

FREEDOM OF INFORMATION AND UNIVERSITIES:

A BRIEF INTERNATIONAL SURVEY, 2005

by

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Acknowledgements and background

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Any errors or inaccuracies are, of course, my own.

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Abstract

Across the world, the applicability of freedom of information legislation to universities varies from country to country, between public and private universities in the same country, and sometimes even between public universities in the same country. As the bulk of the information needs amongst those most closely concerned with a university are the same whether or not this legislation applies, this poses an interesting dichotomy.

This study examines all freedom of information laws known to exist across the world, and determines the ways in which they apply to universities. In around two-thirds of countries possessing such legislation, the public universities are believed to be subject. Only one country is known where all universities are exempt.

In addition, the situation in three nations – Canada, the United Kingdom, and the United States – was examined in some detail, discussing the effect of implementing this legislation on universities as well as the details of the legislation itself.

An overall comparison of these nations with those discussed earlier is given, and a short list of recommendations for further research is included.

An appendix contains a table listing all countries with their dominant freedom of information legislation, and a summary of its applicability, if the legislation is known to exist.

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Introduction

In recent years, freedom of information laws have gone from being a rare oddity on the international stage to being an accepted part of modern democratic life*. A study in May 2004 found that over fifty nations had enacted such legislation – over half of which had been done in the last ten years – and another thirty or so were in the process of creating legislation¹.

In the United Kingdom, the Freedom of Information Act 2000 and Freedom of Information (Scotland) Act 2002 have only recently come into force. As such, institutions covered under the Acts have recently rushed to ensure they were fully compliant in time. Whilst early reports have suggested that fears of a deluge of questions from the public and media overwhelming these institutions were unfounded, the Acts are being used, and it can be expected that the usage rates will slowly increase over time as people become more familiar with the legislation and the rights it gives them.

Whilst the Acts were predominantly intended to apply to the government, and it is here that most of the public attention has focused, they were somewhat broader in scope. They cover a large number of quasi-governmental authorities, as well non-governmental public bodies such as the military, the police, and the Health Service. This is, broadly speaking, representative of the situation in most countries with similar legislation.

An interesting point is that the Acts apply to universities and other higher education institutions[†], despite the fact that many UK universities are independent of central government. This is achieved by working through the funding system; the Acts treat any institution paid for by a higher education funding council as a public body. As with all institutions, universities have spent time and resources ensuring they comply with the legislation. Many have hired professional records managers for the first time, had to write data-handling policies, and the like; a reasonably significant expenditure for most institutions. A Canadian study estimated that the long-term effect of the law on one university was to take up the work of two full-time staff, with each request costing around \$500 – around £300, correcting for inflation and exchange rates².

* In order to avoid confusion between descriptive terms such as “freedom of information” or “public records laws” and any individual legislation with similar titles, the general descriptive term will always be in lowercase through this document, and the name of any individual legislation capitalised.

† In the UK, the University of Buckingham is a notable exception; see later discussion. For the purposes of this introduction, “universities” means HE institutions generally.

The dynamics of freedom of information at universities are interesting. For one, there are “local” aspects – the university is a large institution, exerting a significant effect on the community around it in much the same way that any large employer (public or private) would. There are national aspects – the university as a public institution, either involved in or providing material for national debate on matters such as education policy. There are personal aspects – universities are, in many cases, the first stage in the careers of famous or infamous individuals, about whom the media and the public is always hungry to know more. There is the matter of research information – both the results of the research, and information about it, especially in contentious fields like animal testing. And finally, the university contains its own community, several thousand students, researchers, and others who are not public employees, but have a strong interest in access to information about the workings of the institution, as it has a massive impact on their life*. In addition, universities – especially the major research universities – often spin off commercial companies, either to carry out specific functions such as housing or catering, or to generate income from patents and research facilities. To a degree, these dynamics are independent of what nation the institution is in, or what legislative framework it exists under.

In many ways, this makes the universities a special case among institutions covered by the legislation. As such, it was interesting to discover, doing preliminary research, that the level to which universities were covered by freedom of information legislation varied dramatically between – and sometimes even within – countries. Some nations possessed complex and interesting legal frameworks, under which it was unclear if universities were covered or not; in others, detailed studies had been published on the effects on universities. However, whilst there were comparative studies of the existence and implementation of access laws across the world, no study yet produced dealt generally with the matter of universities. The known wide variance in coverage in a limited sample of countries suggested that there would be interesting results from studying as many as possible.

This study aims to look at the extent to which universities are covered globally, within the framework of individual countries’ legislation, and to briefly discuss some of the general effects. In order to do this, the legislation of every country known to possess a

* The fact that, in many cases, these bodies are represented by one or more organised unions lends this even more force.

freedom of information law would need to be checked. However, the most recent of the comprehensive international studies was a year old, and did not completely agree with other studies in the field. As such, it seemed worthwhile to briefly study every country, known to have such laws or not, checking for any existing legislation. Whilst a large number of countries would simply be noted as “no information available”, this gave the benefit of creating an up-to-date list of laws internationally, a useful piece of research in its own right. An appendix lists every country in the world, with either a brief note that no legislation could be found, a note that there is *known* to be no legislation in existence as of a certain date, or the name and date of the principal legislation; a second appendix goes into detail on the legislation in the individual jurisdictions of the United States.

Methodology

This study aimed to look at each individual country that possessed some form of freedom of information legislation, determining where universities fell within the framework of their national legislation. The aim was, if possible, to categorise every nation as having legislation which clearly did or did not encompass universities. In addition, the effects arising from this legislation would be discussed, both in the contexts where the effects of the legislation were known, and in the contexts where the legislation appeared to create issues of its own. Research of this form does not appear to have been done before, save on a very restricted level – a study discussing the legislative framework in Canada in 1998³, or individual anecdotes of cases – which was felt to make this research clearly original.

A literature search was undertaken, but as no directly relevant studies beyond the Canadian paper already discussed were found, no literature review has been included as a separate part of the methodology. A number of general studies on freedom of information internationally were found, the most significant of which are discussed later. These, however, whilst useful sources for general information about the legislation, were not directly relevant to the topic being studied.

However, it is worth, at this point, noting a short paper produced by the Campaign for Freedom of Information in 1998, which discussed some examples of cases where freedom of information legislation had been used regarding universities in other countries. Among others, this included requiring the release of information regarding racially biased admissions tests, the results of unpublished internal audits, and private staff appraisal reports⁴. The report did not go into great detail, but it did serve as an indicative example of the effects of implementation, and the importance of understanding the effects in the field.

As the most recent comprehensive international study was a year old¹, and bearing in mind the relatively fast-moving pace of this field of research, a large amount of identification of previously unknown individual pieces of legislation would have to be done as part of the research process. As such, a list of all countries together with details of their legislation would have to be provided, which in effect serves as a rather sparse update to the existing general studies. Whilst not itself particularly original research, this information could prove useful as an update to existing work in the field.

Process

The initial method of examination was to work through a list of all the world's countries, checking each one to determine if it possessed any freedom of information legislation. In many cases the specific legislation was identifiable from previous studies in the field, but any country not covered in any of those studies – or which was known to not have a law in effect at the time of those studies – was checked again, to allow for situations where a relevant law had been passed in recent years or where an obscure piece of legislation had been overlooked by previous studies.

For nations where relevant legislation existed, either active or planned, the applicability of the legislation to universities was determined. It should be noted that the example of the UK Acts – where the universities were included by a somewhat circuitous and confusing definition – originally suggested that, for many countries, it would not be possible to conclude anything definite about the scope of the legislation without a detailed understanding of the local legislative framework. In many cases, the result was simply an educated guess based on similar legislation, the terminology of the law, or the structure of the academic system of that country.

As no wide-ranging research in the field had previously been carried out with this specific an intent, it was not possible to use previous studies to predict a “success rate” for this approach. However, reasonably detailed results were gathered for a range of countries sufficiently large to allow some conclusions to be drawn.

Due to time and length constraints, this analysis had to be cursory, limited to a short summary of the relevant portions of the law, a rationale for the interpretation if one was required, and a citation of any appropriate studies on freedom of information as applied to the local universities along with any interesting details about implementation effects. Anything dealing with the legislation generally that was felt to be critical – a study showing that it was only implemented on paper, for example – was included, but otherwise a conscious decision was taken to restrict the study to covering the degree to which the legislation applied to universities, not about the legislation in a general sense. These summaries were then grouped into sets – for example, laws covering universities, or laws where the scope is unclear – allowing patterns to be visible.

In order to offset the problems of the constraints mentioned above, a small number of countries were selected for a discussion of the laws in some detail, together with a

discussion on their implementation. The three countries chosen were Canada (p.49), the United States (p.52) and the United Kingdom (p.46); this provided both a wide scope for variance in the relevant laws*, and a broadly similar cultural and political background to provide a relatively stable baseline. As the United States involved the analysis of almost sixty separate jurisdictions, an appendix was created to include individual analyses for each of these (p.77).

Another appendix (p.68) lists all countries covered by the study, noting whether or not they possess any appropriate legislation; if they do, then it summarises the result of the analysis, giving the name and date of the legislation, together with whether or not it encompasses universities. This allows a secondary use of the work as a summary listing of all known international freedom of information laws, which whilst not an original piece of research is useful in that no reasonably comprehensive overview has been published since mid-2004.

In order to reduce potential ambiguities in the study, and to ensure the research remained focused, it proved necessary to establish some preliminary definitions.

Definition of “countries”

The world currently contains 193 *de jure* sovereign states. For political reasons the exact composition of any such list is debated – the most contentious being the debate over the Republic of China (“Taiwan”) versus the People’s Republic of China (“mainland China”). However, all 193 of these nations are recognised by a wide range of other nations as both independent and sovereign.

In addition, there are many more states that are somewhat harder to define. Six, such as the Turkish Republic of Northern Cyprus, are *de facto* independent, but not recognised as sovereign by the international community at large. Others, such as Palestine, are recognised as sovereign by many nations, but are not *de facto* independent. There are then a large number of dependent territories and other possessions, as well as non-territorial areas governed by international treaty, largely autonomous regions inside sovereign states, areas under the control of armed secessionist rebels, “independent sovereign

* Canada has both federal and regional freedom of information legislation, as does the US; the UK has legislation both nationally and specific to Scotland. As such, these three countries effectively represent over seventy separate jurisdictions!

entities” which claim no territory, governments in exile claiming sovereign status, and more besides.

For reasons of simplicity, we will only consider the 193 “conventional” states. However, many nations have multiple levels of government – the US, for example, has both state and national freedom of information legislation – and some delegate limited powers to subnational entities, such as in the situation in the UK with a national act and one limited to Scotland. It may, therefore, also be necessary to consider additional legislation as well as the laws of these 193. In some cases, the *only* relevant access law is a regional one.

For reference, the terms country and nation will be used interchangeably as appropriate, rather than state, as many nations use “state” to mean a subnational entity. To discuss subnational entities in general, “region” has been used.

Definition of “universities”

A decision was made to examine only universities, not including the myriad other forms of higher education – university colleges, further education institutions, vocational training colleges, and the like. This decision was made in order to focus the research; universities are generally representative of the overall higher education system of a country, and restricting the scope to the top level reduced the large amount of work involved in trying to understand the educational system of every country examined.

All but four countries in the world have universities. Given the expense of maintaining a university, compared to the small size or great poverty of many nations, this may seem somewhat surprising. Of these four, three have some form of higher education institution; Palau, the Federated States of Micronesia, and São Tomé and Príncipe have further education college level institutions, which do not grant degrees. Cape Verde, the fourth, is currently planning to build its first university – it has for years sent students to Brazil, another Lusophone country, for tertiary education.

Of the remaining 189 countries, all have at least one local university of some form, except twenty. These share two universities between them; the University of the South Pacific (of which nine countries are members) and the University of the West Indies (of which eleven countries are members). Both universities also have a number of territorial possessions in the region as members – for example, the British Virgin Islands and Montserrat are both members of the University of the West Indies.

These are examples of regional universities. In these, the university is not based in one country with operations in several others – the normal case for “international universities” – but is a fully-fledged international organisation, operating in a wide range of countries. There are currently three such organisations in the world – the third, the University of Central Asia, is still being created. It is immediately clear that these pose an interesting issue in the context of national legislation – to what degree are they subject to legislation existing in only a fraction of their constituent countries? In some cases, such as Fiji, the member nations have both “conventional” local universities as well as a campus of the regional institution, complicating the matter further.

Unless explicitly noted otherwise in this study, “universities” refers *only* to the publicly operated state universities, not to private bodies – private institutions are almost always exempt from such legislation, and to note this each time would be pointlessly repetitive.

Definition of “freedom of information legislation”

It may seem extraneous to have to define this, but the term “freedom of information” is used vaguely in many contexts. Freedom of information legislation, often termed as “open records”, “right of access”, “access to information”, or similar, is legislation passed with the primary aim of allowing the general public access to information held by public bodies.

This may vary in detail – in some countries, the right of access only extends to citizens or journalists; in others, it may encompass certain private bodies or only encompass a small number of public bodies. It may have a wider scope – in many nations, the freedom of information laws are part of a wider piece of information legislation covering such things as personal privacy* or media regulation. Where relevant, these will be noted, but the coverage of national privacy-protection or data-handling laws are not the intended subjects of this study.

However, the term is also used in a more vague sense, akin to freedom of expression – the freedom to receive and disseminate information is often referred to as “freedom of information”, especially in contexts concerned with studying the freedom of the press.

* The equivalent of the Data Protection Act 1998 in the United Kingdom.

Legislation merely guaranteeing journalistic freedoms will not be considered under this definition.

On a related matter, “freedom of information legislation” has been construed to mean specifically *legislation*, a law actually passed or decreed by a governing body. Many constitutions, especially recent ones, contain a section promising freedom of information; these are generally very vaguely worded, however, and without implementing legislation being passed they are effectively meaningless beyond demonstrating an intention in principle. Unless there is an extreme case – a particularly well-used or detailed constitutional provision – a guarantee of freedom of information in this form will not be interpreted as being active legislation.

Notes on source material

It will be noted that by far the bulk of source material used here is from electronic sources; this is felt to be a strength rather than a deficit. Most of the material cited is from primary sources (actual legislation or advisory documents), which would both be difficult to obtain in print and run a grave risk of being outdated. As will be seen in the study on Canada, this legislation may well be amended significantly since being passed, and outside of a specialised law library it is hard to rely on physical documents for foreign legislation being fully updated. However, using online governmental sources gives a much greater likelihood of the law being fully updated. A small number of resources were referenced in old papers, and no longer exist online, due to the restructuring of Internet sites. Where possible, these have been used and cited through a source such as the Internet Archive. As a number of other resources became inaccessible during the course of this research – governmental Internet sites are notoriously bad for “rearranging” material at short notice – all electronic sources cited were confirmed to be valid shortly before completion of this document.

Due to the international scope of the research, English translations of most of the primary documentation were used. In many cases, these were provided by the relevant government, and in others by appropriate groups such as regional press-freedom campaigns. In most cases these translations were usable, though in some cases the combination of complex legal terminology in the original and a quick translation rendered them very difficult to interpret. The nature of translating legislative material,

however, is such that specific nuances may be lost, or terms with a precise local meaning be translated into something more vague and indeterminate. As such, it is possible that a number of the “position unclear” cases would be less ambiguous if read, in the original, by a native speaker.

