they were deliberately leaking something but because they'd let something slip while you were having a drink. Obviously politicians and politicians' minders or staff leak stuff because they want to leak it – very infrequently for any altruistic reason. It's not often that you've got staff that are leaking stuff because they're being whistle blowers, it's more that they're protecting the interests of their boss. (Crawford).

These days, with internet and fax distribution, and family-friendly sitting hours, Mr Crawford predicts that the level of personal contact between journalists and public servants and minister is far lower. The practise of “doing the rounds” has diminished, and towards the end of the 1980s virtually disappeared. But in the late 60s/early 70s:

Even if you weren't seeing a particular minister you'd be visiting his office because there would be material to be picked up. You know, reports or press statements or whatever. These weren't faxed out in those days they weren't even delivered, they were picked up and that was part of the job – to collect the statements and to try and see the minister, pick up the gossip on the way around, drop into Parliament House on the way to the staff down there, see what's going on, pick up whatever gossip or information was around. (Crawford).

In those days parliament was taken a bit more seriously as a news source... We had one doing the government round, one doing the assembly and one doing the legislative council. Now there's one doing the government round and one doing parliament overall I think. So the importance of parliament as a source of information or a source of stories has been severely downgraded... I mean when I was doing parliament, we covered debates to the extent that we would write reports on what people said. Covering debates in parliament now is unheard of. There may be a story about the issue that's being debated but the debate will be covered very rarely. Very rarely... Back in the 40s, 50s and early 60s the debates would run for columns. Column after column of debate. Every speaker would be given coverage.

Mr Crawford said that was because there used to be more space in the newspaper when it was a broadsheet. The broadsheet would have half a dozen or so stories on the front page then, whereas today there's likely to be one or two.

“Journalism has completely changed,” he says.

Wayne Crawford's observations highlight that journalism in Tasmania today is far less personal than it used to be, and there is far less access to ministers. Journalists today don't have the same opportunities to get to know government personalities and government processes in an informal way, because restricting access is part of the role for the gatekeepers, the press and media secretaries and minders, which have proliferated.

Appendix eight: Analysis of the Reports of the Operation of the Freedom of Information Act, 1993–2003.

Annual reports on the operation of the Freedom of Information Act fulfil the requirements of Section 56(1) of the Act and provides details about the activities of the Government Fol Unit, agencies and prescribed authorities, training and public education, requests received by agencies and local government, agency use of exemption provisions, reviews of decisions, and fees and charges.

This analysis of the annual reports⁸⁴ addresses the activities of Tasmanian Government agencies and prescribed authorities. It does not cover councils.

Authorities covered by the Act: changes over time

The number of agencies and prescribed authorities in existence in Tasmania and covered by the Fol Act have changed over time, as have these organisations' names and their responsibilities.

For example, in the first reporting year 77 agencies and prescribed authorities were covered by the Fol Act.

Agencies and prescribed authorities that have previously been covered by the Act that are not covered today include:

- Alcohol & Drug Dependency Board (abolished from December 1993. Source: Fol Annual Report, 1994)
- Derwent Entertainment Centre
- Egg Marketing Board
- Environment Protection Appeal Board (abolished from June 1994. Source: Fol Annual Report, 1994)
- Gellibrand House Board
- Licensing Commission
- Local Government Advisory Board
- Miners Pension Board
- Navigation and Survey Authority
- North West Regional Water Authority

⁸⁴ Office of the Ombudsman. *Freedom of Information Annual Reports on the Operation of the Freedom of Information Act 1991*. Hobart: Tasmanian Government, 1992–2003. Recent Fol annual reports available: <http://www.justice.tas.gov.au/ombudsman/publications.html>

Psychologists Registration Board
 Public Sector Management Office
 Retirement Benefits Fund Investment Trust (abolished from 30 June 1995.
 Source: FoI Annual Report, 1995)
 State Purchasing & Sales
 State Revenue Office
 Superannuation Accumulation Fund Board (abolished as of 1 July 1994.
 Source: FoI Annual Report, 1995)
 Tasmanian Ambulance Service
 Tasmanian Cancer Committee
 Tasmanian Dairy Industry Authority
 Tasmanian Government Insurance Office (this agency was privatised from
 November 1993. Source: FoI Annual Report, 1994)
 Workers Compensation Board

Other agencies and prescribed authorities have been re-arranged, for example, in 1993 hydro-energy interests were represented by:

HEC and HEC Enterprises Corporation.

In 2003 hydro-energy interests are represented by four discrete authorities:

Aurora Energy,
 Hydro Tasmania,
 Transend Networks P/L,
 Office of the Tasmanian Energy Regulator.

Marine issues are an example where the re-arrangement has acted to consolidate agencies. In 1993 the following agencies were represented:

Marine Board of Circular Head,
 Marine Board of Flinders Island,
 Marine Board of Hobart,
 Marine Board of King Island.

In 2003 marine issues were represented by:

Marine and Safety Tasmania.

In 2003 ten state government departments and 63 prescribed authorities provided statistical returns. Agencies and prescribed authorities that were not represented under the Act in 1993 that were represented in 2003 include:

Ben Lomond Skifield Management Authority
 Civil Construction Services Corporation
 Cradle Coast Water
 Director of Public Prosecutions
 Health Complaints Commissioner
 Hobart Ports Corporation
 Inland Fisheries Service
 Law Society of Tasmania
 Metro Tasmania Pty Ltd
 Office of the Anti Discrimination Commissioner
 Ombudsman
 Port Arthur Historic Site Management Authority
 Public Works Tender Board
 Solicitor General
 Southern Regional Cemetery Trust
 Stanley Cool Stores
 Tasmanian Grain Elevators Board
 TASSAB
 Tourism Tasmania

From 1996 onwards, the Fol Annual Reports state that TGIO and TT Line are the only bodies that have been expressly excluded by Section Five from the operation of the Act.

Analysis of foreword sections

It is interesting to compare the format of the reports over time. The first annual reports, from 1993–1997, opened with a foreword from the Premier, Liberal Mr Ray Groom.

In the foreword of the first annual report the Premier wrote that the introduction of Fol had not only provided Tasmanians with better access to government information but had motivated some government agencies to review their policies on public access to information resulting in greater efficiency of their operation (Fol Annual Report, 1993).

In the second annual report, Premier Groom wrote: “The Government remains committed to the principles of Freedom of Information.”

In 1998, the Premier no longer introduced the annual report with a foreword. That year the task was given the Liberal government’s Minister for Justice. This could be

viewed as a demotion of FoI as a government priority, as annual reports ceased receiving the personal attention of the Premier.

In 1998 Labour took control of the state government and the foreword section was dropped from the report format from then on. That is, no annual written commitment to the principles of the Act was signed by the Premier or other government representative.

Introductory paragraphs

It is also interesting to compare the introductory paragraphs to the annual reports over time.

The 1997, the report stated the object of the Act, as follows:

The aim of the Act is to give people the right to be provided with information held by government agencies, authorities and councils unless the information is exempt or exempted from release. Prior to the Act the release of information was largely at the discretion of each agency (FoI Annual Report 1)

Although the object of the Act (Section 3) hadn't changed, in 2003 the report stated the object of the Act differently:

The object of the Act is to give members of the public access to information held by government, unless, for example the information is exempt and the right to have amended any inaccuracies, incomplete, out-of-date or misleading information. (FoI Annual Report 3)

Rather than referring to a person's *right* to information, in 2003 the object is rephrased to refer to a person's *access* to information.

