



Freedom of Information and Animal Experiments

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Summary

Freedom of Information (FOI) legislation is recognized as a valuable tool to enhance democracy and governmental accountability, and the same basic principles are employed in most such legislation internationally. In addition to the compelling public interest in evaluating expenditure of public money on animal experimentation, there is widespread agreement that the provision of information is essential to an informed debate about the scientific validity and ethical justification for animal experiments. Animal experimentation also is regulated by government to some extent in most territories, and the effectiveness of that regulation also is in the public interest. Although many other sources of information on animal experimentation are available, none provides sufficient information to fully evaluate standards of regulation. Experiences by PETA affiliates in the US and the UK show that different regulatory contexts and legal provisions regarding FOI have an impact on its utility as a tool for obtaining information, exposing violations of regulations, and achieving change in policy and practice. Despite some limitations, FOI is nevertheless a valuable tool for “regulating the regulators.”

Keywords: Freedom of Information, transparency, regulation

1 Introduction

Freedom of Information (FOI) legislation is widely recognized as an essential tool to enhance democracy and the accountability of governments and public institutions (UK Government, 1997). Most established democracies and many other countries have FOI legislation and, in principle at least, it may be used to assess the practices of governments with regard to both their conduct and their regulation of animal experiments, including application of the 3Rs (replacement, reduction, refinement). It is clear from other sectors that regulation is, in itself, often deficient. There must be a mechanism for “regulating the regulators,” and FOI offers one mechanism for doing so.

In practice, different approaches taken by different governments with respect both to transparency and to the regulation of animal experiments, affect the potential utility of FOI for this purpose. This paper examines the principle and practice of the use of FOI with regard to animal experiments in order to assess its value and limitations and to draw conclusions about future practice.

Principles of Freedom of Information

Individual provisions vary, but the following basic principles are common to a range of national legislation and are widely recognized as good practice (Article 19, 1999):

1. Presumption of disclosure

Governments should disclose information unless they have a valid and legally specified reason not to do so. Citizens need not justify or explain requests for information.

2. Maximum disclosure

Information should not be disclosed selectively, and the maximum amount of available, relevant information should

be provided. In practice, this means access to original documents. Where exemptions for legitimate reasons apply, these should be subject to a public interest test, and the minimum amount of information should be withheld with fully explained redactions used rather than a refusal to release documents.

3. All public bodies subject to disclosure

Central government should disclose information, but so, too, should other public bodies that act in the public interest and are under ultimate control by the government and paid for with taxes. This includes local government, semi-autonomous regulatory or funding bodies, and service institutions, such as hospitals and educational institutes receiving public funding.

Information and animal experiments

A very significant proportion of animal experimentation in most countries is supported by public funds, and access to primary information regarding public expenditure is a key benefit of FOI. There is also widespread agreement that the provision of accurate, unbiased information is essential to an informed debate about the scientific validity of and the ethical justifications for animal experiments (Nuffield Council, 2005; Festing and Wilkinson, 2007), while lack of transparency contributes to public mistrust (Information Tribunal, 2011). Evidence also exists that the provision of more detailed and specific information about animal experimentation may reduce support for it (Aldous et al., 1999).

Some evidence suggests that there is a positive relationship between perceived quality of regulation and support for animal experimentation (Ormandy et al., 2011). The use of information about animal experiments to facilitate evaluation of the



quality of its regulation has, however, received less attention than its value to the public debate. Ample evidence exists of failure of regulators to perform their functions adequately (The Guardian, 2009), and given the nature of animal experimentation, effective scrutiny and accountability is critical. Animal experimentation nearly always involves the confinement of animals and the infliction of pain that would, in other circumstances, be illegal.

Other sources of information

Other sources of information about animal experimentation do exist, including published papers, project summaries, commercial or other publicity by institutions, information provided by grant-making bodies, and official reports by regulators. In addition, unofficial sources such as leaks and undercover investigations by animal protection groups also provide information. This information is not, however, an adequate substitute for the kind of disclosure available through FOI.

While published academic papers provide a large amount of scientific information, many animal studies are never published, either because publication is never sought (because they are commercially sensitive, failed methodologically, or generated negative results) or because they are rejected by journals, resulting in “publication bias” (Sena et al., 2010). Perhaps more significantly, published papers rarely provide sufficient information to evaluate harm and benefit. A study by Taylor (2010) discovered inadequate reporting of factors related to the 3Rs and animal welfare, including failure to report numbers of animals, use of enrichment or analgesia, and consideration of alternative approaches. Scientific papers also may fail even to provide sufficient information for an adequate assessment of their scientific validity. Kilkenny et al. (2009) identified failure to report factors such as blinding, relevant characteristics of animals used (e.g., species, sex, age, etc.), and even hypothesis. Published papers are also retrospective and may not emerge for years after the conclusion of experiments.

