Access to government information:

Understanding facilitators and constraints

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CERTIFICATE OF ORIGINAL AUTHORSHIP

I, Maureen Henninger declare that this thesis is submitted in fulfilment of the requirements for the award of Doctor of Philosophy in the School of Communications, Faculty of Arts and Social Sciences at the University of Technology Sydney.

This thesis is wholly my own work unless otherwise reference or acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

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Published papers

Henninger, M. 2013, 'The value and challenges of public sector information', *Cosmopolitan Civil Societies: An Interdisciplinary Journal*, vol. 5, no. 3.

Henninger, M. 2016, 'Government information: Literacies, behaviours and practices', *Government Information Quarterly*, vol. 34, pp. 8-15.

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Henninger, M 2017, 'Freedom of information and the right to know: Tensions between openness and secrecy', *Information Research: an international electronic journal*, vol. 22, no. 4.

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Abstract

Liberal democratic governments like Australia have declared they are open, transparent and accountable to their citizens, acting in the public interest in matters of governance and in service provision. Access to government information is fundamental to openness, and is a bulwark against secrecy. This thesis critically examines Australian government claims to openness. It uses Pierre Bourdieu's relational field theory to analyse both governmental power over information, and the relationships with other fields to restrict access and delimit legitimate or contentious reasoning which not only compromises the public interest, but also entrenches cultures of secrecy.

The thesis investigates three key barriers to open government information: inaccessibility, secrecy and commercialisation. These are addressed through three case studies. The first discusses e-government assumptions that content published on the web, in compliance with minimal regulatory and technical standards, is sufficient to meet citizens' expectations. The study shows this is not the case, since citizens need information to be readily accessible as well as technically available. When information is far from view, a mismatch can emerge between government assumptions and citizens' expectations. The second case study analyses Freedom of Information requests. It questions whether the legislation and governmental procedures enables access or legitimises its restriction in the name of official secrecy. The findings demonstrate that governmental agents and bureaucrats, often use legal disclosure exemptions to deflect inquires or refuse access on contentious grounds. The third study examines the reasoning behind decisions for commercialising and, in some cases, privatising public information and datasets. Making it 'commercial-in-confidence' or rendering it 'fee-for-access' constrains information openness. The study finds that different ideological positions on the relative status of public information and private commerce produce contradictory results, many of which are not in the public interest.

All three cases demonstrate information technologies are a significant factor in shaping access to public information. They also highlight contradictory government positions that often reflect relationships with powerful institutions and actors within government, and

between government and external actors, producing results that are not always conducive to openness.

The study, by addressing the power of technology, extends Bourdieu's field theory to digital information capital and to a hybridised field, digital government information. While the focus is access to Australian Commonwealth government-held information, the insights into how open government declarations are made consistent with restrictive practices and the extent to which this can fuel public disquiet, may shed light on international trends.

Chapter 1: Introduction

This chapter outlines the purpose of the thesis and states the research questions as dimensions of access to the information of the Australian Commonwealth government. It introduces the conceptual framework through which the research will be conducted. It concludes with a brief summary and outline of the significance of the research.

Purpose of the thesis

The motivation for this thesis was born out of my life-long interest in history and what can be loosely called political science, and a career in information management.

This thesis is about the policies, laws and regulations, processes and practices that drive, as well as militate against citizen access to the information of the Australian Commonwealth Government (the Federal government). Although the research is Australian in focus, thereby including historical perspectives, some aspects are global in its contemporaneity. The research approach is an analysis of the social, political and economic factors that influence citizens' access. These factors are framed by the essential role information technologies play in all elements of this approach, recognising that each of these elements is deeply entwined and interdependent. The empirical analysis uses a conceptual framework of relationships. In the first instance, there is a relationship between government and its citizens that in contemporary societies is fundamentally a social relationship affecting and is affected by the political economy. Secondly, is the relationship between governments and myriad powerful institutional, individual and commercial interests, including those in the private sector.

Governments in modern liberal democracies such as Australia have an understanding that their legitimacy is based on two propositions: that they govern in a trustworthy fashion, affirming the social contract that is the inheritance of the Enlightenment thinkers; and that evidence of their decision-making processes in governing and the delivery of services should be available for scrutiny and evaluation by the citizens. This evidence is government information, which in Australia is termed public sector information—*the archive* of

documents, records and data that are generated and collected through the processes of governing and service provision. Historically, in Australia as in many British Commonwealth countries, *the archive* was protected by official secrets law and its status as property of the crown. Granting access to it was the prerogative of the government, disseminating as physical documents, its official policies, political messages, some of its decision-making records, and in the 19th century British tradition of Hansard, the record of parliamentary debates.[1] Until the mid-20th century, it was a paper-based society in which the government and public sector bureaucrats selected, published and disseminated the information (or contracted commercial services to do so); it was a one-way communication flow, from government to its citizens. There was little in the way of formal mechanisms for requesting access to it, although this changed with the introduction of the freedom of information legislation in 1982.

By the first decade of the 21st century this landscape and practices had been radically changed by the new digital information communication technologies (ICTs). In 2010, the Commonwealth of Australia accepted the recommendation of its Web 2.0 taskforce (Gruen 2009, p. xvii) and declared the government to be open; that its public sector information (or government information) is a national resource and that citizens' access to it is the default position, unless there are compelling reasons to the contrary (OAIC 2011b):

> *releasing as much of it [government information] on as permissive terms as possible will maximise its economic and social value to Australians and reinforce its contribution to a healthy democracy*

The intervening decades had marked a transition from secrecy to declared openness of government. It was a long process driven by many interrelated and contentious factors and influences, national and international, idealistic, expedient and pragmatic, technological, industrial and commercial. It cannot be too strongly emphasised that the new information technologies completely revolutionised the ways governments collected and managed its information, and that the last quarter of the 20th century brought demands and formal

[1] Early state governments in Australia adopted the British convention of publishing the Parliamentary Debates (for example, South Australia in 1857 and NSW in 1879). The Commonwealth Government's publication of their parliamentary debates began at the time of federation in 1901.

changes, particularly legislative ones, that gave citizens the right to access, or at least request access to government information. Such changes were the catalyst for a two-way communication flow.

The central purpose of this thesis is to better understand what facilitates and constrains access to the information of Australian Commonwealth Government, which often presents different ideological positions according to the types of information and datasets. In general, the government has asserted that an open government, that is, one in which better access to and use of government-held information promotes democracy, supports transparency and accountability; it restores trust and integrity in government, and enables valuable benefits through the creative use of government data (Australia. Department of Finance and Deregulation 2010a). In contemporary liberal democracies such as Australia, the logical corollary is that without access to its information, governments cannot be held accountable for their decisions, and democratic processes and participation are not well served.

The different ideological positions of the Australian Commonwealth Government raise two principal research questions:

1. how, why and under what circumstances has the government's expression of openness delivered citizen access to its information and to its data?; and
2. how are the limits to information access exercised and justified?

The following sections provide an overview of the conceptual thinking to address these questions.

Dimensions of access

In the light of the government's declaration of openness, the thesis proposes there has been a formalisation of government policies and practices for access to its information. This formalisation provides for three dimensions of access. Each is facilitated or constrained by policies, mechanisms and processes that prescribe the "permissive terms" of its "release", language that implies ownership continues to be a significant aspect of openness. These dimensions of access relate to information and data that

1. are made publicly accessible by their publication on a government agency's website;

2. are not publicly accessible, but access may be formally requested; and
3. are, under many circumstances, concealed from the public.

The formal policy-driven mechanisms that implement, control and administer these three dimensions are legislative, juridical and regulatory instruments, all of which may be ideologically, politically, pragmatically, technologically or commercially determined.

In the case of information that is available through its publication on the websites of government agencies—the first dimension of access—the Freedom of Information Act 1982 [FOI Act] Part II Division I 7A[2] states

> *an agency must publish a range of information including information about what the agency does and the way it does it, as well as information dealt with or used in the course of its operations, some of which is called operational information.*

The Act (Part II, Division I 7A) also provides instructions concerning the publishing of non-mandated information:

> *an agency may publish other information held by the agency. Information published by an agency must be kept accurate, up-to-date and complete [and] . . . is not required to publish exempt matter. An agency is also not required to publish information if prohibited by another enactment,*

an instruction that, in reality, changes little of what governments have always done through their selection and dissemination practices.

The second and third dimensions of access are restrictive, rather than mandatory in nature, since two clauses of the Act determines what government information *may not or must not be* publicly disclosed. The first specifies that many documents and other information are automatically exempt from public access for reasons such as national security, public safety, or a need for frank cabinet deliberation; and that disclosure would be contrary to the public

[2] Unless otherwise stated, all references to the Freedom of information Act (Cth) is Compilation No. 92, compiled 20th December 2018 and includes amendments up to Act 156, 2018.

interest, or because it is commercially valuable. The second clause of the Act stipulates that disclosure may be conditionally constrained (conditional exemptions) by other enactments. These enactments can include legislation, rules, regulations and by-laws, and particularly any enactment relating to personal privacy, such as the Privacy Act 1988 (Cth) and the Migration Act 1958 (Cth). These exemptions and prohibitions are highly contentious, and the subsequent conflicts between the rules and their interpretations, between secrecy and openness, ideology and pragmatism, and the ever-shifting relationships forged or dislodged in these conflicts are the major themes of this thesis.

There is a further consideration of the dimensions of access. As part of their governing processes and provision of services, governments collect large amounts of information and data about private citizens, and under the freedom of information legislation (FOI) a citizen may request access to his or her personal data. This personal information is not the primary focus of the thesis; however, it is not peripheral to it, since concerns for citizens' privacy can become an area of contestation, limiting access to government policy-related and decision-making information.

The thesis proposes that these dimensions of access be investigated through the lens of the government's default position of openness and transparency. It does this through three separate studies, each addressing one dimension. The first explores the assumptions and expectations surrounding the language of access and accessibility when the information is published on a government agency's website. The second examines the usefulness, effectiveness and the decision-making processes by which information may be requested if it has not been published. The third study examines the rationale and consequences of the governmental ideological positions and policies that decree information and datasets to be commercially valuable, a characteristic by which it may be shielded from public access through notions of ownership, intellectual property, commerciality and trade secrets.

In considering these dimensions, the research explores the various mechanisms and processes that are available by which decisions can be made for disclosing government information. Importantly, central to this research is an investigation of the power relationships, self-interested interactions and conflicts among the multiple actors who want access to the information and those who want or need to prevent its disclosure.

Conceptual framework: field theory and thinking tools

The thesis explores the themes of conflict and contestation surrounding access to government information within the conceptual framework of field theory, in which many actors/agents or players in a field compete for power by drawing on a variety of social, political, economic, informational, technological or symbolic resources or capital. Using Bourdieu's concept of field theory, this research proposes a *field of government information,* a field of cultural production that is a "set of systems of interrelated agents and institutions functionally defined by their role in the division of labour (of production, reproduction and diffusion of cultural goods)" (Bourdieu 1985, p. 13). The cultural goods are government data and information and the agents and institutions use their power, informational capital, "of which cultural capital is one dimension . . . [to] redistribute information" (Bourdieu 1994, p. 7).

Government itself is the field of power, "a meta-field that determines the rules governing the [other] various fields" (Bourdieu 2004, p. 33); it is

> *the holder of a sort of meta-capital granting power over other species of capital and over their holders . . . [leading] to the emergence of a specific, properly statist capital (capital étatique) which enables the state to exercise power over the different fields and over the different particular species of capital, and especially over the rates of conversion between them (and thereby over the relations of force between their respective holders)* (Bourdieu 1994, p. 4)

Bourdieu also recognises that the implementation, administration and indeed contestation of the rules relies on many complex relationships, temporal or durable, formal or informal among the players in the field (Bourdieu & Wacquant 1992, p. 96).

The field of government information is bounded by the Australian Commonwealth jurisdiction (Federal Government), although at times, in this study, there are interactions and relationships with other Australian state and territorial jurisdictions. There are many actors (individuals, groups and institutions), from other fields or sub-fields who have one or more interests in the continuum of collecting, generating, managing, distributing, using government information, and writing the rules for these activities.

There are, therefore, multiple interests from multiple fields that are often in conflict with the government and each other over access to government information. This study focusses particularly on the following six fields and their constituent actors and roles which comprise the field of government information:

- political field;
- bureaucratic field;
- juridical field;
- journalism field;
- field of civil society; and
- market or economic field.

While 'the government', as the overarching meta-field, reifies the rules (laws and regulations) and policies, these are in fact, negotiated and written by the actors from the political field; the political parties for example, the Labor and Liberal Coalition parties, with their factions, and individual politicians with their ministerial and media advisors. The actors of the bureaucratic field, the public servants implement the rules, while the judges, tribunals and autonomous legal advisory agencies interpret or adjudicate the rules. Actors who want to access or re-use the information and data are the various types of journalists, particularly political journalists; and from the field of civil society are advocacy and activist groups, public intellectuals, academic researchers and individuals. Finally, there is the market, or economic field, a powerful field when one considers that government information and data are capital goods. Included in the market field is the government itself with its business entities (GBEs), as well as individuals and companies in the private sector.

Thinking tools

Bourdieu considers the field to be a research tool that allows the researcher to think relationally (2005a, p. 30). It is a relational framework of the social world in which actors and structures interact, allowing an exploration of the relationships and interactions among all the actors, and offers a method for analysing a struggle for power and influence of often competing worldviews.

The concept of capital is integral to Bourdieu's field theory. He distinguishes among four fundamental species or forms of capital—*economic*, *cultural, social* and *symbolic*—and

suggests that each of these is a resource or power which determines the success of various practices (Bourdieu 1986). In his later writings, Bourdieu suggested that cultural capital should be called *informational capital* (Bourdieu & Wacquant 1992), and he developed the notion of technical capital, which in its embodied form, are competencies and skills (Bourdieu 2005b), or technocratic power. There are however, many more types (sub-types) of cultural capital, which emerge through empirical research in specific social contexts.

Every field has a dominating type of capital, which in the field of government information is informational capital. However, since there are many fields in which information and data are generated, managed, disseminated, used and sold, there is complex mix of capital—political, bureaucratic, juridical, informational, technocratic, and economic. There is also the power of 'the state' (statist capital), which Bourdieu considers to the "culmination of a process of concentration of many different species of capital" (1994, p. 4), including symbolic capital which serves as a legitimation of authority.

These thinking tools—relational field analysis and capital—provide a method in which Bourdieu emphasises a viewpoint of the world that is confrontational, "of antagonisms" (Bourdieu & Wacquant 1992, pp. 96, 228). It enables an analysis of the fields associated with the field of government information to explore the relationships and power struggles that are fundamental in accessing government information.

Bourdieu's thinking tools provide the approach through which to address the main questions of this study. Firstly, they acknowledge the relational nature of the field of government information and the variety of actors or players in the field. Secondly, each group of actors has its own understanding of the rules and has its own priorities. Thirdly, the thinking tools allow the consideration of the benefits and value—capital—that result from engaging with government information.

The complexity of the structures and processes in such a field, and the emphasis on the three dimensions of access to information, require an exploration that cannot be done through one monolithic study; rather it will be accomplished through data collected in several ways. For ease of expression here, these approaches to focussed data collection are referred to as case studies.

The case studies

All the case studies in the thesis are investigations into access to government information. However, the first, (*Mechanisation and management of web-published information*) seeks to demonstrate, in particular, the social ramifications of the policies and practices of web publishing that are required under Part II of Freedom of Information Act 1982, the Information Publication Scheme (IPS). The research analyses a variety of mechanistic and policy factors that prevented a large group of university students, who like most citizens, were not aware of legal requirements, from finding the information.

The second study (*Legitimation, law and implementation processes*) is primarily a study of the juridical, political and bureaucratic fields in which decisions are made on the disclosure or non-disclosure of government information that is requested by any citizen, including those in the public sector itself. It is an analysis of the mechanisms by which the government legitimates the ideological position proclaimed by the Commonwealth government when it agreed with the central recommendation of the Web 2.0 Taskforce, a recommendation that is a societal expectation and norm:

> *the Australian Government is committed to the principles of openness and transparency in Government, and a Declaration of Open Government is an important affirmation of leadership in these principles. A Declaration, in conjunction with the Australian Government's proposed reforms to the Freedom of Information Act 1982, will also assist in driving a pro-disclosure culture across government* (Australia. Department of Finance and Deregulation 2010b, p. 3).

The third case study analysis (*The ramifications of commercialisation and fiscal policies*) aims to demonstrate 1) how and why commercialisation restricts citizens' access to the government decision-making policies by which the public is able to evaluate the quality of delivered services; 2) the importance of an examination of the conflicting viewpoints of the manner in which social, economic and financial benefits are delivered; and 3) the implications for the *public sector* when government information is monetised.

Summary

This thesis asserts that citizens' access to the information generated and collected by government is fundamental in a liberal democratic society such as Australia. Without that access, governments cannot claim legitimacy since citizens need to be able to examine the documented evidence of governmental decision-making processes for governing and delivering goods and services. Historically, all governments have tended to keep their information and records secret, but advances in communication technologies have been a catalyst for declarations of openness and accountability that are manifested in more access to government information. The thesis demonstrates that there is a greater openness of the Australian Commonwealth government, however, the same policies and mechanisms that provide access to government information, are also instrumental in limiting it.

The conceptual framework for this research is Bourdieu's conceptual tool of field analysis, which identifies the actors or players in the field of government information, the cultural product of 'the state'. The study analyses the social, political and economic policies, laws and regulations, processes and practices that are the 'rules of the game'. The analysis, conducted through three case studies, reveals there are often inconsistencies between the government's rhetoric of openness and the reality. Such mismatches are the product of conflicts or tensions among related fields. In particular are the tensions among the political, juridical, bureaucratic, journalistic fields, and the fields of civil society and of the market, since all have social, political and economic interests in either gaining or preventing access to the information, and in some circumstances, by circumventing the rules.

The research has focussed on the Australian Commonwealth government. However, the research may also have relevancy for other national and international jurisdictions, demonstrating as it does, that powerful interconnecting and adversarial relationships can have far-reaching impact on citizens' right to see and re-use government information and datasets. The thesis proposes that, at least in Australia, there is a tension between government openness and secrecy that moves in an ebb and flow manner that has important consequences for democratic processes and society.

Significance of the research

Access to government information has become the hallmark of contemporary liberal democracies and the Australian government's ideological position confirms this norm. The analysis in this thesis poses questions about this access and the extent to which conflicting self-interests, power struggles and citizens' expectations impact on these democratic norms.

There is a large corpus of current literature published about both Australian freedom of information legislation and the ramifications of the commercialisation of Australian government information, and a smaller amount of material concerning the accessibility of Australian governmental websites. However, there is little literature that gives an overview of access to the Australian Commonwealth Government information in general. Furthermore, there appears to be little current Australian research that focusses on conflicting ideologies, justifications, expediency and practical solutions, and the implications for liberal democracies and open societies.

The thesis contributes to the knowledge of the legal and regulatory mechanisms and processes through which the Australian government has moved away from secretiveness, while at the same time it identifies the factors that diminish openness and accountability. While this aspect of the thesis's contribution is very much from an empirical and procedural viewpoint, importantly it provides a conceptual analysis of the beliefs and ideologies underlying the proposition that access to information is the bedrock of liberal democracies. Through the use of field theory as its conceptual framework, the research has extended Bourdieu's theories to incorporate digital informational capital, and to expand the concept of a field of government information to a hybridised field, the field of digital government information. These developments are not unique to Australia, and the thesis provides some insights into international trends in the disclosure and accessibility of government and of public sector information.

Structure of the thesis

This thesis comprises eight chapters, the contents of which are described below. This introductory chapter has presented the purpose and research questions of the thesis, introduced its conceptual framework, and given some indication of its significance.

Chapter 2: The review of the literature

This chapter uses the field theory of Pierre Bourdieu in order to frame a literature review that address many of the aspects that facilitates or constrains access to government information. The literature is divided in six general themes and three sub-themes: 1) *The foundations of government and its people*; 2) *Government: a public sector institution* and *The contested nature of government information*; 3) *Government information and the commons* and *The restrictive practices of government ownership;* 4) *The value of government information: a potential for conflict;* 5) *Governmental dichotomy: secrecy and openness and Mechanisms of access and constraints;* and 6) *Access: transparency, trust and the public interest*. The chapter concludes with a brief summary of the major aspects of the body of literature and identifies significant gaps that informs new approaches to the research.

Chapter 3: The methodology

The chapter describes and explores the methodological approach taken to the two research questions of the study. First, it outlines the elements of the conceptual framework of Pierre Bourdieu: field theory, capital and illusio, and presents the rationale for this choice. Secondly, it describes how the framework has been applied to this study. Thirdly, it outlines the methodological approach taken to conduct the research. It then describes, in separate sections, the full details of the three data collections and their analyses.