In some cases where no translations were available, some original translation was carried out. The scope of this was limited, but served to gain a rough idea of the legislation being discussed. Non-English sources have been noted where used, and any interpretations here drawn from them should be confirmed as accurate before basing any further research on them. The names of individual pieces of legislation have been given in translation where possible to reduce confusion; it is, though, unclear how many of these are literal translations and how many simply use analogous English terminology – as such, other sources may potentially disagree on the names of individual acts or laws. Interestingly, the same applies in parts of the United States and some other English-speaking countries, where modifications to the legal code are rarely given an official name, and as such the popular name of the act may vary between contexts.

A number of existing studies were used in the process of checking individual nations, and the most significant of these were:

- *Open Sesame: Looking for the Right to Information in the Commonwealth*, from the Commonwealth Human Rights Initiative⁵. This 2003 study discusses freedom of information laws across the Commonwealth, and includes a table of whether or not access laws are known to exist in the fifty-three member countries of the Commonwealth, together with a brief mention of relevant constitutional provisions.
- *Access to Information in Latin American and the Caribbean*, Kati Suominen⁶. This study, written in 2002, contains a brief overview of developments relating to freedom of information laws in the region, and then individual studies of the thirty-five component jurisdictions and the laws then in force there. It should be noted that, however, many of these jurisdictions are not independent nations, but rather overseas territories such as Puerto Rico.
- *Freedom of Information and Access to Government Record Laws Around the World*, David Banisar for freedominfo.org¹. This is a 2003 study, updated in May 2004, which serves as “an ongoing survey of the state of freedom of information in countries which have adopted comprehensive national laws on access”. It covers fifty-

seven countries, does not deal with nations where only regional laws exist, and makes only passing reference to a list of thirty-four nations with pending legislation. Unlike the other two, it could not be used to rule out nations as possessing no law, as most countries were simply not mentioned.

A number of additional local studies, covering a smaller number of countries, were used; the three mentioned above were the most generally useful. It is notable that the most current is a good year old, and as such it is not desperately reliable for pending legislation. However, all were useful for identifying local legislation, especially the latter as it, where possible, cited English translations of the text.

Analysis of Individual Nations

In the following section, all nations known to possess some form of freedom of information legislation, whether active or still pending, are briefly summarised. As discussed earlier, various constraints prevent the discussion of most legislation in depth.

However, generally, freedom of information legislation is of a fairly simple form:

- A general right of access is granted
- The bodies to which this applies are defined
- General exceptions – almost always including personal privacy and national security clauses – are defined.
- Specific exemptions are defined.
- Any overriding duties to disclose are made clear – for example, to clarify that privacy requirements cannot prevent the subpoenaing of material.

It would prove both tedious and redundant to “examine” this in the context of every piece of legislation discussed. Unless discussed otherwise, it is assumed that the public bodies have a duty to disclose information, and that exceptions exist such that material can be withheld from disclosure if it affects personal privacy, if disclosing it would conflict with other legal requirements, and similar legal constraints. If more unusual restrictions exist, these are noted.

Countries where universities are covered

The following nations fall into two broadly similar groups. On the one hand are nations where it can be explicitly determined that universities are liable under the legislation, such as Bulgaria; on the other hand are nations where it can reasonably be assumed that the legislation extends to them, such as South Korea. Where there is an explicit basis for assuming the latter it is given, but in many cases it simply comes down to an informed judgement based on the wording of the legislation.

Albania

In Albania, the constitution of 1998 guarantees the right of access to information, and that “Everyone has the right, in compliance with law, to get information about the activity of state organs”⁷. The legislation supporting this is Law 8503, On the right to information over the official documents, which requires public authorities to grant any request for an official document. “Public authorities” are defined very loosely, as “[an] organ of the public administration, public institution, organizational unit, person as well as any other subject which based on the law exercises public functions and/or services”⁸. As the bulk of Albanian universities are state-owned, they are clearly subject to this legislation; they are public institutions providing public services. However, the law is generally unused; it is not well known, and few requests are made¹.

Australia

In Australia, the Freedom of Information Act 1982 applies to “Ministers, departments and public authorities” of the Government of the Commonwealth, the Australian federal government⁹. All bar one of the Australian universities are, however, established at the State or Territory level – the exception being the Australian National University, in Canberra, which is part of the Australian Capital Territory¹⁰. This institution is therefore liable under the Act, being an agency “established for a public purpose by, or in accordance with the provisions of, an enactment”. The others would only be liable under the relevant State or Territory legislation. There are six states and two territories in Australia; all of these have some form of Freedom of Information law, and in all cases save the Australian Capital Territory the law covers the public universities. (In the case of the Australian Capital Territory, there are no universities established under this jurisdiction, so the question of coverage is moot.)

In Western Australia, the Freedom of Information Act 1992 applies to universities, as a “public body or office”¹¹. The Act is in use; the Office of the Information Commissioner records decisions made for appeals to all four public universities of the state. In New South Wales, the Freedom of Information Act 1989 applies to universities, as bodies “established or continued for a public purpose by or under the provisions of a legislative instrument”, though they are explicitly exempted from compliance regarding “functions relating to dealing with information with respect to the ranking or assessment of students who have completed the Higher School Certificate for entrance into tertiary institutions”¹².

In Victoria, the Freedom of Information Act 1982 covers universities as prescribed authorities¹³, and by regulations extends this coverage to colleges of technical and further education¹⁴. Victoria only contains one private university, Melbourne University (Private), which is closing and merging into the public University of Melbourne as of the time of writing¹⁵. In South Australia, the Freedom of Information Act 1991 extends to the universities¹⁶; there are no private universities in the state.

In Queensland, the Freedom of Information Act 1992 extended to public authorities, defined as incorporated or unincorporated bodies “established for a public purpose by an enactment”¹⁷. This unambiguously includes the public universities established by law. However, in a ruling by the Information Commissioner of Queensland in 1997, it was determined that Bond University, a private university, was exempt from the law. This arose because it was founded in 1987, and shortly thereafter given university status by the Bond University Act 1987. It therefore was not established under this enactment, but merely recognised; the State allowed the conferral of the title of University on an existing private concern¹⁸.

In Tasmania, the Freedom of Information Act 1991 extends to universities, again, as “prescribed authorities”¹⁹. Tasmania contains only one university, the public University of Tasmania. In the Northern Territory, the Information Act extends to Charles Darwin University, the only university in the territory. The Territory publishes a list of all public sector organisations that are subject to the Act²⁰. The Australian Capital Territory contains a university, as discussed above, but has no jurisdiction over it.

Belize

In Belize, the Freedom of Information Act gives every person access to “document[s] of a Ministry or prescribed authority”, the latter defined as a public statutory body or a body, established for a public purpose, which has been prescribed by Ministerial order²¹. The University of Belize Act makes it clear that it is a body established by statute, and thus subject²². It is unclear if this extends to other bodies; Galen University simply describes itself as “chartered by the government of Belize”²³, and whilst Belize is a contributing nation to the University of the West Indies it is not a body of that nation. No list of Ministerial prescriptions seems to have been made public. A 2000 study found that “the Commission is aware that not much use has been made of the Act”²⁴.

Bosnia and Herzegovina

In Bosnia and Herzegovina, the two constituent federal entities have passed freedom of information laws that are broadly identical. Both the Freedom of Access to Information Act for the Republika Srpska²⁵ and the Freedom of Access to Information Act for the Federation of Bosnia and Herzegovina²⁶ regulate information held by “public authorities”. These are defined according to a short list of classes, but no list of what constitutes these authorities is published. However, the legislation refers to “a body that is either owned or controlled by a public authority”, which would seem to cover state-owned universities. All existing universities are currently state-owned²⁷.

Bulgaria

In Bulgaria, the Access to Public Information Act covers access to information produced by “state bodies or the local self-governance bodies of the Republic of Bulgaria”²⁸. It also extends this to other entities with regard to activities they carry out with state funding, but no list is provided. This suggests that the state-funded universities are subject to the act, and this is confirmed by a list produced by the Local Government Reform Foundation, which notes that the Higher Education establishments are bodies liable under the Act²⁹.

Colombia

In Colombia, there is a constitutional right to access of information. “Every person has a right to access to public documents except in cases established by law”¹. There is supporting legislation, the *Ley 57 de 1985 Por la cual se ordena la publicidad de los actos y*

documentos oficiales, which states that all persons have the right to consult documents “*que reposen en las oficinas públicas*” – which reside in public offices³⁰. This is defined quite broadly within the law, in a large set of criteria that almost certainly encompass the state-owned universities.

Croatia

In Croatia, the Act on the Right of Access to Information regulates information controlled by “public authorities”. These are defined as “state bodies, bodies of units of local and regional self-government, legal persons vested with public powers and other persons to whom public powers have been delegated”³¹. The state universities in Croatia are managed and funded by the Ministry of Science Education and Sports, which notes that they are established by law³². Whilst no explicit statement to this effect is made, it can be assumed that the Act covers these universities.

Czech Republic

In the Czech Republic, the Law on Free Access to Information states that obliged entities have a duty to disclose information on request. These entities are “state agencies, territorial self-administration authorities and public institutions managing public funds”³³. The Czech Republic contains both public and private higher education institutions, though it seems that currently no private institutions are accredited as full universities³⁴. It would be assumed that universities, as public institutions, are subject to this act; a booklet produced by The Open Society, a local political organisation, confirms this³⁵.

Denmark

In Denmark, the Access to Public Information Files Act applies to “all activity exercised by the public administration”³⁶. As all eleven Danish universities are publicly funded and operated by the state, they are subject to the Act³⁷. The use of the act does not seem to be contentious in this regard, as indicated by the fact that no challenges involving decisions by universities were ruled on by the Ombudsman in 2001-3³⁸.

Ecuador

In Ecuador, the Transparency and Access to Information Law extends to “all public institutions and other organizations that receive government monies”³⁹. It is likely that this would include the public universities.

Estonia

In Estonia, the Public Information Act extends to all “holders of information”, though this is clarified as being all government bodies, plus “legal persons in public law”⁴⁰. This would likely extend to public universities. All six universities in Estonia are public⁴¹.

Finland

In Finland, the Act on the Openness of Government Activities extends to a wide range of “authorities”⁴². All Finnish universities are owned by the state⁴³, and it can reasonably be assumed they fall under the definition of state agencies or enterprises.

France

In France, the Law on Access to Administrative Documents deals with documents produced by “the State, territorial authorities, public institutions or from public or private-law organisations managing a public service”⁴⁴. It would seem likely that this would extend to the public universities. Examining the reports of CADA, (the *Commission d'Accès aux Documents Administratifs*), a number of cases where they have given an opinion relating to a university are found, confirming this assumption⁴⁵. These rulings tend to refer to the *président* or *secrétaire général adjoint* of the university, both senior administrators; it is unclear if this means the university is liable via its governing body, or simply if these are the bodies which handle correspondence with external organisations such as CADA.

Georgia

In Georgia, the Law on Freedom of Information covers “public agencies”⁴⁶. These agencies are not clearly defined, but it appears likely that they include public universities.

Hungary

In Hungary, the Act on the Protection of Personal Data and Public Access to Data of Public Interest extends a right of access to all data of public interest, defined as any information processed by a body performing a governmental function⁴⁷. It is not clear if this extends to the eighteen public universities (Hungary contains only one private university⁴⁸). However, examination of the annual reports of the Data Protection Commissioner find references to personal-data rulings regarding universities in 1998⁴⁹ and 2000⁵⁰. In the 2000 case, the personal-information query, on examination, turns out

to refer to refusing to disclose information citing personal privacy; it can be concluded that the public universities are subject to the law.

India

In India, the Right to Information Act replaced the never-implemented Freedom of Information Act; it extends to a widely defined set of “public authorities”, of both the national and state governments⁵¹. It is likely that this would extend to the public universities, which are operated by both the state and national governments⁵². A number of state governments have individual pieces of legislation, but these are effectively rendered moot by the new law.

Ireland

In Ireland, the Freedom of Information Act, 1997, was written to apply to public bodies. “Public bodies” was defined according to the First Schedule of the Act, which did not include universities directly⁵³. However, provision was made for the Minister of Finance to expand the classes of bodies covered by the legislation, and accordingly it was expanded in subsequent years to include the Universities⁵⁴. The relevant statutory instrument, covering about thirty higher education institutions, came into force in October 2001⁵⁵.

Italy

In Italy, Law No. 251, 7 August 1990 applies to “administrative bodies of the state”, including otherwise autonomous public bodies⁵⁶. The Decree of the President of the Republic No. 352, 27 June 1992 makes reference to it being applicable to “the providers of public services”⁵⁷. It is probable that this covers universities, but this cannot be determined for certain. However, it is required that applicants must have some form of personal interest which the information is necessary to safeguard, limiting the application of the law in many circumstances. Courts have ruled that personal interest can extend to safeguarding the interests of people represented by the applicant.

Jamaica

In Jamaica, the Access to Information Act 2002 applies to public authorities, which are defined in a set of listed categories, with the relevant Minister given the power to add “any other body or organization which provides services of a public nature which are

essential to the welfare of the Jamaican society”⁵⁸. No list of the affected bodies appears to have been published, but the Jamaica Archives and Records Department notes that “publicly-funded educational institutions” are covered under the Act⁵⁹. This includes a number of universities and community colleges, including – it seems – the University of the West Indies⁶⁰.

Liechtenstein

In Liechtenstein, the Information Act extends to “state and municipal organs”¹. It is not clear if this extends to the public university institutes, but it seems likely that it does.

Lithuania

In Lithuania, the Law on Provision of Information to the Public gives the ability to obtain documents from “State and local authority institutions and agencies and other budgetary institutions”⁶¹. It is not made explicit whether this extends to the public universities, but it seems likely that it does.

Mexico

In Mexico, the Federal Transparency and Access to Public Government Information Law encompasses government bodies and “autonomous constitutional bodies”⁶². An advisory document clarifies that this encompasses the universities⁶³.

Moldova

In Moldova, the Law on Access to Information includes those “organizations founded by the state represented by public authorities that are financed by the state budget”⁶⁴. It is likely that this would encompass the public universities; there is an exemption for “information that represents the final or preliminary results of scientific and technical research” where disclosing this would “deprive the researchers of their priority right of publication”, an exception of some importance to universities.

New Zealand

In New Zealand, the Official Information Act 1982 extends to the public universities. The University of Auckland provides a useful description of the Act as it applies to them, noting the classes of information they hold which are defined as “official information”⁶⁵.

Norway

In Norway, the Freedom of Information Act applies to “administrative agencies”, though the law does not make it clear what bodies are classed as such⁶⁶. It is unclear if this extends to the public universities, but it seems probable.

Panama

In Panama, the Law on Transparency in Government Bodies extends to “*toda agencia o dependencia del Estado*” – every agency and dependency of the State – which is further defined as a lengthy list including “decentralized, independent and semi-independent organizations” and “organisations that receive funds, capital or government properties”. It is likely that this definition would extend to the universities. A decree of 2003 limited access to “interested persons”, a term not fully defined; it is, as yet, unclear what effect this will have on the implementation of the law¹.

