

# 8. FOI scholarship reflects a return to secrecy

**Abstract:** When Mexican president Enrique Peña Nieto launched the third summit of the Open Government Partnership (OGP) in October 2015, protesters disputed his highly scripted account of his government's transparency. The OGP may be growing but increasingly scholars and journalists are reporting a degradation of freedom of information (FOI), even in comparatively open societies like Aotearoa/New Zealand. Stemming from a doctoral review of FOI scholarship, this article traces FOI's origins and role in democratic governance and finds scholars situate access to state-held information as a fundamental human right. However, it describes scepticism among journalism practitioners and researchers alike about the realpolitik success of FOI regimes. Researchers have recorded tendencies back to state secrecy since the declaration of the so-called war on terror and document various other FOI failures, from blatant disregard for the law to an ever-growing structural pluralism that is casting shadows over state expenditure. This article also considers literature on New Zealand FOI regime, work largely produced by legal-studies and policy-studies scholars. It outlines what research does exist within journalism studies but contends a lack of more significant contributions has restricted our understanding of the regime.

**Keywords:** freedom of information, New Zealand, Official Information Act, Open Government Partnership, state secrecy, transparency,

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## Introduction

WHEN Mexican president Enrique Peña Nieto launched the third summit of the Open Government Partnership (OGP) in October 2015, protesters outside the event disputed the scripted account of his government's transparency. Mexico is considered one of the most dangerous countries to be a journalist and state officials are regularly accused of the repression and even murder of reporters (Reporters Without Borders, n.d.). 'México está lejos de cumplir con un gobierno abierto,' *Mexico is far from reaching open government.* countered the human rights and transparency advocate CENCOS (Centro Nacional de Comunicación Social-Cencos, n.d.). This article will argue this

contradiction is indicative of an emerging situation in the world of freedom of information (FOI). Worldwide, the membership of the OGP—an ‘international effort to strengthen democracies around the world by cultivating transparency, participation, and accountability in governance’ (Harrison & Sayogo, 2014, p. 513)—may be growing but increasingly scholars and journalists are reporting a degradation of FOI when it really matters, even in comparatively open societies like Aotearoa/New Zealand. This article, based on a doctoral review of the literature, considers the origins of FOI and then its rapid spread (Banisar, 2006; Ackerman & Sandoval-Ballesteros, 2006; Roberts, 2006) across the world. It attempts to define FOI’s critical role in democratic governance (Dunn, 1999; Birkinshaw, 2006; Lidberg, 2006; Lamble, 2002) and finds that scholarship increasingly situates FOI among fundamental human rights (Hazell & Worthy, 2010). However, it describes scepticism among journalism scholars and other researchers (Nader, 1970; Hager, 2001; Roberts, 2006) about the realpolitik success of freedom of information regimes, thanks to, among other things, the so-called war on terror (Giddens, 2000) and the wide-scale privatisation of public services in the West (Roberts, 2006). It argues that in New Zealand more research with a journalism-studies perspective—that is, a perspective that privileges journalists’ needs for information to fulfil their Fourth Estate role—would deepen our understanding of the nation’s FOI regime.

### **What is FOI and why do we need it?**

Freedom of information regimes are legislative mechanisms that ensure a society’s citizens have unfettered access to information held by their government as a ‘presumptive right’ (Birkinshaw, 2006, p. 188). Since Socrates demanded the ‘liberty to know, to utter, and to argue freely according to conscience, above all liberties’ (cited in Pearson, 2014), such liberty has been linked to meaningful participation in society. The prescient statement that ‘information is the currency of democracy’ has been perhaps unreliably attributed to the architect of the American Declaration of Independence, Thomas K Jefferson (Carnaby & Rao, 2003, p. 401), but whoever said it began a train of thought that has endured the peripatetic journeys that liberal democracies have taken since. In 1970, almost 200 years after the independence declaration, citizen and consumer advocate Ralph Nader called a well-informed public the ‘lifeblood’ of democracy (p. 1). Legal scholars (Birkinshaw, 2006) provide a more notional take on the value of FOI, arguing that, like freedom of speech, FOI is ‘both intrinsically and instrumentally good’ (pp. 203-204), encouraging government to have a necessary trust in its people.

