

Contents

Preface	<i>page</i> xiii
Table of statutes	xv
Table of cases	xxxi
Introduction	1
1 Persistent themes and novel problems	8
Computers and information	10
Reuse of public-sector information	16
The importance of information	18
Information and the state	22
Information and communication	27
Freedom of information, open government and transparency	29
Freedom of information – the good, the bad and the ugly	30
Information and institutional structure	31
2 Information and national security	33
Accountability and information	36
Some changes and questions	46
The security and intelligence services legislation and Regulation of Investigatory Powers Act (RIPA) 2000	48
Interception of communications, surveillance and RIPA	58
Inquiries and national security	64
Reform – some food for thought?	65
The cost of freedom of information to national security	68
3 Government and information: a historical development	69
Crown, mace and information	71
Information and accountability – the struggle	71

Cambridge University Press

978-0-521-71608-6 - Freedom of Information: The Law, the Practice and the Ideal, Fourth Edition

Patrick Birkinshaw

Table of Contents

[More information](#)

viii	Contents	
	Information and censorship	75
	The executive and Parliament – the die is cast	76
	Officials and secrecy in central government	79
	Legal control of information	81
	The Act of 1911	83
	The Ponting trial	87
	The Spycatcher litigation	89
	The Shepherd Bill	90
	The White Paper on reform	90
	In Parliament	98
	The Official Secrets Act 1989	99
	Public Interest Disclosure Act 1998 (PIDA)	116
	4 The Freedom of Information Act 2000	118
	The Act and its contents	120
	The Data Protection Commissioner as IC	138
	FOIA and devolution	140
	Some points dealt with by the IC and IT	141
	Coverage of the FOIA	141
	Section 1 FOIA: holding information	145
	Section 3(2): holding information	146
	Section 12: compliance exceeding fees' limits:	147
	Section 14: vexatious or repeated requests	149
	Section 16: duty on authority to provide advice and assistance	150
	Section 46 code	150
	Facts and figures	151
	Conclusions	152
	5 The exemptions	155
	The 'prejudice' test	155
	Absolute exemptions	156
	Late invocation of an additional exemption	157
	The exemptions	157
	Examination of specific exemptions	162
	Public-interest disclosures	172

Cambridge University Press

978-0-521-71608-6 - Freedom of Information: The Law, the Practice and the Ideal, Fourth Edition

Patrick Birkinshaw

Table of Contents

[More information](#)

ix

Contents

Third-party challenges	174
Enforcement	175
The veto	176
Copyright and FOI	179
6 Decisions and Appeals on FOI Exemptions	181
Section 21: information accessible to the applicant by other means	182
Section 22: information intended for future publication	183
Section 23: information supplied by or relating to bodies dealing with security matters	183
Section 24: national security	184
Section 26: defence	185
Section 27: international relations	185
Section 28: relations within the UK	187
Section 29: the economy	187
Section 30: investigations and proceedings conducted by public authorities	188
Section 31: law enforcement	189
Section 32: court records	193
Section 33: audit functions	193
Section 34: parliamentary privilege	195
Section 35: formulation of government policy	196
Section 36: prejudice to the effective conduct of public affairs	209
Section 37: communications with Her Majesty and honours	217
Section 38: health and safety	218
Section 39: environmental information	218
Section 40: personal information or data	218
Section 41: information provided in confidence	219
Section 42: legal professional privilege (LPP)	224
Section 43: commercial interests	229
Section 44: prohibitions on disclosure	237
Conclusion	243
7 Access to environmental information.	245
The background	245
Contractual arrangements	247
Environmental information	248

Cambridge University Press

978-0-521-71608-6 - Freedom of Information: The Law, the Practice and the Ideal, Fourth Edition

Patrick Birkinshaw

Table of Contents

[More information](#)

x	Contents	
	Proactive availability	249
	Who is covered?	249
	Holding information	252
	Charges	252
	Procedures for requesting EI	253
	Regulation 12 and exceptions from the duty of disclosure	254
	Refusals under regs. 12(1) or 13(1)	268
	Representations and reconsideration	269
	Enforcement and appeal	269
	Costs orders	269
	Conclusion	270
8	Privacy, access and data protection	271
	The surveillance society	271
	Privacy protection, human rights and common law	273
	The Data Protection Act 1998 (DPA)	279
	Problems	313
	Conclusion	315
9	Claims and counterclaims	317
	Principled government	317
	Constitutional principles and central government	321
	New forms of governance	322
	Ministerial accountability or responsibility?	324
	Collective responsibility	328
	The Cabinet	330
	Parliament and information	334
	Ministers and civil servants	343
	Public Records Act	350
	Government statistics	353
	Government communications	353
	D notices	357
	Government, non-departmental bodies and private organisations – quasi-government	359
	Public Appointments Commissioner	365
	Local government, the public and information	366

Cambridge University Press

978-0-521-71608-6 - Freedom of Information: The Law, the Practice and the Ideal, Fourth Edition

Patrick Birkinshaw

Table of Contents

[More information](#)

xi

Contents

10	Secrecy and access in the European Union	381
	Introduction	381
	Amsterdam, Article 255 EC and the Regulation on Access to Information	382
	Regulation 1049/2001	383
	The Commission's 2004 report	391
	The Commission's proposals for reform	392
	The Cashman Report and the European Parliament's proposals	396
	The Lisbon Treaty	397
11	Openness, information and the courts	400
	The 'Golden Met-wand'	403
	Judicial appointments	407
	The openness of the courts	409
	Protection of sources of information in litigation	413
	National security	420
	Special Immigration Appeals Commission, control orders and special advocates	430
	A Wright mess	438
	Judges and confidences	445
	Public interest, immunity and information	450
12	Freedom of information: overseas experience	459
	USA	460
	Canada	480
	Australia	486
	New Zealand	492
	Conclusion	493
13	Conclusion	496
	Index	502