Freedom of Information Unit

According to the 1994 FoI Annual Report (section 1.6), the Freedom of Information Unit⁸⁵ was proactive in many areas. These were on issues of FoI training for state and local government staff, awareness-raising talks about FoI, publication and distribution of users guides and application forms, providing advice and producing a newsletter for agencies, gazetting names of FoI officers, collecting statistical data on FoI usage, conducting co-ordination meetings with FoI officers from different sections, and reviewing the FoI Act. All of these functions, apart from

⁸⁵ The FoI Unit was established within the Department of Premier and Cabinet before the Act commenced, in 1992.

basic collection of statistical data on Fol usage, appear since to have ceased and no vestigial Fol Unit is evident.

The Freedom of Information Unit was relocated to the Office of the Ombudsman in May 1996. This can be viewed as a demotion of Fol as a government priority.

Analysis of statistics

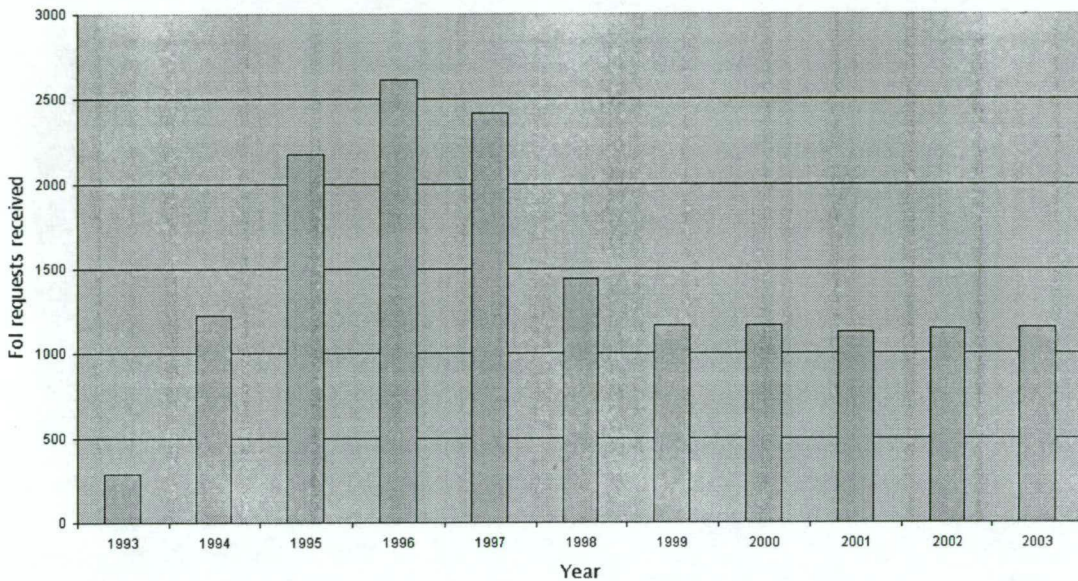


Chart 1: Analysis of requests received by agencies and local government.

Few requests were made under the Act in the first six months of its operation, to 30 June 1993. As problems with the Act were identified and public and institutional education programmes were put into effect, the Act began to be better utilised over 1994 and 1995. Usage peaked in 1996, with 2612 requests being made to the State Government and prescribed authorities.

The majority of Fol requests over the years have been to the department of police. This weighting peaked in 1996 and 1997, with about 97 per cent of all requests going to the police department. The regulators recognised the reasons behind this trend and introduced a pilot scheme for the provision of prosecution briefs for lower court cases in 1997. The scheme removed the need to apply for such information through Fol (*Fol Annual Report* 1998, p.4). Through 1998 and 1999 the policy of giving people their own information when first requested – for example, their own police statement on a burglary for an insurance claim – was continued. Consequently, requests to the police department decreased from 2005 requests in 1996 to 501 requests in 1998.

Other popular departments were Community & Health Services, which experienced up to 22 per cent of all requests in 1993, and Infrastructure, Energy & Resources, which experienced up to 30 per cent of all requests in 1999.

Over the period 1999 to 2003, Fol usage remained stable with the number of requests ranging from 1130 to 1170 annually.

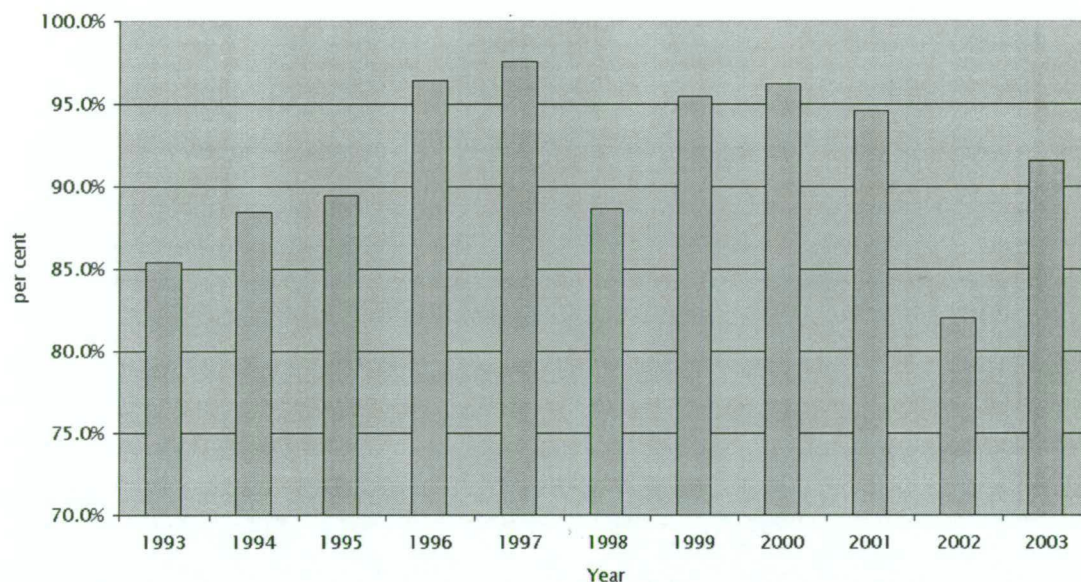


Chart 2: Number of Fol requests decided as per cent of number received.⁸⁶

The proportion of Fol requests that were decided, compared to the number that were submitted, peaked from 1996 to 2001. The highest proportion occurred in 1997, when almost 98 per cent of Fol requests submitted were decided (2356 decided/2414 requests submitted). The lowest proportion occurred in 2002, when 82 per cent of Fol requests submitted were decided (939 decided/1145 requests submitted).

⁸⁶ Some requests decided in the current year are carried over from the previous year.