Researchers agree (Lidberg, 2006; Danks, 1980) that, broadly speaking, FOI regimes have three central purposes in common:

- Firstly, they provide access for all citizens to information the state holds on them, a check on the power of the state and an affirmation of individuality

and a citizen's autonomy.

- Secondly, FOI improves accountability of government through the transparency it creates. Citizens can only take effective part in the accountability process if they can access information they need in a timely manner.
- Thirdly, FOI legislation is intended to improve and increase citizen participation in government, a political ideal in monitory and participative democracies.

The Committee on Official Information, an ad hoc body charged with shaping the introduction of FOI into New Zealand, told Prime Minister Robert Muldoon in 1980 that the case for more openness rested on 'the democratic principles of encouraging participation in public affairs and ensuring the accountability of those in office; it also derives from concern for the interests of individuals' (Danks, 1980, p. 13). In more than 100 nations across the world now, such ideas are the drivers of disclosure, or right to information (RTI), laws.

FOI was enshrined in the UN Declaration of Human Rights in 1948 and is often considered a prerequisite for and enabler of many, if not all, human rights today. Birkinshaw (2006, p. 4) says FOI deserves to be ranked with freedom of speech, access to justice and a fair trial, and protection of privacy. According to UNESCO Assistant Director-General for Communication and Information Abdul Waheel Kahn, a free flow of information lies 'at the heart of the very notion of democracy and is crucial to effective respect for human rights':

In the absence of respect for the right to freedom of expression, which includes the right to seek, receive and impart information and ideas, it is not possible to exercise the right to vote, human rights abuses take place in secret, and there is no way to expose corrupt, inefficient government. Central to the guarantee in practice of a free flow of information and ideas is the principle that public bodies hold information not for themselves but on behalf of the public. These bodies hold a vast wealth of information and, if this is held in secret, the right to freedom of expression, guaranteed under international law as well as most constitutions, is seriously undermined. (Mendel, 2008, p. 1)

### **The origins of FOI**

Once the preserve of liberal Western societies, there are now (December, 2015) 104 FOI regimes around the world (Freedomofinfo.org, 2015) and enacting disclosure laws is seen increasingly as a rite of passage for emerging democracies (Lidberg, 2006, p. 11). But the first FOI legislation was passed in Sweden as long ago as 1766. Radical opposition politicians, led by Anders Chydenius (1729-1803), 'cunningly' (Lidberg, 2006, p. 44) took advantage of a lethargic Parliament and pressed into law the *Freedom of Press and the Right of Access to Public Records Act*. Chydenius was inspired by contemporary philosophers like John

Locke (1632-1704) but also by the thinking of the Tang Dynasty, which ruled China from the 7th to the 10th century. During that time China established an ‘Imperial Censorate’, a body of officials close to the Emperor whose job it was to ‘tell the leader when things were right or wrong, when he was being led astray, and when plans or actions were likely to have deleterious effects or be contrary to moral or established principles’ (Steinberg, 1997, p. 2). It promoted accountable imperial leadership and has been cited as the distant progenitor of today’s FOI regimes (Lidberg, 2006, pp. 25-26; Lambie, 2002, p. 3; Steinberg, 1997, pp. 1-2). Lidberg finds it ‘interesting to note that Chydenius translated the more than 1000 year old Chinese experiences into his contemporary political climate by choosing the political press as the key “accountability agency”’ (2006, p. 26).

