

**Response of The Market Research Society (MRS) to the Consultation on
Freedom of Information Act 2000: Designation of additional public authorities**

1. Preamble

- 1.1. With members in more than 70 countries, MRS is the world's largest association serving all those with professional equity in provision or use of market, social and opinion research, and in business intelligence, market analysis, customer insight and consultancy.
- 1.2. MRS has a diverse membership of individuals at all levels of experience and seniority within agencies, consultancies, support services, client-side organisations, the public sector and the academic community.
- 1.3. It also serves MRS Company Partners agencies, suppliers of support services, buyers and end-users – of all types and scale who are committed throughout their organisations to supporting the core MRS values of professionalism, research excellence and business effectiveness.
- 1.4. In consultation with its individual members and Company Partners, MRS supports best practice by setting and enforcing industry standards. The commitment to uphold the MRS *Code of Conduct* is supported by the Codeline service and a wide range of specialist guidelines.
- 1.5. MRS contributes significantly to the enhancement of skills and knowledge by offering various qualifications and membership grades, as well as training and professional development resources.

2. Introduction

- 2.1. MRS welcomes the possibility offered by the Ministry of Justice (MoJ) to respond to the consultation on the designation of additional public authorities under the Freedom of Information Act 2000 (FOIA).
- 2.2. MRS is encouraged by the recognition the MoJ in expressing that a balance needs to be struck to ensure that the potential advantages of FOIA openness are considered alongside

the potential impact on organisations to be covered. Moreover, that there is a cost to meeting FOIA obligations, that organisations that do not receive any public funding for functions which have a public dimension (such as MRS role as a regulator for market, social and opinion research) would be burdened with the entirety of the FOIA costs should they be designated as a public authority; and that small organisations such as MRS should not be burdened with more regulation or extra costs.

2.3. MRS has responded only to those questions which are relevant to MRS.

2.4. In summary, in this response, MRS:

2.4.1. requests that the MoJ allows more time for the FOIA to bed in, before embarking on further legislative extension of the Act.

2.4.2. suggests other factors beyond function should be considered in determining whether organisations should be designated a public authority.

2.4.3. proposes that receipt of public funding should be the overriding consideration in determining which organisations should be designated a public authority due to the burdens created by the obligations of the FOIA.

2.5. MRS confirms that the contents of this paper can be attributed to MRS.

3. Response to Consultation Questions

3.1.(Q1) Do you support extending the coverage of the FOI Act to organisations that carry out functions of a public nature and to contractors who provide services to a public authority whose provision is a function of that public authority?

3.1.1. MRS believes that other factors in addition to function must be considered before organisations are designated public authorities under the FOIA. These include:

- ❖ whether an organisation is a recipient of public funds. If an organisation does not receive any public funding it should not be subject to the FOIA. Professional and trade associations, such as MRS, voluntarily introduce codes of conduct and practice, to better self-regulate professions and industry. Indeed, BERR is encouraging such activity in the implementation of the

Services Directive. However, such activities are paid for by membership contributions and are not supported by public funding. By supporting best practice such organisations should not be burdened with the costs of meeting FOIA requirements.

- ❖ the size of the organisation. Many professional and trade associations are classified as small companies under the Companies Act 2006. The Government is committed to reducing unnecessary burdens and regulation for small companies and as such small professional and trade bodies such as MRS should be excluded from the burden of FOIA requirements.
- ❖ capacity to meet FOIA requests. Many small organisations have insufficient resources to dedicate to satisfactorily meeting FOIA requests. If such organisations were included within the scope of the FOIA, costs would inevitably increase.

3.1.2. The full provisions of the FOIA only came into force in 2005 and MRS is of the view that more time is required for the legislation to bed in before changes are made.

3.2.(Q2) Of the five proposed options, which do you consider the best option? Or would some other option, or combination of options, be preferable? Please explain your reasoning.

3.2.1. At this time MRS believes that option 1, take no action at this time, is the most suitable option due to the relatively recent full implementation of the FOIA.

3.2.2. If the MoJ rejects this options a combination of option 4 and 5 would be the most workable. There are a number bodies which are suitable for immediate inclusion under the FOIA (for example, academies and privately run prisons) by being specified in a section 5 order as proposed under option 4. Given however that “functions of a public nature” is a dynamic concept, it will be important the the MoJ devise a clear set of criteria so the list of public authorities subject to the FOIA remains appropriate over time. This will require a continual programme of designation (and re-designation should the body concerned cease to exercise a function of a public nature) as envisioned by option 5.

3.3.(Q3) Should some form of public funding be essential in order for an organisation to be considered for inclusion in a section 5 order, or should this be just one of a number of relevant factors to be considered?

3.3.1. Given the burdens created by an obligation to comply with requests under FOIA, MRS believes that some form of public funding be essential in order for an organisation to be considered for inclusion in a section 5 order.

3.4.Q5: Do you agree that the balance between the public interest and the potential burden of FOI is an appropriate consideration when deciding whether to cover an organisation?

3.4.1. Given the burdens created by an obligation to comply with requests under FOIA, MRS believes that the receipt of public funding be the only determining factor when deciding whether to extend the designation to additional public authorities.

3.5.(Q6) To what extent do you think that the factors listed, or any other factors, should be taken into account in determining whether organisations performing public functions should be brought within the ambit of the Act?

3.5.1. MRS believes that the primary consideration is that an organisation should receive a significant amount of public funding to provide a function of a public nature before is it considered for inclusion under the FOIA.

3.6.(Q7) Do you agree that the coverage of FOI should extend to contractors who provide services under contract with a public authority whose provision is a function of that authority? If you disagree, please give your reasons.

3.6.1. MRS believes that the coverage should extend to contractors only to the extent of the provision of such functions which are paid for by public funds. Other aspects of contractors business should not be covered by the FOIA.

3.7.(Q8) Do you agree that information relating to an organisation's administration of a public service or function, for example in the areas listed in paragraph 33, should be subject to FOI? If not, please give your reasons.

3.7.1. MRS believes information relating to an organisation's administration of a public service or function should be subject to FOI only in circumstances where the function is paid for by public funds.

4. Further Information

For further information please contact Debrah Harding at The Market Research Society (MRS) (debrah.harding@mrs.org.uk)

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