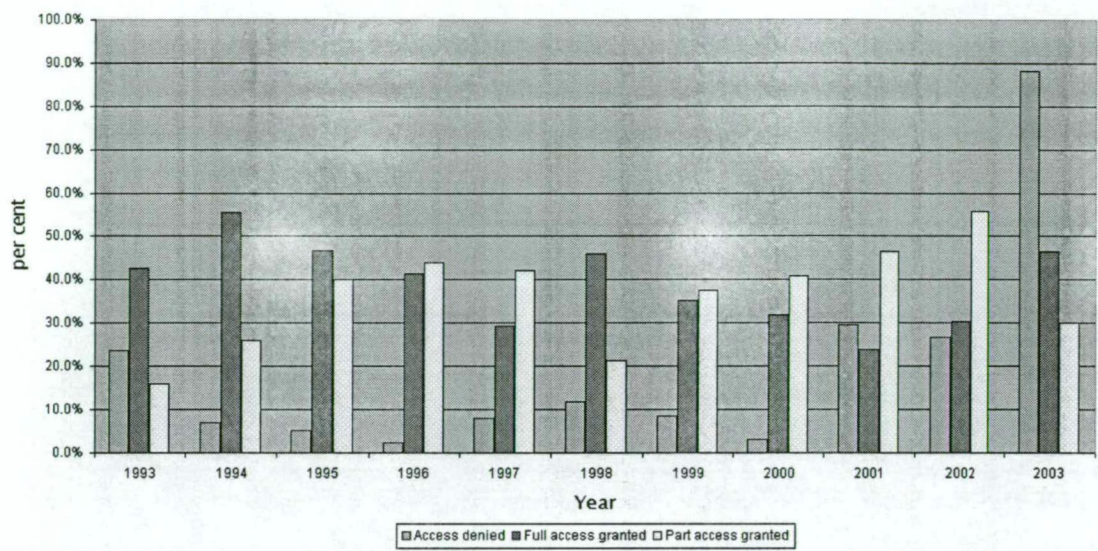


Chart 3: Requests denied (refused or exempt) and granted access, as per cent of requests decided.

The number of requests to the State Government and prescribed authorities that were denied access (refused/exempt) remained fairly stable from 1994 to 2000. The slightly higher proportion of denied requests in 1993 can be attributed to “teething problems” during the first six months of operation of the Act.

Over that period, requests denied access ranged between two per cent of all requests decided in 1996, and 12 per cent in 1998.

In 2001 that figure jumped to 30 per cent, and remained higher – at 27 per cent – in 2002.

Another, even larger, jump was seen most recently. In 2003, 934 requests were denied access out of 1058 requests decided: that’s 88 per cent refused or exempt.

These figures are a rough guide only, as comparisons are distorted by carry-over of numbers from one year to the next.

Full and part access

There was a trend to grant access in full between 1993 and 1998. Partial access began gaining dominance over full access from 1996, and dominated release decisions until 2002. In 2003 access denied (refused/exempt) dominated release.

The only year when more requests were denied access than granted access was 2003.

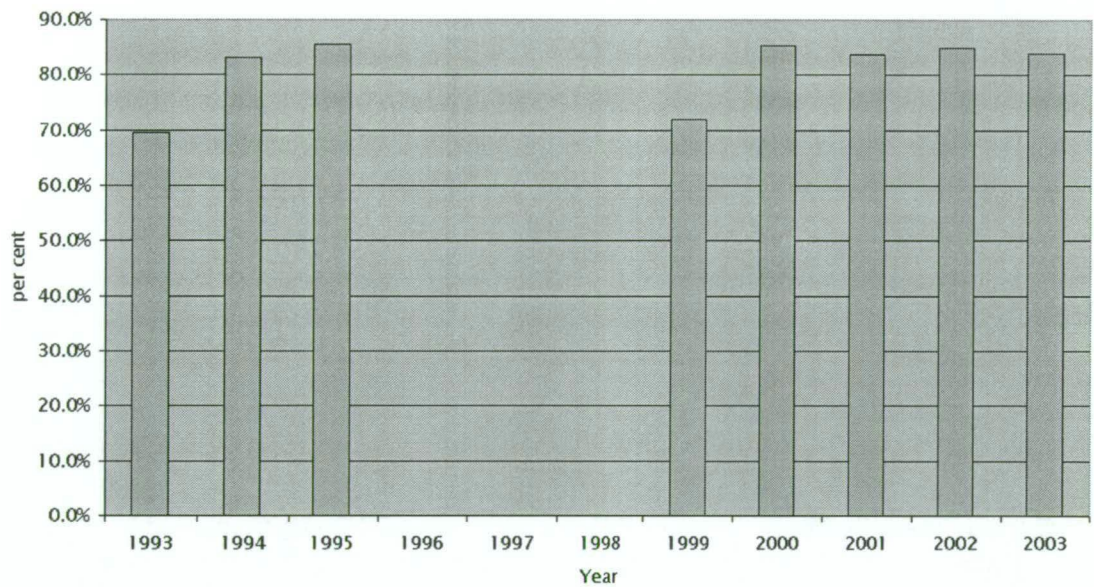


Chart 4: Proportion of requests that took 30 days or less to process, as per cent of total requests decided.⁸⁷

Over the lifetime of Tasmania’s FoI Act, between 70 per cent and 86 per cent of requests decided each year have taken 30 days or less to process (data is not available for the years from 1996 to 1998).

The maximum proportion of requests that took greater than 30 days to process (not including those that negotiated an extension) was 28 per cent, in 1993.

In 2003, 17 per cent of requests took greater than 30 days to process (not including those that negotiated an extension).

⁸⁷ Data for 1996–1998 not available.

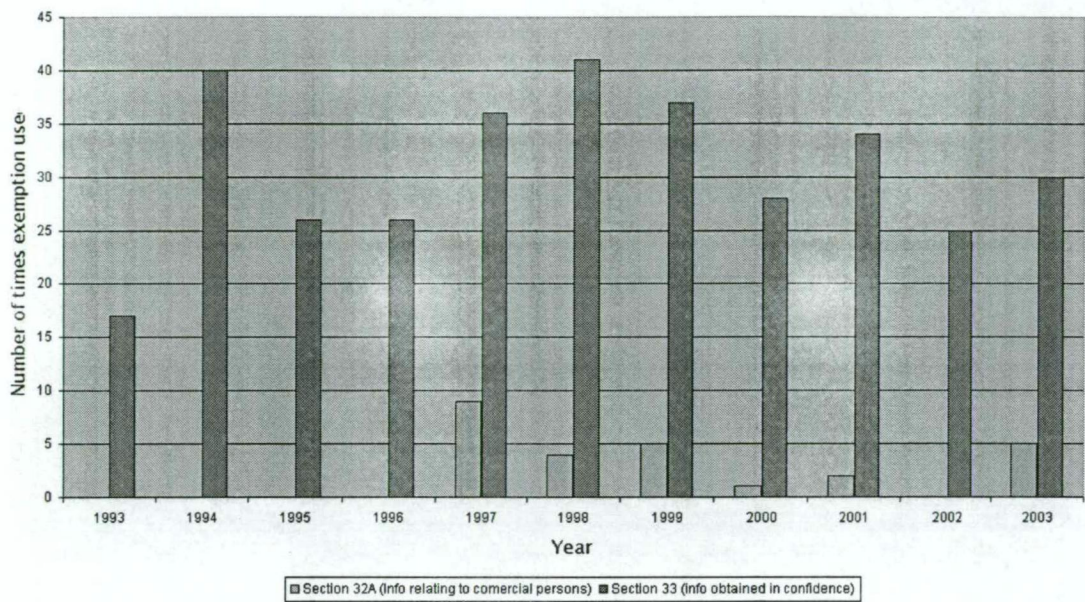


Chart 5: Frequency of the two commercial FoI exemptions.

Two of the commercial exemptions, Section 33 (information communicated in confidence) and Section 32A (information relating to “commercial persons” ie the Forestry corporation⁸⁸, Private Forests Tasmania or the Civil Construction Services Corporation) were charted over the lifetime of the FoI Act.

Chart 5 shows that the Section 33 exemption has been consistently applied over the lifetime of the Act. Application of Section 33 ranged over the years from 17 instances to 41 instances.