### **The global explosion in FOI**

After Sweden (and Finland, which was part of Sweden then) in 1766 and, to some extent, Colombia in 1888, the next FOI legislation was not passed until the second half of the 20th century when the United States (1966) and then France (1978) enacted laws guaranteeing their citizens’ right to access state-held information. Australia and New Zealand followed suit in 1982 (though Australia’s federal law preceded some of its states’ right-to-access laws) and Canada in 1983 (FOI Countries by Date, n.d.). ‘These [early] efforts were mainly a result of extended campaigns led by the media with some government support and many took decades to succeed’ (Banisar, 2006, p. 19). It was a wave made up of wealthy, stable democracies that had active media and a growing ‘skepticism about state authority’ (Roberts, 2006, p. 107) and many thought these prevalent conditions—wealth, stability, strong media and authentic free speech—to be prerequisite to the establishment of FOI. But then came something of a flood of disclosure laws around the world, from countries as diverse as Belgium (in 1995) and Zimbabwe (2002). By 1990 there were 14 nations with FOI laws (Roberts, 2006, p. 107) and by 2006 there were 69 (Mendel, 2008, p. 22). By January 2015 there were 100 across the globe, with Paraguay having joined the ever-swelling ranks of the global movement for openness (FOI Countries by Date, n.d.). Noam Chomsky’s journalist from Mars (2002) would see a spreading flow of openness underway on Earth. One does not need to dig far to find, of course, that the reality of even liberal democracies is some distance from the stated aims of lawmakers who created such regimes. Banisar notes the passing of a right to information law (RTI) is just the start:

For it to be of any use, it must be implemented. Governments must change their internal cultures. Civil society must test it and demand information. Governments resist releasing information, causing long delays, courts undercut legal requirements and users give up hope and stop making requests. (Banisar, 2006, p. 26)

### The undermining of access

FOI is undermined in a number of ways and because a country has legislated for openness does not make its government open. A review of the literature highlights areas of concern:

#### *Window dressing*

Some FOI laws are inconvenient but effectively mandatory prerequisites to trade or international finance deals, with many intergovernmental organisations pressuring ‘poorer and more fragile states’ (Roberts, 2006, p. 109) into adopting disclosure laws. In the worst of these situations, little or no will to openness existed prior to the legislation being passed and not much changed afterwards:

Some of these window-dressing dilemmas have to do with the technical and legal characteristics of FOI laws. Others have to do with the bureaucratic capacity of governments to implement good laws, much less enforce them. Still others can be traced to the origin of so many open-government statutes, which often begin as items pushed onto the policy agendas of developing countries by international or regional organisations without much if any prior grassroots demand. (Michener, 2011, pp. 146)

Other FOI regimes are, in fact, tools of oppression. Banisar, known for his global FOI audits, says the most egregious of these is the ‘baldly misnamed’ (2006, p. 27) *Zimbabwean Access to Information and Protection of Privacy Act*, whose access provisions are ‘all but unused probably for fear that any person brave enough to ask for information will be beaten by government supporters’. Elsewhere, such legislation itself may appear sound in terms of the legislative principles of FOI, but governments ignore it. In the Cook Islands, for example, where the nation’s 2009 *Official Information Act*, was based closely on New Zealand’s act, there has been little sign of transparent governance as a result. Newspaper editor John Woods wrote:

Despite our *Official Information Act*, the Cook Islands is being denied its right to know at the highest level. The most powerful entity of government, Cabinet, is still a stronghold of secrecy and non-disclosure. We believe, and argue, that the public has every right to know what Cabinet decides, what deals it does and what funds it spends. For the past five years we have pleaded for weekly cabinet media briefings, and for release of cabinet minutes and documents, but we are continually denied information. Nowadays we rely on leaks (when it suits an individual) and on papers falling off the back of a truck. (Woods, 2010, p. 18)

In a five-country comparison of the promise and the practice of FOI laws, Lidberg (2006, p. 10) stated that while such laws were potentially one of the most potent accountability tools going, his doctoral research showed that in some

cases they were ‘little more than a toothless paper construct and democratic “showcase” rather than the effective scrutinising tool they were intended to be’.