Peru

In Peru, the Law of Transparency and Access to Public Information extends to bodies of the *Administración Pública* (public administration)⁶⁷. Whilst this does not appear to be defined in the legislation, another document refers to it encompassing “any government body or private entity that offers public services or executes administrative functions”¹, which would seem to encompass the public universities.

Philippines

Whilst the Philippines has no formal freedom of information legislation, it has very strong constitutional provisions “[making] it one of the most open countries in the region”; the Supreme Court has ruled that no implementing legislation is needed, though various bills to this end have been proposed¹. As such, it is hard to define exactly the scope of freedom of information, but the broad definitions used in discussing the law suggest that universities are more likely than not to be considered liable⁶⁸.

Poland

In Poland, the Law on Access to Public Information extends to “public authorities and other entities performing public tasks”⁶⁹. It is not made clear if this encompasses universities, but it is likely that it does.

Portugal

In Portugal, the Law of Access to Administrative Documents applies to a wide range of public bodies, including “organs of either public institutes or public associations”⁷⁰. It is likely that this extends to the public universities.

Romania

In Romania, the Law Regarding Free Access to Information of Public Interest extends to “any public authority or institution, as well as any state company ... which uses public financial resources”⁷¹. It is not made clear if this extends to the public universities, but it is likely that it does.

Slovenia

In Slovenia, the Act on Access to Information of Public Character applies to a wide range of public bodies⁷². A catalogue of these is published by the government each year, but a copy of this has not been found. The Government of Slovenia, however, refers to universities as “state [or] public institutions”⁷³, and it can be considered likely that the legislation extends to them.

Spain

In Spain, the *Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común* (Law 30 of 1992, 26th November, on the legal regime of the public administration and the common administrative procedure) affects various public administrative bodies⁷⁴. As no English translation was available, it was not easy to ascertain how these were defined, but reference was found to a court ruling upholding a point of the Law as applicable, in a case involving the *Universidad de La Laguna*. From this, it can be inferred that the Law extends to the public universities.

South Africa

In South Africa, the Promotion of Access to Information Act gives the right of access to information from all “public bodies”, and in addition the right to gain information from private (or otherwise exempt) bodies or individuals “that is required for the protection or exercise of any rights”⁷⁵. The South African Human Rights Commission, tasked with overseeing the implementation of the Act, provides a list of contact details for public bodies, which does contain the universities⁷⁶. The second class of bodies covered would

extend further, to private universities, but only in cases where there is a legal need for the information, limiting its applicability. Confusingly, many private institutions tutor local distance learning students at public universities⁷⁷, suggesting they could be considered partially public as “[institutions] performing a public function”.

South Korea

In South Korea, the Act on Disclosure of Information by Public Agencies extends to a variety of public agencies⁷⁸. Through the Framework Act on the Management of Government Invested Institutions, this extends to all agencies where the government has invested 50% or more of the capital⁷⁹. This is likely to extend to the public universities.

Sweden

In Sweden, the Freedom of the Press Act extends to all “public authorities”⁸⁰. It is not clear if this includes the state universities, as an advisory document notes that “companies, associations and foundations are not public authorities even if the state or a municipality wholly owns or controls them”⁸¹. However, a Swedish university archivist notes that “almost all Swedish universities are public authorities” in the context of the legislation⁸², and confirms that this extends to all public universities. The three private universities are not covered⁸³. Interestingly, the legislation applies to working material as well as finished material – unpublished research, in the cited example, is still accessible under the legislation. The legislation is taken seriously by the courts; in June of 2005, an academic and the rector of Gothenburg University were convicted for destroying research information to prevent it being released to a journalist⁸⁴.

Thailand

In Thailand, the Official Information Act of 1997 extends to all public agencies⁸⁵. It is not clear from the law if this extends to public universities, but an article discussing disclosure complaints against Khon Kaen University and Kasetsart University, both public, confirms the assumption that it does⁸⁶. A large number of Thai universities are private⁸⁷, and it does not appear that these are covered by the legislation.

Trinidad and Tobago

In Trinidad and Tobago, the Freedom of Information Act, 1999 extends to “public authorities”, defined by a lengthy list of classes⁸⁸. A relevant government website

explicitly refers to the University of the West Indies as a public authority⁸⁹, making it clear that public universities are subject to the Act.

United Kingdom

In the United Kingdom, the Freedom of Information Act 2000 covers public bodies through England, Wales and Northern Ireland, whilst the Freedom of Information (Scotland) Act 2002 covers public bodies which are controlled by the Scottish parliament. Whilst the universities are not publicly operated *per se*, they are – in all but one case – publicly funded, and thus covered under the terms of the Acts. The one private university in England is not subject to the Act. A detailed study of this situation is on page 46.

Countries with universities exempt

Interestingly, Israel is the only country where it can be determined for certain that the legislation does not apply to universities on a national scale. Some nations have been this way in the past, however – Ireland, for example.

Israel

In Israel, the Freedom of Information Law 5758-1998 applies to public authorities. These are defined according to listed categories, with the government required to publish a list of the organisations that fall into the two most general categories (“The government and government ministries, including supporting agencies” and “Legally founded corporations”)⁹⁰. Whilst it was not possible to find this list, in English or in Hebrew – it is possible that it was never fully published – a story in *Haaretz* refers to a proposal to add “the universities and public colleges” to this list being dismissed by the justice minister. However, it also notes that the current justice minister is in favour of extending the law to cover these bodies⁹¹. Israel contains eight universities, all of which appear to be publicly funded. Of the 26 other institutions of higher education, all degree-awarding, eight are not state funded⁹².

Countries where the applicability to universities is unclear

In the following countries, it was not possible to make any informed judgement about whether or not the legislation applied to universities, either through a lack of information about the educational system, about the legislation itself, or through ambiguities in the phrasing of the legislation.

Angola

In Angola, the Access to Administrative Documents Act has recently been enacted⁹³. However, a translated text is not available, and it is not possible to determine the institutions to which it applies. Some reports note that this was put together as part of a package of laws including state secrecy and national security acts⁹⁴, and as such it is possible that this is a secrecy law in the guise of an openness one, similar to the situation in Zimbabwe.

Austria

In Austria, the constitution of 1987 requires government bodies to make available information about their duties, whilst providing for strict secrecy requirements for other information. Further to this, the 1987 *Auskunftspflichtgesetz* (Federal Law on the Duty to Furnish Information) requires the “national departments, the municipalities, the municipality federations and the self-governing bodies” to answer questions about their areas of responsibility; the nine *Bundesländer* (states) have similar laws¹. Following the reforms of the Schüssel government, it is unclear if the universities are classed as governmental bodies in this sense⁹⁵.

Belgium

In Belgium, the constitution provides “the right to consult any administrative document”⁹⁶, and this is supported at a federal level by the *Loi du 11 avril 1994 relative à la publicité de l'administration*. (Law on public access to the administration), which applies to federal authorities and other authorities operating on a federal level⁹⁷. The *Loi du 12 novembre 1997 relative à la publicité de l'administration dans les provinces et les communes* (Law on public access to the administration in the provinces and the communities) makes similar provisions for government on the local level; this is then supported by a variety of legislation passed by the individual regions. Education is the responsibility of the

community governments⁹⁸ – there are three, one for each of the national language areas, although the *Deutschsprachige Gemeinschaft Belgien* (German-speaking community) does not contain any universities. It is difficult to determine to what degree the universities are subject to the local laws, as copies of these are unavailable.

Chile

In Chile, the Law of Freedom of Opinion and Information and Journalistic Practice serves as freedom of information legislation. It apparently applies to “state agencies”⁹⁶. However, a copy of the text of the law could not be found, making it difficult to determine if universities are subject to the Law. A 2005 Inter-American Press Association resolution suggests that it is ineffective in its intended role⁹⁹.

China (People’s Republic of China)

Whilst the People’s Republic of China has no freedom of information legislation on a national level, for historical reasons it contains a strongly autonomous Westernised region, Hong Kong. Two years before their return to China, the province put in place a Code on Access to Information, which remains in force. It extends to all government departments, defined in an annex¹⁰⁰. The city contains twelve institutions able to grant degrees, of which eight are styled universities¹⁰¹. They appear to all be public institutions, and are heavily government subsidised. However, it is not clear if the Code extends to them – they are not mentioned in the Annex or in the annotated guidelines¹⁰². Macao, the other Special Autonomous Region, has no such legislation.

Hong Kong is not the only location in China to have such legislation, however; the city government of Guangzhou passed the Municipal Provisions on Open Government Information. It extends to all government agencies within the municipal region¹⁰³. Shanghai later adopted provincial-level legislation, and a number of other cities are moving towards similar policies¹⁰⁴, though many of these deal only with the duty to publish information, not the right to request unpublished information. However, it is unclear to what degree universities are affected; they appear to be controlled by central government, and thus exempt from such local legislation.

Greece

In Greece, the Code of Administrative Procedure appears to be the dominant legislation. It gives access to “documents drawn up by public services”¹⁰⁵. It is not clear if this extends to public universities.

Iceland

In Iceland, the Information Act applies to government authorities at both national and local levels¹⁰⁶. It is not clear if this extends to public universities.

Japan

In Japan, the Law Concerning Access to Information Held by Administrative Agencies extends to “administrative organs”, as defined by a complex set of categories¹⁰⁷. One definition refers to “other organs under Article 8-2 of the National Government Organization Law”, which in turn allows for the establishment of “Educational or Training Facilities” by government organs¹⁰⁸. It is not clear if this provision is related to the establishment of the universities, however.

Kyrgyzstan

In Kyrgyzstan, the Law on Guarantees and Free Access to Information gives access to information. However, the translated version of the law is terse and confusing; it is unclear exactly what bodies are covered and what the requirements are¹⁰⁹.

Latvia

In Latvia, the Freedom of Information Law extends to “State administrative institutions and Local Government institutions”¹¹⁰. It is unclear if this extends to the public universities.

Netherlands

In the Netherlands, the Government Information (Public Access) Act extends to a variety of administrative authorities¹¹¹. It is, however, not clear from the Act if it encompasses the universities; there is reference to “administrative authorities responsible for education and research”, but it notes that these may only be liable if so designated by an Order in Council. No list of these Orders is available, but it strongly suggests the intent is to exclude universities by default.

Pakistan

In Pakistan, the Freedom of Information Ordinance, 2002, applies to all public bodies, including “any office of any Board, Commission, Council, or other body established by, or under a Federal Law”¹¹². It is unclear, without further information on the legal status of Pakistani universities, whether this would apply to them. It appears that at least one public university was chartered by an act of Parliament¹¹³, but it is possible that these institutions are actually operated by the provinces or territories.

Slovakia

In Slovakia, the Act on Free Access to Information mandates “obligees” to provide information¹¹⁴. In addition to governmental bodies, these are defined as including “legal entities established by law” or “Legal entities established by Obligees ... that manage public funds or operate with state property”. It is unclear if this extends to the public universities; an advisory document notes that the Act extends to schools, but does not mention universities¹¹⁵.

Switzerland

In Switzerland, the *Loi fédérale sur le principe de la transparence dans l'administration* (Federal law on the principle of the transparency in the administration) applies to various state bodies¹¹⁶. It is unclear from the law exactly what these bodies are – no English translation was found, and the text refers back to definitions in 1960s legislation – but a rough translation suggests that universities are unlikely to be covered.

Turkey

In Turkey, the Law on the Right to Information is described as covering “public institutions and private organizations that qualify as public institutions”¹. Confusingly, the translation of the law appears to define this recursively – the law applies to public institutions, and “institutions” are defined as the authorities to which the law applies¹¹⁷. It is not possible to determine the scope of the legislation.

Ukraine

In the Ukraine, the Law on Information gives access to official documents of “state bodies”¹¹⁸; the Law is not clear on a definition of this term, and as such it is not possible to determine if the scope of the legislation extends to the universities.

Uruguay

In Uruguay, it is unclear if freedom of information legislation exists. A source notes that “Article 694 of Law No. 16.736 establishes the freedom of information at the governmental level”¹¹⁹, but a reading of that law fails to find a clear discussion of this¹²⁰. As the law is only available in Spanish, however, this may simply be an error in translating relatively abstruse concepts. Another source notes that the lower house of the Uruguayan Congress passed a bill in 2002 on the right to public information⁶; it is not completely clear if this is the same legislation being referred to, but it seems likely. It is unclear if this bill ever was passed into law. No information on coverage or implementation is available, though the existing governmental culture is described as strongly secretive⁶.

Uzbekistan

In Uzbekistan, the Law on Principles and Guarantees of Freedom of Information, from 2003, is the current controlling legislation. However, this is only available in Russian¹²¹, and it has not as yet been possible to obtain a usable translation. The law it superseded, the 1997 Law On Guarantees and Freedom of Access to Information, is available in English, and deals with “State bodies, self-government bodies, public organizations...”¹²². Were this scope to be carried through to the current legislation, it is likely the state universities would be covered. There do not appear to be any private universities in the nation¹²³. This legislation may not apply in Karakalpakstan, an autonomous sub-entity of the nation; the statute states that freedom of access to information is “also regulated by the legislation” of that republic, but little detail on this is available.

Venezuela

In Venezuela, the Organic Law on Administrative Procedures gives access to “public information or ... government sources for interested parties or their representatives”¹²⁴. A copy of this legislation has not been found, and as such the scope is unclear. There are additionally various constitutional provisions, though access to information is in practice considered to be lacking⁶.

Countries where applicability varies

In the following countries, applicability to public universities varies across the nation. This may be through some regional laws providing exemptions, as in Canada, or the fact that some jurisdictions encompassing universities have not yet enacted freedom of information legislation, as in some territories of the United States.

Canada

In Canada, the federal Access to Information Act affects “any department or ministry of state of the Government of Canada”, further listed in Schedule I of the Act¹²⁵. The federal government, however, does not operate or control universities; these are the responsibility of the individual provinces and territories, and thus not covered by the federal Act¹²⁶. However, all provinces and territories have some form of freedom of information legislation; currently, in ten of thirteen provinces and territories, universities are subject to the local legislation. A detailed study of this situation is on page 49.

Germany

In Germany, the recently passed Federal Freedom of Information Act is, as it suggests, binding on agencies the federal government; the scope of the Act is not entirely clear¹²⁷. It appears that higher education is the responsibility of the individual *Bundesländer* (states), and thus the relevant legislation would be on the regional level; four of the sixteen states have some form of freedom of information legislation¹²⁸. Of these, the scope of the legislation in Berlin is unclear¹²⁹; in Brandenburg, the legislation explicitly refers to “schools” and “research establishments” and may well thus extend to universities¹³⁰. For Nordrhein-Westfalen, and Schleswig-Holstein, no translated form of the legislation was available, and thus the scope could not be determined.

Serbia and Montenegro

In the Republic of Serbia, the Law on Free Access to Information of Public Importance gives access to documents of public authorities¹³¹, defined in such a way that it is likely it would include the public universities. An equivalent law pending in the Republic of Montenegro does not yet appear to have passed; a draft is not available, but considering the precedent of Bosnia and Herzegovina, it is likely that the two pieces of legislation will prove substantially identical when both are passed.