The chart clearly shows the introduction of 32A in 1997, when this exemption was applied nine times. Application of 32A dropped thereafter, probably because citizens realised that information about the three GBEs covered by this section would not be released, so they didn’t try.

⁸⁸ Sections 2, 3, 6, 7A, 8A, 8B, 8C, 8D, 9, 9AA, 9A, 9B, 9C, 9D, 9E, 9F of the *Forestry Act 1920* are now repealed. Section 6 of the *Forestry Act 1920* was the section that related to the *Freedom of Information Act 1991*.

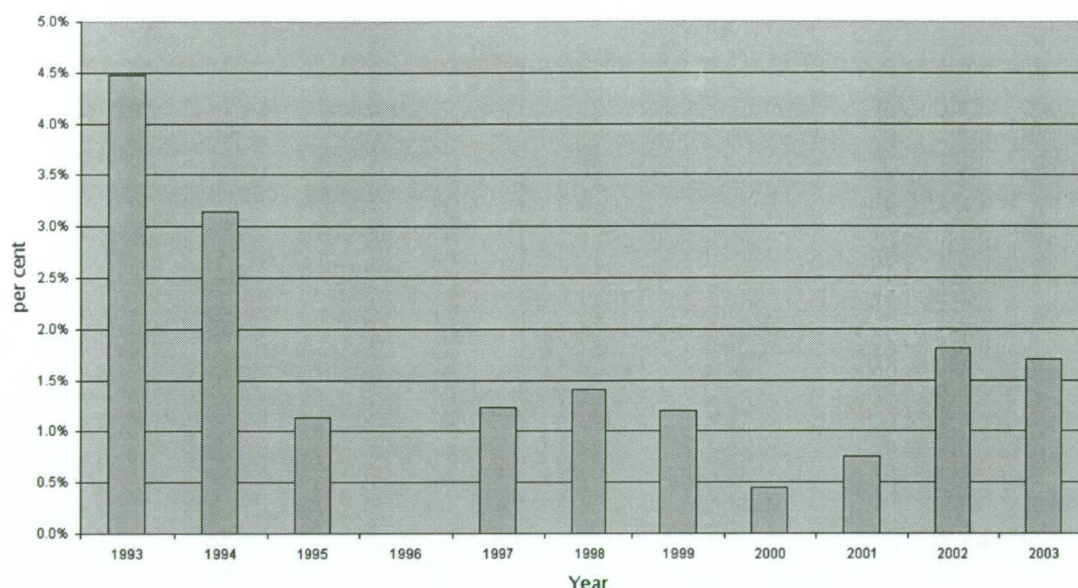


Chart 6: Requests externally assessed by the Ombudsman, as per cent of total number of requests decided.

The Ombudsman has externally assessed between 0.4 per cent and 4.5 per cent of the total number of requests decided. The largest proportion of requests externally assessed by the Ombudsman occurred in 1993 – again this anomaly can be viewed as a “teething problem” associated with the introduction of the Act.

From 1994 to present, the proportion of external review decisions made has been very low – and disproportionate to the amount of discontent journalists have had with the Act, as documented by undergraduate administrative law students (see appendix three).

After a lull in the number of external reviews sought in 2000 and 2001 (when five and eight were sought, respectively), there has been a resurgence in 2002 and 2003, with 17 and 18 reviews sought, respectively.

The maximum number of requests externally reviewed by the Ombudsman was 34, in 1994. In 2003 the Ombudsman reviewed 18 requests out of 1058 State Government requests decided (including prescribed authorities), that is, about two per cent.

Analysis of fees and charges

The Tasmanian FoI Act is unique in comparison with mainland counterparts, in that it does not impose an application fee on requests at the time of lodgement (*FoI Annual Report*, 1994, 32). There is a cap on fees of \$400. Fees collected were recorded from 1993 to 2000. Because the revenue and fees collected from

applicants for the processing of their requests did not ever come close to the actual costs of processing the requests, the keeping of records ceased in 2001.

Of the records that are available, total fees collected by State Government agencies and prescribed authorities ranged from \$5,335 to \$62,050.92. The proportion of waived fees ranged in total from 41 per cent to 82 per cent.

Appendix nine: Results

Eight questionnaire results were collected over the period 16 July and 28 August 2004. Interview-based results only were collected from one other respondent. Some of his contribution is included in the questionnaire results summary, as he was often asked the same questions.

Sydney-based investigative journalist Ross Coulthart also submitted a completed questionnaire but this is not included because he has not used Fol in Tasmania.

This section presents the results of the questionnaire and, where appropriate, corresponding results from Lidberg’s thesis.

Some journalists preferred not to be identified. For the sake of consistency all journalists have had their name codified by news organisation.

Questionnaire for reporters and journalists, Part I: Journalists’ attitudes towards Fol in Tasmania.

For the following seven statements, your answer options are:

Strongly agree – SA, Agree – A, No Opinion – NO, Disagree – DA, Strongly Disagree – SDA.

Please circle one option only.

1. Generally, I think Fol is easy to use

SDA	Merc1, Merc2
DA	ABC2, Adv1, Adv2, Aus1
SA	ABC1
A	Adv3
“NO” was not chosen by any respondent.	

2. Fol is very important as a professional journalistic tool:

SA	ABC1, ABC2, Adv2, Aus1, Merc2
DA	Adv1
A	Adv3
Merc1 did not circle an answer to this question. SDA and NO were answers not chosen by any respondents.	

3. Journalists in general have good knowledge of how to use Fol.

SDA	Merc1
DA	ABC1, ABC2, Adv3, Aus1, Merc2
NO	Adv2
A and SA were answers not chosen by any respondents.	

4. Public servants are helpful in assisting Fol requests from journalists.

Tasmanian response

SDA	ABC2, Merc2
DA	Adv1, Aus1, Merc1
NO	ABC1, Adv2, Adv3
A and SA were answers not chosen by any respondents.	
Comments	ABC1: I've had some success, but not others, and the length of time has been excruciating at times. So you'd have to put it in the middle because it would have to work on an average, the answer to that one."

West Australian response 33 per cent

5. Journalists should use Fol more.

NO	Merc2
A	Adv1, Adv2, Aus1
SA	ABC1, ABC2, Adv3, Merc1
SDA and DA were answers not chosen by any respondents.	

6. Journalists need more training in how to use Fol.

A	ABC1, Adv1, Adv2, Adv3 Aus1, Merc2
SA	ABC2, Merc1
SDA, DA and NO were not chosen by any respondents.	

7. A well-functioning Fol legislation is an important part of the democratic system.

SA	ABC1, ABC2, Adv1, Adv2, Adv3, Aus1, Merc1, , Merc2
SDA, DA, NO and A were answers not chosen by any respondents.	

Questionnaire for reporters and journalists, Part II: Practical use of Fol by journalists in Tasmania.

Please circle one option and give a short description if your preferred option is 'other'.

1. How often do you use Fol?

Tasmanian response range: 12 times per year to "very rarely"

b) Once per month	ABC1, Merc1
d) Other.....	ABC2: a couple of times per year Adv1: very rarely Adv2: 3 times a year Adv3: a couple of times a year Aus1: several times per year Merc2: six times per year
"a) Once per week" and "c) Once per year" were not chosen by any respondents.	