*The war on openness*

Roberts (2006) and others have studied 21st-century influences on FOI that frustrate its success, including a reduction in openness since the New York attacks on September 11, 2001, increased secrecy around state-security services, powerful networks that are ‘opaque’ and operate at levels removed from public access, and the secrecy of corporations whose operations are arguably in the public interest but who have few or no disclosure obligations. Within weeks of the 9/11 attacks, large amounts of government information, previously open to all, were withdrawn from public scrutiny, despite the US FOIA.

In the three years following the September 11th attacks, complaints about the erosion of these [access] rights were common, although the evidence was still inchoate. In one prominent case, a Utah-based environmental group, Living Rivers, challenged the Interior Department’s refusal to provide maps that showed the likely impact of a failure of the Glen Canyon Dam on the Colorado River, the second highest concrete-arch dam in the United States. (Roberts, 2006, p. 39)

Barack Obama has been criticised for campaigning on openness and then running an administration with a higher rate of FOI refusals than his predecessor’s (Moos, 2012). In the UK, British Prime Minister Tony Blair took power in 1997 on the back of a promise to sweep aside Britain’s longstanding culture of governmental secrecy only to bemoan his stupidity in his memoirs years later (Blair, 2010). He told the Associated Press: ‘What happens in the end is that you make politicians very nervous of actually debating things honestly, because they’re worried about what’s going to happen when there’s a FOI request’ (Stringer, 2011).

*The ‘privatised sector’*

Structural pluralism, a term used by Giddens (2000) to define an economic environment in which services to the public that are deemed essential are provided by both the state (e.g., most education) and the private sector (e.g., telephone services). Multiple forms of privatisation—from entire divestment of a state service to any one of a variety of types of state-owned or controlled enterprise—have created a group in the economy that might be thought of as the ‘privatised sector’. This sector has characteristics of both state service and private enterprise but is neither, oriented operationally, as it is, to the private sector, while being fundamentally connected to the public purse. The public interest in the provision of the service—be it public roading or television news—is clear but so too is the requirement that the quasi-private organisation providing

the service subjects itself to market forces and conditions. Of particular interest here are the varying levels of secrecy that such organisations expect and demand for their operations.

Roberts argues that such ongoing privatisation and the state's withdrawal from the provision of services to the public is having a deleterious effect on FOI. Contractors and others engaged in this new world of outsourced and market-driven services have pressured governments to exclude them from the public scrutiny formerly applied to the provision of the same services (2006, p. 151):

. . . the effectiveness of many FOI laws has been undermined as a consequence of restructuring. These laws have traditionally applied to government departments or other agencies that are tightly linked to these departments. As authority has shifted to quasi-governmental or private organizations, the ambit of the law has shrunk. Many public functions now are undertaken by entities that do not conform to standards of transparency imposed on core government ministries. There is little consensus on how to address this problem. (Roberts, 2001, pp. 2-3)

However, Roberts (2011) goes further, arguing the public's right to access information is based on 'physical and economic security, privacy, and political enfranchisement' and that these are reasons for a free flow of information from *any* organisation that holds information the public needs. This approach 'rejects the classical liberal insistence on differential treatment of the public and private spheres, recognises that harm to fundamental interests could as easily arise from either sector, and establishes information rights where these seem likely to avert such harm' (p. 3). The right to secrecy of private or quasi-private organisations is considerably weakened when information they hold is in the public interest. Roberts' argues this as an FOI theorist and pulls in entirely the opposite direction to the increasing reluctance of governments and corporations to operate transparently in the interests of an open society.

#### *Administrative discretion*

In one of democracy's great ironies, FOI laws are dependent for their success on the very officials and politicians whose behaviour they are intended to control. Despite the legislation's aim to correct a power imbalance (the State has the information, the citizen does not and information is power), the mechanism of balance itself is characterised by an imbalance of power. Echoing Nader (1972), Roberts wrote:

Whether a freedom of information law succeeds in securing the right to information depends heavily on the predispositions of the political executives and officials who are required to administer it. Statutory entitlements could be undermined if government institutions refuse to commit adequate resources for implementation or consistently exercise

discretionary powers granted by the law in ways that are inimical to aims of the legislation. In fact, critics in many jurisdictions argue that FOI laws have been weakened by the emergence of internal practices designed to ensure that governments are not embarrassed or surprised by the release of certain kinds of politically sensitive information. (Roberts, 2002, p. 176)