Chapter 4: Mechanisation and management of Web-published information

This chapter is a study of how documents of a public inquiry, mandated to be published on a government website, had apparently disappeared when a cohort of citizens needed to access them. The study examines the processes by which government information is selected, uploaded and removed from websites, and effectively hiding their existence from citizens. The study draws conclusions about the power of information and communication technologies and technocrats, and the roles and functions of other government agencies that attempt to counter-balance the adverse consequences of mechanistic and technological practices.

Chapter 5: Legitimation, law and implementation

This chapter examines the Freedom of Information mechanisms by which citizens have a right to request access to unpublished information. The research begins with an analysis of the complete official government statistics of requests and their outcomes, in order to draw some conclusions about the patterns of usage from 1982-2018. It then analyses the texts of real-world submissions and associated documentation to gain insights into the bureaucratic and administrative power and practices that can result in the nondisclosure of the requested information.

Chapter 6: Commercialisation of information and the public interest

This chapter begins with an overview of the complexity of legislation surrounding government business and commercial entities that can constrain access to information. It then presents a discussion of government's reliance on the private sector for the provision of services and the implications for access to commercial information. Using official statistics of government tenders, government contractual information is examined to discern the extent of the use of commercial-in-confidence clauses that public access. This is followed by a comparative analysis of two valuable government geospatial datasets, which explores the impact on the public interest when one of the datasets considered to be valuable for economic development, is privatised and no longer available for public access.

Chapter 7: The discussion

This chapter, with regard to the proposition that there are three dimensions of access to the information of the Australian Commonwealth government, reviews the findings of the study that are presented in *Chapter 4 The mechanisation of and management of Web-published information*, *Chapter 5 Legitimation, law and implementation*, and *Chapter 6 Commercialisation of information and the public interest*. It presents the conclusions to the principal research questions of the thesis: 1) how, why and under what circumstances has the government's expression of openness delivered citizen access to its information and to its data; and 2) how are the limits to information access exercised and justified? It submits an account of the ways in which the research extends the field and capital theories of Pierre Bourdieu.

Chapter 8: The conclusion

The chapter presents the conclusions of this study into the factors that facilitate and constrain access to the information and datasets held by Australian Commonwealth government. The implications of this research for the concept of open government and for citizen access are considered. The contribution to existing knowledge and its significance are discussed, and suggestions for further studies are proposed.

Chapter 2: Review of the literature

This chapter uses the field theory of Pierre Bourdieu in order to frame a literature review that addresses many of the aspects that facilitate or constrains access to government information. The literature is divided in six general themes and three sub-themes: 1) *The foundations of government and its people*; 2) *Government: a public sector institution* and *The contested nature of government information*; 3) *Government information and the commons* and *The restrictive practices of government ownership;* 4) *The value of government information: a potential for conflict;* 5) *Governmental dichotomy: secrecy and openness* and *Mechanisms of access and constraints;* and 6) *Access: transparency, trust and the public interest*. The chapter concludes with a brief summary of the major aspects of the body of literature and identifies significant gaps that informs new approaches to the research.

Introduction

The general proposition of this thesis is that rulers of every ilk function on the flow of information and that in modern western democracies, this is a two-way flow. Governments require information to govern through law-making and to provide essential services; and the people, often the source of that information, expect access to it, whether governments have collected it or created it.

The conceptual framework of the thesis is Pierre Bourdieu's unified political economy of practice (see Wacquant 1989), with its emphasis on fields of power, actors, relationships, interactions and rules of the game. Using the game metaphor, it is proposed that the study of this two-way flow of information takes place in a *field of government information*, a field of cultural production in which government information is generated, collected, managed, disseminated and used. To continue the metaphor, the goal of the game is access to the information; however, the government owns the information and write the rules that control that access, and the players (contestants, actors), the citizens wanting access often challenge the rules to alter the information asymmetry. The contest is over the secrecy or openness of government, where the players employ antagonistic, supportive or contradictory strategies to

further one or other position, depending on temporary or permanent self-interested circumstances. The field is a field of power, "a field of forces structurally determined by the state of relations among various forms of power" (Bourdieu 1996, p. 264). This power is capital, a "set of actually usable resources and powers" (Bourdieu 1984, p. 114), that the players use to advance their interests.

In the field of government information, the actors are individuals, groups, and institutions. The first is the government. In Bourdieusian terms, this is the state, a field of power, the "meta-field that determines the rules governing the various fields" (Bourdieu 2004, p. 33). 'The state', Bourdieu suggests, "incarnates itself … in the form of specific organizational structures and mechanisms" (Bourdieu 1994, p. 4) and conflates the term at various times as 'government' and 'bureaucracy'. This study assumes a Westminster system, in which the state is 'the government' as represented by parliamentarians, comprised of politicians and their advisors, separate from the government are the public or civil servants, the bureaucracy.

The major fields and actors are, therefore, 1) the political field that includes the political parties and individual politicians and their advisors who write the rules; 2) the bureaucratic field comprising the public servants and government employees who advise on and implement the rules; 3) the juridical field, which includes judges, tribunals and autonomous legal advisory agencies who interpret and adjudicate the rules; and 4) autonomous government cultural institutions such as the National Library of Australia and the Australian National Archives. The fields and actors external to the government, and whose relationships with government are often antagonistic, are the fields of civil society (including individual activists, public intellectuals, academics, citizens, and non-government institutions), journalism and the market. The boundaries of the field of government information in this thesis is the Australian Commonwealth Government jurisdiction and its information, although occasionally the study, of necessity, explores its relationship with other states that are part of the Australian federated system.

This literature review, is therefore based on the following assumptions: that the nature of the state is a governing institution with a relationship with those it governs. That this relationship is manifested, in part, and in association with both the public the private sectors, resulting in a conceptualisation of the public sector as a fuzzy and complex institution that has intersecting relationships with the private sector. That these visible and invisible relationships have

consequences for access to state-held public sector information, generating uncertainty about ownership and control that is dependent on how the information is valued by each of the players in the game. Further, the rules dictating this ownership and control access of the information, that is, the rules enabling and limiting the information flow, are legislative mechanisms that are implemented by governmental processes and practice. Finally, it proposes that the government has ideological positions on access to different types of information, thereby creating an area of contestation, which can have unexpected impacts and consequences for the accessibility of its information.

To examine these assumptions, the review is structured in six sections:

1 The foundations of government and its relationship with the people

2 Government: a public sector institution

2.1 The contested nature of government information

3 Government information and the commons

3.1 The restrictive practices of government ownership

4 The value of government information: a potential for conflict

5 Governmental dichotomy: secrecy and openness

5.1 Mechanisms of access and constraints

6 Access: transparency, trust and the public interest.

The review is then followed by a brief section that presents the gaps and conclusions arising from the literature, leading to a method for explore them.

1. The foundations of government and its relationship with the people

> *a popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.*
>
> (James Madison 1822, p. 103)

This study assumes that in the relationship between the ruler and the people, access to information is the sine qua non for governing and the provision of services. That information should flow in both directions is an assumption firmly anchored in the nature of a 21st century liberal western democracy such as Australia. Its antecedents are historical, but have developed gradually over time, driven by disruptive elements that are both causal and consequential, many of which continue to be relevant and influential in contemporary Australia. It is useful, therefore, to briefly review these historical antecedents in order to position contemporary relationships between government and its people as manifested in the accessibility of the records of government processes and decision-making.

Rulers, since the development of writing, have codified their official records and the ancient world is replete with public and private archives most of which were created by sovereign powers and bureaucrats for administrative purposes (Hawke 2011; Sickinger 1999), to serve the elites and the self-interest of those in power (Tauberer 2014), and which Wriston (1993) claims were, in fact, the basis of their political power. There was little consideration that 'the people' should have access to this information, apart from the necessity to proclaim new laws such as the Hammurabi code or Visigothic Code of 7th Century Europe (King 2007; Scott 1910). However, there were early glimmerings of the potential for a two-way information flow in the political systems of city states such as Athens. That citizens might want to consult the public record, what the Athenian politician Aeschines called 'the public documents of the people' (Harris 1994), was clearly recognised by Aeschines in his speech before an Athenian law court in 330 BC praising the preservation of the public record enabling citizens' access:

> *a fine thing, my fellow Athenians is the preservation of public records. For records do not change, and they do not shift with traitors, but they grant to you, the people, the opportunity to know, whenever you want, which men, once bad, through some transformation now claim to be good* (Sickinger 1999, p. 1).

These words provide some evidence that the notion of government accountability, which will be covered in greater detail in Section 6 *Access: transparency, trust and the public interest*, had its roots in Athenian democracy (Elster 1999; Roberts 1982), as does the basis of modern freedom of information mechanisms: "in Athens, the freedom of information in effect provides the citizens with their power and liberty" (Harris 1994, p. 214).

For the next one and a half millennia, the rulers who exercised governmental control, what I will refer to as *government*, over the demos (the people) were embodied in the absolute authority of a monarch, and governmental information—the *arcana imperii*[3] that was the guiding principle of power (Horn 2011, p. 107)—was kept secret in a regime easily aided by the fact that most information was codified in the prevailing expensive technology of handwritten manuscripts (Roberts 2006). However, new communication technologies such as the printing press and its subsequent improvements quickly spread information and ideas—a pattern replicated throughout history into the 21st century—challenging the status quo, such as the sovereign's absolute right to absolute control, potentially attenuating the power of the ruler (Wriston 1993). Such was the case in the late seventeenth and eighteenth century when, through the influence of philosophical and political writings of the enlightenment thinkers—including Thomas Hobbes, in particular *Leviathan* (1651 [1999]), John Locke, in his *Second Treatise on Civil government and Social Contract* (1689 [2003]) and Rousseau's *The Social Contract* (1762 [2002])—three foundational and interconnected threads of contemporary liberal democracies were laid: constitutional government, its obligations to the people and access to its information.

In *Leviathan*, Hobbes allowed the possibility of a limitation to the authority of the sovereign by conceding that the people had rights (equity), a concept that Devine (1975, p. 750) argues enabled Locke to make a stronger argument for limiting the sovereign's absolute power and Rousseau began to question the absolute authority of the King. It was argued that any political legitimacy of ruler (monarch) was based on a social contract between the ruler and the people, in which the people's consent is given in return for certain obligations (Held 2006); that the ruler's power included the right to make laws "only for the public good" (Locke 1689 [2003], p. 101 Chapter II §3), but was obliged to protect the people "from

[3] Literally 'secrets of empire', the term used by Tacitus to describe the secret powers and knowledge upon which autocracy rests (Bernario 1963, p. 362).

foreign injury" (op. cit.) or "against other men" (Hobbes 1640 [1994] Chapter 10). Coupled with the 18th century revolutions in England and France, these new ideas spread rapidly, gradually breaking down the old power structures, forcing monarchs to grant constitutions whereby societies would be governed by constitutional principles (Braman 2006b), and giving rise to powerful bureaucracies that further diminished the power of the sovereign, leading to the emergence of the modern state (Bourdieu 2004; Wriston 1993).

Of equal importance in the Enlightenment thinkers' nascent concepts of the nature of government was the emphasis on education; this was after all, the Age of Reason, and Locke, in particular was an advocate for education for children, reasoning that it brings about human autonomy, which Tarcov (Tarcov 1984) suggests is liberty and is preparatory for civil polity. The logical sequel of children's education is adult education, a view espoused by John Stuart Mill and Adam Smith, since one of the effects of the industrial revolution was the necessity of having men who could read instructions and drawings, and had some understanding of scientific knowledge (Braman 2006b, p. 18). A degree of literacy was required to read the laws—

> *we hear of tyrants, and those cruel ones: but, whatever we may have felt, we have never heard of any tyrant in such sort cruel, as to punish men for disobedience to laws or orders which he had kept them from the knowledge of* (Bentham 1838-1843b, p. 547),

forcing governments to recognise their responsibility to inform the people. By implication, this information, once solely available only to the government should, at least in part be accessible to the people; that "secrecy, being an instrument of conspiracy ought never to be the system of a regular government" (Bentham 1838-1843a, p. 315).

These social upheavals fostered other new ideas, one particularly germane to this study, the Swedish Freedom of the Press Act of 1776, now considered to be the precursor of freedom of information granting to all citizens statutory rights of access to government-held publications (Bowles *et al.* 2014). Finally, these upheavals hastened the pace of reforms (Roberts 2006), and ultimately changed the nature of government into a political system of democratic rule, which Bollen (1986) considers, in part, to be "the extent to which a national government is accountable to the general population . . . derive[ing] its authority from the population" and in which "each individual is entitled to participate in the government directly or through representatives´(1986, pp. 568-9). Or, as it has been argued, changed into a governmental

system (Braman 2006b) or a political system that integrates all activities through which social policy is formulated and executed (Easton 1953).

2. Government: a public sector institution

Australia, as in all governmental systems, collects and creates information as it performs its functional roles of law-making and the provision of services to its citizens. In Australia, this information is called *public sector* information (PSI), not *government* information, a distinction that requires an examination of what constitutes the public sector, of how it may or may not differ from 'the government', of its relationship with the government and with the rest of society, and the subsequent effect on public sector information as a public good.

The public sector is a system of ideas that exists in a variety of paradigms or ideologies: institutional, administrative, economic, and social. Each of these view has implications for the nature and value of its information. Lane (2000) considers the public sector to be a system of public institutions, which, in liberal democracies, is understood to be "institutions of politics, government and bureaux" (2000, p. 1). He (Lane) then suggests the concepts of this system may be interpreted as bureaucracy, planned economy, authority, public resource allocation, public distribution of income, public ownership, and public employment (2000, p. 47). Several of these interpretations appear to infer that the public sector refers to the government function of service provision, rather than law-making. For example, Broadbent and Guthrie (1992) emphasise the public sector as the role of government: "the public sector is composed of organizations which provide utilities and services to the community and which have traditionally been seen as essential to the fabric of our society"(p. 3). Similarly, Joseph Stiglitz (2015) sees the public sector as an expression of government's role of providing goods and services, but he frames this role as a public expenditure or public economics. Others see it through the lens of the ownership and management of public assets (Broadbent & Guthrie 1992; Flynn 2007; Wilenski 1988). Still others emphasise accounting and efficiency, a consequence of the wide-spread ideological changes in the political economy during the 1970s and 1980s (Aucoin 1990; Barrett 2004; Larner 2000; Mirowski & van Horn 2015), including the wave of reforms to the public sector and new public management (Aucoin 2012; Hood 1991, 1995; Kaboolian 1998). A final perspective is a social one: that the public sector should be responsible for the delivery of intangible services

such as environmental and sustainable development, that are part of the social contract between the government and its citizens (Banisar 2011; McMillan 2010; Stiglitz *et al.* 2009).

These various views of the public sector all speak of institutions, often as organisations, but also as systems of organisations (Miller 2012), of networks of relationships (Bourdieu & Wacquant 1992) or as socially constructed abstract concepts (DiMaggio & Powell 1983), such as legal, environmental and industrial ones (Wildavsky 1985), all of which affect the public sector. As Lane (2000) writes

> *the modern democratic state is based on a set of principal-agent relationships in the public sector . . . involve[ing] both the relationship between the population and its elected leaders and the relationship between the government and its agencies or bureaux* (pp. 12-3).

However, in each case, there is an acceptance of the social universe as the foundation of institutions; that the notion of social life is a fundamental aspect of institutionalism (Clemens & Cook 1999; Giddens 1984; Searle 2005; Turner 1997).

It is Hodgson's (2007) characterisation of institutions that is germane to my study: "institutions are systems of established and embedded social rules that structure social interactions" (p. 96). This view is similar to that of Douglass North, who, in his theoretical approach to institutions, considers an institution to be "the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction" (1990, p. 3). North also adds that "[c]onceptually, what must be clearly differentiated are the rules from the players" (1990, p. 4). Miller (2012, Section 1) proposes the notion that some social institutions are *meta-institutions* "that organise other institutions (including systems of organisations)." He (Miller 2012) suggests that one such example is a government, the meta-institution of the nation-state, a position that reflects Bourdieu's field of power, where the state is "a meta-field that determines the rules governing the various fields" (Bourdieu 2004, p. 33).

In practice, the public sector itself is understood through the rules of particular games, variously economic, social and socio-economic, and indeed it is frequently described in purely economic terms, and not necessarily overt social terms. For example, Wegrich (2012)

categorically states the public sector to be "the portion of the economy composed of all levels of government and government-controlled enterprises" (pp. 776-7). However, while Broadbent and Guthrie (1992) in their literature review of public sector changes define the public sector as "that part of a nation's economic activity which is traditionally owned and controlled by government" (p. 3), they acknowledge the importance of perspectives, requiring "moving from an organizational [accounting] level to a more societal type of analysis" (ibid., p. 25). There is, however, a general tendency to discuss the public sector in a dichotomous relationship—the economy or society, the public or the private (Lane 2000). However, boundaries between the public and private sectors are neither clear nor permanent because of government privatisation, outsourcing or subsidisation of services (see for example, Boyne 2002; Broadbent & Guthrie 1992; Deleuze 1992; Flynn 2007). In fact, to define the public sector by its function, at least its function for the provision of services, is problematic since many of the functions of the public sector are now carried out by the private sector (Lienert 2009). This definition leads Broadbent and Guthrie (2008) to suggest that the public sector should now be re-named *public services,* since central public services such as health are more and more removed from the central government. Finally, Lane (2000) concludes that the public sector is embodied in questions and problems of individual freedom, allocation, distribution, production, ownership and bureaucracy. Examining the nature of the public sector through paradigmatic lenses foreshadows potential conflicts in ownership of public sector information, its value to the agents/parties who collect or create it, and the serious consequences for who, and under what circumstances, has access to it.

2.1 The contested nature of government information

> *PSI is a highly contested notion . . . [it is] a hard-fought contest between the specifications of users of what should be included in a PSI portfolio, and those of producers as to what should be excluded*
>
> (Blakemore & Craglia 2006)

The concept of public sector information is a complex framework of legal, economic, social and technical policies, and decisions as to what information is collected, created, codified and preserved. There is the question of what is then made 'public', that is, made accessible to whom and under what circumstances. At the centre of this complexity is the contestation of

ownership: the government or 'the public', or the private, as may be the case when public functions are provided by the private sector. Within this framework, any conceptualisation of public sector information has developed gradually overtime, accelerated by new information and communication technologies (ICTs). It is a concept that includes formal declarations about inclusiveness or exclusiveness, of which agencies and institutions are generating it, and in what forms it is manifested—information-as-thing (Buckland 1991).

In Australia, public sector information is considered to be

> *information, including information products and services, generated, created, collected, processed, preserved, maintained, disseminated, or funded by or for the Government or public institution* (Office of the Australian Information Commissioner (OAIC) 2013).

This general definition was developed by the Organisation for Economic Cooperation and Development (OECD 2008a), and is a distillation of wide-ranging debates over several decades, in which new technologies enabled an information economy and spawned much deliberation about the essence of public sector information and information policies (Bates 2014b; Braman 2011; Burkert & Weiss 2004; Maurer 2001; Weiss 2010). Emerging information industries had begun to produce and disseminate electronic information (Braman 2006b; Lamberton 1994); this information included that of governments, as they looked to outsourcing as a means of cost-cutting and efficiency (Gilchrist 2015; Rowlands 1993; Schiller 1991). This practice led Schiller (1994) to remark that by the 1990s a handful of very large corporations had "become the producers and custodians of a good part of the world's information, and to a certain extent, the global memory" (p. 140).

The changes in the technology landscape also gave rise to new types of codified information, which until the middle of the twentieth century had mainly been in analogue form, generally ink on paper. By the 1970s the literature begins to describe new types of government information being collected, stored and disseminated in electronic formats. These include data collected electronically through electronic data interchange (EDI) systems (de Brisis 1995), public registers of companies and vehicles (Burkert 1992; Rowlands 1993), statistical data (Geiger & von Lucke 2011; Pollock 2010), scientific data including meteorological and geospatial data (Pollock 2010; Reichman & Uhlir 2003; Vickery 2011), many types of 'social'

data such as health and demographic statistics (Ubaldi 2013), research data (Arzberger *et al.* 2004; Borgman 2010; Fischer 2013), email (Boudrez & Van den Eynde 2002), social media (Leadbetter 2011) and public websites, intranet and extranet sites and the content and objects they contain (*Archives Act 1983 (Cth)*). In short, what is included in public sector information is "any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium" (European Commission 2003, p. 91), and "born-digital public sector products and data" (OECD 2008a, p. 5).