West Australian response 1-4 times per year

2. How often does the information that you have acquired using Fol make it into your stories?

b) Once per month	Merc1
d) Other	<p>ABC1: You can always say that Fol didn't really fulfil the request that you put in, so you do in fact refer to the fact that you have lodged a Fol request.</p> <p>ABC2: Rarely get a response</p> <p>Adv1: Very rarely</p> <p>Adv2: Once a year</p> <p>Adv3: I have found the info I request is usually later released by the government.</p> <p>Aus1: Varies according to time taken to process, but probably several times over two years.</p> <p>Merc2: Six times per year</p>
"a) Once per week" and "c) Once per year" were not chosen by any respondents.	

3. Do you think Fol is a fundamental research tool for a journalist?

a) Yes	ABC1, ABC2, Adv2, Adv3, Aus1, Merc2
b) No	Adv1, Merc1

4. If not fundamental, do you think Fol is a worthwhile tool to use?

a) Yes	Adv1, Aus1, Merc1, Merc2
b) No	
Comment	<p>Adv1: It is okay as far as it goes, but that is the whole point. A front-end loaded system where documents are classified early in the process would be better. It also takes much too long.</p> <p>Aus1: It is worthwhile but eternally frustrating too.</p> <p>Merc1: I think it is worthwhile because it can give an exclusive story. With some figures or information which is otherwise inaccessible.</p>
ABC1 and ABC2 did not circle an answer to this question, or offer comment.	

5. When you research a story of a more investigative nature, do you use Fol?

Tasmanian response

a) Never	
b) Seldom	Adv1, Adv3, Merc2
c) Often	ABC2, Adv2, Aus1, Merc1
d) Always	ABC1
Why?.....	ABC1: Yes, always, because it's such as fundamental tool. That's how you get information that you can't access any other way... I have (had some success with it) on occasions, but I've certainly had some duds as well. Adv2: To establish fact. Adv3: I don't always remember or think about it! Aus1: Another tool available that may prove invaluable.

West Australian response yes = 44 per cent (n=14)

6. In your experience, do you find that your editor or chief-of-staff encourages you to use Fol?

Tasmanian response

a) Yes	ABC2, Aus1, Ex1, Merc1.
b) No	Adv1, Adv2, Adv3, Merc2.
Comment	ABC1: N/A – I really worked independently so that really doesn't apply to me. The fact is that Sydney, when I was working for the 7:30 Report, they would almost demand that you would use Fol when it was needed. Ex1: Yes, he does, particularly when there's a downtime. When you're covering politics, there's always downtimes. After Christmas, before Christmas, politicians break and they break for a long time... so we've got to come up with things... normally at this time of year we're putting in Fol requests, very much at the insistence at times of the editor. He says this is the time to do it and that makes sense. So he is really keen on it. Both Adv1 and Adv2, who are the two respondents who work for <i>The Advocate</i> , said their COS and editor don't encourage Fol.

West Australian response yes = 38 per cent (n=14; all WA ABC journalists said their COS did not encourage use Fol use).

7. How do you use Fol?

a) It usually provides the core basis of my story (ie it provides hard news)	Adv1, Aus1, Merc1, Merc2
b) It provide background only	Adv1, Adv3
c) The story normally centres on the fact that I can't get the information I want via Fol	Aus1, Adv2
Comment	<p>ABC1: N/A – Essentially... I have used (Fol) to often confirm things that I've been told. So I don't know if any of those questions really apply.</p> <p>ABC2: I often use Fol to substantiate an avenue of inquiry.</p> <p>Aus1: Varies between a) and c) depending on the success of the applications.</p> <p>Ex1: That depends on what it is – on what information you get, if it goes to plan. Usually why we're going through an Fol is because we want to uncover something and then that would be the core news, but sometimes it wouldn't go to plan – you get something back which isn't what you were looking for but can be incorporated into something else. It all depends on what you get back.</p> <p>Merc2: Occasionally "c" applies</p>

8. In what circumstances (if any) would you use Fol as a first port of call for information gathering?

ABC1	Usually when I can't get information from the government department, or if they're reluctant to (release information) – if I've been denied access to information through normal channels.
ABC2	When I have heard some unsubstantiated information which I need to confirm & know I won't get satisfaction from the government media office.
Adv1	Only if I couldn't get moles and snouts to talk.
Adv3	N/A
Aus1	As a means of getting raw data, eg, stress claims in police force.
Ex1	I tend not to use Fol as a first port of call for hardly anything, I like to have a bit of a basis of the story together before. But I do use it for silly things like 'how many police cars were involved in car accidents' just things when we're thinking what could be a good story. When we're purely looking for statistical type of stories, then we use that as a first port of call. But when it's investigative stuff, of any sort of gravity, I usually like to do a bit of digging around first, and then, now that I know where I'm going with this then it's Fol.
Merc1	When I had hit a wall on an issue. I used one this year to find out 1080 usage in the forestry industry and then followed with another about the number of native animals shot in the cause of forestry.
Merc2	Only when I thought I couldn't get the information any other way.

9. Please give examples of stories you have written using Fol, and how you used Fol

ABC1	I used Fol on the Howrah tip story, to confirm whether or not any testing had been done of water or soil samples taken of the area. Fol went into the Department of Public Health and to the Clarence Council. I've used it on Forestry stories, where I've been trying to access information about arrangements between private companies, private plantation companies and the government. I've used Fol on the story I did on possum meat exports to see what regulations had in fact been laid down for the export of wild animals, from Tasmania to China.
ABC2	A story on a recommendation to the Environment Minister that the duck hunting season should be banned. The Fol material was provided to me by the Tasmanian Conservation Trust.
Adv2	Most recent case was Fol on Mersey Hospital contact & admin.
Adv3	As I said - the few occasions I have used Fol the government released the information before my request was processed.
Aus1	None of my Fol applications in Tasmania have resulted in stand alone stories (in a two and a half year period). They have been part of national stories on stress claims in medical and police professions.
Merc1	Speed camera revenue.
Merc2	Devil disease; police speeding statistics; ambulance funding; politicians' travel expenses; departmental "spin doctor" numbers.
Adv1 didn't answer this question.	

10. If you put in a Fol request, how much time do you spend putting the request together?

Tasmanian response		West Australian response
a) 1 hour or less	ABC1, Adv2, Adv3, Merc2 (equiv. 57 per cent)	0
b) 1 to 5 hours	ABC2, Aus1, Merc1 (equiv. 43 per cent)	78 per cent (11 respondents)
Comment	ABC1: I always know what I want	

Adv1 didn't answer this question.

11. After you have put in the request, how long does it normally take for you to access the information?

Tasmanian response	
a) 1 to 3 days	-
b) 1 month	ABC1 ("Too long")
c) 1-3 months	Adv2, Merc1
d) 3-6 months	Merc2
e) Other	ABC2: I have never received information from a request. Adv3: usually a couple of weeks. Aus1: Varies from one month to never!
Adv1 didn't answer this question.	

Within statutory time period (30 days) = 3

Greater than Tasmanian statutory maximum (30 days) = 3

West Australian response greater than statutory maximum (45 days) = 78 per cent (11 respondents).

12. In your experience, how are your Fol requests treated by departmental staff?

Tasmanian response		West Australian response
a) Helpful	Adv3	One third of respondents.
b) Not helpful	ABC1, ABC2, Adv2, Aus1, Merc1, Merc2	(by inference) two thirds of respondents.
c) Other	-	-

Why do you think that is?