When seen from the perspective of journalists attempting to perform their so-called Fourth Estate duty, the FOI regime in Aotearoa/New Zealand is more complex than the somewhat heroic narratives about it (Aitken, 1998; Elwood, 1999; Shroff, 2005, Hazel & Worthy, 2010) would suggest. When journalism studies adds its thread to the FOI narrative, it adds both a strong understanding of the practical need for such a legislative guarantee of access (Nader, 1972; du Fresne, 2005; Price, n.d.) and a strong understanding of the gap between the promise and the practice of FOI (Lidberg, 2006; Price, n.d.).

### **FOI and Aotearoa/New Zealand**

Studies exist into the many aspects of FOI regimes around the world (Nader, 1970; Banisar, 2006; Martin, c2008; Nam, 2012), but there is little academic work with New Zealand's FOI laws as its primary centre of interest and, in particular, the media's role in making a meaningful success of the OIA. Much of the literature on New Zealand's FOI regime is comparative in nature (Snell, 2006; Hazel & Worthy, 2010) and does not unravel local and specific complexities. Snell (2006) examined the differences that emerged in the development of the Australian and New Zealand regimes, which diverged significantly, despite both countries being Westminster-based democracies with many similarities. For example, New Zealand's strongly liberal approach allowed its FOI regime to capture 'information', not just 'documents'. In addition, in New Zealand information is withheld if its release would be less in the public interest than withholding it, while in Australia a decision is made according to the category of information to which it belongs.

The New Zealand OIA shows what can be achieved by starting from first principles, designing legislation suited to the local political and administrative culture, ensuring that the focus [is] on the front end user and making the major objective the making, on [a] progressive and proactive basis, more high quality policy information available on a timely basis to its citizens. (Snell, 2006, pp. 13-14)

New Zealand is considered a benchmark in a number of overseas studies (Hazell, 1991; Hazell & Worthy, 2010; Nam, 2012) but direct, local research is relatively thin. Among policy-research projects (Poot, 1997) that seek to understand how FOI affects the workings of the state bureaucracy is White's argument (2007) that



New Zealand's official information system is resulting in *less* trust in the state sector, rather than the increased levels of trust that are meant to result. In an important study, from which emerged her book *Free and Frank: Making the Official Information Act 1982 Work Better*, White, like most researchers, acknowledges the fundamental openness that was embedded in New Zealand society by the OIA. However, her research highlights significant issues with both the principles and the operation of the Act. She lists (2007, pp. 90-92) 10 'themes' that emerged from her study:

- New Zealand government is much more open because of the Act.
- Many requests for information are unproblematic.
- Real uncertainty exists about the public's right to information.
- The ombudsman's role has been a success.
- Processing delays have long been a problem and have not improved.
- Large requests are problematic.
- Officials need more training.
- The protection of officials' advice from disclosure is still contentious.
- The digital age brings its challenges.
- It may be time (2007) to introduce a pre-emptive, push-model of information release.

From a legal studies perspective, Price (2006) asked how the OIA was working in practice and concluded that while there was much to be pleased about, there were significant problems, with state officials frequently flouting the act's guidelines on the release of information (p. 50). Working journalists, including investigative journalist Nicky Hager (2002), have lamented a deterioration of the system since its early days. Hager, a regular requester of state-held information, praised the readiness of officials to release information in the early years of FOI in New Zealand but says it changed significantly under the Labour Government in the late 1980s and 1990s. 'Ministers and officials developed ways of routinely subverting the provisions of the *Official Information Act*, including delaying information releases and misusing exclusion clauses' (Hager, 2002). Palmer notes (2007, p. 14) Price's conclusion that New Zealand effectively has two FOI systems—one for requesters wanting non-sensitive information who have their requests processed efficiently and without fuss and another for requesters of sensitive material, characterised by a disregard for the spirit of the law.