Thus, the forms of public sector information are quite clear. What may be accessed or used is a different matter; one that primarily revolves around ownership, intellectual property (IP) rights, including usage rights and value. The first caveat is signalled in the 2004 the policy guidelines of UNESCO, which articulated exclusive properties, suggesting that PSI is

> *information produced by public entities in all branches and at all levels be presumed to be* ***in the public domain*** *[my emphasis] unless another policy option (e.g. a legal right such as an IP right or personal privacy) is adopted and clearly documented, preventing it from being freely accessible to all* (Uhlir 2004, p. 6).

The potential constraints described as "another policy option" are the major factors that contribute to the notion of public sector information as an area of contestation; these are ownership and intellectual property rights, financial value, concepts of re-use of government data, economic growth and the citizens' right to its access.

3. Government information and the commons

Joseph Stiglitz asks of government information "[i]s it the private province of the government official, or does it belong to the public at large?" (1999b, p. 7), to the government or its citizens? The question of ownership of public sector information is inextricably linked to the binary proposition that the information is "presumed to be in the public domain, unless . . . a legal right such as an IP right . . . prevent(s) it" (Uhlir 2004). While Australian government information is not in the public domain, as we shall see, it is a property with all the concomitant issues of access and usage rights, and consequences of these rights in the form of intellectual property (IP). This thinking has evolved from the historical background of

English law and gives rise to parallels and debates about contemporary notions of the public domain and the information commons.

'Domain', a derivation of the French *domayne*, has long connoted property rights, particularly land rights and from the 15th century in England, meant the land rights of the Crown, that is, crown lands. This is a concept that finds continuity with Crown copyright of government information in many countries of the British Commonwealth, including Australia (discussed in detail in Section 3.1 *The restrictive practices of government ownership*). Until the 18th century English enclosure movements, acts that modern critics have suggested were state-aided privatisation (Boyle 2003b), the majority of people, farmers and crofters, were not property owners, relying on the 'commons', land privately owned but traditionally available for public grazing of livestock. In contemporary legal and economic debates on the 'tragedy of the commons', positions are taken on gross exploitation and under-investment of and in the property (land), versus the detriment of the social fabric of society (see Boyle 2003b; Hardin 1968; Rose 2003). These debates have led analogously to an examination of a modern concept of a public domain and its usufruct, which in civil law is a right to the use of property belonging to others as long as it is not damaged or destroyed (see Travis 2000 on usufruct law and the 'commons'). In this sense, one can draw a parallel to information as property that is not destroyed by use, a notion examined in detail in Section 4 *The value of government information: potential for conflict*.

With regard to the review of the legal literature of the historical context of public domain, I have taken a conceptual approach that is not necessarily paralleled in the Australian legal literature, which is covered by the notion of crown copyright in Section 3.1. In general, the legal literature has concluded there is a modern public domain, central to which is the concept of property rights (Boyle 2003a; Lange 1981) that may be applied to creative works and tangible information documents (Boyle 2003b). Greenleaf and Bond (2013) argue for a more expansive understanding of the term in contemporary contexts; that the public domain comprises

> *all types of rights that allow members of the public to use copyright works without permission from copyright owners, such as statutory exceptions to copyright, uses outside the exclusive rights of the copyright owner, and uses allowed under compulsory licences* (p. 112).

There is therefore, an implied necessity for a broader discussion of intellectual property rights, the composition of the public domain and the informational commons. It is a discussion of the processes that define, map and locate its constituent sources, an endeavour that Michael Birnhack (2006) calls the *public domain project* (pp. 59-60). As Zückert (2012) says, the historical concept of the commons is a concept of property rights, and Boyle suggests "there is not one public domain, but many" public domains (2003b, p. 62), including the public domain of information. Pamela Samuelson's 2006 review of the proliferating public domain literature counted at least thirteen definitions of information 'in the public domain', which she grouped by their legal status, their freedoms of use and whether it was publicly accessible (Samuelson, p. 788). Samuelson (2006) further noted that these many definitions illuminated important social values of information and scientific commons, and of indigenous knowledge; and therefore their use and accessibility are points on a public domain continuum. Many scholars (including Boyle 2008; Samuelson 2003; Travis 2000) contend that attaching property rights to information is comparable to an intellectual enclosure movement—"the enclosure of the intangible commons of the mind" (Boyle 2003b)—suggesting that there are circumstances in which access to information should be unfettered by property rights: an information commons. It is universally recognised that the public domain exists equally in the digital environment (Boyle 2003b; Samuelson 2003), and that in the context of the Internet the public domain is a virtual space, a public space or land, just like a commons (Benkler 1999; Hess & Ostrom 2007; Lessig 2001).

By the 1990s the term 'information commons' began to enter the scholarly lexicon, particularly that of information science (Hess & Ostrom 2007). David Bollier (2007) considered 'the commons' to be a useful term in economic terms. Since information (and knowledge), in spite of the supposed 'tragedy of the commons' where free-riders over-exploited the resources through self-interest, is non-rivalrous and non-depletable. Bollier (2007; Boyne 2002) argues that in the digital age, there was no vernacular for the public domain, and that it required a transformation language, which enabled a new cultural form and public discourse. This is a notion entertained by information professional scholars (Beagle 1999; Kranich & Schement 2008), who argue that intellectual property rights, including copyright restrictions and extensions, could prevent access to information and knowledge (Lessig 2001; Longworth 2000; Reichman & Uhlir 2003). For example, much of the opposition to the introduction of legislation such as the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement of 1994, the WIPO Copyright Act of 1996, and the

United States Digital Millennium Copyright Act of 1998) has come from the information profession.

Legal and economic scholars have also indicated serious concerns that public sector information will become less accessible (see Benkler 1999; Esanu & Uhlir 2003; Gasaway 2002; Perritt Jr 1997). Indeed, Drahos and Braithwaite warned that TRIPS was "the first stage in the global recognition of an investment morality that sees knowledge as a private, rather than public, good" (2003, p. 10); it is a position that places the 'commons' and intellectual property and ownership rights at the centre of the debate concerning the ownership of Australian public sector information.

3.1 The restrictive practices of government ownership

I have already noted that Australian government information, unlike the United States but similar to other Westminster systems, is not in the public domain; it is constrained by copyright. This is Crown Copyright, an historical anachronism by which "documents prepared by Crown servants became Crown property" (Campbell 1967, p. 77). This clearly states the ownership of government information resides with the government and implies it is the Crown's prerogative power to permit access. This fundamental legality can be problematic in a liberal democracy; not only is ownership contentious, but so too is the right to access and in particular, to re-use Crown property. This section will review the literature of issues arising from the concept and the reality of Crown copyright, and the drivers of change to government policies on accessibility and usage of government information.

As with the notion of the public domain, Crown copyright has its basis in historical practice and in common law (Gilchrist 2015). In Australia, according to Gilchrist, this prerogative right was "inherited by the Crown in right of the colonies before federation and by the Crown in right of the several States and the Commonwealth of Australia upon federation" (Gilchrist 2015, p. 41). As a consequence, the British Copyright Act of 1911 is the basis of Australia's Copyright Act 1968, which preserves the prerogative right and privilege of the Crown and does not limit its duration (*Copyright Act 1968* (Cth) s 8A).[4]

[4] Prerogative rights of the Crown in the nature of copyright.

Historically, Crown copyright had its genesis in commercial practices, when in the 16th and 17th centuries the Crown controlled the publication of government information through the granting of exclusive licenses to commercial printers (Saxby 2010). This practice of publication licensing continues today, particularly of legal materials and for which Gilchrist argues "there is a strong and identifiable public interest in wide dissemination and access" (2015, p. 64). Greenleaf *et al*. contend it is not a question of copyright, but one of public policy, since "it is quite possible for a government to theoretically claim Crown copyright but to give a blanket license to the public" (1995, p. 57). This has been the case with AustLII,[5] leading Cox (2006) to remark "even with Crown copyright, the public interest in dissemination has prevented a governmental—or commercial—monopoly from operating" (p. 202). In 2005, the Copyright Law Review Committee (CLRC)

> *investigated the extent and appropriateness of reliance by government on copyright to control access to. and/or use of, information . . . [recommending that] copyright in certain materials produced by the judicial, legislative and executive arms of government be abolished* (2005, pp. xii, xxvi),

a recommendation that was not implemented.

By the mid-1990s, with the advent of the World Wide Web, governments embraced the practice of publishing much of their information on departmental websites, often as a cost-cutting device (Chadwick & May 2003; Fitzgerald 2010; Gilchrist 2015). Although Australia appeared to be slow to move in this direction, Tony Barry (1995) noted some changes in this attitude for which he gave a great deal of credit to the work of the National Library of Australia. At the same time, an ideological activist movement developed, and similarly to the earlier movements demanding open source and freedom of software, sought to provide an alternative to copyright laws (see Elkin-Koren 2006; Lessig 2001, 2004). This was the creative commons movement whose ideas of creative commons licenses very quickly gained popularity, leading Bannister (2011, p. 1083) to remark

> *[t]here is no doubt Creative Commons licensing and electronic publishing on the Internet enables far greater efficiencies in distribution of government information and,*

[5] The Australian Legal Information Institute free online database of legal information, particularly government primary legal materials.

> *in recent years this has undermined the user pays approach once associated with paper based publishing for government publications.*

However, it was the open government data (OGD) movement that galvanised change in the restrictive copyright practices for access and reuse of government information, particularly datasets, in Australia and other western democracies (see for example, Fioretti 2010; Saxby 2010).

Governments were gradually recognising the value, in both commercial and socio-economic terms, of open access to their datasets (see for example, Burkert 2004; Fitzgerald *et al.* 2010; Weiss 2003). Australian government commissioned a number of reports (including Australia. Department of Communications Information Technology and the Arts (DCITA) 2005; Cutler & Company 1994; Gruen 2009) to explore and make recommendations for effective means of releasing their datasets to the public. A later Cutler report (2008) commissioned for the Department for Innovation, Industry, Science and Research, noted there was "strong evidence that existing intellectual property arrangements are hampering innovation" (p. xii), and recommended the adoption of "international standards of open publishing as far as possible. . . [and] released under a creative commons licence" (p. 95). The thread running through these reports advocating releasing government information under open licensing is that of value, for commerce, innovation and economic development.

4. The value of government information: a potential for conflict

A discussion of the value of public sector or government information should begin with the proposition that the institution of government is the

> *culmination and product of a slow process of accumulation of . . . cultural or informational capital accumulated in the form of statistics, for example, and also in the form of instruments of knowledge endowed with universal validity within the limits of its competence, such as weights, measures, maps or land registers* (Bourdieu 2005b, p. 12).

If government information has value, then the question becomes to whom, and why, thereby placing value of its access or non-disclosure as a corollary of its context. In this context, the

field of government information, it is the actors in government and its agencies, politicians, bureaucrats and the public service, citizens, activists, journalists and the private sector.

Bourdieu (1986, p. 281) argues cultural capital "is convertible, on certain conditions, into economic capital." One such condition appeared in the mid-20th century with a series of converging trends. First was the development of powerful information and communication technologies (ICTs) with its subsequent phenomena of a networked society and open government movements. Together, these trends represented a gradual Kuhnian paradigm shift (Kuhn 1996) from long-established government secrecy to government/public administration openness. Additionally, there was the confluence of two other developments, economic and political. The first was the advent of a knowledge/information economy based on the generation, processing and transmission of information (described by Bell 1973; Castells 2010; Machlup 1962; Porat 1977; Smith 1985). The second was the rise of a neo-liberal economic philosophy (Mirowski & van Horn 2015; Polyani 1975[1944]) which, citing inefficiencies of government, advocated for the transference of many of the functions of the state to the market. The outsourcing of the functions of service provisions, including the dissemination of government information (Rowlands 1993), was reducing the state to the enforcement of basic property rights and liberties (Bourdieu 1994; Campbell & Pedersen 2001; Larner 2000; Wacquant 2012).

In his book on the postmodern condition, Lyotard (1984, p. 3) argues that "the status of knowledge is altered as societies enter what is known as the post-industrial age and cultures enter what is known as the postmodern age"; an age in which knowledge has become a highly commercialised international commodity. That

> *[k]nowledge is and will be produced in order to be sold, it is and will be consumed in order to be valorised in a new production: in both cases, the goal is exchange* (Lyotard 1984, p. 4).

The intersection of the commodification of information and the citizens' right to know, commonly expressed in terms of open government movements, is one of the conflicts of power that is addressed in this thesis.

The open government movements are generally considered to be a phenomenon of recent years (Evans & Campos 2013; Moore 1995). However, historically, as already discussed, the concept of openness of government can be traced back to the thinkers of the Enlightenment, who began to question the legitimacy of state secrecy (Hood 2006; Mulgan 2003; Roberts 2006), and to the Swedish 1766 Freedom of Press Act, which is generally regarded as the precursor to contemporary Freedom of Information legislation (Relyea 1980). The modern concept of open government is ambiguous in its meaning (Yu & Robinson 2012)—variously transparency, accountability, civic engagement, access to information and a conflation with open data—but each has developed out of the notion of a right to know through access to information. It is arguable as to what kind of *right* this might be. James Madison and John Dewey suggested the right to *read* such information was implicitly essential for democracy and modern scholars generally agree (Bovens 2002; Mason 2000; Mendel 2003; Stiglitz 2003). Others consider there is a legal basis to this right, including a constitutional right (Emerson 1976; Peled & Rabin 2011; Prins 2004). The United Nations in its 1946 Resolution 59(1), considers it is a human right to "to gather, transmit, and publish news anywhere and everywhere without fetters" (para. 2). Some scholars are exploring the basis of access to information as an emergent human right (see e.g. Beers 1992; Mendel 2003), while Patrick Birkinshaw (2006) provides a cogent argument that the right to information is a human right in both civil and common law.

Economists have examined the value of the public domain pointing out that in a knowledge economy there is both economic and social value in 'open', that is public sector information is openly available, particularly data (Pollock 2010; Weiss 2003). The concept of open data—and by extension, open government data (OGD)— that is, data that can be "transferred and analysed using freely accessible platforms and tools" (Davies 2010, p. 2) was a driving force for an overwhelming abundance of scholarly and economic literature on public sector information (Nilsen 2010). According to Yu and Robinson (2012) the term 'open data' was first used in the 1970s when the US government was framing science policies that "ensure[d] unrestricted public availability" of the data "at a fair and reasonable charge based on actual cost" (p. 189). Janssen (2012) has suggested that OGD developed out of various right to information movements in the 2000s, while others have argued its roots are in open source, a concept that treated intellectual property as "public goods" (Lathrop & Ruma 2010; Willinsky 2005). Still others, on examining the phenomenon as part of the open government movement, have suggested it is the latest element in the Freedom of Information (FOI)

continuum (Halonen 2012; Heusser 2012). On the other hand, David Eaves (2012) considers that currently FOI legislation and open government data are separate but complementary processes, with the ability of open data to circumvent the onerous and expensive processes of FOI requests while maintaining FOI's inherent protections and rights. Fundamentally, open government data is a shift in the public's attitude to public sector information. As Halonen (2012) remarks

> *in comparison to reactive freedom of information, the open-data movement . . . is seen as enabling a participative writing society instead of a reading society, where citizens are theoretically able to receive information but not to re-use it in creative ways* (p. 22).

It is the ability to *reuse* the datasets that can and does generate enormous revenues for both the public sector itself and for the private sector (Dekkers *et al.* 2006; Vickery 2011; Weiss 2010). This ability to reuse, not to simply see, the data that are highly contestable, in part because of the perceived value of the data, and the consequential intellectual property concerns.

It was not until the mid-twentieth century that the economics of information emerged in fields of economics (for an overview, see Wegrich 2012) and information science (see Nilsen 2010; Relyea 1977). As George Stigler noted in 1961, information is a valuable resource "and yet it occupies a slum dwelling in the town of economics [but] mostly it is ignored" (Stigler 1961, p. 213). This emergence coincided with the notion of the information society (Bell 1973), that was stimulated by the converging developments of information technologies (see for example, Atkinson & Stiglitz 2015; Castells 2010; Moore 1995) and the early work on the economics of the production of information by Machlup (1962) and Porat (1977). In their work on the concept of an information economy, Machlup and Porat made attempts at valuing information, leading to the economic view that information could be regarded as a commodity (Allan 1990; Eaton & Bawden 1991; Schiller 1997); that "if information—whatever it may be—can be owned and valued, it can be a commodity" (Mowshowitz 1992). In economic terms, when information is commodified, neoclassical economic theory states its worth is dependent on the value the user places on it (McKenzie 1979); that its supply equals its demand, and participants in the market have perfect information (Babe 1995). It was Joseph Stiglitz who first recognised that the neoclassical paradigm of the marketplace was

not robust, and that "information economics represents a fundamental change in the prevailing paradigm within economics" (2002a, p. 460).

Information as a commodity is a central theme within this thesis, since access to such information is essential to address the flow of information between the government and its citizens. In a general theory of commodities, Debreu (1957) stated a commodity is characterised by its physical properties: "good or a service completely specified physically, temporally, and spatially" (p. 32), thus equating a commodity with a 'good'. Paul Samuelson (1954) developed the notion of a public good

> *which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtractions from any other individual's consumption of that good . . .* (p. 387).

Machlup (1980) referred to public goods as collective goods, adding that their production and consumption have external affects (externalities) such as costs or benefits. A public good, as opposed to a private good, is non-rivalrous, that is, there is zero marginal cost for an additional individual to have it, and it is non-excludable, that is no one can be excluded from having it—a public good externality (Stiglitz 1999a). However, the nature of information as a commodity or good has long been regarded as paradoxical (see for example, Bowles *et al.* 2014) it cannot be characterised by physical properties alone, thus defying standard economic theories (Cutler & Company 1994; Relyea 1977). Hall (1981b) provided an early overview of the unusual economic properties of information as *a commodity*, that is, a public good. These not only included public good externalities, but also the unenforceability of ownership, uncertainty of production and exchange, the non-depletion in consumption, market power, and problems of measurement of its value.

Measuring the value of information is complex and enigmatic (Raban & Rafaeli 2006). It is a relative and subjective property dependent on the context in which it is used by particular persons in particular situations (Repo 1989). It "is of value only if it can affect action" (Hirshleifer 1971, p. 564); that its value is revealed only after it is used (Hood 2010), experienced (Shapiro & Varian 1999) or in its application (McMillan 2010). When considering the value of government information and data in the context of public sector information, it is helpful to also consider the notion of public value. This notion was first

introduced by Mark Moore in his seminal work, *Creating Public Value* (1995), in which he suggests that value is not restricted to monetary value, but includes values such as national security, environmental sustainability and equality. Although Moore applied his theories of public value to the role of public managers in the provision of government services, analogously, government information and data have public value, as well as monetary and economic value. While they may have a direct value (revenue from selling the information), a commercial value (revenue generated by companies who have purchased or used the information), they may also have an indirect economic, social or downstream value, what Bates (1988) calls ancillary value in the form of individual and social benefits (see for example, Babe 1995; Deloitte 2013; Mayo & Steinberg 2007).

A second way of thinking about the value of government information and data is to differentiate between information as content (Floridi 2003) and information as product (Repo 1989). *Information [or data] as content,* is meaningful and a necessary condition for knowledge. It has an informative value to support decision-making, such as reducing uncertainty in the market place (Hirshleifer 1973; Wegrich 2012), or for facilitating citizens' electoral decisions (Dahl 1998; Davies 2010); however, others such as Dervin (1994) have questioned the validity of this assumption, a point discussed in more detail in Section 5.1 *Mechanisms of access and constraint*. This informative value of data and information also enables governments to make service provision and policy decisions. Equally, in an open society, it enables citizens to scrutinise those government decisions and to evaluate their consequences (Dahl 1998; Thornton 2016, Section 6), particularly through information delivered by FOI requests (Mulgan 2003). Nevertheless, the following section examines the background that originally positioned the Australian government as an institution of secrecy, and then gradually moved to one of more openness, albeit one that continues to be the basis of more contemporary conflicts over information access.

5. Governmental dichotomy: secrecy and openness

> *There is no political power without control of the archive… Effective democratization can always be measured by this essential criterion: the participation in and access to the archive, its constitution, and its interpretation*
>
> (Derrida 1996, p.4)

Historically, power lay in access to codified records (Tauberer 2014; Wriston 1993) and little has changed. Joseph Stiglitz (2002b) writes of information asymmetries as a state when one agent or party has more information than the other, and that there is " a natural asymmetry of information between those who govern and those whom they are supposed to serve" (p. 27). A democratic society demands a flow of information from government to its citizens, a reduction of this natural asymmetry. These societal demands are expressed in legislative mechanisms and regulatory processes, policies and rules that are introduced, amended and sometimes rescinded in an ebb and flow motion. In Australia, the legacy of an extreme asymmetry, that is total secrecy, has gradually given way to more openness through a suite of interlocking legislation, which sets the rules, and regulations that expand them, often through interpretation and implementation. It is within and through these mechanisms and processes that power over access to information—the archive—is exercised and conceded.