United States of America

In the United States, the Freedom of Information Act is the controlling freedom of information legislation nationally. Individual states have their own legislation. The federal act affects authorities of the Government, which generally speaking does not include the higher education system, as this is operated under the aegis of the states. However, the US military operates a small number of military universities, which are subject to the Act, as do one or two other federal departments. These institutions, however, are not open to the public.

The US has a strong private university system – indeed, most of the well-known American institutions are private – which is predominantly not covered by the local legislation. However, some exceptions have been ruled to exist by courts, and the legislation of several states is written such that these exceptions could well be held to be widespread. All public universities are subject to *some* form of freedom of information legislation, with the exception of four universities operated by Native American nations, those in the territories of Puerto Rico and the Northern Mariana Islands, and a somewhat confusing situation in the state of Delaware. These are quasi-independent of both federal and state jurisdictions, and this renders it unclear of their status. A detailed study of this situation is on page 52, with legislation discussed on a jurisdiction-by-jurisdiction basis on page 77.

Countries with pending legislation

In the following countries, some form of freedom of information legislation is currently pending – either going through the governmental process or waiting to be put before parliament. Where a copy of the draft legislation could be found, it was examined; this was only possible for a fraction of the countries, however.

Argentina

In Argentina, Congress has not yet passed the Freedom of Information Law¹³²; some access legislation exists, however, on the local level¹³³. The content of the draft bill is unknown, and the coverage cannot be determined.

Armenia

In Armenia, the Law on Freedom of Information was approved by the government in 2003, but as of 2004 had not come into force pending government plans to replace it¹. It would extend to public bodies, organisations operating with public funds, and “private organisations of public importance”¹³⁴. This would almost certainly extend to the public universities.

Azerbaijan

In Azerbaijan, there is a constitutional provision for the freedom of information, and a Law on Freedom of Information. However, this is “a declarative proclamation ... rather than an operational freedom of information law”¹³⁵. Whilst the nation intends to enact implementing legislation, and drafts have been considered by the national parliament, nothing has yet come into force. The draft produced by the Media Law Institute would cover “legal entities carrying out education [duties]” and “private legal entities and physical persons (in connection with carrying out ... provision of education”); the draft produced by the Government defines authorised bodies to include “state bodies ... and juridical persons financed from the state budget in full or partly”¹³⁶. In both cases, it is clear that public universities would be included; it is possible that under the Media Law Institute draft the private universities would also be covered. Azerbaijan contains a number of private universities¹³⁷.

Botswana

In Botswana, there does not appear to currently be any freedom of information legislation, but the government was slowly moving towards one in 2003¹³⁸. No draft bill has been found, meaning that the coverage cannot be determined.

Fiji

In Fiji, there is currently no law relating to freedom of information. The Constitution provides a general right of access, but interestingly also places a requirement on the government to “enact a law to give members of the public rights of access to official documents of the Government and its agencies” as soon as is practical¹³⁹. The government did do so, and a draft bill was circulated in 2000 with the intent of passing it later that year¹⁴⁰. However, a coup in 2000 derailed this, and the government has not as made any new moves towards enacting such legislation¹⁴¹. A local organisation, the Citizens’ Constitutional Forum, proposed a draft bill in 2004, with the aim of kindling public debate. Under this draft, the act would cover “public bodies”, including those established by statute, or owned or substantially funded by the state¹⁴². Fiji is one of the owning governments of the University of the South Pacific, and contains one other state university, the Fiji Institute of Technology; it is probable that both these institutions would be subject to the act if it was to be passed in the form of the current draft.

Ghana

In Ghana, the Freedom of Information Bill was resubmitted to the Cabinet in 2005¹⁴³. The draft text of the Bill is not known, and thus the coverage of the legislation cannot be determined. There is a constitutional provision for freedom of information⁵, but it requires enabling legislation that is not currently in force.

Indonesia

In Indonesia, the House of Representatives drafted and submitted a freedom of information bill in 2004, but as of 2005 it remained dormant, with the government taking no action¹⁴⁴. A copy of the draft was not available, and as such it was not possible to determine the scope of the legislation.

Jordan

In Jordan, there appears to be a draft Law on the Guarantee of Access to Information¹⁴⁵. However, no copy can be found of this, making it impossible to determine the scope, and it is unclear how involved the government has been in the drafting process, suggesting that the draft may be little more than a discussion paper.

Kenya

In Kenya, the draft Freedom of Information Act 2005 is currently pending, having been promised by the President¹⁴⁶. The draft text of the Act is not available, however, and thus the coverage of the legislation cannot be determined.

Lesotho

In Lesotho, the Access and Receipt of Information Bill was before Parliament in 2003/4¹⁴⁷, but the current status of the legislation is unknown. As the draft bill was not published, the scope of the legislation is unknown.

Maldives

In the Maldives, there is currently no freedom of information legislation. In 2004, the government announced that one was expected to be passed this year¹⁴⁸; this has not yet transpired¹⁴⁹. No copy of the draft is available, and the scope of the legislation cannot be determined.

Monaco

In Monaco, there does not appear to be any current freedom of information legislation. A 2004 draft resolution by the Council of Europe, regarding Monaco's intention to join that body, mentioned that "laws on freedom of the media (freedom of information) ... will be enacted at the spring session of the legislature"¹⁵⁰; however, the resolution as passed removed the reference to freedom of information¹⁵¹. It is has not been possible to determine if this law was ever enacted, or if so what level of freedom of information it provides.

Mozambique

The government, in August 2005, produced a draft Freedom of Information Bill. It is expected to become law within two years¹⁵². However, the text of the draft bill is not known, and thus the scope of the legislation cannot be determined.

Nauru

In Nauru, the Freedom of Information Act 2004 was laid before the parliament in that year, but was not passed. Further work on the legislation is currently being held back, pending a review of the country's Constitution, but it is considered likely that the principles of the proposed Act will either be incorporated into the revised Constitution or passed shortly thereafter¹⁵³. Nauru has no local university, but is one of the owning governments of the University of the South Pacific. The draft bill is very similar to that of Fiji¹⁵⁴.

Nauru is an interesting case, as it was possible to correspond with one of the co-authors of the draft bill. On enquiry, he stated that there had been no conscious consideration of including the University, but felt that the intent of the law encompassed it; the possibility of amending the draft to clarify this was suggested. It was not clear if the law as it stood would encompass the University, though it is likely that it probably would be construed that way. (An interesting supporting point was that the University rents the land it is on from the government, illegal for a foreign body under Nauruan law)¹⁵³.

Nigeria

In Nigeria, the Freedom of Information Bill was before Parliament in June 2005, and considered likely to pass¹⁵⁵. The text of the Bill is not available, however, and thus the coverage of the legislation cannot be determined.

Sri Lanka

In Sri Lanka, the 2004 draft Freedom of Information Act has been endorsed by both major parties, but had not been passed as of January 2005¹⁵⁶. No draft is available, thus coverage cannot be determined.

Uganda

In Uganda, there is currently no freedom of information legislation. The 1995 Constitution gives an explicit right of access to information, but requires Parliament to

enact laws governing this right. These laws have not yet been passed, though a bill was put before parliament in 2004. As it stood, the draft bill appears to have extended to all governmental agencies, which would likely include the public universities¹⁵⁷. It has not been possible to determine if this bill was passed into law.

Countries with strongly limited legislation

In the following countries, the legislative provisions for freedom of information are ignored in practice, are limited solely to the media, or are otherwise not effective access legislation for the purposes of this study.

Malta

In Malta, there is a vague constitutional provision for freedom of information. However, there is no overall freedom of information legislation. Existing laws provide for limited access to government information by journalists, and for public access to information in the national archives¹⁵⁸.

Tajikistan

In Tajikistan, there is effectively no freedom of information legislation. Whilst the government is required by the Law on Television and Radio Broadcasting to provide information to the media, this is effectively ignored. There are no general access laws¹⁵⁹.

Yemen

In Yemen, there is a limited right of freedom of information; the Press and Publications Law of 1990 allows “the right to peruse official reports, facts, information and data”. However, the scope of this law is limited – it extends only to licensed journalists – and it is not made clear how “official information” is defined¹⁶⁰. As such, it is not possible to determine to what degree universities are liable.

Zimbabwe

In Zimbabwe, the relevant legislation is the Access to Information and Protection of Privacy Act. This provides a right of access to records held by public bodies, which are defined in an attached Schedule of that Act¹⁶¹. However, this right is strictly limited to citizens or legal permanent residents, or media organisations legally registered under the Act. It can, in many ways, be seen as an act to gag the media in the name of freedom of information¹⁶² – it even includes a requirement for registration by journalists. It is unclear from the text of the Act if universities are covered. An earlier draft Bill from 2001 is interesting; its attached Schedule includes an entry for universities under “public bodies”, which is not present in the current Act¹⁶³. The omission of this entry from the current

bill would suggest that universities are not covered under this version, but it is possible that they were simply removed as surplus; they could be classed under “Any statutory corporation, authority, board, ... or other statutory body”, or as public companies. Were it not for this unexplained alteration, it would be assumed that publicly owned universities were subject to the Act. However, the state of the law, and the fact that it is effectively unused for its nominal purpose, renders this question moot.

Case Study - United Kingdom

In the United Kingdom, the major legislation is the Freedom of Information Act 2000 (2000 c. 36)¹⁶⁴. This legislation extends to a wide range of “public authorities”, defined in an attached schedule. However, it does not extend to any agency controlled by the Scottish Parliament; these bodies are subject to the Freedom of Information (Scotland) Act 2002 (2002 asp 13)¹⁶⁵. The two pieces of legislation are broadly similar in the classes of bodies they cover, though the Scottish law has slightly stronger wording governing disclosure of information.

Universities in the United Kingdom are almost always considered public bodies; whilst often operated as independent organisations, they are heavily funded by the state. In the 2000 Act, Part IV of Schedule 1 extends to “the governing body of ... a university receiving financial support under section 65 of the Further and Higher Education Act 1992” and the governing body of any institution of a university which falls under that section. Section 65 refers to receiving funding from the national funding councils (bodies such as HEFCE)¹⁶⁶. It also explicitly extends to any institution in the further education sector; this is a simpler definition, as the further education colleges possess a lot less legal independence than the universities. The quoted definition refers to England and Wales; a functionally similar section afterwards covers Northern Ireland.

However, this section does not apply to Scotland; the thirteen Scottish universities themselves are noted under Part 5 of Schedule 1 of the 2002 Act, as “institution(s) in receipt of funding from the Scottish Higher Education Funding Council other than any institution whose activities are principally carried on outwith Scotland”. In both the 2000 and 2002 Acts, the definition clearly encompasses all publicly-funded universities, though interestingly the 2002 Act does not contain the limitation of “governing bodies”.

The UK as a whole contains a number of private educational institutions, but only one non-state-funded* university; the University of Buckingham, which “remains independent of HEFCE, although it receives a £2,640 fee subsidy for each of its UK students”¹⁶⁷. As such, it would appear that Buckingham is the only UK university not subject to the 2000 Act. All other conventional UK universities, however, are, including the Open University

* In the light of the strong independence of many British universities, “private” would seem a misnomer in this regard.

and the MoD's Defence Academy¹⁶⁸. As the governing criteria is who *pays*, rather than who *operates*, this is much clearer than in other jurisdictions.

The Acts do not, it should be noted, extend to Overseas Territories of the United Kingdom (such as Bermuda or the Falkland Islands), nor do they extend to the Crown Dependencies (the Isle of Man and the various Channel Islands). These would be covered by separate local legislation, which does not appear to exist.

Early versions of the legislation, it is interesting to note, were substantially simpler. A draft Freedom of Information and Privacy Bill, circulated in 1977, took three sentences to define its coverage – compared to the current lengthy Schedule – and included “any public body or authority established by statute” as well as “any other body established by the Crown”. This would likely have covered the Universities, though it cannot be stated for certain¹⁶⁹.

Both Acts only came into force on January 1st, 2005, though there had been a gradual compliance process in place before that. As such, it is too early to reasonably expect any significant information on the results of the implementation, much less any statistics. The effects do not confine themselves to being felt after the Acts come into force, however; as discussed earlier, the requirements to prepare for implementation involve significant investment of time and resources in advance.

A 2004 study noted that institutions were required to prepare a publication scheme (and have it approved), though the existence of a model publications scheme produced by the Joint Information Systems Committee reduced this burden somewhat. Review and editing processes would have to be set up, as well as a monitoring system for tracking individual requests in order to provide statistical data on the implementation. There are also notes on the potential intellectual property issues; for example, a university making its HR policies public could lead to another institution choosing to develop their own policies from these. Additional legal costs would thus have to be incurred in providing preventative statements and arranging licensing systems. A governmental Model Action Plan for implementing proper records management, which suggests that it takes at least a year and a half to institute a full programme, including an overall information audit and the hiring of a professional records manager, is mentioned; additionally, the use of an electronic documents management system is suggested, which would further increase the expense. The Act is described as “[forcing] universities to file their information properly, possibly for the first time”¹⁷⁰.

An interesting sidenote is the issue of student unions. In the UK, these are funded through the university, and as such do not directly receive money from the funding councils. In order to be subject under the 2000 Act, they would have to be “any college, school, hall or other institution of a university [defined as above]”, and in order to be subject under the 2002 Act they would need to be legally considered as part of the university.

However, whilst often *de facto* treated as a part of their parent university, it is not at all clear that they are *de jure* a part of it; very few court cases have ruled on this issue, and it seems likely that the issue of whether or not a union is legally a constituent part of the university is strongly dependent on the situation of the particular institution¹⁷¹. This may lead to an interesting situation arising where, whilst all universities are subject, this set of associated bodies may or may not be, on an apparently random basis.

Case Study - Canada

In Canada, the national-level freedom of information legislation is the Access to Information Act. However, education is the responsibility of the individual provinces and territories, which control universities. (Unlike Australia and the US, the national government in Canada does not directly fund any universities). All regions, however, have some form of local freedom of information law.

According to a 1996 study, in four of the provinces – Newfoundland and Labrador, New Brunswick, Nova Scotia & Manitoba – and in the Northwest Territories and the Yukon, the laws do not cover local public bodies, and thus exclude colleges and universities. Conversely, in Alberta, British Columbia, Quebec and Saskatchewan, the laws cover universities as public bodies. Unusually, in Ontario, whilst colleges and schools are covered as public bodies, compliance by universities is *voluntary*³.

This list misses one province, Prince Edward Island, which only enacted its Freedom of Information and Protection of Privacy Act in 2002. The legislation covers public bodies¹⁷², though the regulations of 2003 do not list universities as an organisation considered a public body under the Act¹⁷³. The province's Information Commissioner confirms the Act is not meant to apply to “post-secondary educational institutions”¹⁷⁴.

It also misses one territory, Nunavut, which was created in 1999 from the Northwest Territories. Due to this status, unless amended or repealed by Nunavut, all Northwest Territories legislation in force as of 1999 remains in force in Nunavut. The Access to Information and Protection of Privacy Act has been amended four times, though not significantly, which suggests that post-secondary education would not be covered.