The new EU Directive (European Commission, 2010) mandates the central publication of anonymous project summaries when projects are licensed, which is already the practice in the UK. These are of limited value, however, because of the lack of detail provided. This also means they cannot easily be cross-referenced with other information, such as published papers. In addition, in the UK the papers are written by researchers themselves and may not be objective or comprehensive in their accounts of the potential harms and benefits of the project (Hudson, 2006). Other sources of specific information, such as those noted above, usually are insufficiently detailed, are of patchy availability, and may be of suspect objectivity.

While of value in their own right, as mechanisms to assess the quality of regulation, other sources of information are inadequate in comparison to access to the documentation generated by the process of regulation.

2 FOI and animal experimentation

While in principle FOI may be used to gather information from public bodies regarding animal experimentation, in practice applications for information under Freedom of Information legislation have faced a number of obstacles.

Legal obstacles

The UK’s Animals (Scientific Procedures) Act 1986 (ASPA) contains a clause (Section 24), originally designed to prevent whistleblowing or leaks by civil servants, making it a criminal offense for regulators to disclose any information judged to be “confidential” according to an extremely wide definition (Thomas, 2009). Because the UK’s Freedom of Information Act (UK Government, 2000) recognizes any prohibitions on disclosure embodied in other legislation as absolute (i.e., not subject to a public-interest test), Section 24 and subsequent legal interpretations of it have effectively walled off from FOI any information submitted to the central regulator (the Home Office, a government department) by institutions performing animal experiments and therefore prevented disclosure by the regulator of how they perform much of their work.

The UK currently is revising the ASPA, while transposing the new European Directive 2010/63/EU on protection of animals used for scientific purposes, and a vigorous policy debate is taking place about how the new legislation should manage information disclosure.

Application of exemptions

Primary information about animal experiments may contain aspects of intellectual property or commercially sensitive information, which usually enjoys protection from disclosure under FOI law. These definitions can rarely, if ever, be argued to apply to most of the information kept by public institutions, and if certain information is judged to fall within the scope of such an exemption, it is usually possible to redact these portions, while releasing other critical information, such as uses of and impact on animals.

Secondly, to a significant extent in the UK (Thomas, 2009), and to a lesser extent in the US, FOI applications have been refused on the basis of perceived threats to health and safety arising out of possible animal rights campaign activity. Most FOI law recognizes the right to withhold information on this basis, although this exemption – in the UK, for instance – may be subject to a public-interest test.

While it is impossible to provide a categorical assurance that no risk can arise from release of information on any topic, it is unreasonable and contrary to the principles underlying FOI to apply this exemption indiscriminately. FOI regarding animal experimentation has been used extensively by campaigners in the US for many years with no evidence of its leading to any harm to health and safety. As noted above, there are many mech-



anisms by which information regarding animal experimentation is released into the public domain. These include publication of scientific papers, which normally report procedures applied to animals (if not always, as noted above, welfare impacts upon them) and also, critically, name the researchers and institutions involved. Given the availability of information through these routes, any risk arising from the release of *specific additional information* requested via FOI is likely to be effectively non-existent. When balanced against the strong public interest in disclosure, the exemptions on the basis of health and safety should very rarely, if ever, be triggered.

3 Freedom of Information in practice: US and UK perspectives

Experiences in the use of FOI by PETA-named affiliates in the UK and the US reflect the different contexts of regulation of animal experimentation in the US and the UK, as well as the application of FOI law in those countries.

In the US, regulation of many aspects of animal experimentation is theoretically conducted at the institutional level by the Institutional Animal Care and Use Committee (IACUC), with other aspects overseen by the Department of Agriculture (USDA). Regulation does not include centralized, advance approval of projects (except in some circumstances where public funds are used), and use of non-animal methods is not mandatory. More than 95 per cent of animals used in laboratories are not covered by the Animal Welfare Act (US Government, 1966), particularly rats, mice, and birds. FOI legislation has, however, long been established as a mechanism of scrutiny of all aspects of government activity.

In the UK, ASPA provides for a licensing system requiring the government regulator to approve all projects in advance, following submission of detailed proposals and harm-benefit assessments conducted by the regulator. As in all EU countries, the use of non-animal or reduced or refined methods, where available, is mandatory. All vertebrate animals are covered by the Act. FOI is, however, relatively new to the UK, and its capacities and limitations are still being tested, especially in the context of animal experimentation.

The PETA US experience

Using Connecticut state FOI provisions, a student obtained veterinary records in 2005 revealing that monkeys who underwent invasive brain surgeries for federally funded eye movement experiments at the University of Connecticut (UConn) Health Center had been suffering from unrelieved pain and distress, including the occurrence of regular seizures. One monkey exhibited these symptoms for nine months but was repeatedly strapped into a restraint chair for many hours end and forced to watch a computer screen for test sessions. During one session,

he suffered a grand mal seizure and died. This event had never been reported to the school's IACUC and had been overlooked during government inspections. Based on these documents, a complaint submitted to the USDA led to citations for more than a dozen violations of federal law and a fine (Merritt, 2007; Sullivan, 2007). Based on the USDA action, PETA US were also able to compel the National Institutes of Health to order UConn Health Center to return \$ 65,000 in grant money that was spent during the period of noncompliance with federal law (Silber, 2008). As a result of public pressure, which was a result of publicity, these experiments were ended completely at the university (Merritt, 2007).