In Australia, for much of its contemporary history, governmental processes have been shaped by its existence as a group of British colonies and its administrative practices and policies, including those concerning government records that were an extension of British policies. Most government records were kept within their administrative units, or in government (state) research libraries, but in most cases there was little formal policy to consider their long-term retention, and indeed destruction of records was not unusual (Cunningham 2005; Piggott 1989). By federation in 1901 when the Commonwealth Library was set up, legislative policy based on the British Official Secrets Act—the Post and Telegraph Act of 1901—was enacted to ensure the records remained secret (McGinness 1990). According to Piggott (1989), until 1940 it was a period of archival dark ages. Although an archives bill was put forward in 1927 but never presented to parliament (National Archives of Australia n.d.-b para. 2), the only official federal policies to preserve records had concerned war records,[6] and a formal war archive was set up in 1945 (Cunningham 2005). However, by the second world war, the role of the federal government had expanded into most fields of administration, including taxation, education, health, welfare, scientific research and industry regulation, all of which generated vast amounts of records that needed to be managed (McGinness 1990). An expansive history of archives in Australia is outside the remit of this literature review, but the notion of providing access to government information assumes that

[6] The state of South Australia was an exception, setting up a archive department in 1920.

there is, in Derrida's terms (Derrida 1996), *the archive*, and that there are mechanisms and processes for handling government information, that is, its records and data within it. Such mechanisms and processes are developed and implemented through formal government information policies, which initiation, modification, extension and rescission control any consideration of a two-way flow of that information.

As already noted, there are many legal arguments and positions regarding ownership and rights of access to government information, both in Australia and internationally. They have generated much debate about information policies, and what such policies might involve, including citizen access to both the official records of government and government-generated data. The first rigorous discussions of such information policies were in the second half of the 20th century. They were spawned by advances in information technologies and the subsequent exponential growth in government information, particularly scientific information, and issues around information security and information management (see for example Judge 1970; the Weinberg Report 1963). At that time, governments, including that of Australia, attempted to design comprehensive national information policies, but few were implemented (Biskup 1994; Braman 2011; Browne 1997), in part because of the complexity of issues, leading Rowlands (1996, p. 14) to describe information policy as a 'fuzzy set' of policy issues. Nevertheless, in 1974 Don Lamberton, the Australian economist, highlighted the importance of the early information policies, since they enabled better information flows to governments' social and economic decision-making centres (1974, p. 145). In the United States, Weingarten defined a national information policy to be "the set of all public laws, regulations and policies that encourage, discourage or regulate the creation, use, storage and communication of information" (1989, p. 805). By the early 21st century, the Australian government was again discussing information policies and strategies by which access to government information was desirable. The government-commissioned Cutler report (2008) recommended the establishment of "a National Information Strategy to optimise the flow of information in the Australian economy" (p. 95). A second report noted that openness was the government's proclaimed policy; that

- that its information and data is [sic] a "national resource which should be managed for public purposes" (Gruen 2009, p. x);[7] that
- some of it is "publicly releasable . . . [to which access] is a fundamental right of all citizens in a democratic society" (Australia. Information Management Steering Committee 1997, p. xxviii); and
- its disclosure is "the default position unless there are compelling reasons to the contrary" (OAIC 2011b, p. 10).

In the light of these statements, the following section will examine the path by which Australia moved away from a default policy of secrecy (Snell 2006; Zifcak 1991) to openness as the default position. In doing so, it examines the main processes, mechanisms, strategies and consequences that enable or inhibit public access. In particular, it reviews the legislative and regulatory policies that set up *the archive*, and then to write the rules of the game, that is, to express the levels of access and for whom.

By 1961 the Commonwealth Archives Office had separated from the Commonwealth Library, later the National Library of Australia, however there was still no formal legislation concerning archives. Nevertheless, in 1966 the federal cabinet, still guided by the rules of the British Public Records, declared a fifty-year moratorium on access to the public record (National Archives of Australia n.d.-b). Ironically, the following year Great Britain reduced to thirty years the length of time government records could be secret, after which, in principle, they would become available to the public (the open access period). In 1970 the Australian federal government followed suit. Over the next two decades there was a sequence of reforms, driven by several factors. Firstly, there was a need for systematic record-keeping, albeit to support administrative requirements of the government rather than for any democratic accountability (Cunningham 2005). Secondly, the nascent right to know movement was beginning to articulate concerns about secrecy; there was lack of access not only to the records themselves, but also the lack of transparency of the decision-making processes of governmental ministers and bureaucrats (see for instance Hall 1981a;

[7] Freedom of Information Act 1982 (Cth) – after the reform of 2010 stated its objects are "to give the Australian community access to information held by the Government of the Commonwealth . . . [with an intention that] "by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource" s3(3).

McGinness 1990; Thynne & Goldring 1981). Many of these concepts concerning secrecy gradually began to coalesce. For example, during the ten years of drafting the archives bill, which finally passed in 1983, it was always accepted that the bill was part of a "'package' of administrative law measures" that needed to consider public access to the records (Macfarlane & Antsoupova 2013). Such is an outline of the brief history of the establishment of the archive. I will now turn to the major legislative measures implemented to enable the two-way flow of information that democratic governments and their citizens assume to be the foundation of transparency and trust.

5.1 Mechanisms of access and constraints

Bourdieu (2004) proposes that the power of the state, in part, is a "meta-field that determines the rules governing the [other] various fields" (p. 33). From this perspective, it is important to review Australian legislative history as the rules by which government information asymmetries have been preserved and alleviated. This is a broad and generalised review of the significant legislative mechanisms, particularly but not exclusively, the Freedom of Information Act 1982. It is reviewed here in order to provide background for the second study in Chapter 5 *Legitimation, law and implementation.*

There have been two major periods of legislation, the first was the mid-1970s and early 1980s, and the second in 2009-2010. The first tranche, broadly speaking, had two purposes: to hold bureaucrats accountable for their decisions, and to provide public access to the records of those decisions. The first of these was in the area of administrative law, the basis of which is to "ensure the lawfulness of decision making by government agencies, and to protect the rights and interests of people in relation to government" (Australia. Administrative Review Council 1995, p. 174). In the early years of the twentieth century "costs, government secrecy, legal technicalities, and other factors combined to make judicial review a difficult and hazardous process" (ibid., p. 177) and in 1968 an extensive review of the Commonwealth's administrative law was commissioned. The landmark Kerr Committee (1971) recommended a series of reforms that resulted in significant legislation, the Administrative Appeals Tribunal Act 1975, the Ombudsman Act 1976, and the Administrative Decisions (Judicial Review) Act 1977; legislation that Hall (1981a) argues were of fundamental importance for "lifting the veil of secrecy from the decision-making process" (p. 75), and of which Thynne and Goldring (1981) remarked "provide[d] a means by

which individual officers of the Commonwealth administration can be made *accountable* to aggrieved members of the public" (p. 204).

Several of the most far-reaching laws during this period were the long-anticipated Archives Act 1983 (Cth), the Freedom of Information Act 1982 (Cth) and the Privacy Act 1988 (Cth). It is important to consider these separate acts together since government policy adoption and implementation "do not operate in a vacuum" (Julnes & Holzer 2001, p. 696), and increased reform can impact government processes and citizens' demands in both predictable and unforeseen ways. Since information can only flow if there are good archive and records management systems, FOI mechanisms and privacy concerns must be considered as a whole (Snell & Sebina 2007; Stiglitz 2002b). The suggestion that these reforms are inherently related is confirmed by the comment of Dr Allan Hawke who conducted the review of the FOI and the Australian Information Commissioner Acts: any review of freedom of information legislation "might also consider interaction of the FOI Act with the Archives Act and the Privacy Act and other related legislation" (Hawke 2013, p. 4). The primary objective of the Archives Act was to provide an efficient, reliable and visible system of record-keeping "in the interests of accountable government and for the benefit of the community" (Cunningham & Phillips 2005, p. 303), but not the provision of immediate public access.[8] It was the Freedom of Information Act that would cover the circumstances by which records could be made available even though they did not fall into the open access period.

Australia was the second country to pass freedom of information (FOI) legislation, the first being that of the United States in 1966, and the first in a Westminster system of democratic Government. However its development was a twenty-year deliberative process, ultimately driven by a Labor government in part over the secrecy of decisions concerning the Vietnam war (Whitlam 1972). Its basic objectives "to extend as far as possible the right of the Australian community to access to information in the possession of the Government of the Commonwealth" (Section 3(1)) were said to be simple. In reality, achieving these objectives

[8] The Act provided for public access to most government records after thirty years and further information reforms in 2009-10 further reduced this period to twenty years.

were far more complex, as Cronbach *et al.* (1980, pp. 129-30) commented "the goals or objectives for a program are almost always vague . . . Only the lofty goal evades challenge."

The bill when it was introduced to parliament in 1972, was immediately criticised for its restrictive approach to access to future documents, and for its provision of no access at all from existing documents and for the power of bureaucratic decisions-making such as no appeal from ministerial vetoes [of access], or 'conclusive certificates', (Hazell & Worthy 2010; Snell 2001b; Terrill 1998). The conclusive certificates were particularly criticised through arguments that

> *"highly sensitive information, release of which would not harm the public interest but which would precipitate a public accountability debate, is exactly the sort of material to which the FOI Act is designed to give access because it involves responsibility at the very highest levels of government* (Australian Law Reform Commission (ALRC) 1995, p. 79).

On the other hand, bureaucrats were also highly critical, arguing that the bill was inimical to the Westminster system of government, leading Terrill (1998) to remark that the bureaucracy and politicians were using constitutional rhetoric to defend self-interest (p. 94). Other criticisms were the bill placed an impossible burden on their departmental resources; that by presenting scrutiny of deliberations would create discord within government (a continual complaint into the present); and would "distort the political neutrality and hence loyalty of the public service" (Stewart 2015, p. 101). This last is an interesting position since political neutrality was already being questioned because of the government's adoption of neoliberal and new public management policies (Aucoin 1990; Hood 1995; O'Flynn 2007).

The following year, 1973, the Standing Senate Committee on Constitutional and Legal Affairs (SSCCLA) reviewed the bill and concluded

> *there is no justification for such a system tailored to the convenience of ministers and senior officials in a Freedom of Information Bill that purports to be enacted for the benefit of, and to confer rights of access upon, members of the public. This can only confirm the opinion of some critics that the bill is dedicated to preserving the doctrine of executive autocracy* (SSCLCA 1979, p. 180).

As a result of these criticisms, a number of amendments were made, including the right to access of documents created before the legislation, requiring the compliance of an FOI request to be delivered within thirty days, but most of these amendments were rejected (Terrill 1998, p. 95). After four more years, in 1982 the bill became law. Stewart (2015) however, is critical of the SSCLCA and other parliamentary committees in their deliberations for their failure "to engage with the extent passage of the FOI Act might itself encourage further change and the implications that may have" (2015, p. 104). One of the major legislative implications of the freedom of information legislation was threats to privacy, including personal privacy.

Australian common law neither defines nor recognises a right to privacy (Taylor 2000) and McGinness (1990) concluded that as the government expanded its collection of personal and commercially sensitive information, it had an "undesirable effect in reinforcing an atmosphere of official secrecy within government" (p. 89). In 1976, during the deliberations on the freedom of information bill, the Liberal government, which was supportive of open government (Terrill 1998, p. 92), commissioned an inquiry by the Law Reform Commission (now the Australian Law Reform Commission) into the "extent to which undue intrusions into or interferences with privacy arise or are capable of arising under the laws of the Commonwealth Parliament …" (ALRC 1983, p. xxxvi). The report was tabled in 1983 and in 1988 the Privacy Act was legislated, setting up the potential for friction between the two laws (Banisar 2011; Cate *et al.* 1994; Hazell 1998), since they are both mechanisms for providing and restricting access to government-held information. According to Paterson (2005), in some cases, information that would be withheld under privacy legislation may be required to be disclosed under FOI, or the converse, personal rights to information can be exempt from disclosure under freedom of information. Scholars such as Halstuk and Chamberlin (2006) in the United States consider that in many cases the courts have tipped the balance in favour of "a broadly construed and vaguely framed right to privacy over the public's right to access" (p. 514). Others conclude that conflicts arise when privacy laws are improperly invoked to prevent public access (Banisar 2011; Waters 2002). Waters (2002) contends that attempting to align the two acts in the 1991 amendment to the Freedom of Information Act, references in the 'personal affairs' were replaced with 'personal information' which would include information related to public servants' performance of their duties. Consequently, he (Waters) suggests there is

> *much greater recourse to the privacy exemption to withhold information about matters of public interest on the arguably spurious grounds that it would reveal the identity or work related activities of the public servants involved* (Water 2002, para. 4).

Eventually, after twenty-seven years of consequential legislation, numerous amendments and administrative clarifying decisions, which in the opinion of Daniel Stewart (2015) and others (for example, Snell 2001a; Snell 2006; Terrill 1998) "did little to alter the basic structure and operation of the act and if anything, they reflect increased resistance to the disclosure of government information" (Stewart, p. 104). And two major inquiries into the status of FOI in Australia,[9] broad-sweeping reform bills were introduced and enacted.[10] The Freedom of Information Amendment (Reform) Act 2010 (Cth) and the associated Australian Information Commissioner Act 2010 (Cth) delivered many of the changes recommended by the 2009 Australian Law Reform Commission inquiry. These included the abolition of application fees and the removal of conclusive certificates, but added a new category of exemptions based on a public interest test. These reforms were met with cautious optimism that they might effect a permanent cultural change within the government (McMillan 2010; Timmins 2012b). Nevertheless it was noted that more needed to be done (McMillan & Popple 2012). Writing four years later, when a newly-elected government proposed rescinding the Information Commissioner Act, Popple (2014), was more pessimistic:

> *the many benefits of having a specialist FOI regulator will be lost. And the benefits that have been realised from having an integrated approach to information management issues—FOI, privacy and information policy—will be lost, too* (Popple 2014, p. 4)

Finally, legislation, which sets out a framework of principles, such as the rules of what government information and data may or may not available to the public and under what circumstances, is embedded in regulatory structures that dictate processes in government agencies or departments, tasking them with its administration and oversight and the issue of guidelines when required. The FOI act provided for such a regulator in the Office of the

[9] Conducted by the Australian Law Reform Commission: *Open government: A review of the Federal Freedom of Information Act 1982* (1995), and *Secrecy Laws and Open Government* (2008).

[10] These broad sweeping reforms were carried across several state jurisdictions as well as the Commonwealth (see McMillan 2010).

Information Commissioner (OAIC), in tandem with the Privacy Commissioner, the regulator of the Privacy Act (Popple 2014).

Given that legislation is the creation of politicians and regulation is the realm of bureaucracy, we are led to the notion that regulation is based on a principal-agent relationship consisting of those who write the legislation and those who implement it (Carpenter & Krause 2014; Moe 2005). Much has been written of bureaucratic autonomy, whether in government (for example, Carpenter 2001; Christensen & Lægreid 2007; Maggetti & Verhoest 2014), or in semi-autonomous agencies that have relationships with 'the government' (Christensen & Lægreid 2006; Pollitt *et al.* 2001). But of the relationships between the principal and agent, Carrigan & Coglianese (2011, p. 108) consider it is "a nested set relationships" predicated on either coordination or control, an administrative game "which takes place within a political context in which political principles attempt to control the actions of the government agents" (Scholz 1991, p. 117). Rowlands (1996) argues more broadly, writing that any information policy that includes all public laws, regulations and policies concerning the life-cycle of government information (see Weingarten 1989) emerges from the machinery of government and implicitly attempts to address both political and bureaucratic goals which are not necessarily congruent (p. 14).

The legitimacy of government rule-making, its implementation and subsequent accountability provides the foundation for two major themes in this study These are the relationships between the bureaucratic field and the field of power (Bourdieu's state), and the power struggles within the field of government information.

6. Access: transparency, trust and the public interest

The previous sections of this review have explored the literature of access to government information. Beginning with the foundations of the concept of access , it then examined the modern concept of the government as a public sector institution and what that implied for the types of information generated through exercising its responsibilities for ruling and service provision. This was followed by an exploration of the value of information, particularly the value of ownership and its potential for monetary value. Section 6 investigated the specifics of the Australian Commonwealth Government context, in which it moved from a position of secrecy to one of declaratory openness and the introduction of mechanisms to balance

citizens' expectations and government's need for secrecy. This final section reviews the literature of the various notions of transparency and its effects, implications, ramifications and intended and unintended consequences for access to government information.

> *Government transparency is constructed in interactions between actors with different perspectives within a certain (institutional) playing field, and, at the same time, these interactions change the nature of the playing field*
>
> (Meijer 2013, p. 430)

Through all the literature of openness of government is the thread of transparency and accountability, concepts that are often used interchangeably (Bovens 2010; Heald 2006b; Hood 2010). Judith Bannister (2015) argues that the two terms are generally linked "because information must be disclosed about actions taken, or decisions made, before those actions can be debated and judged" (p. 332). Mulgan (2003, p. 8) suggests that accountability "has come to stand as a general term for any mechanism that makes powerful institutions responsible to their particular publics."

More precisely, accountability is a social relationship in which a person or organisation has to justify its conduct (Bovens 2010; Hood 2010), and transparency is a concept of good governance within supranational organisations such as the United Nations and the International Monetary Fund (see Florini 2000; Hood 2001; Roberts 2006, Chapter 8). Transparency, according to Hood (2010) is "the conduct of business in a fashion that makes decisions, rules and other information visible from outside" (p. 989).

Bovens (2010) offers a different viewpoint, considering accountability can be a virtue: "a positive quality of organisations or officials" (2010, p. 948), or a mechanism, as is the case in Australia, by which institutional arrangements operate, a view that echoes Heald's discussion of the value of transparency as either intrinsic or instrumental (2006a). No matter what the viewpoint, transparency has become a "widespread normative doctrine for the conduct of governance" (Hood 2007), a mechanism with which governments act according to fixed rules within clearly drawn fields of activity (Hood 2001; Meijer 2013).

In recent years, governments of liberal democracies have embraced the concept of openness, often including in their declarations the terminology of transparency and accountability, for example:

> *greater openness and transparency will mean that government is more exposed to public scrutiny and criticism* ([Australia] Gruen 2009, p. 2)*;*
>
> *creating an unprecedented level of openness in Government . . . to ensure the public trust and establish a system of transparency [that] promotes accountability and provides information for citizens about what their Government is doing* ([US] Obama 2009); and
>
> *[for transparency] we need to throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account* (*Cabinet Office [UK] 2010).*

Underlying these government proclamations of openness is the notion that there are relationships[11] that are sometimes causal. For instance, between transparency and accountability (for example, Harrison & Sayogo 2014; Hood 2010; Janssen *et al.* 2012); or between transparency and legitimacy, a term John Kay (2004, p. 76) puts simply as "what gives them the right to do that?" (Curtin & Meijer 2006; de Fine Licht *et al.* 2014; Worthy 2010). Or between transparency and trust (Bannister & Connolly 2011b; Bouckaert & Van de Walle 2003; Grimmelikhuijsen 2010; Mabillard & Pasquier 2016).[12]

This study in part, is concerned with the implications of conceptual relationships; for instance, whether access to information is achieved through the rules of proactive release to meet legal obligations (Cucciniello & Nasi 2014; Darbishire 2010), or through the rules of reactive mechanisms such as freedom of information requests. It is, as Florini (2007) proposes "the degree to which information is available to outsiders that enables them to have informed voice in decisions and/or to assess the decisions made by insiders" (p. 5).

Many scholars, while recognising that transparency can increase accountability, also observe that this is often ambiguous (Bauhr *et al.* 2010; Hood 2010; Janssen *et al.* 2012). That high levels of transparency may result in unintended consequences or consequential paradoxes; for

[11] Heald (2006) proposes that there are relationships and trade-offs between transparency and what he calls "valued objects": effectiveness; fairness, accountability; legitimacy, which he would rank above trust, autonomy and control; confidentiality, privacy and anonymity, since he believes these last four are means for achieving the first four.