In the decade since 1996 many of these laws have been amended; some examination confirms that universities are still covered in Alberta¹⁷⁵, British Columbia¹⁷⁶, and Quebec¹⁷⁷. In Saskatchewan, confusingly, they are still covered, but under the Local Authority Freedom of Information and Protection of Privacy Act rather than the Freedom of Information and Protection of Privacy Act¹⁷⁸. As these two Acts seem to date to the same year, it is unclear why it was felt two were needed.

However, the Freedom of Information and Protection of Privacy Act in Manitoba now covers universities, explicitly citing them by name¹⁷⁹. In Newfoundland and Labrador, the Access to Information and Protection of Privacy Act now covers the one university in the province, again referencing it by name¹⁸⁰. In the Northwest Territories, the Access to

Information and Protection of Privacy Act allows for public bodies to be designated by regulations¹⁸¹, and these now extend the coverage to Aurora College, the only postsecondary institution in the territory¹⁸². (They do not extend to the college in Nunavut, which appears to have been created recently). In Nova Scotia, the Freedom of Information and Protection of Privacy Act now extends to universities¹⁸³.

In Ontario, however, universities are still not covered; the Information and Privacy Commissioner's annual report of 2004 called out for these bodies to be included¹⁸⁴. The "voluntary compliance" of the 1996 study does not seem to be mentioned. In practical terms, voluntary compliance is indistinguishable from a situation of no coverage, and as such it may have fallen by the wayside. In the Yukon, as well, the Access to Information and Protection of Privacy Act does not appear to cover postsecondary institutions¹⁸⁵.

It is unclear if the Right to Information Act in New Brunswick covers universities; the law is worded vaguely¹⁸⁶, but a 1998 discussion paper proposed amending the law to cover universities¹⁸⁷. It does not appear that this paper resulted in amendments being passed, but the vague terminology of the law does not rule this out. The University of New Brunswick website makes no reference to Right to Information Act requirements, which seems to indicate that it is not subject¹⁸⁸.

It should be noted that, in all three territories, there are no universities *per se*; each of the three has one (multi-campus) college.

As can be seen, we have gone from seven regions where universities were not covered and four where they were in 1996 to having ten where they are and three where they are not as of 2005, with two of those having publicly discussed extending the law to cover universities – and the apparent spirit of the regulations in the Northwest Territories would likely have meant the inclusion of the college in Nunavut had it existed at the time, so potentially eleven to two.

Returning to the 1996 study, we can see the motives behind originally excluding and including the universities from the scope of the legislation. Both British Columbia and Ontario had public consultation processes. In British Columbia, the universities – along with a wide number of other public bodies – submitted proposals requesting sixteen specific changes for situations unique to the universities, along with routine suggestions on minor clarifications. The government held that no public body should be able to claim an exemption through uniqueness, and dealt only with specific issues that had no equivalent in the general public bodies. The universities were granted exemptions for

research and lecture notes – on the grounds that making them public did not significantly increase accountability – and allowed a slightly increased period of implementation. Other requests, mainly related to confidentiality and the privacy aspects of the law, were dismissed.

In Ontario, however, the universities argued for a special agreement over the legislation, saying that full compliance would threaten both their economic and academic welfare. An agreement was reached that universities would be subject to voluntary compliance – as has been noted earlier, a decade later this has become effectively a complete exemption.

The study also notes that the legal and academic contexts of Ontario and British Columbia are essentially the same; in effect, the only difference between the two is that the Ontarian government was more willing to accept pressure from the universities³.

As far as implementation, a set of limited statistics is available covering the first four years of implementation, 1994-8, at Simon Fraser University, a large institution in British Columbia. On a year-by-year basis, around one third of the requests were for personal information, under the privacy clauses of the Act, which can be ignored for our purposes. Whilst requests dropped off in the final year of the study, the manpower taken up peaked and remained constant – 90% of the time of two full-time equivalent clerical employees. By 1998, the study estimated some 50% of the time of the Archives department was taken up by Freedom of Information requests. The average request took up around two days of staff time, at a nominal cost \$546 – it was noted that only 9% of this time (and 7% of the cost) was spent on services for which a fee was allowed to be charged, the location and preparation of records. Because of charging regulations, however – it is common to require charges below a certain amount be waived, as they would cost more to administrate than they bring in – only 2% of the average cost was recoverable. In practice, only 1.25% was recovered over the four years – had fees not been waived, this would still only have totalled 3.25%².

Whilst these numbers may be slightly inflated by personal-information requests (for which fees cannot, by law, be charged), they do not take into account ancillary costs – publicity about the regulations, for example, or any new data-handling policies that were instituted to comply with the Act – involved with implementation. As such, it is clear that they represent a noticeable cost on the universities.

Case Study - United States

In the United States, the Freedom of Information Act (5 U.S.C. §552) was the original freedom of information legislation at the federal level¹⁸⁹. It affects government agencies, which are defined in some detail in 5 U.S.C. §551¹⁹⁰ as “any authority of the Government of the United States” with a long list of conditions. However, education in the United States is strongly decentralised, the responsibility of the states, which are not covered by the Act. It is notable that the governments of the overseas territories and possessions are not subject to the Act, nor is that of the District of Columbia; universities located in these jurisdictions would be subject to local legislation, not federal.

All of the individual states operate a public university system – in some cases, more than one system in a single state – and all have some form of freedom of information legislation. In order to determine the degree to which universities are covered, it is necessary to examine the individual legislation. For a listing of the legislation in individual states, please see the appendix on page 77; most states have broadly similar legislation, though some have interesting characteristics.

With the partial exemption of Delaware, all conventional public universities appear to be covered by the legislation, with the tribal universities and overseas territories posing an interesting quandary in this regard. However, the degree of coverage can vary significantly, with some states having extensive university-specific exemptions and others hardly considering their existence. An interesting corollary is that many states have, in addition, “open meetings” legislation, which usually extend to all bodies affected by freedom of information. These fulfil much the same role, but give citizens the right to attend and observe meetings of public bodies, not just read the documentation related to these meetings. Whilst common in the US, these are rare internationally.

Often, the only reference to the university – for example, in Missouri – comes through referencing the Board of Regents, the University President, or a similar “management” body. Lacking an understanding of the specific legal situations in individual states, it is somewhat unclear if this only extends to that body, if it extends to that body and its administrative staff, or if it extends to the whole university by “cascading” from the head down. In general, the latter case was assumed, but this may not always be valid. The case of Delaware is interesting here; it exempts the state universities as a public body, but makes it clear that the Board of Trustees of each, and documentation relating to the

expenditure of public funds, are subject. This, however, only serves to muddy the waters further.

In several cases, an exception is made for library records; it is explicitly stated that personal library records are not subject to the legislation, for obvious reasons of privacy. These statutes are likely aimed at the public library systems, but would also encompass libraries at schools or universities covered by the legislation; however, these exemptions were not generally noted, as it is likely conventional privacy statutes would cover them. However, the inclusion of explicit language is interesting to note; library records are, in many of these laws, put on a par with personal medical records, employment records, and academic transcripts. In Kansas, one particular semi-commercial body of a single university is specifically exempted; this suggests that the universities are fully capable of lobbying for exceptions to the law if they so choose.

A further common theme is to provide an exception for records relating to the identity of candidates for the post of a university president. The reasons for this are not well understood, but it is notable that in states without such exemptions, or where they are seen as insufficient, selection committees have been known to spend a great deal of effort and ingenuity in avoiding having to disclose the identity of candidates. In one notable case, this went to the point of the recruitment committee travelling to a different state for “informal meetings” with candidates, as these would not constitute interviews, and thus they would not be considered “finalists” in the recruiting process¹⁹¹. Very often, exceptions are provided (quite sensibly) for records relating to the operating of examinations, though in many cases these would not be liable anyway through being internal working papers.

In Delaware, a recent court ruling noted that the law, inasmuch as it gave the right of access only to citizens of that state, was unconstitutional. Whilst a Federal court made this ruling, it is not generally binding on other states, as it was only made by the District Court. However, several other states – as noted above – have similar provisions, with the right of access guaranteed only to citizens; it is quite likely that if these are challenged in a Federal court, the decision will follow this one. Delaware is particularly contentious because its beneficial corporate law encourages companies to register there, and thus the government departments dealing with them are subject to Delaware law.

In the case of Delaware, with an explicit exemption for state universities, this may seem moot – but the precedent is interesting. Whilst out-of-state applicability would not seem

to be a major issue in the context of state universities, which exist to serve only the state, there is a wide market for “out-of-state” public education in the US, and they compete with private institutions in this regard. For example, at the prestigious University of California Berkeley, around 15% of applicants for undergraduate entry in 2002 were from outside California, with an additional 5% being from outside the US. Acceptance percentages are lower, but still around one in eight undergraduates are from outside California¹⁹².

As one of the key “markets” for obtaining contested data from universities is the student body, this potentially signals issues where the university population would not be able to use the legislation fully. However, it is unclear what state citizenship entails – in many cases, it seems to be little more than a residence requirement, an interpretation supported by the Constitution*. This would still leave the issue of overseas students, however, who would not be eligible to be citizens of the state through not being citizens of the United States, as the two are intrinsically linked. By comparison, most states which do not use a citizenship requirement apply it to all persons, a term usually defined as to include anyone subject to the law.

There is also the further issue that the faculty of universities are often from overseas, and as such may not be naturalised citizens; the very nature of a university as a seat of learning means it will have a high throughput of such individuals. Limited application of the law here again becomes potentially worrying. Even if all state residents, citizen and non-citizen, are treated as “state citizens” for the purpose of such legislation, there is still a further issue to address – non-resident distance-learners. The distance-learning field has grown greatly over recent years, and is likely to continue doing so; several state universities have developed programs¹⁹³. Citizen-only legislation could mean a significant handicap for a distance learner, compared to a resident student, in any dispute with the university.

In Vermont, the issue of whether a public university was a public body by the terms of the legislation was decided by a court ruling. The logic was that “the exception proved the rule” – the existence of a specific exception in the law relating to the university showed that there was, implicitly, a standard that the university was otherwise subject. It is unusual to see the definition laid out in this manner, but it is heartening; similar logic was often felt to confirm assumptions in the course of this analysis. This is the only

* Fourteenth Amendment: “...citizens of the United States and of the State wherein they reside”

reference found to an explicit challenge to whether a public university was subject to such legislation.

It is hard to judge the degree to which the legislation is used against universities without specific statistics, which have been difficult to find and are largely beyond the scope of this research. It is easier to find information on publicly challenged decisions, but researching court cases from overseas poses significant difficulties. It was noted that many states have a semi-formal appeals process not involving the court, where the state Attorney General, or a specified body, acts as an impartial advisor in the dispute. These decisions may or may not be legally binding, but usefully they are often published.

Examining these opinions to see to what degree they relate to universities is interesting. In Wyoming, with a very small number of appeals, there were no open-access cases relating to universities. In North Dakota, only one of around 140 cases did. The proportion was higher in Virginia – 8 of 154 – and Hawaii – 18 of around 300. The peak was in Oregon, with 12 of 150 cases involving universities, and Utah, with 13 of 133. Court records are available for Wisconsin, where 2 of 67 cases brought to court under the legislation involved universities. It is unclear precisely what these statistics indicate, but they are interesting to note – a range from effectively no appeals, through to almost 10% of the contentious cases. A small number of rulings, interestingly, have touched on the matter of student bodies such as student governments^{*}; it has generally been held that these are bodies subject to the legislation, either through being funded by the state or by being created by the university. In Washington, the major court case cited involved an enquiry by an animal-rights group; it is interesting to note that the issue of animal testing is one often quoted in the press as a possible use of the Acts in the UK.

Finally, a note on the most important caveat – that some private universities are covered under the Act. A court case in New York determined that Cornell University, whilst a private body, was to some degree subject to the law. This ruling is potentially very interesting; it hinged on the fact that Cornell received funding from the state in order to run specific colleges, and that under New York law a private body receiving funding from the state to carry out a public duty is subject to the law – this provision is in place to prevent the government delegating all public duties to private bodies and then claiming that records of the public duties are exempt through being held by a private

^{*} These are roughly analogous to UK student unions, but often with less legal grounding or formal status.

entity. Several other states have similar provisions, and it is possible that future challenges to the courts could result in private universities having a limited duty to comply with the law in regards to any public funding they receive. However, the situation at Cornell is complex, and seems to be the result of historical accident; it is not clear that any strictly comparable situation exists elsewhere in the US. The ruling was also made by a state court, and would thus not be considered significant precedent out of state.

Comparison of national situations

Coverage of universities

In a large number of cases, it is not possible to tell whether universities are covered or not. This is partly due to vaguely worded legislation, but also because it is difficult to fully understand the legal structure of a foreign education system, and to be able to determine what terms like “state agencies” mean in the context of specific national laws.

In many cases, it was only possible to assume, with varying levels of confidence, that universities were covered – indeed, it could only be assumed that *public* universities were covered. From a British standpoint, where private universities are rare, the significance of this distinction is quite surprising. As a result, in many countries, one group of higher education institutions is subject to the law whilst another is not. Similarly, in some countries, such as Canada, differing legislation on the regional level means that universities are covered, or not covered, dependent on where they are located. In only one country, Israel, was it clear that no universities were covered at all.

The higher level of accessibility for public universities makes sense from one standpoint – they are publicly funded institutions and so should be more accountable. However, from the point of view of the student body (or the staff), the institutions are often indistinguishable in practice, meaning that the community involved with a public university has greater recourse to openness than that at a private university.

In South Africa, private universities are covered by the legislation – along with most other organisations – where it is necessary for the “protection or exercise of legal rights”. In Italy, only governmental organisations are covered, but this caveat still applies. Whilst better than no legislation at all, it does mean that many of the potential uses of the legislation at universities are blocked.

In the majority of jurisdictions with appropriate legislation, institutions carrying out public duties or expending public funds are believed to be covered, though generally only to the limits to which they spend those monies. Depending on the specific structure of the local system, this may or may not extend to the universities, public or private. This is, essentially, the manner in which universities are covered in the UK; the one private university which does not receive state education funding is exempt. In Delaware, there

is the interesting situation of a university exempt from coverage, but then covered again to the extent of its state-originating expenditures.

In some cases, public and private universities were covered to the same degree by virtue of neither being subject to the legislation. In several Canadian provinces, universities have become subject after originally being exempt; the same is true in Ireland, where universities have only been liable for about half the time the Act was in force. In the world at large, as in Canada, the trend seems to be to generally extend the scope of the legislation – in Israel, for example, the minister responsible for the legislation plans to have it encompass universities.

There is an interesting contrast here with the other trend, most noticeable in the US, for individual exemptions to the law to pile up, each coming about through particular pleading for a special case. In Kansas, for example, there is an explicit exemption for a single body of a single university, in Tennessee one for a single university-maintained database. In Moldova, there is an exemption for releasing research information that would jeopardise the right to priority of publication, an exemption almost tailor-made for universities.

It is, however, not possible to track a large number of these changes; in most cases, amendments are simply added into the existing legal code, and without knowing that the law has been amended it is not possible to determine that the scope of the legislation has altered. In Canada, it would not have been possible to determine that most provinces had changed their legislation without the use of the 1996 study. In Austria, changes in the educational system, rather than in the freedom of information regime, have confused the issue of whether universities are governmental bodies.