They are more likely to be transferred to the minister's office, often with questionable or no justification. Many are refused outright. Information is withheld, either wholesale, or in larger than necessary chunks. Price noted, with more than a little sense of irony, that his own OIA requests for the purpose of this research apparently fell under this second, much less user-friendly OIA. (Palmer, 2007, p. 14)

The New Zealand Law Commission, charged with two reviews of New Zealand's FOI regime since it was introduced, declared in 2012 that the 'basic pillars of the legislation remain fundamentally sound' (New Zealand Law Commission, 2012) but also recommended more than 100 changes, including extending its reach to parts of the government's parliamentary services. The commission argued because of the significance of the changes and the importance of the legislation, it should be drafted afresh. The government disagreed, declining both the suggestions that the OIA needed a fresh start and that it should cover the business of Parliament (Davison, 2013).

In its 1997 review of the OIA, the commission had concluded that because of its open-textured nature, the act had weathered societal changes well and was still achieving its purposes. However, it also identified a number of problems:

- the burden caused by large and broadly defined requests
- tardiness in responding to requests
- resistance by agencies outside the core state sector
- the absence of a co-ordinated approach to supervision, compliance, policy advice and education regarding the Act and other information issues (Palmer, 2007, p. 11)

While very little has changed about its FOI regime since the 1980s, New Zealand society has changed dramatically. The country's ongoing privatisation of once-public services and organisations is a key part of its brand of economic liberalism, unleashed with dramatic effect in the mid-1980s. Under the neo-liberal economic policies of successive New Zealand governments since, the state has withdrawn from the provision of services that it could encourage the private sector to take over (Kelsey, 1993). Now significant amounts of public money are being spent outside the watchful eyes of those who rely on FOI legislation to monitor state behaviour, arguably a damaging constraint on press freedom. Some of these services have high levels of public interest attached to them, including the relatively recent innovations of private prisons and charter schools. As these services shift to the private sector, the public loses sight of their operation to varying degrees, despite often being the major or sole funders of the service. The transparency intended under the OIA starts to become murky.

### **The need for a journalism studies perspective**

While Price (2006) included journalists in a section on the views of information 'requesters', no singular study focuses on the media's use of the OIA 1982. Elsewhere in the world, too, the focus of researchers tends to be on whether the passing of legislation to protect freedom of information has achieved its goals of, for example, access, transparency and openness. The media, despite being a key user of FOI legislation and an acknowledged mechanism in the accountability of officials and politicians, is often excluded. FOI in New Zealand was for

many years considered within a conventional discourse that emerged through, principally, legal studies (Banisar, 2006; Elwood, 1999; Hazell, 1989; Law Commission, 1998 & 2012; Price, n.d.a) and policy studies (Poot, 1992; White, 2007), each of which has its distinct reasons for an interest in the legislation. Together they wove a two-strand, dominant narrative that had New Zealand as a world leader in FOI (Elwood, 1999; Hazell, 1991; Hazell & Worthy, 2010; Nam, 2012; Price, n.d.). Its tendencies were towards a strongly liberal regime, which made it a standout when the OIA was enacted in 1982 and became widely regarded as a 'model of how progressive access to an information regime should work' (Hazell & Worthy, 2010, p. 353).