[12] For a good summary of last twenty-five years of transparency research see Cucciniello *et al.* (2017).

example, which cause governments to turn toward more secrecy, or suddenly exposing the public to a situation of uncertainty (Costas & Grey 2014; Ringel 2018). Others have found a causal relationship could not be inferred (Grimmelikhuijsen 2012; Harrison & Sayogo 2014; Tolbert & Mossberger 2006), while Roberts (2015, p. 12) remarked that transparency has many purposes "many of which have more to do with the extension of administrative capabilities, than with accountability or oversight."

Transparency, legitimacy, trust and trustworthiness

Legitimacy claims of modern governments can be traced back to the 18th Century and the social and political relationship between the government and the governed; it was an acceptance of authority in return for responsible governing and the provision of services, embodied in a set of rules or government mechanisms that are the basis of decision-making. Studies of the effects of transparency on the legitimacy of government show mixed findings (Cucciniello *et al.* 2017; de Fine Licht 2014), while others suggest that transparency can lead to adverse publicity, further eroding government legitimacy (Grimmelikhuijsen 2012). While there's a strong overlap between the concepts of the legitimacy of government and trust in government, there is an extensive literature on the relationship between transparency and trust, a term often associated with the notion of social capital (see for example, Keele 2007; Newton 2001; Putnam 1995), in which scholars exhibit some scepticism. There have been many studies documenting the steady decline of trust in government (Hetherington & Rudolph 2008; Miller 1974; Rijkhoff 2018; Rolef 2006), but recent literature has noted the often paradoxical effects on trust. In fact, there is little evidence that transparency has delivered more trust in government (Longo 2011; Roberts 2006, p. 119; Worthy 2010). Rather, there is research indicating an erosion of public trust in government (Bannister & Connolly 2011a; Bauhr *et al.* 2010), caused, for example, by political scandals such as the British parliamentary expenses scandal (Bowler & Karp 2004) and negative media reports of poor performance (Hetherington & Rudolph 2008).

Nevertheless, the concept of transparency, as Coglianese (2009, p.35) has observed, seems to be lauded as "an unalloyed public good", that knowledge gained from access to information is fundamental to contemporary government advocacy of openness, *ipso facto* it " restores trust and integrity in government" (Australia. Department of Finance and Deregulation 2010a, para. 12). However, trust must also be seen in sociological terms and is often

associated with the notion of social capital (see for example, Keele 2007; Newton 2001; Putnam 1995). Therefore, the equivalency of full knowledge with absolute transparency can have social consequences, leading Moore and Tumin (1949) to conclude that ignorance may often be "an active and often positive element in operational structures and relations" (p. 795). Once we consider bureaucracies in this context of operational structures and relations, trust, mistrust and power come into play (Giddens 1984), not only between the bureaucracy and the citizens, but within the public sector itself, including politicians, bureaucrats and their private sector partners (see for example, Bouckaert 2012; Hood & Peters 2004; Lawton & Doig 2006).

Other studies that have noted there is a direct relationship between the type and quality of government information and government trustworthiness. For instance, Cook et al. (Cook *et al.* 2010) suggest that trust is often predicated on the quality and quantity of information, as well as the citizens' level of motivation, and Grimmelikhuijsen and Meijer (2012) found that citizens' perceived trustworthiness of the government was highly dependent on the accessibility of government information as well as their predispositions. O'neill (2006), differentiating trustworthiness from trust, argues that governments are assumed to be trustworthy when complying with transparency requirements, but in their information practices, often delivered a "'one-sided' communication not tailored to any particular audience, therefore providing "too little [information] to enable others to place or refuse trust intelligently" (p. 84).

Transparency and the right to know

There is a great deal of literature on the relationship between transparency and access to freedom of information laws, often referred to as access to information (ATI). For example, Calland and Bentley (2013), Hood and Heald (2006), Roberts (2006), and Worthy and Hazell (2013) report both positive and negative results; for an extensive overview of the effects of ATI laws in different contexts, see Relly and Sabharwal (2009). However, there is a body of scholars who contend that transparency mechanisms such as FOI laws and regulatory guidelines can hinder government processes (Jaeger & Bertot 2010; Riddell 2013; Worthy 2010), discourage formal record-keeping (Badgley *et al.* 2003; Eriksson & Östberg 2009; Worthy & Hazell 2013), and simply enforce compliance with "legal obligations, not

necessarily meeting citizens' [information] needs" (Cucciniello & Nasi 2014, p. 911). Finally, for Amitai Etzioni (2010)

> *the critical question is whether transparency constitutes a reliable mechanism of promoting good governance and sound markets under most circumstances—or whether it is a rather weak means that itself relies on other forms of guidance and can supplement regulation but not serve a main form of guidance;*

to which he (Etizioni) concludes "even the soft version—as just an element of regulation—cannot carry much weight" (p. 391).

Many scholars have noted that one value of transparency is the detection and/or deterrence of corrupt practices (Bac 2001; Bauhr & Grimes 2014; Hazell *et al.* 2012; McGee & Gaventa 2011), a point conceded by Onora O'neill (2006), who has generally espoused a negative attitude towards transparency effectiveness (O'neill 2002). Transparency effectiveness is also tempered by a *rule for one versus the rule for everybody else* tendency (Brin 1998, p. 10; Hood 2006); for example, Brito (2010) suggests that governments' releasing of datasets may increase accountability of those entities they regulate, but not necessarily of their own actions.

Transparency and the public interest

Charles Anderson (1994, p. 67) asserted that "there is a **public interest** [my emphasis], fundamental to liberalism, in assuring that established practice is always open to challenge, reconsideration, and change", to which Alasdair Roberts commented "that's what transparency does" (2006, p. 23). The public interest is a "vague indeterminate construct . . . a rhetorical phenomenon" (Box 2007, pp. 585-6) whose meaning has changed across time, political regimes and democratic contexts (Dahl 1989; Douglass 1980; Held 1972; Mitnick 1976; Morgan 2001; Sorauf 1957). However, much of the literature views the public interest through a lens of a public good (for an overview of the historical background of the public or common good, see Diggs 1973). Douglass (1980) and Morgan (2001) consider that while the public good is an objective concept, the public interest is subjective, and therefore dependent on interpretation. Amanda Olejarski (2011) writes that no matter the enormous volume of literature debating its meaning, it does little to solve "the practical need to implement vague takings laws that frequently treat "public good," "public interest," "public use," and "public purpose" either synonymously or in a contradictory manner" (p. 333). While Jeremy

Bentham (2000[1781], p. 15) commented "[t]he interest of the community then is, what?—the sum of the interests of the several members who compose it", this study assumes the public interest is a process that balances self-interestedness of all the players in the game, with what can be deemed to be good for the whole of society as declared by all the people; that public interest information informs government policy decision-making to deliver benefits to society and the building of social capital. There is an assumed understanding that, in Walter Lippmann's words "the public interest may be presumed to be what men would choose if they saw clearly, thought rationally, acted disinterestedly and benevolently" (Lippmann 1955, p. 42).

As already noted, the subjective nature of the public interest is played out in Australian legislation, where it is left "necessarily broad and nonspecific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered" (Office of the Australian Information Commissioner (OAIC) 2014, p. 3). It is these contexts which become a potential for conflict and power struggles, for example, privacy and the media (Gajda 2009; McQuail 1992), FOI and the rights of the individual to privacy (Oliver 2004; Paterson 2005; Raab 2004), government outsourcing (Hood *et al.* 2006; Roberts 2006), private sector commerciality (de Maria 2001; Paterson 2004), commercialisation of government data (Bates 2012; Roberts 2000), and national security (Feinberg 2004; Jaeger 2007) to name just a few. Overall, the concept of 'in the public interest' is at the heart of much of the tensions among all the actors in the field of government information, since all claim their actions, whether they are requests for or refusals of information, releasing or privatising government datasets, or building relationships with the market for economic development, are all 'in the public interest.

Key points, gaps and conclusions

This literature review has explored many of the elements that underlie the principles of a liberal democracy such Australia, by which it claims legitimacy through trustworthy governing and the provision of essential services to its citizens. The review situates the Australian government as a public sector institution; and through the literature, has examined the logic that if the Australian government is in the public sector, then its information must be public sector information, a conclusion that the literature reveals to have many contested positions.

The review explored two historical bases of these positions. In the first instance, as part of its colonial history, Australian government information was held to be secret, and access to it is the prerogative of the government. The second basis is the process through which Australian government information came to be considered to be Crown property, and therefore access to it may be restricted through the application of intellectual property rights. Based on the conjunction of these two positions, the review explored the various understandings of how government values it information, and therefore, on what criteria it keeps information secret, or makes it accessible and by what mechanisms it does so. Finally, the literature examined aspects of access to or nondisclosure of government information in order to provide insights into the ramifications for transparency and accountability, and subsequent impacts on the public or private interests.

A good deal of the literature concerning government information addresses specific elements and the impact of government policies. For example, the lack of transparency and accountability when governments rely on the market to provide essential services (for example, Hodge, Boulot*, et al.* 2017; Hood *et al.* 2006). Another is the inherent problems of Freedom of Information mechanisms to request access to information (Bluemink & Brush 2005; Rees 2012), and in the Australian context much of the literature does not take into account the 2009 changes in the FOI legislation (Snell 2006; Worthy 2010). Much of the literature of e-government examined citizens' engagement with service provision (Gauld *et al.* 2010), usability processes and questions of a 'digital divide' (for instance, Van Deursen & van Dijk 2011), or technical reports of the mechanisms of web archiving (Pennock 2013).

This literature review was framed by Bourdieu's concept of a social space or a field, in order to conceptualise the various relations and powers that drive the many aspects of government information, and to explore the implications of these relationships and the evolving tensions that emerge. However, much of the literature does not address this; most tends to be procedural in nature, often in the form of reports that do not necessarily show the implications for government practices. There is little that is in the voice of the citizens that can provide insights into the impact of government policies and mechanisms to deliver or refuse access to the information on which democratic practices depend. And in the Australian context, there is little that presents an overview of the various dimensions of access to government information.

Bourdieu's conceptual tools (see, for example, Bourdieu in Wacquant 1989) have been widely used in social science research, particularly his concepts of the relational field, power (capital) and the rules of the game (illusio). Many of the examples that are germane to this study, deal with the concept of government and 'the state'. For instance, colonial studies that examine historical empires as global fields (Go 2013; Steinmetz 2016) and various studies of the European Union as an emergent 'government'; these include the integration of states and the development of rules around security, defence, and human rights (Berling 2012; Kauppi 2003; Madsen 2007; Mérand 2010). Of particular relevance, is Jouni Häkli's theoretical proposition of the development of new 'transnational field', a field of European international relations (Häkli 2013).

However, there little in the English language literature of information science that uses Bourdieusian field analysis; one exception is the study by Rasmussen and Jochumsen (2003) to identify the characteristics of Danish public libraries. There appears to be none in the Australian context of government, although, Ann Galligan's history of the National Library of Australia, while it does not overtly reference Bourdieu, shows the library exists within a threatening relationship to wider fields of power represented by government bureaucracies (2000).

To conclude, the literature has revealed gaps that provide a range of avenues of research into the elements that facilitate or constrain public access of government information. The literature suggests that analyses using Bourdieu's field theory would present rich areas of exploration. Among these could be an examination of the nexus of power within the government—the political parties and the juridical actors—and the tensions over implementation and reform of legislative mechanisms, including FOI legislation. Additionally, in order to provide the citizen's voice, real-world case studies would be devised to explore the barriers citizens face when attempting to access information. A third avenue would be an analysis of the government ideologies that drive policy decisions, leading to new and strengthening relationships between government and the market field; relations that are based on the commercial value of government information and subsequent implications for its access. By framing this research in a conceptual field of government information, new insights into the powerful relationships that facilitate and constrain access to government information would be delivered.

Chapter 3: The methodology

This chapter describes and explores the methodological approach taken to the two research questions of the study. First, it outlines the elements of the conceptual framework of Pierre Bourdieu: field theory, capital and illusio, and presents the rationale for this choice. Secondly, it describes how the framework is applied to this study. Thirdly, it outlines the methodological approach taken to conduct the research. It then describes, in separate sections, the full details of the three data collections and their analyses.

The research questions

Governments, in their dual role of governing and providing services, generate and collect information. There are many reasons why they do not wish to reveal this information, and just as many reasons why citizens want access to it. As explained above, the purpose of this thesis is to explore this apparent dichotomy through the underlying details, motives, and legislative and regulatory policies by which access is facilitated or constrained. Fundamental to this study are the tensions and conflicts between the 'old' position of government secrecy and the 'new' ideology of government openness. It asks the questions

1. how, why and under what circumstances has the government's expression of openness delivered citizen access to its information and data?
2. how are the limits to information access exercised and justified?

These questions should be viewed as proxies for the fundamental ideological tensions of power raised in the literature review. Who has written the rules of the game, what are the bases for changing them, and on what criteria is government information valued. How can Australian government information be 'public sector information' when it is not in the commons; and how do new technologies constantly challenge stasis in the field of government information. Each study represents the tension between government and the

citizens, but each also displays the political and ideological tensions within the government itself.

More specifically, the research questions to be answered in this study concern the power relationships that influence citizen access to government information, which the Australian government refers to as 'public sector information'. The Australian Commonwealth Government in recent years has taken a position of openness in which it states it will release as much of its information as possible, on as permissive terms as possible in order to support transparency and accountability. To test this position, the study is seeking to identify the power, pressures and tensions in providing open access to government information and the consequential impacts on social and democratic practices.

Framing the study

Policy and decision making factors do not occur or operate in a vacuum, but need to be set in a framework that exposes the visible and invisible structures and the relationships among powerful individuals, groups and institutions within a particular social context (Julnes & Holzer 2001). Pierre Bourdieu's unified political economy of practice, with its emphasis on fields of power, actors, relationships, interactions and rules of the game, provides the conceptual and methodological frame for this study. Bourdieu argued that 'thinking' or conceptual tools places sociological research at the nexus of theory and practice, and is fundamental to social theory and empirical research (Bourdieu in Wacquant 1989, p. 50).

These thinking tools are the elements of Bourdieu's metaphor for society as a game played in a particular setting or field: it is a game that follows rules that are not necessarily explicit or codified, that the players (actors) believe in the game and the stakes, that the game is worth playing and that some players have more advantages (power or resources) than others (Bourdieu & Wacquant 1992).

Thinking tools

Three of Bourdieu's thinking tools are used in this study; they are *field*, *capital* and *illusio*. The following section begins with an overview of the concept of a field, and a description of the way it is applied in this study, which the researcher considers to be a *field of government information*. This is followed by overviews of capital and illusio, with an indication of how

these concepts are used in the research. Bourdieu's thinking tools provide the approach through which to address the main questions of this study. Firstly, they acknowledge the relational nature of the field of government information and the variety of actors or players in the field. Secondly, each actor or group of actors has its own understanding of the rules and has its own priorities. Thirdly, the thinking tools allow the consideration of the benefits and value (capital) that result from engaging with government information.

Field

Central to Bourdieu's social theory is the concept of field, an abstraction; it is "comparable to a field of physical forces; but it is not reducible to a physical field" (Bourdieu 2005a, p. 30). It is a social space in which actors (individuals, groups, institutions) with varying amounts of power (capital) that they use to advance their interests; they occupy their positions in the field in a hierarchical relationship of dominance or influence. In Bourdieu's conceptualisation, a field is not disciplinary or institutionalised, but rather it enables a definition that comprise a very broad range of factors that shape behaviour rather than narrowly limiting an area of activity (Swartz 1997, p. 121).

Bourdieu has described the concept 'the field' in many ways, but all are framed by a social context, a social space in which interactions take place. It is a space

> *within which the agents occupy positions that statistically determine the positions they take with respect to the field, these position-takings being aimed either at conserving or transforming the structure of relations of forces that is constitutive of the field . . . it is the site of actions and reactions performed by social agents endowed with permanent dispositions, partly acquired in the experience of these social fields* (Bourdieu 2005a, p. 30).

Bourdieu also considers it a tool (Bourdieu 2005a), a way of thinking—"to think in terms of field is to think relationally" (Bourdieu & Wacquant 1992, p. 96).

> *To think in terms of field demands a conversion of the whole ordinary vision of the social world which fastens only on visible things: the individual, this ens realissimum to which we are attached by a sort of primordial ideological interest; the group, which is only in appearance defined solely by the temporary or durable relations, formal or*

> *informal, between its members; and even relations understood as interactions, that is, as intersubjective, actually activated connections* (ibid. n.48, p. 96).

To think relationally encourages the researcher to seek out underlying and invisible relations that shape action (Swartz 2012, p. 119). It is a measure for correcting positivism through reflexive practices. Bourdieu suggests the field is a relational framework of the social world in which actors and structures interact, and in doing so acts as a bridge between two epistemologies: of objectivism that "seeks to construct the objective relations which structure practices and representation", and of subjectivism that "seeks to grasp the way the world appears to the individuals who are situated within it" (John Thompson's editorial introduction to Bourdieu 1991, p. 11).

This relational approach enables an analysis of the overlap, connectedness and interdependence of multiple fields of forces in which agents and institutions occupy positons. It allows the researcher to uncover the power struggles in the "spaces of invisible relationships" (Bourdieu 2005a, p. 31) that drive the decisions of control of access to government information. We can, therefore, consider the field of analysis as

> *a network, or a configuration, of objective relations between positions objectively defined, in their existence and in the determinations they impose upon their occupants, agents or institutions, by their present and potential situation (situs) in the structure of the distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake in the field, as well as by their objective relation to other positions (domination, subordination, homology, etc.). Each field presupposes, and generates by its very functioning, the belief in the value of the stakes it offers* (Bourdieu in Wacquant 1989, p. 39).

In Bourdieu's social theory he uses the term field of power, a meta-field, which he suggests is

> *the relations of force that obtain between the social positions which guarantee their occupants a quantum of social force, or of capital, such that they are able to enter the struggles over the monopoly of power* (Bourdieu & Wacquant 1992, pp. 229-30).

In particular, Bourdieu asserts that it is where economic and cultural capital intersect, an overlapping structure in which economic capital is the "dominant principle of hierarchy" and cultural capital is the "second principle of hierarchy" (1992, p. 76 n16). The field of power requires several forms of capital since "pure economic domination never suffices" (Bourdieu in Wacquant 1993, p. 25). Since each field is nested within or related to other fields, there are tensions that exist among positions in the one field as well as between this field and other fields; it is the struggle between the dominant power of one field and the dominant powers of other fields (Wacquant 1989).

Fields are not static but constantly changing. They may be relatively autonomous from the influences from external forces but the relativity acknowledges a connectedness and interdependence on external factors, primarily of other fields. They may overlap or have sub-fields each with its own logic, rules and regularities and whose boundaries are dynamic. Bourdieu admits

> *the question of the limits of the field is a very difficult one, if only because it is always at stake in the field itself and therefore admits of no a priori answer . . . [and] participants in a field . . . constantly work to differentiate themselves from their closest rivals in order to reduce competition and to establish a monopoly over a particular subsector of the field* (Bourdieu & Wacquant 1992, p. 100).

Each relatively autonomous field has its own structure. The connectedness among them leads to "structural and functional homologies" which are "resemblance[s] with a difference" (ibid., p. 106); these homologies are also the basis of partial alliances between the hierarchical positions and, as in any game there are cooperative and collaborative linkages in the pursuit of strategic positions.

The field of government information

This study proposes a framework in which all other fields with their groups of actors, their relationships and interactions relating to government information, occur in a *field of government information*. It is a field of cultural production, a "set of systems of interrelated agents and institutions functionally defined by their role in the division of labour (of production, reproduction and diffusion of cultural goods)" (Bourdieu 1985, p. 13). The

cultural goods are government data and information and the agents and institutions use their power, informational capital "of which cultural capital is one dimension" to effect a monopoly of the management and redistribution of its information (Bourdieu 1994, p. 7). There are two interdependent groups of agents who produce, re-produce and distribute government information; these are the actors in the bureaucratic field and the political field. There is also an overarching concept in Bourdieu's field theory, the field of power, "a field of forces structurally determined by the state of relations among various forms of power" (Bourdieu 1996, p. 264). This field of power is the state, the "meta-field that determines the rules governing the various fields" (Bourdieu 2004, p. 33). It is "the holder of a sort of meta-capital granting power over other species of capital and over their holders" (Bourdieu 1994, p. 4) to either preserve or transform its dominant legitimacy through symbolic power and its statist or regulatory capital (Bourdieu 1994, 1996).

Simply put, the field of government information comprise many actors from a number of interrelated fields. The political field (political parties, individual politicians) propose the rules of the game and 'the state' reifies them as legislation and regulations, which public servants in the bureaucratic field implement. There are, however, many other individuals, groups and institutions from other fields—journalism, civil society, the market—that have an interest (illusio) in this game, so that there are multiple interests which are often in conflict with each other and with the dominant 'state' over access to government information.