Through a 2008 records request to the National Institutes of Health (NIH) for correspondence between the agency and the Oregon National Primate Research Center (ONPRC), PETA US discovered that ONPRC had reported to the NIH (the source of funding for the experiments) that it had accidentally performed a surgery on the wrong monkey, that it had mistakenly left a surgical sponge inside a baboon during a surgery, and that it had intentionally withheld medical treatment from a pregnant monkey, resulting in the death of the baby and mother. However, PETA US also discovered that the USDA had never identified these incidents during its inspections of ONPRC and that the facility and NIH had not alerted the USDA, even though the law clearly was broken (PETA US, 2008), despite NIH policy to share documentation of violations with the USDA. PETA US filed a complaint with the USDA based on the documents obtained from the NIH (PETA US, 2008), and the USDA cited ONPRC for three violations of the Animal Welfare Act and issued the facility an "Official Warning for Violations of Federal Regulations," which warns that civil or criminal penalties may apply if additional violations are found in the future (Dworkin, 2009).

These are just two examples out of many violations uncovered through FOI requests. In both these and other cases, a combination of requests to institutions, funders, and the government regulator uncovered failings in the regulatory process leading to corrective action and, it may be presumed, improvements in practice as a result.

The PETA UK experience

Because Section 24 effectively places the work of the regulator out of bounds of FOI insofar as it relates to individual projects, experimenters, or institutions (including inspection records, correspondence, and licenses), PETA UK sought an opportunity to evaluate regulation "from below," by obtaining comprehensive information about a licensed procedure from a public body and assessing it for compliance with the legal requirements. Since the adoption of FOI in the UK, most universities have refused to disclose this information on grounds of possible risk to health and safety (regardless of evidence specific to their case), effectively treating the exemption as a



blanket mechanism to deny requests. In 2006, however, Oxford University and a researcher there voluntarily made public in a high-profile TV documentary (BBC, 2006) their involvement in and the nature of ongoing Parkinson's disease research on a macaque. PETA UK requested comprehensive information from the relevant project license under FOI and pursued the information that Oxford refused to disclose – on health and safety grounds (Oxford University, 2007) – through the appeals process. PETA argued that disclosure of the technical and highly specific information we sought would not generate any risk for any individuals (whose work was, by their own choice, already firmly in the public domain) and that there was strong public interest in disclosure. Effectively, however, the last stage of the appeals process concluded that public interest of the kind we identified could not outweigh any potential risk (Information Tribunal, 2010). Given the specific campaign against the university then taking place, and given the difficulties in proving a negative (i.e., that there would be no risk), it was almost impossible for our argument to prevail.

This case illustrates one of the potential problems that can be faced in using FOI in the UK context. Nevertheless, PETA UK's initial FOI request to Oxford University actually led to the disclosure of more technical information from an ongoing project license than had previously been made available through any other official means. In addition, while this paper was being prepared, an appeal decision in a similar FOI case (involving primate research at another UK university) has emphasized the need for a causal link to be established between information requested and risk before the health and safety exemption can be engaged, and it has affirmed the strong public interest in disclosure (Information Tribunal, 2011). Information of the kind PETA sought in 2007 has now been disclosed, and this decision may herald greater openness in future.

4 Conclusions

Freedom of Information legislation is an essential tool for holding public bodies to account, embodying the core democratic principle that voters and taxpayers have a right to know what their representatives do and what their taxes pay for. In particular, it provides a mechanism to allow the public and stakeholders to assess the quality of regulation conducted on their behalf. While information about animal experimentation is available from other sources, none of these is adequate to evaluate the standard of regulation, while the critical feature of FOI – direct access to original documentation – should be able to permit this.

In the US, FOI has proved to be an effective tool for improving quality of regulation and changing practice, although, because of the devolved and limited regulatory system, its direct effects have been localized. In other territories with more extensive regulation, including mandatory use of the 3Rs, prior cen-

tral evaluation and licensing of projects and inspection systems to evaluate compliance, the potential of FOI is even greater. Restrictions on the applicability of FOI to animal experimentation will, however, severely impair its usefulness as a tool to regulate the regulator.

In the UK, the blanket ban on information from the regulator effectively imposed by Section 24 of ASPA must be removed, and FOI legislation must be the sole mechanism regulating access to information. Exemptions also must be applied extremely judiciously. Authorities in the UK appear increasingly to recognize that health and safety exemptions are not a legitimate basis for withholding information in normal circumstances (Information Tribunal, 2011). The public interest in open government, financial accountability, and evaluating the quality of regulation remains very strong, and maximum disclosure of information regarding the conduct and regulation of animal experimentation is essential. A culture of openness and acceptance of the role of FOI will enhance public understanding of animal experimentation, facilitate better regulation, and foster better implementation of the 3Rs.

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