It is worth noting explicitly that only Israel is currently known to give a complete exemption to universities, though in some other – Switzerland, for example – this is suspected to be the case. In some regions of Canada and the US, universities are exempt, and in other regions of the US (the tribal jurisdictions) it is distinctly unclear whether either the state or federal laws apply. In the Netherlands, it appears that universities *may* be exempt by default but able to be included by order.

Public-Private Issues

The difference between public and private universities, whilst conceptually major, is relatively small “on the ground”; whilst they have different sources of funding and

different external influences, the internal dynamics are generally very similar. Likewise, the roles of freedom of information at the institutions are similar. The legislation normally works in a top-down manner, so that public universities are covered by virtue of the fact that they expend public funds, whilst private universities are exempt because they do not expend those funds. Whilst this fulfils one important role, that of public oversight of the government, it treats universities merely as an end-user of public money.

The case mentioned in Arizona, for example, where the legislation was used to reveal that information had been suppressed about past sexual abuse, could not have happened were private universities involved – but the facts of the case, and the facts of suppression, would have been identical either way. A student attempting to get records of particular interest to themselves will face the same bureaucratic challenges in a public or a private institution, but in one case will have the legislation to assist them. This is a significant issue; it is an open question to what degree it will prove to be contentious in the future.

Regional universities

Earlier, regional universities were discussed. As freedom of information laws are by definition national in scope, it is an open question exactly how these bodies can be affected; certainly the legislation for participating countries did not mention them. Dependent on the local legal situation, they may or may not be considered bodies of the local government.

Belize is a member of the University of the West Indies, but their Act makes no reference to it. Neither is it mentioned in Jamaica, though it is noted there that “publicly-funded educational institutions” are liable. In Trinidad and Tobago, the University of the West Indies is known to be a public body. In Fiji and Nauru, the University of the South Pacific is not mentioned, but it seems probable that it would be subject to the legislation in either country if passed.

It is interesting to compare the regional universities to the situation applying in the United States, where we saw that there are potentially major issues involved with students moving between states and citizen-only access legislation. In the regional universities, it is not uncommon for students to move to a different nation for part of their studies – if their home nation provides a right of access, but not the one they are currently resident in, how would this apply to their dealings with the university? Or, for

example, appeals in a country with right of access, requesting documents only held on-site in a country with no such right. The issues are broad and wide-ranging – and potentially have an impact beyond just universities, dealing with international organisations generally – but the answer to them is currently unclear.

National versus local effects

In some nations, the universities are operated or funded on the regional level of government, not the national; in this case, legislation is only relevant if it applies to both the national and regional levels (as with India) or if the individual regions have specific legislation (as with Canada). In some cases – Australia and the US – the national law comes into play, as well, as a small number of universities are directly under the federal government. Regional legislation is harder to acquire copies of, and thus in cases such as Belgium it is not possible to determine coverage when the relevant legislation is on the regional level.

In Bosnia and Herzegovina, as in the UK, there is no single piece of national-level legislation; constituent parts of the union have passed their own pieces of (mostly identical) legislation. In cases such as China, where the only regional legislation is on the local level, trying to determine how it extends to universities can be very difficult without a detailed understanding of the educational structure.

Form of the legislation

In the United States, “open meeting” regulations are common – these are effectively the same as open records regulations, but rather than giving access to documents they give the right to attend and observe meetings of public bodies. These are uncommon elsewhere, however.

In many jurisdictions, the definition of a public body is constructed in such a way as to encompass the governing bodies of universities – their senate, or board of governors, or trustees, or the office of the chancellor, or other high-level administration – and, sometimes, it adds any secondary bodies with executive powers established under these. This is particularly common in the United States, but occurs in other jurisdictions – it is suspected that many of the countries where it was assumed that universities were covered would, examined in detail, turn out to work something like this. (It should be noted that, in many cases, an “advisory committee” which in practice takes all the decisions for the parent body is considered to be itself an executive body.) In France, this “top-down”

method is not explicitly described, but it should be noted that all the opinions of the *Commission d'Accès* referred to university presidents or similar officers.

It is unclear exactly what this means – and it is likely it varies between jurisdictions. One interpretation is that only the senior administration of the university are covered – where faculty records could be requested, for example, but particular research ones could not – whilst another is that the duty of access “cascades”, with the entire university, in effect, considered to be exercising the executive powers conferred on the president or trustees. This latter interpretation, at least in the West, seems more plausible; it is analogous to the understanding that the executive directors of a company are responsible for any acts carried out by the company, on the grounds that it was exercising their executive powers.

Effects of the legislation

In British Columbia, we saw that at Simon Fraser University the cost of implementing the legislation was two full-time clerical staff; in the UK, the baseline good practice is to have at least a records manager, and it is likely that the additional workload will grow similarly to that in Canada. When considered alongside ancillary costs – public education about the legislation, document management systems, increased archival requirements et cetera – it is clear that the financial burden, in a country where the legislation is commonly used, can prove reasonably significant.

Whilst actual statistics on the effects of implementation were not commonly available, some proxy methods were. In the United States, it was possible to identify past court cases, or past rulings by state Attorneys General, relating to the legislation; these gave some idea of how universities are affected compared to other bodies in the state. However, these *only* represent situations where an appeal or formal query has been made, and may not be statistically representative of the normal usage of the law; it is all too easy to imagine a situation where these numbers are grossly inflated in one jurisdiction because of a single, particularly obstructionist, institution. The Canadian study does not give us any information on the numbers of appeals made there, which would act as a baseline; in addition, the numbers of jurisdictions with such details are low, making it difficult to draw any reasonable inferences. Most critically, this metric cannot distinguish between the best case, where all requests are handled without any problem or contention, and the worst, where the law is completely inactive.

In an earlier section, we briefly touched on a Campaign for Freedom of Information paper mentioning past disclosure cases⁴. It is worth noting it again, as it gives some good examples of the ways in which this legislation can be used with regard to universities – the release of unpublished theses despite prior confidentiality agreements, the exposure of racially biased admissions processes, releasing confidential internal reports of scientific fraud, and internal personal references relating to an unsuccessful promotion. All of these are high-profile issues, and many could potentially have major detrimental effects on the disclosing institution.

An interesting detail of implementation is the aspect of burden of proof. A major principle of freedom of information legislation is that an applicant does not have to provide a reason for wanting information – rather, the government has to provide a reason not to give it to them. This is one of the most powerful aspects of the legislation, as it vastly reduces the scope for limiting disclosure; if the body has to put significant effort into keeping information secret, then it will have strong motivation to disclose any unimportant information.

In Italy, the legislation only gives access to information to the extent that it is needed to safeguard and exercise otherwise existing rights. Similar provisions exist in South Africa, though only with regard to private institutions – public institutions are fully subject to normal disclosure rules. In addition to limiting the scope of the law, this also has the effect of reversing the burden of proof; the applicant must be able to show that they have a specific need for the information. This effectively rules out speculative enquiries – but it can also rule out many minor, but legitimately relevant, enquiries, as the process to demonstrate that the information is needed may well be more of a burden than managing without it would be.

It has, however, been ruled in Italy that an enquiry made by someone representing the individual may be considered as though it were made by that individual – so a member of parliament, for example, could request information on behalf of a constituent. This ruling is a logical one, and it can reasonably be expected that in countries with comparable legislation, the same principle will be upheld. As was mentioned earlier, in many cases a large number of those involved with the university are unionised to some degree – teaching unions are often quite strong, and a large fraction of universities internationally have their own quasi-unionised student bodies – suggesting that, in this

context, these bodies may be able to play a much greater role in safeguarding freedom of information.

Absence of legislation

Many nations have constitutional provisions, often recent and vaguely worded, about the right to access public information; similar provisions are common in individual US states. These are not, normally, of any practical use; sometimes they explicitly require that enabling legislation be passed, but more often they simply offer a general statement of intent.

In Monaco, the government was to commit to implementing freedom of information legislation in order to join the Council of Europe, but this appeared to have fallen by the wayside. Implementing such legislation appears to be a common condition for access to international organisations such as this. Whilst some nations, as with Azerbaijan, may drag at compliance, the existence of this requirement makes it likely that an effective law will be in place eventually.

Yemen has a viable information law, though it limits the right to journalists only. This is not uncommon – indeed, it can be considered a “first step” towards implementation of a full freedom of information law. However, for our purposes, this is a sufficiently limited law that it is not of use; uptake by the media is important, but uptake by the general population is much more significant. As discussed in the introduction, the “concerned population” of a university is different to that of the nation as a whole; its information needs are focused around the single institution, and the issues that concern them are not those that usually concern journalists. Whilst academic institutions often have their own media, or strong ties with local newspapers, these small media outlets do not usually have the resources needed to follow through inquiries on behalf of organised groups.

Some countries, such as Albania, have reasonably comprehensive legislation which is, however, effectively unused. Whilst in many ways this is effectively the same as having no law in force, it should be noted that once legislation has been enacted it remains in place; it will probably be easier, in the future, for someone to begin to put this legislation into use than it would be for them to pass a new law. Even where the law was used from the beginning, for example in British Columbia, we saw that it steadily increased over time; many of these nations may simply take longer to start this process.

In some nations, most notably Zimbabwe, the law is in effect a secrecy law; even if various government bodies are nominally required to disclose information, the legislation exists to *limit* the flow of information, not to *increase* it.

As nations without legislation have been included in the appendix, it is worth briefly discussing how they were determined to be so lacking. In some cases this can be inferred by reading between the lines of press freedom reports, such as *Access to Information in Latin America and the Caribbean*⁶ – failure to mention such legislation in a review which discusses it in detail for other countries is a good indication that none exists – but in many others it simply is a result of attempts to find such legislation coming up blank. As such, it is quite possible that one or more of the listed nations has such legislation, but that nothing has been written about it in English or come to the attention of the international community – the only record found for the legislation in Angola was a single press release discussing a conference about it. Whilst existing studies are reasonably comprehensive, they do not appear to be exhaustive, and the most recent worldwide study is from mid-2004.

In many cases, it is fairly clear from press freedom reports that a repressive government – for example, that of Cameroon¹⁹⁴ – is not in any way likely to have passed such legislation. However, for this very reason, reports tend not to state the obvious, and, bearing in mind the situation with of Angola mentioned above, it seemed worthwhile to avoid applying common sense in this regard, tempting though it may be. If there is a clear and unambiguous recent source that there is no such legislation, then this is cited alongside the year.

Comparable surveys do not normally record negatives; it was felt to be worthwhile to do so here, in order to provide comprehensiveness and a baseline for future research. Where a nation only possessed a vague constitutional provision, this was not recorded; these are rarely actively used to guarantee freedom of information, and in the rare cases they are, the nation has been noted elsewhere – see, for example, the Philippines.

Conclusions

Some form of freedom of information legislation was found in sixty-seven countries, with another seventeen countries having pending legislation. Of these, thirty-nine countries had active legislation that was believed to currently cover public universities – either explicitly confirmed or felt, on the balance of probabilities – whilst another five had pending legislation that was likewise believed to do so. Only one country completely exempted universities on a national level, though some nations have partial exemptions stemming from inconsistent regional legislation, where universities are controlled on the regional rather than the national level. Evidence was put forward to show that the trend is for the legislation encompass universities; the one nation with a complete exemption intends to extend the scope of the legislation, and in a variety of other jurisdictions universities which once had an exemption from the legislation have now had it extended to cover them. However, there is some evidence of an opposing trend to slowly add highly specific individual exceptions to the legislation, which may reduce the effect of this trend.

It was not possible to determine the scope of the legislation in thirty-one countries, for a variety of reasons including translation issues, lack of usable source material, or ambiguous legal terminology. The remaining one hundred and nine countries have no legislation known. It is expected that this number will decrease over time, as reform movements gather steam in more countries. In many of the nations with legislation it is believed to be dormant; in many more, however, it is active, and it is thought that those nations with inactive legislation will, over time, find it beginning to be used.

A small number of legislative clauses that affect private universities were noted, and the limitations in these cases made clear; the burden of proof for disclosure tended to be on the side of the applicant, not the university. Whilst these are useful clauses, they fall short of fully enabling freedom of information, as do jurisdictions that give a public right of access with such limitations, or give a general right but limit it solely to journalists.

The unusual issues of freedom of information at universities were discussed in a theoretical sense, and some examples of cases quoted from the literature along with a discussion of known effects of implementation. It was clear that this legislation can have a significant effect; however, the dichotomy between public and private universities

poses an interesting problem in this regard. Whilst the underlying principles of freedom of information – keeping tabs on the government – requires following public institutions, the freedom of information needs of the staff and students at public and private institutions are effectively identical.

The general legislative framework in which universities operate was briefly discussed, noting the commonality of legislation which refers only to the executive bodies of the institution, and debating what this means in practice. In the specific case of regional universities, it is unclear in what ways individual national legislation applies to these institutions, but it is clear that in at least some of these nations the regional universities are considered liable.

Overall, two thirds of nations with some freedom of information legislation are believed to extend it to universities; this proportion is potentially higher, and is believed to be a growing trend.

Avenues for future research

The United States is a clear topic for further research, especially with regards to possible future developments in the legislation over matters such as the Cornell ruling. The individual states have been dealt with cursorily, and it is likely that more detailed research would turn up a large number of specific fragments of information on implementation; being able to compare the details already gained here would be interesting.

As was seen in some cases, over a period of years the legislative situation with regard to universities can change significantly. It is likely that similar research, carried out a number of years in the future, would be informative in this regard.

One failing of this research was the difficulty involved in studying a wide range of international jurisdictions, all with subtly different legal conventions and practices, without the availability of expert sources in those jurisdictions. In order to undertake this research in a fully comprehensive manner, this would have to be addressed. Likewise, the matter of translations proved problematic; in many cases, the translations available were of low quality, and in at least one case almost completely useless. The ability to convey subtle legal distinctions through a translation is difficult, but critical; better translations would also greatly assist any future version of this study.

In a limited number of cases, some statistical information on the application of the legislation, drawn from court cases and legal rulings, has been noted. Whilst of only incidental interest here, this does seem to have the potential to become an interesting metric with further study.

Appendix I – Table of all countries with legislation

In the following list, the most current piece of national-level legislation is given – for example, in Finland, the original legislation was the 1951 Act on Publicity of Official Documents, but the 1999 Act on the Openness of Government Activities superseded it, so the latter is listed. Where legislation has been amended but not superseded, the original date is given; the detailed discussion will mention specific amendments. As with the main discussion, the names of legislation are given in English unless no direct translation is known; as translations are often in the spirit of the original rather than a literal conversion, these may disagree with the names given in other sources.

Where multiple laws are listed, these are equally significant in the nation; where regional laws are significant, these are referred to. As some nations have all their higher education operated at the sub-national level, the legislation mentioned by name may not be the legislation discussed in the main text.

For discussion of a country in the main text, see page references in the table. The nations with both brief summaries and detailed studies have had both page references given.

As with the rest of the document, “Universities covered?” here is limited to public universities. For the unusual cases where private universities are covered to a limited extent, see the discussion. “Unclear” refers to cases where the law was examined and found to be ambiguous; “unknown” refers to cases where no judgement can be made as no copy of the law could be found.