There are also players from the juridical field, who interpret the rules; these include judges in the Freedom of Information (FOI) appeals tribunals and high court justices presiding over landmark FOI cases. From the political field there are, for example, the Labor and Liberal Coalition parties and their factions, the voters and ministerial and media consultants. Players from the journalism field include individual mainstream journalists, and particularly political journalists, bloggers, and media companies—the fourth estate—who are charged with disseminating the government's information and messages, and who often contest the rules. There are the 'citizen journalists' who may also be actors in the field of civil society, along with advocacy and activist groups, public intellectuals and academics and other individuals concerned with the concept of open government and the right to know. And finally there is the market, or economic field, which can be a powerful player in the field of government information, when one considers that government information and data are capital goods. Here the players can be the government itself manifested in government business entities

(GBEs), and individuals and companies in the private sector, all of whom either produce, re-produce or use government information.

Each of the interested players in the field of government information brings to the game their particular brand of power—capital (cultural, symbolic, social, economic, political, and technological). The ensuing relationships and power struggles have, overtime, resulted in an ebb and flow of government secrecy that, until the middle of the twentieth century was the hallmark of the Westminster systems. These power struggles and the relationships that affect access to government information are examined through the dual lenses of rhetoric and reality as revealed in the three case studies.

Capital

Capital is "what makes the game of society something other than simple games of chance" (Bourdieu 1986, p. 280). In his treatise *Forms of Capital*, Bourdieu (1986) distinguishes among four fundamental species or forms of capital—economic, cultural, social and symbolic—and suggests that each of these is a resource or power, a "set of actually usable resources and powers" (Bourdieu 1984, p. 114). It is this power that determines the success of social practices, and a valuable resource in power struggles (Bourdieu 1996).

Cultural capital in its objectified state, its materiality, is cultural goods that include "pictures, books, dictionaries, instruments and machines" and its possession is the "means of 'consuming' a painting or using a machine" Bourdieu 1985, p. 119). In his later writings Bourdieu suggests cultural capital should in fact be called "informational capital to the give the notion its full generality, and which itself exists in three forms, embodied, objectified, or institutionalized" (1992, p. 119). He also developed the notion of technical capital, which in its embodied form, are competencies and skills (Bourdieu 2005b), or technocratic power. There are however, many more types of cultural capital that emerge through empirical research in specific social contests (Swartz 1997, p. 78). Nevertheless, Bourdieu concedes that "economic capital is at the root of all the other types of capital . . . that [they are] transformed, disguised forms of economic capital" (1986, p. 288).

Symbolic capital on the other hand is "any property (any form of capital whether physical, economic, cultural or social) when it is perceived by social agents endowed with categories of perception which cause them to know it and to recognize it, to give it value" (Bourdieu

1994, p. 8). Symbolic capital can be conceptualised as symbolic systems which enable the hierarchies and dominant groups to be recognised as the power within the field (Bourdieu 1977). While serving as a legitimation of authority, it may also disguise self-interested practices, so that those based on economic stakes are not recognised by participants in the field (Bourdieu 1986, pp. 283-4).

This study, framed as a field of cultural production, is a continuum of collecting, generating, managing, disseminating, selling and using information; it is a study of capital in practice. Each of these practices calls into play many actors who employ their particular capital as a power or resource in the game of access to government information, and overarching the study are statist or regulatory capital and technocratic capital. The first case study, *The mechanisation and management of web-published information*, is particularly concerned with bureaucratic and technocratic capital; the second, *Legitimation, law and implementation*—is political, bureaucratic, and juridical capital. The third case study, *Commercialisation of information and the public interest*, is about the conflict between economic capital and the capital of civil society.

Illusio

The concept of *illusio* is the explicit requirement of play in the game. It is the "belief associated with belonging to a field" (Bourdieu 2010, p. 3). It is how the game is played, its rules and practise sense; it is at the same time both the condition [of entry] and the product of the field's functioning (Bourdieu 1998; Bourdieu & Wacquant 1992). The participation in the game assumes that "playing is worth the effort . . . Interest is to "be there", to participate, to admit that the game is worth playing and that the stakes created in and through the fact of playing are worth pursuing; it is to recognize the game and to recognize its stakes" (Bourdieu 1998, pp. 76-7). Once in the game, a player's *illusio* determines his or her hierarchical position in the field based on "the distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake in the field" (Bourdieu & Wacquant 1992, p. 97).

In this study, the concept of illusio is 'the rules the game', and in the field of government information, the government writes the rules and all the actors in the diverse sub-fields—political, bureaucratic, juridical, journalistic, market and civil society—abide by, interpret or misinterpret, or challenge those rules. While this plays out in all the cases studies, illusio is

particularly overt in the first one, as will be seen below, where the citizens are playing with a different set of rules from those enacted by government and its actors.

Applying the research methods

Bourdieu, himself, was an anthropologist and used ethnographic methods in his work. This study has sought to follow this methodological approach, since the study seeks to understand the relationships, interactions and behaviours of the actors in the field of government information. Ethnography is a means of exploring and gaining insight into the beliefs and behaviours of people (Gottleib 2006, p. 48). Fundamental to ethnographic practice is observation (Adler & Adler 1998); it is as Bryman (2008) says, about observing behaviour and listening to conversations. In Bourdieusian terms, the researcher is an actor who is immersed in a social setting to gather and interpret data or the emerging knowledge in a reflexive manner (Bourdieu 1992). Although there can be serious issues of subjectivity in ethnographic practice (Guba 1981), in this study, they have been countermanded in several ways. The first is the reflexive and iterative practices of Bourdieu's field theory; the second is the means by which the case studies were selected, and finally, the official government datasets that were analysed are not of the definitional, interpretive or subjective type (the details of which will be discussed below). In this study, the researcher is a silent, unobtrusive observer of the 'conversations', using a range of techniques for observing them. The conversations are of digital actors: government documents, websites and datasets (Lee 2000; Webb *et al.* 1966), which are the traces left by human actors.

The principal questions of the thesis began from the assumption that there are three dimensions of access to government information and data that

1. are made publicly accessible by its publication on a government agency's website;
2. are not publicly accessible, but access may be formally requested; and
3. are, under many circumstances, concealed from the public.

The strategy for investigating these dimensions of access is to collect data in several ways, following an ethnographical approach. However, since each of the dimensions is explored using its own particular approach, for ease of expression, these approaches to focussed data collection are referred to as case studies, of which there are three. The first two case studies

address the ways that power relationships have impacted citizens' access to different types of information and data; the third investigates how the perceived value of government information can influence the level of access. The following are the methods used to examine the case studies; in all cases, the first step is to become thoroughly conversant with the legislative and regulatory regimes that are relevant to the particular case, the rules of the game.

Mechanisation and management of web-published information

This particular study, in the broad field of government information, investigates the first dimension of access where information is disseminated on a government website. The framing of this particular dimension of access is conceptualised as a field of e-government, and the main actors are a specific government department, a consultant, invisible bureaucrats, information and communication technologies (ICTs), and of course, citizens. The opportunity to explore this dimension of access was brought to the researcher's attention when a specific website apparently did not provide access to documents needed by a group of actors (500 undergraduate students) two years after the documents were purportedly published, and after there had been a change in government. The documents pertained to a 2011-2012 Commonwealth Government inquiry—the Independent Inquiry into the Media and Media Regulations conducted by the Honourable Ray Finkelstein QC for the Australian Commonwealth Department for Broadband, Communications and the Digital Economy. In order to investigate this apparent disappearance, the following strategy was devised.

The first step was to ascertain the rules that were to be followed by the Hon Finkelstein and the website team concerning the publishing of the documents. There are four legislative and regulatory regimes that are relevant to government website publishing (a mechanistic vehicle referred to as e-government). These are

1. the Information Publication Scheme (IPS), a clause of the Freedom of information Act 1982 s8(2f);
2. the regulatory guidelines of the Act (OAIC 2014 Section 13.58);
3. the Machinery of Government (MoG) regulations (website archiving); and
4. the Web Content Accessibility Guidelines (WCAG 2.0).

The regulatory guidelines of the Act indicated that public inquiries, such as that of the case study, are public consultation and therefore all documentation must be published; and, based on Web 2.0 accessibility guidelines, they were to be easily found. The MoG regulations specified when government agencies or their functions change, the websites must be completely archived.

The data collection began by identifying the interactions between the students, who had described their expectations and frustrations, and the mechanisms by which the government delivers this open access. However, there was a procedural complexity because of the two year delay between the purported publishing of the documents and the time of the students' search, an inherent complexity of the dynamic nature of the Web. Therefore two different processes were required.

Firstly, the researcher, an expert in information search and retrieval, and aware of the civil society archiving service, the Internet Archive—a service it was clear the students knew nothing about—found, reconstructed and interacted with the original website. The interactions with the website used the criteria specified in the Web 2.0 guidelines, included searching, navigating through the menus, checking every link that looked as though it might point to publications or inquiries, and it was determined the documents had been published and they were easy to find. Secondly, the researcher as a surrogate for the students, then repeated and documented the same interactions with the website the students used. There was no trace of the documents, and no indication of where archived copies could be found.

These 'conversations' with the website were the documental evidence that provided several insights into processes and procedures that may have either inadvertently or purposefully removed the documents. The Hon Finkelstein had published the documents as required; the students were told they were there, but the government department agency had changed and had not archived them. Conclusions are drawn about the accessibility factors that constrain and impact on the notion of e-government as a mechanism for providing access to government information. Deductions are then made about the roles of the other actors: the ICTs, and the invisible actors, the bureaucrats and web management team, and of the level of technocratic capital required by citizens.

Legitimation, law and implementation processes

The second case study was designed to analyse the policies concerning the mechanisms by which citizens can request access to information that has not been published: the second dimension of access. It is primarily a study of two power struggles, the first of which is among the juridical, political and bureaucratic fields over the writing of the rules; the second is a power struggle over the implementation of the rules. The concern the decisions made for the disclosure or non-disclosure of government information, which is requested by any citizen, including politicians themselves who for political reasons might need access to documents not published. The legal mechanism, the rules of the game, by which requests can be made is the Freedom of Information Act 1982 (FOI Act), and the first step in this case study was to become familiar with its various clauses.

Several approaches are brought to this case study. The first was to interrogate two official FOI datasets that are publicly available in the government's open government data portal: the *FOI Requests, Costs and Charges 1982-2018*, and the *FOI Annual Returns 2000-2018*. A rational or technocratic approach, that is, a simple count of the numbers of requests (see Table 1) was employed to establish patterns of usage of FOI, a technique used by Hazell and Worthy (2010) in their study of FOI.

Year	Requests for personal information	Requests for other information	Total requests	Application fees AUD	Internal review fees AUD	Charges notified AUD	Charges collected AUD	Estimated costs AUD
1982-1983	No data	No data	5576	0	0	3069.38	2067.14	7502355
1983-1984	No data	No data	19227	0	0	22247	13535	15106511
↓	↓	↓	↓	↓	↓	↓	↓	↓
2000-2001	31777	3662	35439	89815	5780	1099380	126052	14415406
2001-2002	33403	3766	37169	91684	5600	825779	198551	17387088

Table 1 Variables in the dataset FOI Requests, Costs and Charges 1982-2018

While reliability of official numbers is never certain, coming as they do from various departments as traces of the work of bureaucrats, the approach provided a series of data visualisations from which patterns of requests emerged. These patterns informed further avenues of research to uncover the contexts, policies and practices—political, bureaucratic, economic—and external events that may have initiated the requests (Julnes & Holzer 2001).

The analysis of the *FOI Requests, Costs and Charges 1982-2018* data produced a pattern of fluctuating numbers of submissions over thirty-four years, and provided a basis on which to determine the influential factors for these variations. A close reading of all the Freedom of Information annual reports uncovered policies that might account for some of these variation, for example, the introduction of fees, and the advent of e-government information publishing. As can be seen in Table 1 above, in 2000 a new variable was included when the requests were separated into access for personal information and those for 'other', that is, government policy-related information. While this second type of request was the focus of the study, a comparative analysis of the two requests types was relevant to a study of government openness.

The *FOI Annual Returns 2000-2018* dataset (see Table 2) included the outcomes of both personal and policy-related ('other') requests—granted, partially granted (redacted) or refused—that provided important insights into access to government information.

Agency	Granted in full			Granted in part			Access refused		
	P[13]	O	T	P	O	T	P	O	T
Agriculture and water									
Agriculture									
Australian Fisheries Management Authority	0	0	0	1	3	4	0	2	2

Table 2 Variables in the dataset FOI Annual Returns 2000-2018

A new avenue for data collection emerged from the insights of the data analytic research. The possibility that the rise in request numbers might be related to controversial government policies or actions, led the researcher to an exploration of real-world requests. This approach involved text analyses of three FOI submissions by journalists and public intellectuals, high users of FOI, in order to gain insights into the political and bureaucratic processes and decisions for disclosure or non-disclosure of government information. Two of these three were requests triggered by very public events. The other, consisting of two submissions, was

[13] In this table **P**[ersonal], **O**[other], i.e. policy-related information, and **T**[otal].

given to the researcher after a chance conversation with an academic and public figure about freedom of information.

The first two requests were examined in the light of the legislation that declares some requests may not be granted if the required information is deemed exempt under certain circumstances. These are conditional exemptions, of which there are several, and the decision for disclosure or restriction is based on a public interest test, a procedure that is a highly contestable and subjective issue. The third example, was examined to investigate the administrative practices of implementing the legislation. These several approaches to the investigation provided a very rich collection of data from which conclusions can be made about the power struggles between political and ideological positions, and of the barriers that citizens face when they submit freedom of information (FOI) requests.

Commercialisation of information and the public interest

The third dimension of access to government information is the proposition that, under many circumstances, the information is concealed from the public. This case study is based on the premise that one of these circumstances is a perceived commercial value of the Australian Commonwealth government's information and, in particular, of its datasets. The study is fundamentally an investigation of how economic power drives the re-writing of the rules for the provision of services in order to accommodate new developing relationships between government and the market field, and in doing so prevents public access.

This investigation follows an ethnographic approach, in which each set of findings opens new research avenues and new themes. It eventually shifts the investigation from the generalities of the commercial value of information, to valuing information in socio-economic terms, and an exploration of how government-market relations impacted the public interest aspects of access to government datasets. The first theme or thread developed out of the concept that in the market place information has a commercial value when it is used for decision-making; this had become evident in the analysis of FOI commerciality clauses through which government information became inaccessible. The logical thread to follow was that of fiscal policies leading to new relationships between government and the market—public-private partnerships (PPPs). This was not feasible since the Australian Commonwealth Government

relies on private sector contracts rather than PPPs, nevertheless it led to an examination of a different government-market relationship, that of contractual arrangements.

To gather data on restricted access to information through government-market contractual relationships, the researcher used the dataset of Commonwealth tenders, *Historical Australian Government Contract Data 1999-2018*, available on the government's open data portal. This approach confirmed a high level of government contracts had been flagged as having commercial-in-confidence information, both in the contractual arrangements and the subsequent generated information (contract outputs). Since the legislation requires that business entities claiming commerciality must provide substantiating documentation, the annual reports of the Australian National Audit Office (ANAO) were consulted to verify the extent the claims were valid.

The concept of open government, in which information could be available on websites or as open government data (OGD) uploaded to OGD portals, provided the final thread of investigation. In a case of 'information encountering' (Erdelez 1999), a new research field appeared; a field of government-market relations, in which governments release their commercially valuable datasets under license to the public, including the market place, to drive economic development through entrepreneurial activities. The research approach was a comparative analysis of two sets of geospatial data, regarded by both economists and governments as the most valuable data for national economic development (Productivity Commission 2017; Weiss 2010).

The first datasets are meteorological and hydrological; they are generated by the Bureau of Meteorology and openly accessible and free of charge on its website. A second block of geospatial data—cadastral data[14]—that are generated in individual state agencies, transferred to a private company (PSMA, Public Sector Mapping Agencies) and available only through a fee-based service.

In order to gain insights into these opposing approaches for delivering government data for economic development, three avenues of data collection were conducted. The first, in order

[14] Data on the extent, value and ownership of land.

to explore the underlying decision for each approach, was an analysis of government documents, including the various legislation relating to the Commonwealth Bureau of Meteorology, Hansards (the official record of parliamentary proceedings), economic reports, white papers and annual reports. The second approach was an analysis of the financial bases on which the economic services were delivered; this was done by analysing budgetary and revenue statements available in the annual reports of both organisations. Finally, in order to get a broad comparison of the socio-economic benefits delivered by both approaches, the researcher examined many third-party economic reports, and in the case of the Bureau of Meteorology, conducted a citation analysis of academic research, using the Scopus™ citation database to obtain insights into the types of new research derived from public access to the Bureau's datasets.

Together, the findings from each of these data collections allow conclusions to be drawn about the policies that have institutionalised government-market relationships and which have ramifications for the public sector and the public interest. In the first instance, whether the public interest is served when one valuable dataset can remain in the public sector, but public ownership (intellectual capital) of another can be transferred to the market. Secondly, can policies that privilege economic power to deliver services be transparent and accountable? Finally, what is the impact of such commercialisation when citizens are no longer able to reuse what was public data, either for entrepreneurial or other activities?

Openness and secrecy: the dimensions of access

The following three chapters, *Mechanisation and management of web-published information*, *Legitimation, law and implementation*, and *Commercialisation of information and the public interest*, present the findings of the research strategies that investigate how the relationships and power conflicts among the actors in the many fields reflect government secrecy and openness, and impact on citizen access to Australian Commonwealth Government information.

Chapter 4: Mechanisation and management of Web information

This chapter is a study of how documents of a public inquiry, mandated to be published on a government website, had apparently disappeared when a cohort of citizens needed to access them. The study examines the processes by which government information is selected, uploaded and removed from websites, and effectively hiding their existence from citizens. The study draws conclusions about the power of information and communication technologies and technocrats, and the roles and functions of other government agencies that attempt to counter-balance the adverse consequences of mechanistic and technological practices.

Introduction

This is the first of three case studies that explore several dimensions of access to government information, the archive of codified information collected and generated by government in its role of governing and providing services to its citizens. Public access to this information is both facilitated and constrained through three dimensions of legislative and regulatory mechanisms. This study is concerned with the first dimension, the information that is made publicly available by its publication on a government agency's website. In Australia, agencies are obliged by legislation to publish certain types of information on their agencies' websites. While the case study is primarily an examination of the availability of a set of documents that fall into the mandatory category, the analysis will demonstrate the implications for all Web-published government information and data.

The impetus for this case study was a casual remark made by an academic teaching a course on communications and ethics in September 2014, concerning the inability to find a set of government documents that had previously been publicly available on a government website. The subject had a cohort of over 700 undergraduate students in a Bachelor of Arts in Communications program, in which they were to discuss in a seminar "the main

recommendations of the 'convergence review' and the Finkelstein Review" as preparation for an assignment. They were "to examine and discuss the range of submissions put to the Convergence Review, as background, and to the Finkelstein Inquiry . . . [that] were submitted by organisations."[15] This required finding 1) the *Convergence Review Final Report*, 2) the *Independent Inquiry into the Media and Media Regulations Final Report, 2012* (the Finkelstein Inquiry), and 3) all the submissions to both inquiries. Most students concentrated on the Finkelstein inquiry and easily found the final report. A handful was able to find the supporting "disappeared" documents when they were given a URL, albeit an incorrect one, through further investigation and sleuthing. At the time, however, this situation provoked comments by lecturers, tutors and students, such as "is it a story of deliberate inaccessibility", "they're hiding the information", and "they have destroyed the documents".

This case study examines one slice of the field of government information, the sub-field of e-government, where the actors or players are involved in the creation, selection, publication and use of information and data[16] on government departments' or agencies' websites. The Commonwealth legislative and regulatory mechanisms are the rules of the game, and the major players are institutions, groups and individuals. The institutional players are 1) government departments and agencies that create and publish information on their websites, in this case the Department of Broadband, Communications and the Digital Economy and its successor, the Department of Communications, 2) government agencies that archive websites—the Australian National Archives and the National Library of Australia, and 3) a public not-for-profit institution, the Internet Archive. There are at least two individual actors, Ray Finkelstein QC, a consultant commissioned to lead the inquiry and to produce its report, and the authors of the submissions. There are several group actors, 1) bureaucrats and government advisors who select, and sometimes create, the content to be published, 2) the students who require and use the information, and who in this case study are representative of the citizens, and 3) the website management group that designs and populates the website. In this last group is the technology itself, with its algorithms and other automated processes.