ABC1	The Clarence Council for example has an Fol officer. But in fact I know that they had more information that they could have sent me, and by law I could have continued to pursue it, because they are required by law to give the information that you have requested, if it's not classified information, or if it's not a Cabinet document. So I've found that sometimes I've had to go back to them a second time, to say, – wait a minute you've given me this but I know you can give me more. I've had to revisit the Fol original request.” But why withhold information, when departmental staff are required to release it? “Who knows? Could it be laziness? Or could it be that they have in fact been told that's enough, don't give her anymore?
ABC2	I think it is treated as a low priority.
Adv2	Stalling
Aus1	Part of the anti-Fol attitude within the wider government. Seen as an annoyance.
Merc1	They do what they have to do, but it is unusual to get “help”.
Merc2	They are not interested and in fact prefer the info not be released. Except Fol re police, who are generally helpful.
Adv1 didn't answer this question.	

13. Has your use of Fol increased or decreased in the last five years?

Tasmanian response		West Australian response
a) Increased	ABC1, ABC2 Adv2, Adv3, Merc1.	11 per cent (two respondents)
b) Decreased	Aus1	

Why?

ABC1	I've probably done more stories of an investigative nature (in recent years). And of course Fol hasn't really been around for that long has it? So I think that yes, maybe I was a bit slow on the uptake but I certainly got stuck into it towards the end.” (ABC1 has recently retired).
ABC2	Increased understanding about the power of Fol material.
Adv3	Because I am more aware of it and it is necessary as a political journalist.
Aus1	Moved from Adelaide, where I used it more frequently – found Tasmanian system exasperating.
Merc1	In the last year it has increased because I am based in Launceston for The Mercury. To get a good run for my stories I need something good and exclusive.
Merc2	Neither
Adv1 didn't answer this question.	

Note: Some Tasmanian journalists who used Fol in the past but not recently declined to participate, saying that because they had not used the legislation for a while they didn't feel that they could recall accurately their experiences. This attitude would skew the answers to this question because only journalists who have used Fol more recently are tending to participate in the questionnaire.

14. In your view, how would your journalism be affected if Fol were to be restricted or abolished?

Tasmanian response		West Australian response
ABC1	I think it would be grossly affected. I mean I think that it is one of the great democratic tools of all time that we've had access to.	
ABC2	It would put journalists at the mercy of the government media office in terms of what information they're prepared to let out.	I would like to think that the mere presence of Fol, whether or not it's used, makes departments more inclined to give us requested information...
Adv1	It would remove a potential tool.	No. It has become virtually useless as an info gathering tool.
Adv3	It could make life difficult – harder to uncover facts and limit some stories	Even though I don't use it – the fact that agencies believe I could if I wanted is important to the information gathering process.
Aus1	Another valuable research tool would be lost so stories may go uncovered.	Yes – it would make some pertinent stories impossible to do.
Merc1	It would affect me seriously in my present approach.	Minimally: most Fol stories I have written have been about departments' refusals to release information.
Merc2	The world wouldn't stop turning but the government would be able to cover up a number of stories. This would be a blow to democracy.	...agencies will have secrets regardless of any Fol law. Journalism should not rely on what is being handed over because anything really incriminating won't be supplied. Fol is a good tool for detailed tables and lists of information. For particular documents, I think any Fol legislation is suspect.
	Adv2 didn't answer this question	

15. Do you think the Fol process needs reform in Tasmania?

a) Yes	ABC2, Adv1, Adv2, Aus1, Merc2.
b) No	ABC1, Adv3.

Comments

ABC1	No, I don't think so. I think Fol and whistle blowing needs to be looked at fairly closely, because a lot of information that may be given to you by a whistleblower will then not be released by the government department that that person is whistle-blowing on. So I think that there needs to be some link up between whistle-blowing legislation which has been so slow to even get through. I think there just needs to be some refinement of the Fol legislation.
Ex1	I do but I don't think that's unique to Tasmania, I think Fol around the country needs reforms. They should change the name because it's not Freedom of Information at all, as it is right now, it's hard to get info out of it.
Merc1	Probably. There seems to be many exemptions." (Merc1 did not choose yes or no)

16. In what ways would you like to see Fol in Tasmania changed?

Tasmanian response

ABC1	I'd like to see it linked with whistleblower legislation.
ABC2	I would like government departments to take it more seriously & work harder to provide information.
Adv1	Less exemptions, quicker, less obstruction.
Adv2	Easier/quicker to use. I have been confronted by spin doctor in relevant govt dept after lodging Fol.
Adv3	No opinion
Aus1	More streamlined, rather than being caught in departmental 'pass the parcel'. Forestry (and all GBEs) <u>must</u> be included.
Merc1	I think government business enterprises such as TT-Line or Forestry Tasmania should be open to Fol.
Merc2	More assistance from Fol officers, less political interference, faster reaction from department.

West Australian response "Simplify the process, faster access, no fee, reduce exemptions, less third party consultation to speed up process."

Note: Both Adv2 and Ex1 comment that the media officers/spin doctors get involved. Ex1 provided more detail:

Often we'll get a phone call from the media officer from that department inquiring a little bit more about our Fol application. The police are good at that."

"They'll be trying to put out the fires before they happen. But we're not going to tell them what our real intent is, are we? I mean if we're onto something that we think could be big and they ring us... I don't like to be rude to them but I don't give away any secrets either, I'll say that we're just making this inquiry and there's some superficial reason that we're looking at it. But if there's something that's deeper than that then they can figure it out for themselves, and they can usually figure it out. If you're looking at something through Fol, most time it will make sense to the people in the department what we're chasing.

17. How would that impact on your reporting?

Tasmanian response		West Australian response
ABC1	I think it would have given more background to stories that I had dealt with, yes. More, in fact, vital information.	
ABC2	It would be more informed and independent.	I would use it more, better quality information, would start using it again – it would become a proper tool.
Adv1	Would make for stronger stories at times.	
Adv2	Positively.	
Adv3	N/A	
Aus1	More timely release of info means more chance of a story getting a run. Greater access to Forestry means potentially better stories.	In my particular case, I am about to report on something that happened a year ago. I put in a Fol request in January. I received half the information this month [September] and don't expect the second half until November.
Merc1	It would help and open up a realm of possibilities.	
Merc2	Make stories more timely, more accurate. Provide more information and make governments more accountable.	

18. The Courier Mail and The Australian have a Fol Editor who has arranged better access to government information through the use of Fol by accessing lists of documents by government departments (for example, the Premier's department in Queensland). Do you think the appointment of a Fol editor at your news organisation would benefit your journalistic practise?

a) Yes	ABC1, ABC2, Adv1, Adv3.
b) No	Adv2, Merc1, Merc2.

Comment

ABC1	We probably have one within our legal department, don't we? Certainly if there isn't one - yes, I think an Fol, an individual dealing with that particular area would be extremely important. I think our legal department handles it, but whether they have a specific Fol person I don't know. Yes, yes, I think my organisation could greatly benefit by that.
Adv1	However numbers are tight and people are busy enough. It should not be our role to have to make the system work.
Aus1	N/A (with <i>The Australian</i> already)
Merc1	I like doing it myself. Neither would I like to do it for anyone else or have them do it for me.
Merc2	We are too small to warrant such a position.

19. How do journalists proceed with Fol requests?

a) Individually	ABC1, ABC2, Adv2, Adv3, Merc1, Merc2.
b) In consultation with the Editor	Adv3
c) In consultation with the Chief-of-staff	Aus1
d) In consultation with someone else:	Adv3 Aus1: Fol Editor.
Adv1 did not answer this question.	