In thirty-nine countries with legislation the law is believed to apply to universities, in one it is known not to, and in nineteen the situation is unclear. In four the applicability varies on a regional basis, and in another four the legislation is so limited as to be effectively irrelevant. In seventeen countries there is some legislation pending, and in five of those it is believed that the legislation would encompass universities.

In the remaining one hundred and nine countries, no legislation is known to exist.

Country	Name of legislation	Year	Universities covered?	Page
Afghanistan	<i>None known</i>			
Albania	Law 8503, On the right to information over the official documents	1999	Yes	20
Algeria	<i>None known</i>			
Andorra	<i>None known</i>			
Angola	Access to Administrative Documents Act	<i>Unknown</i>	Unknown	32
Antigua and Barbuda	<i>No legislation as of 2003⁵</i>			
Argentina	Freedom of Information Law <i>also regional legislation</i>	<i>Pending</i>	Unknown	39
Armenia	Law on Freedom of Information (<i>not in force</i>)	2003	Believed to be	39
Australia	Freedom of Information Act 1982 <i>also regional legislation</i>	1982	Yes, all regions	20
Austria	Auskunftspflichtgesetz	1987	Unknown	32
Azerbaijan	Law on Freedom of Information (currently inactive legislation)	<i>Pending</i>	Believed to be	39
Bahamas	<i>No legislation as of 2003⁵</i>			
Bahrain	<i>None known</i>			
Bangladesh	<i>No legislation as of 2005¹⁹⁵</i>			
Barbados	<i>No legislation as of 2005; government plans an act by 2008</i>			
Belarus	Constitutional right with no enabling legislation known ¹⁹⁶			
Belgium	Loi du 11 avril 1994 relative à la publicité de l'administration <i>also regional legislation</i>	1994	Unknown	32
Belize	Freedom of Information Act	1994	Yes	22
Benin	<i>None known</i>			
Bhutan	<i>None known</i>			
Bolivia	<i>No legislation as of 2002⁶</i>			
Bosnia and Herzegovina	Freedom of Access to Information Act for the Republika Srpska Freedom of Access to Information Act for the Federation of Bosnia and Herzegovina	2001 2001	Believed to be Believed to be	22

Country	Name of legislation	Year	Universities covered?	Page
Botswana	<i>Title not known</i>	<i>Pending</i>	Unknown	40
Brazil	<i>No legislation as of 2002⁶</i>			
Brunei Darussalam	<i>No legislation as of 2003⁵</i>			
Bulgaria	Access to Public Information Act	2000	Yes	22
Burkina Faso	<i>None known</i>			
Burundi	<i>None known</i>			
Cambodia	<i>No legislation as of 2005¹⁹⁷</i>			
Canada	Access to Information Act also regional legislation	1985	Dependent on region	37, 49
Cape Verde	<i>None known</i>			
Central African Republic	<i>None known</i>			
Chad	<i>None known</i>			
Chile	Law of Freedom of Opinion and Information and Journalistic Practice	2001	Unclear	33
Colombia	Ley 57 de 1985 Por la cual se ordena la publicidad de los actos y documentos oficiales	1985	Believed to be	22
Comoros	<i>None known</i>			
Costa Rica	<i>No legislation as of 2002⁶</i>			
Côte d'Ivoire	<i>None known</i>			
Croatia	Act on the Right of Access to Information	2003	Believed to be	23
Cuba	<i>None known</i>			
Cyprus	<i>None known</i>			
Czech Republic	Law on Free Access to Information	1999	Yes	23
Democratic Republic of the Congo	<i>None known</i>			
Denmark	Access to Public Information Files Act	1985	Yes	23
Djibouti	<i>None known</i>			
Dominica	<i>None known</i>			

Country	Name of legislation	Year	Universities covered?	Page
Dominican Republic	<i>No legislation as of 2002⁶</i>			
Ecuador	Transparency and Access to Information Law	2004	Believed to be	23
Egypt	<i>None known</i>			
El Salvador	<i>None known</i>			
Equatorial Guinea	<i>None known</i>			
Eritrea	<i>None known</i>			
Estonia	Public Information Act	2000	Believed to be	23
Ethiopia	<i>No legislation as of 2003¹⁹⁸</i>			
Federated States of Micronesia	<i>None known</i>			
Fiji	Freedom of Information Bill 2004	<i>Pending</i>	Believed to be	40
Finland	Act on the Openness of Government Activities	1999	Believed to be	24
France	Law on Access to Administrative Documents	1978	Yes	26
Gabon	<i>None known</i>			
Gambia	<i>No legislation as of 2003⁵</i>			
Georgia	Law on Freedom of Information	1999	Believed to be	24
Germany	Federal Freedom of Information Act <i>also regional legislation</i>	2005	Dependent on region	37
Ghana	Freedom of Information Bill	<i>Pending</i>	Unknown	40
Greece	Code of Administrative Procedure	1999	Unknown	33
Grenada	<i>No legislation as of 2003⁵</i>			
Guatemala	<i>No legislation as of 2005¹⁹⁹</i>			
Guinea	<i>None known</i>			
Guinea-Bissau	<i>None known</i>			
Guyana	<i>No legislation as of 2003⁵</i>			
Haiti	<i>None known</i>			
Honduras	<i>None known</i>			

Country	Name of legislation	Year	Universities covered?	Page
Hungary	Act on the Protection of Personal Data and Public Access to Data of Public Interest	1992	Yes	24
Iceland	Information Act	1996	Unknown	34
India	Right to Information Act	2005	Believed to be	25
Indonesia	<i>Title not known</i>	<i>Pending</i>	Unknown	40
Iran	<i>None known</i>			
Iraq	<i>None known</i>			
Ireland	Freedom of Information Act, 1997	1997	Yes	25
Israel	Freedom of Information Law 5758-1998	1998	No	31
Italy	Law No. 251, 7 August 1990	1990	Believed to be	25
Jamaica	Access to Information Act 2002	2002	Yes	25
Japan	Law Concerning Access to Information Held by Administrative Agencies	1999	Unclear	35
Jordan	Law on the Guarantee of Access to Information	<i>Pending</i>	Unknown	41
Kazakhstan	<i>No legislation as of 2002¹⁵⁹</i>			
Kenya	Freedom of Information Act	<i>Pending</i>	Unknown	40
Kiribati	<i>None known</i>			
Kuwait	<i>None known</i>			
Kyrgyzstan	Law on Guarantees and Free Access to Information	1997	Unknown	34
Laos	<i>None known</i>			
Latvia	Law on Freedom of Information	1998	Unknown	34
Lebanon	<i>None known</i>			
Lesotho	Access and Receipt of Information Bill	<i>Pending</i>	Unknown	41
Liberia	<i>No legislation as of 2004²⁰⁰</i>			
Libya	<i>None known</i>			
Liechtenstein	Information Act	1999	Believed to be	26
Lithuania	Law on Provision of Information to the Public	1996	Believed to be	27
Luxembourg	<i>No legislation as of 2003²⁰¹</i>			

Country	Name of legislation	Year	Universities covered?	Page
Macedonia	<i>No legislation as of 2005</i> ²⁰²			
Madagascar	<i>Constitutional right with no enabling legislation known</i> ²⁰³			
Malawi	<i>Explicit constitutional provision, but no legislation as of 2003</i> ⁵			
Malaysia	<i>No legislation as of 2005</i> ²⁰⁴			
Maldives	<i>Title not known</i>	<i>Pending</i>	Unknown	41
Mali	<i>None known</i>			
Malta	<i>Various minor pieces of legislation</i>	<i>Unknown</i>	Inapplicable	44
Marshall Islands	<i>None known</i>			
Mauritania	<i>None known</i>			
Mauritius	<i>No legislation as of 2003</i> ⁵			
Mexico	Federal Transparency and Access to Public Government Information Law	2002	Yes	26
Moldova	Law on Access to Information	2000	Believed to be	26
Monaco	<i>Title not known</i>	<i>Pending</i>	Unknown	41
Mongolia	<i>No legislation as of 2005</i> ²⁰⁵			
Morocco	<i>None known</i>			
Mozambique	Freedom of Information Bill	<i>Pending</i>	Unknown	42
Myanmar (Burma)	<i>None known</i>			
Namibia	<i>No legislation as of 2003</i> ⁵			
Nauru	Freedom of Information Act 2004	<i>Pending</i>	Believed to be	42
Nepal	<i>None known</i>			
Netherlands	Government Information (Public Access) Act	1991	Unclear	35
New Zealand	Official Information Act 1982	1982	Yes	26
Nicaragua	<i>None known</i>			
Niger	<i>None known</i>			
Nigeria	Freedom of Information Bill	<i>Pending</i>	Unknown	41
North Korea	<i>None known</i>			
Norway	Freedom of Information Act	1970	Believed to be	34

Country	Name of legislation	Year	Universities covered?	Page
Oman	<i>None known</i>			
Pakistan	Freedom of Information Ordinance, 2002	2002	Unknown	34
Palau	<i>None known</i>			
Panama	Law on Transparency in Government Bodies	2002	Believed to be	27
Papua New Guinea	<i>Constitutional right with no enabling legislation as of 2005²⁰⁶</i>			
Paraguay	<i>No legislation as of 2005⁹⁹</i>			
People's Republic of China (China)	<i>Various regional legislation only</i>		Unknown	33
Peru	Law of Transparency and Access to Public Information	2002	Believed to be	33
Philippines	<i>Various constitutional provisions</i>		Believed to be	27
Poland	Law on Access to Public Information	2001	Believed to be	27
Portugal	Law of Access to Administrative Documents	1993	Believed to be	33
Qatar	<i>None known</i>			
Republic of China (Taiwan)	<i>No legislation as of 2005²⁰⁷</i>			
Republic of the Congo	<i>None known</i>			
Romania	Law Regarding Free Access to Information of Public Interest	2001	Believed to be	28
Russian Federation	<i>None known</i>			
Rwanda	<i>None known</i>			
Samoa	<i>No legislation as of 2004²⁰⁸.</i>			
San Marino	<i>None known</i>			
São Tomé and Príncipe	<i>None known</i>			
Saudi Arabia	<i>None known</i>			
Senegal	<i>None known</i>			
Serbia and Montenegro	Law on Free Access to Information of Public Importance	2004	Believed to be	37
Seychelles	<i>None known</i>			
Seychelles	<i>No legislation as of 2003⁵</i>			
Sierra Leone	<i>None known</i>			

Country	Name of legislation	Year	Universities covered?	Page
Singapore	<i>None known</i>			
Slovakia	Act on Free Access to Information	2000	Unclear	35
Slovenia	Act on Access to Information of Public Character	2003	Believed to be	26
Solomon Islands	<i>None known</i>			
Somalia	<i>None known</i>			
South Africa	Promotion of Access to Information Act	2000	Yes	26
South Korea	Act on Disclosure of Information by Public Agencies	1996	Believed to be	29
Spain	Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común	1992	Yes	26
Sri Lanka	Freedom of Information Act	<i>Pending</i>	Unknown	42
St. Kitts and Nevis	<i>No legislation as of 2003⁵</i>			
St. Lucia	<i>No legislation as of 2003⁵</i>			
St. Vincent and the Grenadines	<i>No legislation as of 2003⁵</i>			
Sudan	<i>None known</i>			
Suriname	<i>None known</i>			
Swaziland	<i>None known</i>			
Sweden	Freedom of the Press Act	1949	Yes	29
Switzerland	Loi fédérale sur le principe de la transparence dans l'administration	2004	Unknown	35
Syria	<i>None known</i>			
Tajikistan	Law on Television and Radio Broadcasting	1996	Inapplicable	44
Tanzania	<i>No legislation as of 2003⁵</i>			
Thailand	Official Information Act, B.E. 2540 (1997)	1997	Yes	29
Timor-Leste (East Timor)	<i>None known</i>			
Togo	<i>None known</i>			
Tonga	<i>None known</i>			
Trinidad and Tobago	Freedom of Information Act, 1999	1999	Yes	29
Tunisia	<i>None known</i>			

Country	Name of legislation	Year	Universities covered?	Page
Turkey	Law on the Right to Information	2004	Unknown	35
Turkmenistan	<i>No legislation as of 2002¹⁵⁹</i>			
Tuvalu	<i>No legislation as of 2003⁵</i>			
Uganda	Access to Information Bill, 2004 (Bill No. 7)	<i>Pending</i>	Believed to be	42
Ukraine	Law on Information	1992	Unclear	35
United Arab Emirates	<i>None known</i>			
United Kingdom	Freedom of Information Act 2000 Freedom of Information (Scotland) Act 2002	2000 2002	Yes Yes	29, 46
United States of America	Freedom of Information Act <i>also regional legislation</i>	1966	Dependent on region	37, 52, 77
Uruguay	<i>Exact legislation unclear</i>	<i>Unknown</i>	Unknown	35
Uzbekistan	Law on Principles and Guarantees of Freedom of Information	2003	Unknown	36
Vanuatu	<i>No legislation as of 2003⁵</i>			
Vatican City	<i>None known</i>			
Venezuela	Organic Law on Administrative Procedures	1981	Unclear	36
Vietnam	<i>None known</i>			
Yemen	Press and Publications Law of 1990	1990	Inapplicable	44
Zambia	<i>No legislation as of 2004²⁰⁹</i>			
Zimbabwe	Access to Information and Protection of Privacy Act	2002	Inapplicable	44

Appendix II – Individual United States jurisdictions

Alabama

In Alabama, the Open Records Act provides the right of access to “any public writing of this state”²¹⁰. It does not define coverage by agency, but it is clear that public universities are subject.

Alaska

In Alaska, the legislation establishing access to records of public agencies explicitly mentions the University of Alaska, confirming that public universities are subject²¹¹.

Arizona

In Arizona, the Open Records Law extends to all public bodies, including any public organisation expending monies provided by the state²¹². This would extend to the public universities; recent news coverage has discussed in the law being used to uncover a scandal at a state university, for example²¹³. Potentially, this could be extended to the private universities, at least to the degree by which they receive state support, in a manner similar to the Cornell case in New York.

Arkansas

In Arkansas, the Freedom of Information Act extends to agencies expending public funds²¹⁴. This would extend to the public universities, as confirmed in a 1981 judicial ruling regarding Southern State College (now Southern Arkansas University)²¹⁵. Potentially, this could be extended to the private universities, at least to the degree by which they receive state support, in a manner similar to the Cornell case in New York.

California

In California, the Public Records Act includes all public agencies²¹⁶. This would extend to the public universities; the University of California provides a full discussion of all the information laws to which they are subject²¹⁷.

Colorado

In Colorado, the Public Records Act explicitly “includes but is not limited to every state institution of higher education, whether established by the state constitution or by law”²¹⁸.

Connecticut

In Connecticut, the Connecticut Freedom of Information Act applies to all public agencies²¹⁹. This would extend to the public universities.

Delaware

In Delaware, the Freedom of Information Act explicitly exempts “the University of Delaware and Delaware State University” from being public bodies. However, the Board of Trustees of each, and documentation regarding the spending of public funds, are considered public²²⁰. These two universities are the only public universities in the state. In passing, it should be noted that earlier this year, a Federal court ruled that the Delaware Freedom of Information Act was unconstitutional, on the unrelated grounds that it limited public access to only those who were citizens of the state²²¹.

Florida

In Florida, the Florida Public Records Act covers “[any] unit of government created or established by law”²²². This would extend to the public universities.