[15] Instructions from the subject curriculum and tutorial and assignment briefings.

[16] Data and datasets are often published on government websites, but this is not the focus of this case study, rather they are central to the third case study, and to a lesser extent in the second study.

The basis of the study is to examine not only the access as legislated, but to evaluate its accessibility, the experiential quality, or, in the language of systems design, the user experience of that access. The case seeks to demonstrate, in particular, the social ramifications of the policies and practices of web publishing that are required under Part II of Freedom of Information Act 1982, the Information Publication Scheme (IPS). The research will analyse the mechanistic and policy factors that prevented a large group of university students from finding the information, and who (like most citizens), were not aware of legal requirements. These factors include web automated technical processes, bureaucratic information selection practices, inadequate web design decisions, apparent ineffectual information management, and a lack of a clear understanding of machinery of government (MoG) procedures and regulations that specifically require the archiving of departmental websites when government agency functions change. It explores and evaluates the power of ICTs and technocrats, and the functions and roles of other government agencies that attempt to counter-balance the adverse consequences of mechanistic and technological practices.

The Independent Inquiry into the Media and Media Regulations

In September 2011, Senator Stephen Conroy, the Federal Minister for Broadband, Communications and the Digital Economy, announced an independent inquiry into aspects of the Australian media and media regulation, stating that "a healthy and robust media is essential to the democratic process" (Conroy 2011, para. 2). The inquiry was to be independent of Government and conducted by the former Justice of the Federal Court of Australia, the Honourable Ray Finkelstein QC, with the assistance of Dr Matthew Ricketson, Professor of Journalism at Canberra University. The final report was delivered to the minister on 28 February 2012 and was released to the public on 2 March 2012.

Hon Finkelstein, after consideration of the terms of reference, released a short issues paper on 28th September to assist in the preparation of submissions (Finkelstein 2012, p. 345). Advertisements were placed on 21st and 28th of September inviting submissions to the inquiry, stating "it was proposed that all submissions would be publicly available unless it was otherwise determined" (ibid., p. 12). Submissions were received from some 11,000 people and organisations and about 9,600 were facilitated by an advocacy group (ibid., p. 17), at which

time it was decided to hold public hearings in Melbourne (8 and 9 November), Sydney (16-18 November), and Perth (6 December).

A website was set up at www.dbcde.gov.au/media-inquiry (Figure 5) and was to be the main source of information; "among other things, the site provided access to:

- the terms of reference for the inquiry and a short issues paper;
- media releases;
- public notices, including the schedules of the public hearings and details of how to attend;
- copies of letters issued to stakeholders;
- information on how to make a submission to the inquiry;
- copies of submissions to the inquiry and transcripts of the public hearings;
- policies on the publication of submissions, the use of Twitter, privacy and the handling of confidential information" (Finkelstein 2012, p. 337).

As noted, the final report of the inquiry was delivered to Minister Conroy on 28 February 2012 and was released to the public on 2 March 2012. On 7 September 2013, Australia held a federal election and the Labor party was defeated by the Liberal–National Coalition (LNP). The Department of Broadband, Communications and the Digital Economy (DBCDE) was disestablished and was replaced by the Department of Communications. By the third quarter of 2014, two-and-a-half years after the inquiry's documentation was published on the former department's website, students said they were not able to find the documents.

Legislative and regulatory mechanisms

In June 2009, the Commonwealth government commissioned a taskforce to report on the best use of Web 2.0 tools and approaches to achieve an open government; the report, authored by Nicholas Gruen (2009), recommended that

> *subject to security and privacy requirements, all public inquiries funded by the Australian Government should ensure that all submissions are posted online in a form that makes them searchable, easy to comment on and re-use . . . [and] easily discoverable* (2009, pp. xviii, xix).

This recommendation is reflected in the Freedom of Information Act 1982 (FOI) that sets up an Information Public Scheme (IPS) requiring

> *details of arrangements for members of the public to comment on specific policy proposals for which the agency is responsible, including how (and to whom) those comments may be made* (s 8(2)(f)).

In order to comply with this section of the Act, the regulatory guidelines state

> *agencies that undertake public consultation on specific policy proposals for which they are responsible are required to publish details of how and to whom comments may be made (s 8(2)(f)). This requirement applies whenever an agency administers or establishes a public consultation arrangement in the course of developing a specific policy proposal* (OAIC 2014 Section 13.58).

Furthermore, there are legislation and regulations to ensure that this material, which under the Archives Act 1982, are government records, must be preserved. This requires technologies to archive the website. According to the policy statement of the National Archives of Australia (n.d.-a, p. 2)

> *all agencies should take snapshots when there is a major change to, or decommissioning of, the website. These snapshots are 'Retain as national archives' records (i.e. they have been assessed as having ongoing archival value) under AFDA class 1935 . . . [and] may be transferred to the National Archives.*

Under the machinery of government (MoG) guidelines, all departments must develop a communication strategy whenever the department changes, is to be abolished, or is changing or transferring its responsibilities or functions. According to Sedgwick (Sedgwick 2013, pp. 11-2), the communication strategy includes

> *. . . establishing a website dedicated to the transition ... [and] updating gaining and transferring agencies' internet sites to reflect changes, arranging pointers from the transferring agency's site where needed . . . that previous website data must be retained not only for archiving purposes but also for FOI purposes.*

The timeframe specified for these activities is Day 1-5 planning, and by Day 30, completion (ibid., p. 13).

Technologically, this is achieved through an active decision to push a copy of the website to archival repositories, by law to the National Archives and within the department. There are also mechanisms to pull a copy to other public sector institutions, in particular the Internet Archive and the National Library of Australia (Figure 1). In 1996, the National Library began to selectively capture snapshots of federal government websites for its Australian internet archive PANDORA. In June 2001, the Australian Government Web Archive (AGWA) was set up, enabled by an opt-out provision recommended in the Gershon report (2008) whereby permission to copy government websites (which are Crown Copyright) was waived. This recommendation was endorsed by the Whole-of-Government ICT policies and approved by the Secretaries' ICT Governance Board (SIGB) in May 2010 (Australian Government Information Management Office (AGIMO) 2010). According to Paul Koerbin (2015), archiving manager of the National Library of Australia, the AGWA went public in March 2104, now harvesting Commonwealth websites three times a year, and at the time, was retrospectively adding content previously collected in PANDORA (see Figure 1).

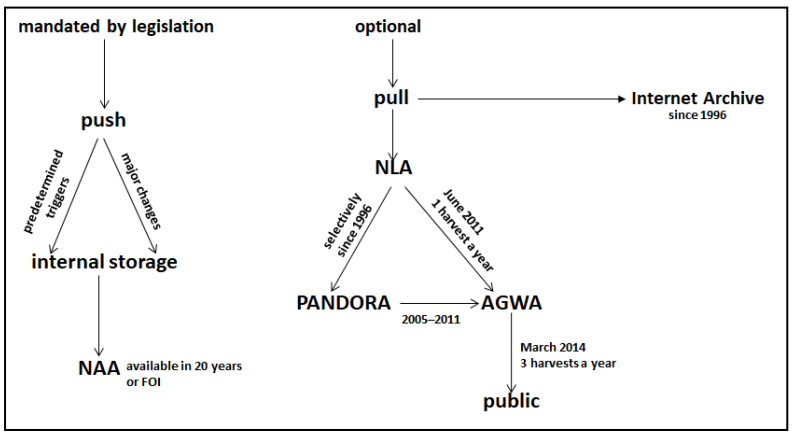

Figure 1 Legislative and regulatory archiving mechanisms, 2014

These legislative and regulatory mechanisms are the tools and mechanisms by which the access and accessibility of information published on the government websites can be analysed and evaluated.

A forensic analysis

The data collection strategies for this case study test several major assumptions that underpin the government's legislative and regulatory mechanisms:

- that the documents, including the transcripts of public hearings, submissions and reports of a public inquiry, were published on the appropriate government agency's website;
- that they were open to public scrutiny (access);
- that at the time of publication they were easily found (accessible); and
- that they would remain available for scrutiny in the future.

In order to establish the validity of these assumptions, data were collected that enables the following processes and analyses:

1. a reconstruction of the chronology of the availability of the documents on
   a) the DBCDE website in March 2012 and on
   b) the new Department of Communications website in August-September 2014;
2. an evaluation of the points of access to the documents on the Department of Communications website in August-September 2014; and
3. an assessment of the effectiveness of the bureaucratic mechanisms for archiving the websites.

The data are initially collected using the *Wayback Machine*, the search facility for retrieving websites archived in the public non-profit institution, the Internet Archive; the data are then confirmed using PANDORA and the Australian Government Web Archive at the National Library of Australia.

The Internet Archive is useful for analysing time-based web content (Dougherty *et al.* 2010), and has been used for a disparate variety of research, for example, longitudinal studies of education websites (Hackett & Parmanto 2005), country representation of the Internet (Thelwall & Vaughan 2004), health website attrition (Veronin 2002), evaluation of academic library websites (Aharony 2012), and African-American discourse analysis (Brock 2005). It uses an automated process to crawl a specified website to capture snapshots of the website; it is these snapshots that provide the data for analysis. It is important to note there are some

limitations to the snapshots, for example, restrictions on crawling by the website owner (by placing a robot.txt file in the header), a pre-set depth of the crawl, and time lags. This applies particularly if the website is very large, in which case different pages within the website may have different snapshot dates, a problem referred to as temporal coherence. However, these limitations do not affect this analysis.

The first step in this forensic analysis is to ascertain that DBCDE had complied with the legislation: a) it had been published, that is, there was access, and b) it could be easily found, that is, it was accessible. This was done by examining the archived copies of the DBCDE website at the Internet Archive, which showed that between 5 December 2007 and 23 June 2014, they had been saved 198 times (Figure 2).

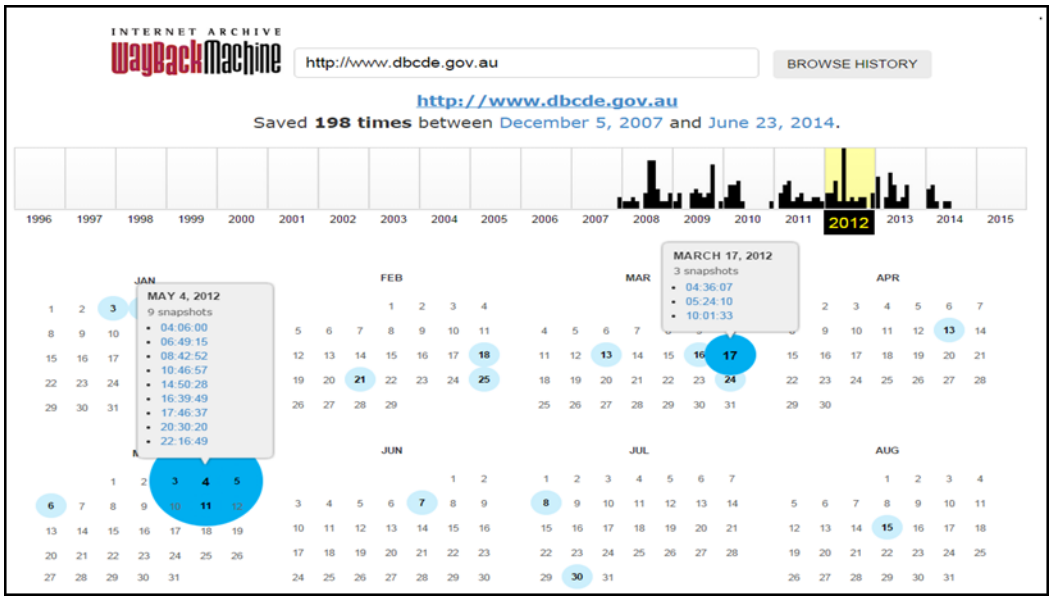

Figure 2 The Internet Archive's snapshot history of www.dbcde.gov.au
Source: Internet Archive

The first on March 17th contains the announcement of the publication of the Inquiry's final report (Figure 3), although the report had been uploaded to the dedicated website several days earlier on March 5th. The second spike occurs on May 4th when there was an announcement that final report of the Convergence Review was released for review by the telecommunications ombudsman.

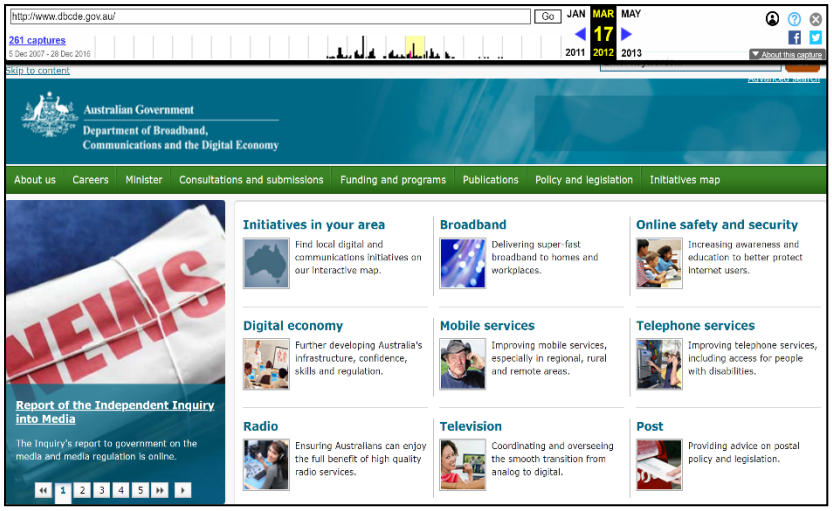

Figure 3 The Department of Broadband, Communications and the Digital Economy17 March 2012
Source: Internet Archive

According to the Internet Archive, the pages dedicated to the Inquiry www.dbcde.gov.au/digital_economy/independent_media_inquiry, had been archived 30 times between 3 October 2013 and 11 February 2014 (Figure 4).

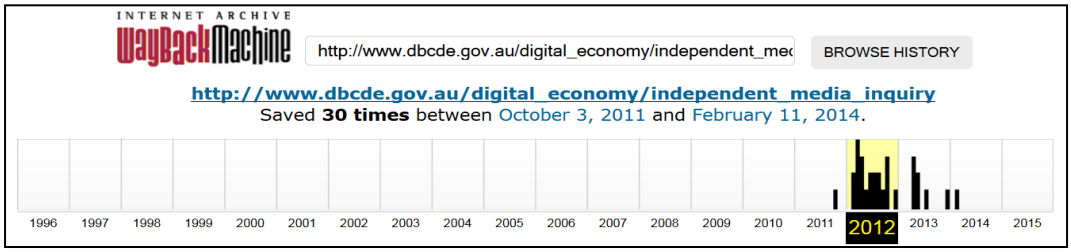

Figure 4 Internet Archive snapshot history of the website for the Independent Media Inquiry
Source: Internet Archive

An inspection of each of these snapshots to ascertain the amendments and additions to the website content provided a chronology of the availability of the documents.

Date	Documents and comments
3 October 2011	webpage in place with issues paper
27 February 2012	two links to *Consultations & Submissions* page which has all submissions, and public hearings transcripts
6 March 2012	complete update with all documentation listed and available
28 July 2013	all documentation still available
28 December 2013	website no longer available, a re-direct to new department website (Figure 12)
29 December 2013	new department website had no obvious link to inquiry documentation

Table 3 Availability of the documents of the Independent Media Inquiry

Table 3 clearly shows that DBCDE had complied with the legislative requirement to publish the material on the agency's website. Figure 5 shows the dedicated website with a copy of

the final report, and includes links to the submissions, transcripts of the public hearings and to the Convergence Review.

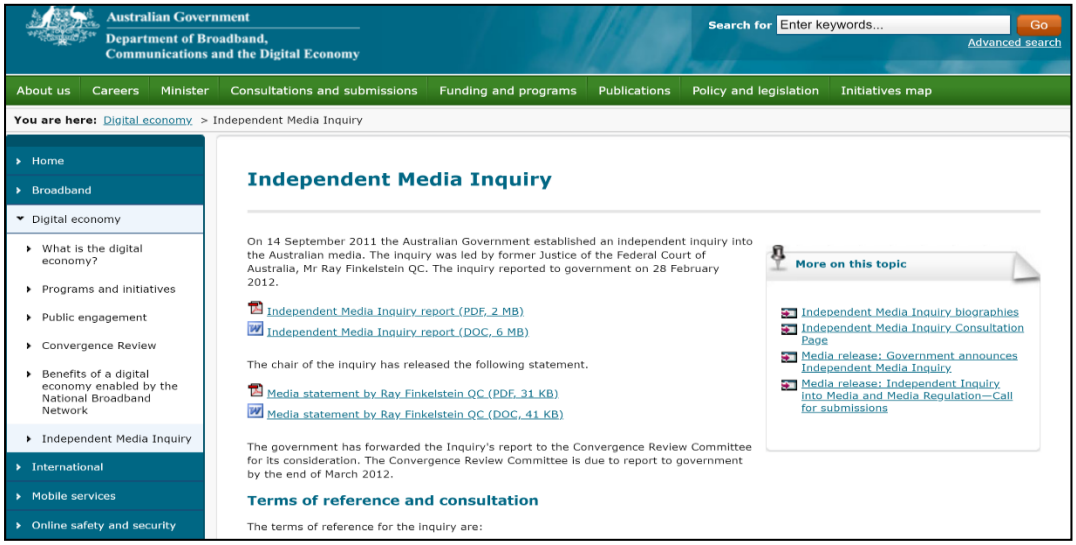

Figure 5 The Department of Broadband, Communications and the Digital Economy: Documents of the Independent Media Inquiry
Source: Internet Archive

The DBCDE homepage also provided clear access points to the documents; the main menu at the top had a link to 'Consultations and Submissions' and at the bottom of the page was a named link to the Independent Media Inquiry.

As noted, once the government changed hands, the searcher was redirected to the newly created website of the Department of Communications, which had been radically re-designed by 8 October 2013 and had remained the same towards the end of 2014, when the students were looking for the documents (Figure 6).

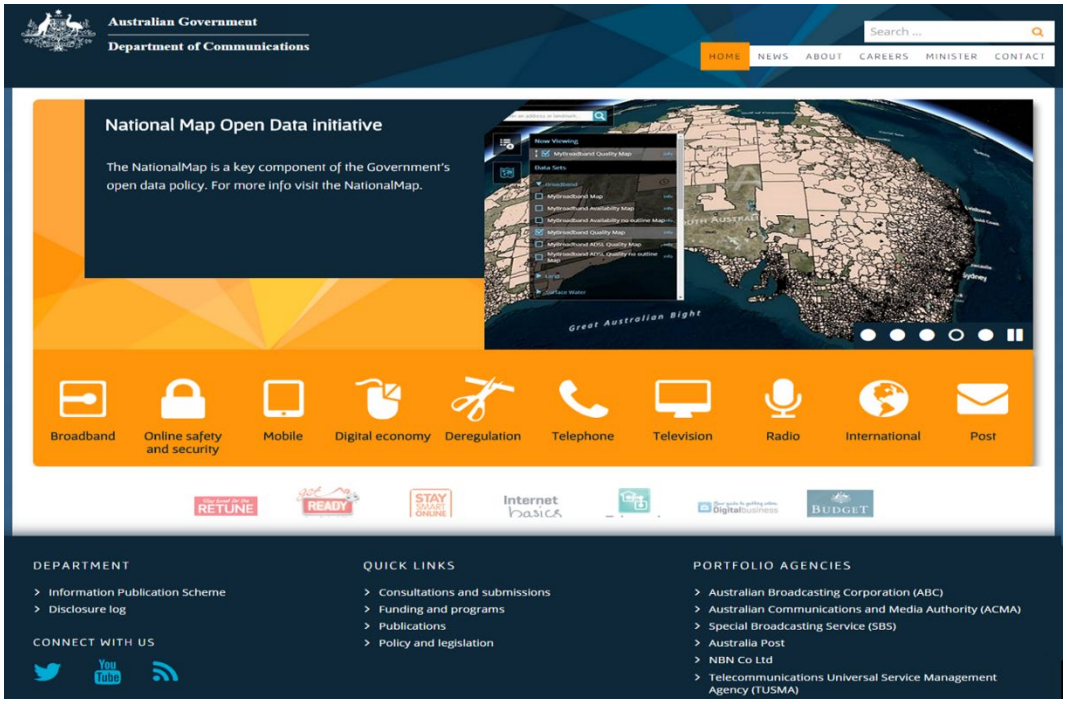

Figure 6 Department of Communications website, 23 October 2014

Two snapshots (21 September and 25 October 2014), taken during the three-month period of the students' search, show that the website architecture remained the same. It is these two copies of the website that provided the testbed to establish if the documents

> *are posted online in a form that makes them searchable, easy to comment on and re-use . . . [and] easily discoverable* (Gruen 2009, p. xviii)

The ease of discovery, in information architecture terms, depends on access points—menus, named links, visible indexes, a directory of topics, generally in the form of a sitemap, and a search function that depends on an internal index. The homepage of the Department of Communications (Figure 6) is relatively simple. At the top right of the interface there is a menu bar (news, about, careers, minister, contact), more a contacts guide than signposts to documented government information. Under a prominent banner, there is a series of icons in no discernible order, which are hot-linked to the functional areas of the agency. There are three obvious access possibilities: at the top is the search bar; at the bottom there are two Quick Links: a) Consultations and Submission, a clear choice, and b) Publications, a less likely option.