However, the contributions of journalism studies to this discourse are relatively minor. Practitioners with special interest in the legislation have written about their experiences using the *Official Information Act 1982* (Hager, 2002) or published work intended to explain, and underscore the importance of such freedoms (du Fresne, 2005). But there is very little academic research with the experiences of journalists attempting to perform their role of monitoring the state at its centre. The media, despite being an acknowledged mechanism in the accountability of officials and politicians in liberal, monitory democracies, tend to be excluded from the horizons of such scholarship (Nam, 2012). Despite there usually being very few, if any, specific provisions for journalists under FOI regimes, they are arguably key participants in them. Their role in disseminating a wide variety of information to the citizen body and electorate means they can have far wider influence with the information they gather than other requesters. This alone is a good argument for an increased focus from journalism researchers on FOI laws and their impact on journalistic practice and press freedoms. Journalism studies can bring a refined focus to this issue, concentrating not on the efficacy of an FOI regime as it pertains to an entire population but on its impact on the work of public interest journalists. Among the journalism studies scholarship on FOI in New Zealand, and an example of its importance, is Robie's (2007) unravelling of the famous case of the guilty pleas of the *Rainbow Warrior* bombers, after French agents sank the Greenpeace vessel at its Auckland berth in July, 1985, killing Portuguese photographer Fernando Pereira. The only two charged were agents Alain Mafart and Dominique Prieur and it took advocates of openness 20 years to have the court footage, deemed to be restricted on the grounds of privacy, released so New Zealanders could finally see their guilty pleas being made on videotape. Such a journalism perspective is needed in FOI scholarship to balance the dominant narratives that parade the nation as a South Seas information paradise (Treadwell & Hollings, 2015).

## Conclusion

Let us go back to the summit of the Project for Open Government Partnership in

Mexico, where outside protesters are disagreeing with the President. Launched in 2011, the OGP has grown to have 69 participating member countries in 2015 (Open Government Partnership, n.d.a). Digital publishing has enabled proactive publishing of information and in the interests of open government, states are joining. Government ministries across the world are starting to publish information without being asked for it, creating the beginnings of what must eventually become massive and accessible databases. So-called ‘push models’, can, according to Lidberg (2015), improve public access to information. The open data movement, which promotes automated access to statistical data and metadata to enable ‘better decision-making [in] many fields of research and policy-making’ (Open Data Foundation, n.d.) continues to impact access to state-held data. When signing New Zealand up to the OGP, Prime Minister John Key (Open Government Partnership, n.d.b) said the OGP’s principles were in line with the New Zealand government’s commitment to transparency. Our journalist from Mars (Chomsky, 2002) might be forgiven for thinking the wave of openness sweeping Earth had just entered another realm of transparency altogether, one based on free access to almost unlimited data sets. But researchers with a journalism studies perspective will beg to differ (e.g., Felle & Mair, 2015). At the level of *realpolitik*, sensitive material is as hard, if not harder, than ever for journalists to get from governments. In New Zealand, known as one of the most open societies on the planet, the Ombudsman is submerged with complaints (Treadwell & Hollings, 2015) about refusals to release information. Prime Minister John Key last year admitted his government sometimes withheld sensitive information as long as possible, instead of releasing it to journalists as soon as practicable, as the law requires. At the centre of the so-called ‘dirty politics’ scandal before and during the 2014 general election was evidence of abuse of the OIA, including preferential treatment of an attack blogger’s information requests in order to embarrass an Opposition politician. Such was the atmosphere of suspicion around the OIA, that the Chief Ombudsman initiated an inquiry into the way state agencies responded to their duties under it. The Ombudsman’s report (Wakem, 2015), much like those by the New Zealand Law Commission, found the OIA was ‘fundamentally sound, but it [was] not always working in practice’ (p. 140). Such a situation is in contrast to the positive vibrations of the open-government movement. Much like New Zealand’s two-tier system (Price, 2006), governments around the world appear to be developing one attitude for information it doesn’t mind disseminating and another approach entirely to information they decide they need to keep secret from the media.

Has it always been like this? No. Veteran investigative journalist David Fisher told a gathering of civil servants that when he started as a journalist in the early 1990s, he would simply ring officials for the information he needed. ‘It seems a

novel idea now. I can barely convey to you now what a wonderful feeling that is, to be a man with a question the public wants answering connecting with the public servant who has the information' (Fisher, 2014). His first OIA request ever was because of an evasive, difficult official who was clearly ahead of his time, he said. A journalism studies approach would privilege the needs and experiences of journalists such as Fisher who rely on FOI and on whom the public relies to extract public interest information from the depths of government.

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