Georgia

In Georgia, the Open Records Act applies to public agencies²²³, and cites a separate legislative entry, which in addition to the standard definition of “Every state department, agency, ... and authority”, includes any private non-profit organisation that receives more than a third of its operating expenses by direct allocation of state funds²²⁴. This would extend to the public universities, and potentially could be extended to the private universities, at least to the extent by which they receive state support, in a manner similar to the Cornell case in New York. Whilst the private universities are generally exempt, a court recently held that their campus police are not, as they are deputised under state law²²⁵.

Hawaii

In Hawaii, the Uniform Information Practices Act extends to all government agencies²²⁶. Records of the University of Hawaii, the only public university in the state, are regularly requested; the state Office of Information Practices has issued opinions on 18 cases appealed to it, out of a total of 301 appeals of the Act²²⁷. It has been held that a corporation created and owned by the university is subject to the Act²²⁸.

Idaho

In Idaho, the Public Records Act provides the right of access to “any public record of the state”²²⁹, defined as one produced by any state agency²³⁰. This would extend to the public universities.

Illinois

In Illinois, the Freedom of Information Act explicitly includes “state universities and colleges”²³¹.

Indiana

In Indiana, the Access to Public Records Act extends to all public agencies²³². This would extend to the public universities.

Iowa

In Iowa, the Iowa Public Records Law extends to all government bodies²³³. This would extend to the public universities.

Kansas

In Kansas, the Kansas Open Records Act extends to all public agencies. This would extend to the public universities. It should be noted that the University of Kansas Medical Centre receives a limited, but explicitly codified exemption from disclosure of information that would give an unfair commercial advantage to its competitors²³⁴. However, this is not significant to the university as a whole.

Kentucky

In Kentucky, the Open Records Act extends to all state agencies²³⁵. This would extend to the public universities.

Louisiana

In Louisiana, there is both a legislative right of access and a Constitutional one. The law provides the right of access to documents of public bodies²³⁶. This would extend to the public universities.

Maine

In Maine, the Freedom of Access law applies to all agencies of the state. This would extend to the public universities, whose Boards of Trustees are explicitly mentioned. The law, however, provides a limited exemption for internal working papers and records intended for the faculty and administration of these institutions²³⁷.

Maryland

In Maryland, the Public Information Act extends to all “units or instrumentalities of the State government”²³⁸. This would extend to the public universities.

Massachusetts

In Massachusetts, the Public Records Law applies to all agencies of the Commonwealth, and all bodies established by statute for a public purpose²³⁹. This would extend to the public universities.

Michigan

In Michigan, public universities are included under the state Freedom of Information Act²⁴⁰. A 1997 disclosure of information relating to admissions procedures by the University of Michigan led to a lawsuit by unsuccessful applicants, alleging racial discrimination⁴.

Minnesota

In Minnesota, the Minnesota Government Data Practices Act explicitly covers the University of Minnesota as a “state agency”²⁴¹. It would normally have been assumed that the definition covered public universities generally, but the explicit mention of one university renders this unclear; Minnesota contains a number of public universities, and the singling out of one by the legislation renders the status of the others in doubt. There is a general exemption for “educational data” relating to students.

Mississippi

In Mississippi, the Public Records Act extends to “public bodies”. This would extend to the public universities. The Boards of Trustees of these institutions are explicitly liable, as confirmed by two 1980s court cases. However, proprietary information developed under contract with a private company is exempt. Additionally, the statute does not extend to non-governmental bodies supported by public funds, unless they are created by statute²⁴². This likely precludes the “Cornell interpretation”, as per New York.

Missouri

In Missouri, the Sunshine Law explicitly mentions the Curators of the University of Missouri, as well as any other board of governors of a higher education institution “supported in whole or in part from state funds”, and any subsidiary committees advising policy, with the exception of the staff of the institution’s president²⁴³. This is distinctly confusing – what parts of a university’s administration constitute the president’s staff? – but it is nonetheless clear that the public universities are to some extent subject. Potentially, the “in whole or in part” indicates that the New York interpretation may extend to any private institutions part funded by the state. A 1987 opinion by the state Attorney General has held that, in general terms, the Student Government Association of a public university is not subject to the Law, though it may be applicable in certain circumstances²⁴⁴.

Montana

In Montana, the freedom of information legislation extends to all “public writings”²⁴⁵, supported by a strong provision in the Constitution of the right to examine public documents save where privacy concerns are paramount²⁴⁶. This would extend to the public universities.

Nebraska

In Nebraska, the public records legislation extends to all “public records”. Universities are not explicitly mentioned, though it is noted in the annotated statutes that unpublished academic or scientific work in progress is exempt and may, if so chosen, be kept confidential²⁴⁷. This legislation would extend to the public universities.

Nevada

In Nevada, the public records legislation extends to all “public books and public records of a governmental entity”²⁴⁸, where a governmental entity encompasses “university foundations”. The definition given for the latter is that it is non-profit, charitable and “organized and operated exclusively for the purpose of supporting a university or a community college”²⁴⁹; this suggests that non-profit private universities in the state may potentially be covered, though the intent of the law would seem to preclude this. There is an absolute exemption for information that would tend to disclose the identity of any donor to the institution.

New Hampshire

In New Hampshire, the Right-to-Know Law extends to the “Board of Trustees of the University System of New Hampshire”, and advisory entities set up by this board²⁵⁰. This system appears to cover all public universities in the state²⁵¹.

New Jersey

In New Jersey, the Open Public Records Act covers the state universities and colleges. It does not, generally, cover private not-for-profit organisations²⁵². There are a number of exceptions specific to a state educational institution, stipulating that the specific details of research are not considered as a government document, nor are such things as individual application records or – unusually – specific rare-document collections if they were donated with the intent of limited public access²⁵³.

New Mexico

In New Mexico, the Inspection of Public Records Act applies explicitly to (public) “institutions of higher education”. There is a specific exemption involving the identities of applicants for the position of president of a public institution of higher education²⁵⁴.

New York

In New York, the Freedom of Information Law extends to all governmental entities “performing a governmental or proprietary function for the state”²⁵⁵. This legislation would appear to extend to the public universities, but not private institutions. The

University of the State of New York* manages all university education, public and private, in the state, though despite the name this organisation is not strictly a university per se and this should not be taken to imply that the private universities are part of the state system²⁵⁶. However, a court case ruled that Cornell University, a private institution, was subject to the Law to the extent that it operates public colleges for the state²⁵⁷; for historical reasons, Cornell University operates three publicly funded colleges.

North Carolina

In North Carolina, the Public Records Law extends to any agency of the state government²⁵⁸. This would extend to the public universities.

North Dakota

In North Dakota, the open records legislation extends to any public or governmental bodies of the state²⁵⁹. This would extend to the public universities. It also encompasses “organizations or agencies supported in whole or in part by public funds, or expending public funds”. Potentially, this could be extended to the private universities, at least to the degree by which they receive state support, in a manner similar to the Cornell case in New York. There are explicit exemptions for details of university donors, and users of the university health services. In the past seven years, the timeframe for which the Attorney-General’s opinion letters are available, only one of around 140²⁶⁰ has dealt with a public university; a dispute over fees²⁶¹. It can be thus surmised that the application of this legislation to the universities has been reasonably smooth, though it may simply indicate a low level of use either of the legislation or of the advisory system.

Ohio

In Ohio, the Public Records Act applies to all documents produced by public offices. This would extend to the public universities. An exemption applies for unpublished documents involved in the study of “educational, commercial, scientific, artistic, technical, or scholarly issue[s]” at a university, so long as they are not also financial or administrative records, and for records relating to personal information about donors. The Act has been heavily litigated, and several pieces of case law used as exemplars involve universities²⁶².

* Not to be confused with the public State University of New York, or the private New York University.

Oklahoma

In Oklahoma, the Public Records Act covers all public bodies²⁶³. This would extend to the public universities.

Oregon

In Oregon, the Public Records Law covers all public bodies. This would extend to the public universities. There is an explicit exemption for “sensitive business records, financial or commercial information” of the Oregon Health and Sciences University, along with any material relating to candidates for the president of that institution. There is also a general exemption for “writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented”²⁶⁴. Of 222 “significant” Public Records Orders published by the state Attorney General, 20 related to public universities^{*265}.

Pennsylvania

In Pennsylvania, the Right To Know Law encompasses all Commonwealth agencies, explicitly including “any political subdivision of ... the State System of Higher Education”²⁶⁶.

Rhode Island

In Rhode Island, the access to public records legislation covers all public agencies²⁶⁷. This would extend to the public universities.

South Carolina

In South Carolina, the Freedom of Information Act covers all public bodies²⁶⁸. This would extend to the public universities. There are statutory exemptions for certain university donor records, and for unpublished research information.

South Dakota

In South Dakota, the basic freedom of information legislation simply requires that public servants maintain the record or document for viewing by the public²⁶⁹. It is likely that this

* Note, however, that these 20 involve some duplication, due to the way the list is laid out, and there are only 12 unique orders; if this duplication is representative, it is probably closer to 12 of 150 PROs.

extends to public universities, but the lack of definitions renders this unclear. However, many other such pieces of legislation exist, scattered through the state code²⁷⁰, one of which provides for access to documents of the Board of Regents of public universities, and institutions under their control. However, this is strictly prescriptive; only documents that fall into specified classes are “records”²⁷¹.

Tennessee

In Tennessee, the Public Records Act covers all public bodies²⁷². This would extend to the public universities. There are statutory exemptions for “trade secrets, patentable information, and commercial or financial information used in research” at universities and for student records, as well as specific exemptions relating to material about illegal practices received by the auditors of the University of Tennessee, or any proprietary information submitted to a certain database held by Middle Tennessee State University. The statute only extends the right of access to citizens of Tennessee.

Texas

In Texas, the Public Information Act covers all governmental bodies. This would extend to the public universities. It applies an exemption for the names of applicants for the position of chief executive officer of an institution of higher education, or any information that would tend to disclose the identity of a donor to such an institution. Educational records, and working papers of auditors, are also exempt²⁷³.

Utah

In Utah, the Government Records Access and Management Act explicitly covers “any state-funded institution of higher education or public education”²⁷⁴. There are exceptions for certain privately sponsored research information, codified by different legislation. Documents of a higher education institution regarding tenure discussions, appointments, applications and the like are classed as “protected”, as is personal information relating to donors to a higher education institution, and unpublished “lecture notes, research notes and data, manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposals”. From October 1992 to date, the State Records Committee has published rulings on 133 appeals²⁷⁵. Of these, 13 have related to a public university; one of the thirteen related to a student body election²⁷⁶.

Vermont

In Vermont, the Public Records Act covers all public agencies. This would extend to the public universities. There is an explicit exemption for unpublished research information at “the University of Vermont or the Vermont state colleges”, which are the only public universities of the state, and for student records except where disclosure is required under Federal law²⁷⁷. A recent state Supreme Court ruling held that “student records” was to be interpreted broadly, applying to personal disciplinary records as much as to academic ones²⁷⁸. Interestingly, a 1987 case explicitly ruled on the matter of the public universities, holding that since there were exceptions provided in the law that applied to the University of Vermont, it must therefore be considered an “agency” by the law²⁷⁹.

Virginia

In Virginia, the Freedom of Information Act extends to all public bodies, explicitly including “boards of visitors of public institutions of higher education”. It also encompasses organisations “supported wholly or principally by public funds”, allowing the possibility of a Cornell-like ruling²⁸⁰. There are explicit exemptions for “proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School”, and for “scholastic records containing information concerning identifiable individuals”. The statute only extends the right of access to citizens of Virginia. The Virginia Freedom of Information Advisory Council has issued a small number of advisory opinions* regarding universities, of which one held that the student government at a state university was a body subject to the Act²⁸¹, and another noted that it was not automatically a subset of the University²⁸².

Washington

In Washington, the Public Records Act includes all “agencies”²⁸³. It can be assumed this would apply to the public universities, confirmed by the existence of an exception for donor records at universities²⁸⁴. The Attorney General does not appear to have issued any rulings on universities under the Act, though at least one significant† court case under this legislation involved the University of Washington²⁸⁵.

* Records for 2000-2005 are available, and eight of 154 records involve state universities.

† *Progressive Animal Welfare Society v. University of Washington* (1990). The case is significant enough that the Attorney General’s handbook on the Act cites it no less than four times on a single page as setting legal precedents.

West Virginia

In West Virginia, the Freedom of Information Act applies to all public bodies. This would extend to the public universities. It also encompasses “any other body which is created by state or local authority or which is primarily funded by the state or local authority”, allowing the possibility of a Cornell-like ruling²⁸⁶.

Wisconsin

In Wisconsin, the Open Records Law explicitly extends to the “University of Wisconsin System... and any technical college district”. The “associate and assistant vice presidents of the University of Wisconsin System” are also explicitly defined as state public officers²⁸⁷. The University of Wisconsin system encompasses all state universities. Two of 67 cases decided by the state Supreme Court or appeals courts dealt with universities as respondents²⁸⁸.

Wyoming

In Wyoming, the Public Records Act extends to all agencies of the state. This would extend to the public universities. It provides certain specific regulations for a database maintained by the University of Wyoming, but otherwise no exceptions relating to higher educational institutions are noted²⁸⁹. Only one formal opinion relating to the Act has been published by the state Attorney General, making it difficult to establish to what degree it has been contentious²⁹⁰. This opinion did not relate to the state university system.

Federal Universities

Whilst no “conventional” universities are operated under the aegis of the federal government, there are a small number of (predominantly military) universities maintained by government departments, such as the U.S. Naval College at Annapolis. These institutions are subject to the federal Act.

Tribal Jurisdictions

The Tribal Colleges and Universities, four of which offer three-year degrees and can be considered universities, pose a further interesting issue. Whilst “public universities”, they are not part of the state educational system, being chartered by the Native American nations (and largely funded by federal monies); this places them largely outside both sets

of legal frameworks²⁹¹. It is unclear to what degree these institutions are subject to the legislation; in most states, only public bodies are subject to the legislation, with that defined in such a way as to exclude bodies which are a part of a separate governmental entity.

District of Columbia

In the District of Columbia, the right of access extends to all public bodies. This would include the one public university of the District²⁹². No university-specific exemptions seem to exist.

Territories and possessions

The Federal act explicitly does not extend to the territories and possessions of the US. Of these territories and possessions, Guam contains a public university, as do the Northern Mariana Islands, the Virgin Islands, and Puerto Rico.

The Virgin Islands Open Records Act applies to all “branches of government”²⁹³; there is an exception for student records. Guam has the Sunshine Reform Act of 1999, which covers all government agencies. It contains a set of explicit exemptions for the University of Guam, covering applicant records, donor records, and a specific set of archives of the RFT Micronesian Area Research Center, on request of the donor that they be closed²⁹⁴.

The Northern Mariana Islands appear to have some form of freedom of information legislation, as news stories repeatedly refer to “an open records request approved by the island government”²⁹⁵, but the actual legislation has not been found and thus no conclusions can be drawn; it is possible that this is a misreporting of a Federal-level request in which the island government was involved. Puerto Rico currently has no freedom of information legislation, and the government is reportedly strongly obstructionist over disclosure⁶.

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