Please describe the normal routine when lodging a Fol request

ABC1	Online.
ABC2	Lodging an application online.
Adv2	Fill form and submit and follow via telephone.
Adv3	Discuss with another reporter or editor the issue and go ahead with lodgement.
Aus1	Joint application written and lodged in consultation with Fol Editor.
Ex1	The three journalists in the Hobart office meet and discuss what Fol requests to submit. "we'll nut it out and sometimes assign who will do the story before we do the Fol, otherwise we'll put the Fol in and then we'll see what we do with it.
Merc1	I write an Fol request to the department and correspond with the department without any input from COS or editor or anyone else.
Merc2	I decide on information and lodge a request.

20. How far is your news organisation willing to pursue its journalists' Fol requests, if you don't get the information requested?

a) We probably won't pursue the issue.	
b) We usually lodge an internal appeal, but if it's knocked back we won't usually appeal to the Ombudsman.	ABC1, ABC2, Adv2.
c) We usually take it all the way to the Ombudsman.	ABC1, Aus1, Merc1, Merc2.

Why does your news organisation usually treat Fol requests this way?

ABC1	It all depends on what issue that would be. If it was vital to the story, I think we would go c) all the way to the Ombudsman, obviously. But if it wasn't vital to the story, if it was just background stuff, probably b).
ABC2	Because they provide important news content.
Adv3	Don't know.
Aus1	A determination to test the process of public accountability.
Merc1	It is undertaken individually. It is hard to answer the question. I have taken just two to the Ombudsman.
Merc2	It's not my organisation, it's me.
Adv1	did not answer this question.

21. How long would you or your news organisation be willing to follow a story for?

a) Less than 1 month	
b) 1 month	
c) 2 to 6 months	
d) 6 to 12 months	ABC2
e) As long as it takes	ABC1, Adv1, Adv2, Aus1, Merc1, Merc2.

Comments

ABC1	"I've worked on them for so many months, some stories. You need the smoking gun for a good story. You can nibble away at the edges for a long time but to really have an impact, you need that smoking gun in a story. That's what I needed on that Howrah tip story, and I sort of found it when I tracked down a fellow who had dumped all the oil there. But I worked on that story for seven months. Interviewer: "Do you get smoking guns sometimes through Fol?" Yes.
Adv1	Depending on priorities and how good the story is likely to be.
Adv3	Unsure about the organisation. I'd be willing to do whatever it takes.
Aus1	Depending on the strength of the story and potential impact.
Merc1	However, if its newsworthiness is dissipated I may not. It is a matter of judgement at the time.
Merc2	In fact, I pursued one request for 14 months.

Note: It's interesting that ABC1 and ABC2 provide different advice on this question. ABC1 has now retired, so it is of interest that ABC2, who is one of the latest generation of journalists at this news organisation, perceives that the news organisation has less patience to follow through with the Fol process. There is consensus from two journalists each at *The Mercury* and *The Advocate* that they would follow a story for as long as it takes. Perhaps the difference is newspaper culture vs radio/TV news culture. Perhaps budget cuts at the ABC are a factor. Does it indicate that the newspapers are more tenacious than the broadcaster?

22. Are time delays a deterrent to using Fol?

a) Yes	ABC1, ABC2, Adv1, Adv2, Adv3, Aus1, Merc1, Merc2.
No respondent chose b) No	

Comment (Ex1):

I've seen them, just in my short period here, taking longer and longer. Sometimes they're taking months. You can get some of them back in a few weeks but that doesn't seem to be the case much anymore, it's taking a long time... The longest we've had has been, I think maybe three months, but I've heard of others that have taken six months or more. They can send you a letter saying that you haven't applied for this right, on some kind of minor point here, but then the timing starts again for you having to put in another application.

23. Do you think government agencies delay Fol responses on purpose?

a) Yes	ABC1, ABC2, Adv1, Adv2, Adv3, Aus1, Merc1, Merc2.
No respondent chose b) No	

Why do you think this?

ABC1	Because they can.
ABC2	Because I think the State Government has a closed policy when it comes to information.
Adv2	Lose interest.
Adv3	To avoid scrutiny and facing questions on unfavourable topics.
Aus1	To kill off the relevance or timeliness so it is less likely to be reported.
Ex1	Sometimes the information you want is very time-dependent. I think the people in the government departments that are processing the Fol can store things until the point that when they release the information it's not relevant anymore. Yes, timing is the key to a lot of our stories.
Merc1	It is part of the process of dissuading usage.
Merc2	To make news less timely and therefore less newsworthy.

24. If you believe that Fol requests are sometimes delayed on purpose, where do you think this delay comes from?

a) Fol officers are under-resourced		ABC1, Aus1, Merc1.
b) Fol officers cause delays due to instruction from their superiors		ABC2, Adv3, Merc2.
c) Fol officers are responsible for another reason:		
d) Government media advisors cause the delays		ABC1, ABC2, Adv2, Adv3, Merc2.
e) None of the above. Delays are caused by another factor:		
Aus1	And a combination of subtle passing the buck or application between departments.	
Ex1	That's a very hard question for us, on this side of it, to answer. But my gut feeling is that it's not so much the Fol officers, it's government culture. Maybe it's part of the job description of the Fol officer that the pressure is on them that they've got to stall it, but I think the pressure is higher than that, it's in the culture of secrecy within government.	
Merc1	Just a general feeling that they can delay with impunity.	
Merc2	A general, whole-of-department lack of will.	
Adv1 didn't answer this question.		

Further comment (Ex1):

If I think I'm being stonewalled... then that becomes the news as far as I'm concerned - whether it's Fol, whether it's the government press office, whatever, if they are delaying giving the information then I'm happy to write a story about that. And more often than not it helps you get the story you want in the end anyway.

25. How much is your news organisation willing to pay for information from Fol requests?

ABC1	Substantial, if it's vital to the story. Up to five grand, I'd suppose.
ABC2	Unsure.
Adv2	Don't know.
Adv3	No idea.
Aus1	Would depend on strength of story: hard to say a dollar figure.
Ex1	Not much. A lot of the requests we get are free, but once costs come into it - I've got a company credit card and I can make those decisions, but I can't go and spend hundreds and hundreds of dollars on it. But if there's \$50 or \$100 you need to spend to get the information, sometimes it's just for copying the documents or whatever... then I'm happy to pay that if we think we're onto something decent. I buy reports and stuff a lot on the credit card. They're pretty cool with that. If I start spending hundreds and hundreds of dollars then I've got to start answering... the type of things that we've tended to do, money hasn't been a problem yet. Money has probably been the least of the problems.
Merc1	Don't know. Haven't had to pay yet.
Merc2	Not possible to answer.
Adv1 didn't answer this question.	

26. Have you had any other difficulties when using FOI for stories that haven't been covered by the questions above?

ABC1	No.
ABC2	After acknowledging a request Fol officers have simply failed to get back to me.
Adv1	No.
Adv3	No.
Aus1	The frustration of nailing down an application so that the right department handles it straight up and the request is specific enough to avoid the usual response of "please refine" which sends you back to "go".
Merc1	The Ombudsman's office is under-resourced. I have a matter before them which is at lease three months old.
Adv2 and Merc2 didn't answer this question.	

27. Do you make use of information obtained through Fol by other sources (eg lobbyists, opposition ministers)?

a) Yes	ABC1, ABC2, Adv1, Adv2, Adv3, Merc2.
b) No	Aus1, Merc1

28. If so, how many of the Fol requests that you dealt with in the financial year ending 30 June 2004 were requests that were given to you by other sources?

ABC1:	Probably three (in the year prior to ABC1's retirement).
ABC2	Unsure.
Adv2	Five.
Adv3	No idea.
Merc1	Nil.
Merc2	About six.
Adv1 didn't answer this question.	

29. How many Fol requests did you make in the financial year ending 30 June 2004?

ABC1	About six.
ABC2	Three.
Adv1	Zero.
Adv2	Two
Adv3	Probably one or two.
Aus1	About eight to ten – coincided with Fol editor's appointment.
Ex1	About six: I actually don't put in any – there was a while, a year or so back, I had a run of them, but I am getting a bit frustrated with it, actually. I'm not saying that I don't use it at all now, I still do from time to time, but for me it's really got to be that I can't get this information from anywhere else. The red flag goes up as soon as you put in an application nowadays, they think of ways to not give you the info, or to delay it until it's not relevant anymore.
Merc1	Eight.
Merc2	Five or six.

Biographical information

Journalist code	ABC1	ABC 2	Adv1	Adv2	Adv3	Aus1	Ex1	Merc1	Merc 2
Number of years as a working journalist (total)	30	Six	17	16	Four	16	15	15	15
Number of years as a working journalist in Tasmania	30 (incl. periods in Sydney, Melb. and Brisbane)	Six	17	16	Four	2.5	Two	15	15
For how many years have you worked at your current news organisation?	30	Five	17	Ten	Four	Five	Two	(Seven plus three).	Eight
Do you consider yourself to be an investigative journalist?	Y	Y	Some-times	N	N	Y	Y	Y	Y
Medium	Radio, TV	TV	Print	Print	Print	Print	Print	Print	Print
Age	60	29	36	39	25	39	42	46	33
Time taken to complete questionnaire / interview (minutes)	25	10	10	15	30	20	1-2 hours ⁸⁹	40	30

⁸⁹ Interview, not questionnaire.

Journalist	News organisations where the journalists have worked over the course of their careers:	Type of reporting over the lifetime of the journalist's career (eg. political, crime, sport. Name more than one type, if appropriate)
ABC1	ABC and <i>The Examiner</i> .	Current affairs, some news, radio and TV.
ABC2	HOFM, WIN and ABC.	Science and current affairs.
Adv1	<i>The Advocate</i>	All sorts.
Adv2	<i>The Advocate, The Mercury</i> .	General news.
Adv3	<i>The Advocate</i> .	General rounds, court, political.
Aus1	<i>The Australian, The Advertiser</i> , Messenger newspapers (suburban).	Political, general.
Merc1	<i>The Mercury</i> 1988-94, <i>The Examiner</i> 1994-2002, <i>The Mercury</i> 2002-'04	Finance, police and crime, sport, political, rural and general.
Merc2	<i>The Examiner, The Mercury</i> .	Crime, politics.

Questionnaire for reporters and journalists, Part III: Measuring administrative compliance.

The following definitions describe levels of administrative compliance (as defined by Snell, 2002). These definitions describe how Fol requests are handled and you will be asked to choose the category that best describes your experience using Fol.

Proactive compliance — enthusiastic pursuit of the social purpose of the Act:

- information is identified and available in public interest without Fol requests
- exemptions are waived if there is no substantial harm in release
- adverse external review is perceived as a helpful quality control check.

Administrative compliance — timely compliance with letter and spirit of the law:

- requests are handled in a co-operative fashion
- exemptions are only applied as a last resort and to the minimum extent possible
- external review decisions are used as a future reference guide.

Administrative non-compliance — undermining of access with deficient administration and/or lack of resources:

- inadequate researching
- deficient record management
- low priority attached to processing of requests.

Adversarialism — testing of the limits of the legislation without engaging in any illegalities:

- requests processed in an 'Us-Them' environment
- adoption of broad interpretation of exemptions
- automatic resort to exemptions
- no or limited consideration of the public interest in release
- extensive and often deliberate time delays.
- Deficient statement of reasons.

Malicious non-compliance — 'a combination of actions, always intentional and sometimes illegal, designed to undermine requests for access to records'(Roberts: *Limited access*, 1998):

- shredding of documents
- deliberate non-recording of information to defeat possible future access requests
- removal of information from requested files.

Referring to the definitions above, how would you describe the level of compliance you have most often experienced when engaging with Fol legislation in Tasmania? (please circle the most appropriate answer)

	Today	Five years ago	Ten years ago
a) Proactive compliance			Merc1
b) Administrative compliance	Adv3	Merc1	
c) Administrative non-compliance	ABC1, Aus1, Merc1		
c) Administrative non-compliance		ABC1	
d) Adversarialism	ABC2	ABC2	ABC1
e) Malicious non-compliance			ABC1
N/A		Adv3	ABC2, Adv3, Aus1.

Adv1, Adv2 and Merc2 did not answer this section

Comments

ABC1	Ten years ago there was probably a lot of shredding going on. There is still a reluctance. It's probably a misunderstanding of the purpose of Fol. People (government administrators) are still a bit fearful of Fol in some circumstances.
Aus1	Generally, acknowledgment of an Fol request is speedy but the process of actually receiving the information you want quickly becomes bogged down in bureaucratic buck passing.
Merc2	Can't answer this, can't be confident my thoughts are correct. Didn't do Fol ten years ago.

Would you consider a proactive approach towards Fol compliance, by writing positive stories (such as stories detailing the efforts made by a Fol officer to provide information quickly and helpfully), in order to minimise the expectation from public servants that the media only use Fol to get information that is then used to write negative and critical stories about the government?

a) Yes	Adv3
b) No	ABC1, ABC2, Aus1, Merc1, Merc2.
Why? / Why not?	
ABC1	I've never really wanted information that was of a benign nature. It is the Fol officers' job to administer the Fol Act. I'm too busy chasing the hard news stories to write soft pieces like that. I can imagine other journalists doing that though.

ABC2	I don't think that's the purpose of Fol. We should not be expected to write positive stories about Fol to get information. It is a right of a legal act that we have to obtain information that is of public interest.
Adv3	Could be helpful to breakdown barriers and raise public awareness of the need to be able to use this tool effectively.
Aus1	Fol is available for myriad purposes and the media should not feel compelled to "justify" its access more or less than anybody else.
Ex1	Sure, I mean it depends on what we get. You've got to be aware, most Fol requests aren't usually for positive stories. But if we get something back that is not what we are expecting and it is positive and we see that positive story then, yeah, we would do that. But usually we would use Fol to try and dig up dirt so we can expose something.
Merc1	A story about Fol compliance would be unlikely to get published. However, the information received should be treated on its merits - whether "positive" or "negative".
Merc2	They are there to do a job. They shouldn't be praised for doing the work they are paid to do.

More comments

Ex1 agreed that if there were more positive stories about Fol, then the government agencies wouldn't be so eager to stop release of information:

...but then it comes back to – are we managing the news or are we reporting the news? I'm not interested to give Fol a good spin so that the process can work better for us, I'm interested in the news. And the news so far, in most cases, is that the legislation isn't working here to any great extent... I don't want to start doing good news stories about Fol just so we can get a better run, that's just manipulating the whole process.

The interviewer commented that the process is already manipulated from the government's point of view. Ex1 responded: "It's definitely manipulated from their side, but I don't want to be a party to that. I don't want them to think that if they make it harder for us, we'll be nicer to them in the hope of getting more information. That doesn't work for me."

Merc2's final comment: "I have always found police Fol to be efficient, timely and helpful. They have provided statistics cheerfully and quickly, and even rung to help me out. This is the only Fol unit in Tasmania I have ever encountered with this approach."