While search is a logical strategy, web-archiving technology of the time did not have the ability to search in a snapshot, and so it is not known if a search might have returned the required results. However, at the time of the case study analysis (15 March 2015), a search

for the phrase "media inquiry" on the then current Department of Communications website produced 41 results. These included emails and minutes from the Freedom of Information (FOI) log, other administrative documents, two spreadsheets of fees paid to the head of the inquiry, the Hon Finkelstein, and his assistant Dr Matthew Ricketson, miscellaneous documents concerning the setting-up of the inquiry, and one submission.

To return to the testbed snapshots, the second possible access point, the Publications link, led back to the DBCDE website and its archive of publications, listed by year, and included an A-Z index that was not useful, since it appeared the documents had not been indexed (Figure 7).

Figure 7 Internet Archive snapshot of the Department of Communications' publications page 1 June 2014 Source: Internet Archive

An examination of the contents for each month in 2012, the year of the completion of the inquiry, found that in both the snapshots the November publications list was identical, and while not organised in any discernible order, contained the transcripts of the preliminary hearings in Perth, Melbourne and Sydney, the final reports and 17 of the individual submissions (out of a total of 62). Among the listed items was a folder labelled Submissions, but these were mainly items (92) connected to the Convergence Review Interim Report that was released on 15 December 2011.

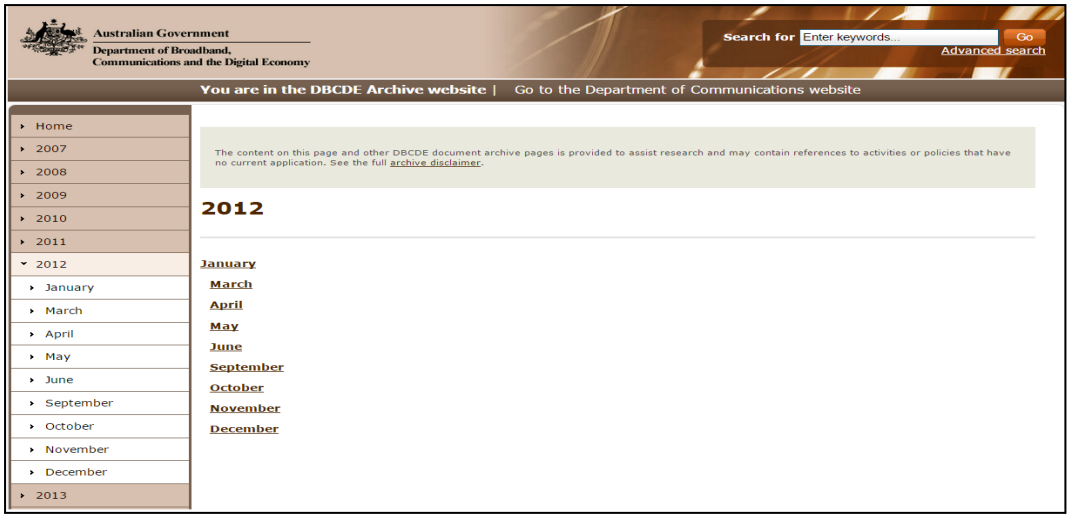

Figure 8 Department of Broadband, Communications and Digital Economy 2012 Publications archive
Source: Internet Archive

The third, and most obvious, of the access points is the Quick Link Consultations and Submissions. Figure 9 shows a prominent pointer, 'Previous Consultations and Submissions", which through a redirect message embedded in the page redirects to the DBCDE archive of publications. This lists the link to the dedicated Independent Media Inquiry web page last modified on 3 October 2013, 5:56am, containing all the documents. One problem was noted, however: the pointer to the previous consultations link was not visible when using at least one mobile device, in this case an iPhone.

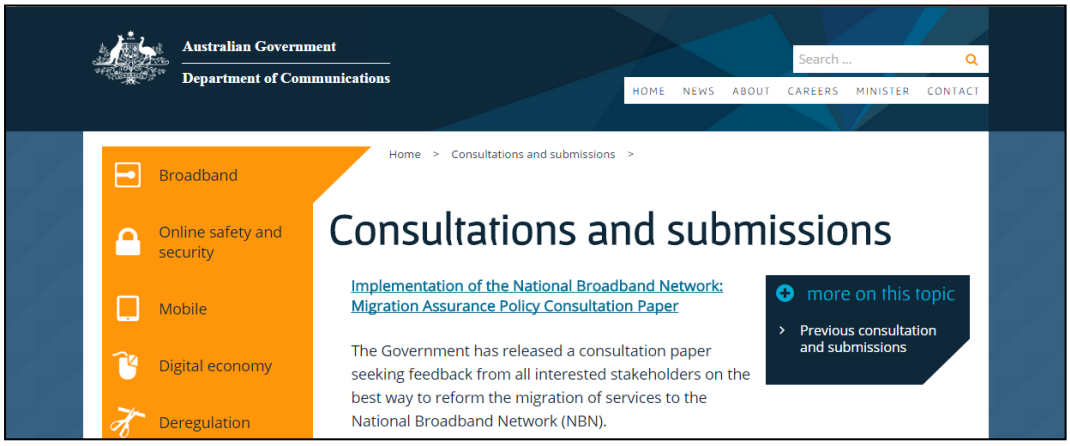

Figure 9 Consultations and Submissions section of the Department of Communications 27 September 2014
Source: Internet Archive

There is a final and certainly non-intuitive access point that was built into the Department of Communications website during the students' search period. The 'About' item on the menu (a standard on most institutional websites, particularly several years ago at the time of the Inquiry period) contains information about the organisation, its mission, structure and

functions. It is arguably not the most obvious place to look for government documents and reports, and the Internet Archive's snapshot confirms the presence of traditional content: "[t]his page provides access to information about the structure and operations of the Department", but continues with the information that the page has "links to **key reporting documents** [my emphasis] and to information on career options and employment benefits." A little further down there is an item "Departmental Archive" stating

> *Information about the policies, programs and publications from previous iterations of the Department, such as the Department of Broadband, Communications and the Digital Economy, and the Department of Communications, Information Technology and the Arts can be found on the National Library's online digital archive, PANDORA and Australian Government Web Archive. The websites are listed below . . .* (see Figure 10, Source: Internet Archive).

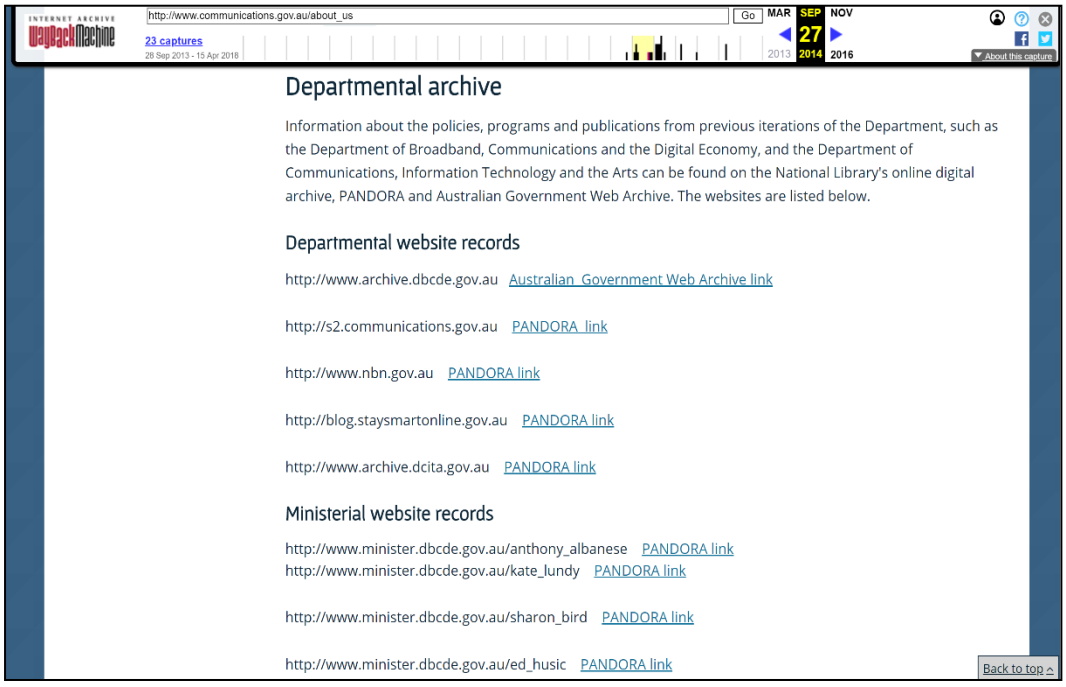

Figure 10 Department of Communications About page 27 September 2014
Source: Internet Archive

Unfortunately, there is a coding error in the hypertext link (URL) to the Australian Government Web Archive,[17] possibly the same incorrect URL for the National Library's

[17] http://webarchive.nla.gov.au/gov/

archive service PANDORA that was given in response to a student phone call to the department. Nevertheless, the information that there is an archive of government websites should and did, lead one motivated student to pursue and find a copy of the Inquiry's dedicated website; it had been archived by the National Library of Australia on 21 March 2012, 19 days after the final report was released (Figure 11).

Figure 11 PANDORA's notice of archiving the Independent Media Inquiry website 21 March 2012
Source: National Library of Australia

As shown in the model of the legislative and regulatory archiving mechanisms (Figure 1), by the time the students were searching for the documents, the National Library was in the process of moving copies of government websites to the new AGWA service. Below is further verification that the DBCDE website was available in the archive and that there was a valid redirect to the new Department of Communications website (Figure 12).

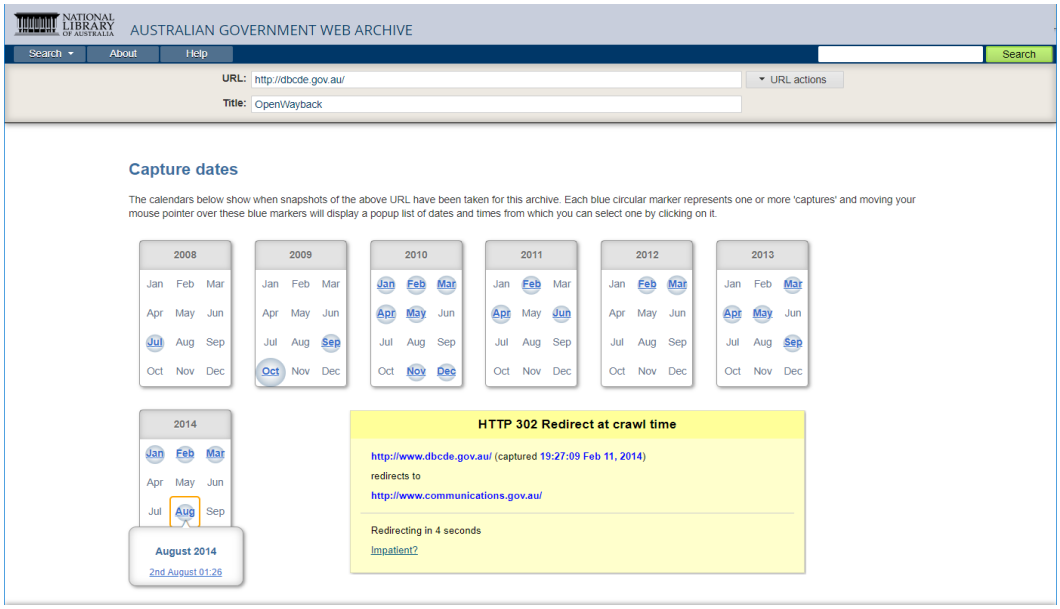

Figure 12 Australian Government Web Archive redirect to Department of Communications 2 August 2014
Source: Australian Government Web Archive

In summary, this forensic analysis using data collected from the Internet Archive, and verified by both the PANDORA archive and the AGWA of the National Library of Australia, has established that the documents of the Independent Media Inquiry held in 2011-2012, required by a cohort of 700 undergraduate university students for an assignment, were available. That is, the Department of Broadband, Communications and the Digital Economy was in compliance with the legislation mandating public access to the documentation of a public Commonwealth inquiry; and at the time, the documents were easily found. However, the analysis determined that at the time of the students' search, it is not unreasonable to conclude the documents were no longer 'easily discoverable'. The analysis demonstrates the challenges that can eventuate when there is a change in government. In this case study, the documents were very difficult to find because of a range of factors that are not in concert with the assumptions of the legislative and regulatory mechanisms, factors that led to a mismatch with the expectations of those seeking government information.

Discussion

This case study raises two major and often conflicting social and technocratic factors that governments face when the major medium for informing citizens of their policies and decisions is a notoriously dynamic information communication technology. It demonstrates that it is not simply a matter of access to information, it is a question of accessibility, which is the experiential quality, or in the language of systems design, the user experience of finding and retrieving information (documents or data) in a system that is often controlled by mechanistic and technological processes. It shows at a fundamental level, the reasons and potential pitfalls that cause a mismatch of expectations; those of the government, as manifested in technology, and those of the citizens, as represented in this case by university students.

The government agency, the Department of Broadband, Communication and the Digital Economy (DBCDE), complied with the letter of the law. Under the Information Publication Scheme, the secretariat of a Commonwealth Government inquiry is to maintain a website to be the main source of information concerning the conduct of the inquiry—transcripts of public hearings and written submissions with permission of the authors (Finkelstein 2012, p. 337), a fact that was verified by examining the website archived by the Internet Archive. From the DBCDE's perspective, public access is assured: the documents have been published. From the users' perspective, the documents are not available; ipso facto, there is no compliance with the rules. On the surface, this is appears to be a straightforward case of asymmetric or mismatched *illusio*; if the users do not share the same understanding of the rules of the game, then the game makes no sense to them and they will not participate fully in it. Indeed, it is easy to suggest that they became disillusioned with the government when they either gave up on the search, stated that the documents were not there, or even commented "they had taken them away".

The fact is that gaining access to information published on government websites depends on many multidimensional factors that loosely coalesce around several themes, which are discussed in the following sections:

1. procedural access based on a mechanistic adherence to the regulatory framework;

2. accessibility, the quality of the user experience underpinning the web design and information selection policies;
3. social elements of search behaviours, digital and civic literacies and motivation; and
4. the implicit and explicit issues of information management.

Procedural access

As already noted, the legislation simply required that the DBCDE upload the submissions to and final report of the inquiry. However, any legislative mechanism is dependent on and implemented through a series of regulatory processes; often specified in the guidelines of the machinery of government (MoG). These regulations state only that when a department changes names and/or responsibility, a copy of the website must be deposited in the National Archives, which as we have seen is not immediately accessible to the public. To counter this, the Australian Government Web Guide (Australian Government 2011, para 6) suggests that in order to retain access to outdated content, agencies should consider

> *preserving key electronic resources in the National Library's PANDORA Web Archive; creating a publicly accessible archive for out of date web content on your website [or] publishing information on your website on how to obtain out of date content that is no longer available through the website.*[18]

The analysis of the archived website at the Internet Archive shows that this had been done, inserting a link to the Australian Government Web Archive (AGWA), a subset of PANDORA, had been inserted, but by late 2014, the link was no longer active.

While it is not known how long the students persisted in their searching, there was little reported evidence of any success and apparently no student followed up the actual AGWA website at the National Library (http://webarchive.nla.gov.au/gov/), where a simple search for the phrase "Independent Media Inquiry" immediately brings up a link to the archived copy of

[18] This guide was superseded in July2015 by the Digital Service Standard, and at that time this new standard made no mention of out of date content. However, the 2019 guidelines suggest that it is important get approval to take down any content and getting evidence often by "using analytics to show the state of the content".

the Independent Media Inquiry Consultation Page. However, according to the lecturer (personal communication, 20 November 2014), one enterprising student rang the Department of Communications and was given a URL to the DBCDE archive at the National Library (an incorrect one as it turned out).

It seems clear that with the change of government, the new department's technocrats were either unaware of or ignored the regulatory guidelines. It is also conceivable that in the new political climate, an inquiry of great import to a now opposition party was no longer politically advantageous.

From the point of view of the students, public access was not so simple since they were looking for 'outdated content' on a newly designed website, although it is conceivable the students did not realise this was the situation. With little knowledge of the regulatory environment regarding the publication of and access to government information, of website archiving processes, and with a possible lack of persistence, it is not hard to see why students might, and did, say the documents were not available.

Accessibility: the quality of the user experience

> *accessibility is a human issue, not a technology issue nor a compliance issue . . .[and] recommends that agency compliance with the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) as the minimum accessibility level* (Gruen 2009, pp. 66, 7)

All Australian government websites are required to adhere to the WCAG 2.0 standard for accessibility. In 2012 only 26% were compliant (Australian Government Information Management Office (AGIMO) 2013), although the new Department of Communications website stated that "as of 6 May 2014, this site complies with all relevant Level AA checkpoints" (Source: Internet Archive, 2 August 2014). However, the WCAG guidelines are concerned primarily with facilitating maximum access for people with disabilities, and while unquestionably there would have been some students with physical disabilities, it is the other multidimensional social issues that affect authentic accessibility of websites, including psychological and motivational factors, literacy and search behaviours. Dervin (1973) has suggested there are several necessary steps that must be satisfied before actualising a search for information:

- societal: the need to provide certain types of information within the social system;
- institutional: organisations have the capability and willingness to provide resources;
- bibliographic: the extent to which resources are collected and described;
- psychological: the individual's willingness to approach and obtain information from appropriate sources;
- intellectual: an individual's skills and ability; and
- physical access to the resources.

Dervin's view is supported by van Dijk & van Deursen's model (2010), in which they proposed information access as a successive process with many social, mental, motivational and technological causes, that "material [physical] access was preceded by motivational access and succeeded by skills access and usage access" (p. 279). An information service such as a government department's website that does not give serious consideration to each of these steps is not providing universal accessibility. Furthermore, this taxonomy of accessibility interconnects with the digital and civic literacies of citizens that government information policies assume to be present.

Digital literacy

Studies show that students looking for information consistently begin with a search engine (De Rosa 2006; Nicholas *et al.* 2006; Wong *et al.* 2009), typically Google as scholars have noted (Rowlands *et al.* 2008)—"maybe a race of "extreme Googlers" will come into being" (Anderson & Rainie 2010, p. 13). This behaviour is exhibited when looking for government information rather than beginning with a government website, suggesting that it is too challenging and time-consuming, and often concluding that governments publish little or nothing of value in their area of search (Bridges *et al.* 2012; Burroughs 2009; Margetts 2006), a point we will return to.

In light of these findings we can conjecture that the case study students automatically turned to Google and found the final report at the top of the results, pointing to the website of the Australian Broadcasting Corporation, the national broadcaster, as indeed this researcher did on 20 August 2014. Disconcertingly, the Google results did not contain a listing for a government department, nor were there any links to the inquiry submissions in the first 10 pages of results. Rowlands *et al*. (2008) have concluded the verdict is open on the claim that the Google generation thinks everything is on the web (and it's all free), but remarked that

"anecdotally, this appears to be true for a large minority of young people . . . Certainly this was a prevalent view earlier in the evolution of the internet, indeed its central ethos" (ibid., pp. 300-1). The level of student perseverance is unknown, as is how many gave up after this first try, assuming the material no longer existed or was even recorded as having existed, a point that Lancaster (1995, pp. 3-4) suggests is a major determinant of motivational access. If some students did make a second, more sophisticated attempt by going directly to the website of the Department of Communications, again we can suppose that search was the preferred option and the result was still unsatisfactory.

The analysis of the case study shows little depth in the students' digital information-finding skills, which is not to say these do not exist. However, a series of studies by Nicholas *et al*. (2006) showed that typically students, and academics for that matter, exhibited shallow rather than deep engagement with information systems; and in the case of websites, they relied predominantly on the homepage or an introductory page. They rarely displaying deep site penetration behaviour (a characteristic that may say something about "the structure, the architecture, and nature of the website" (ibid., p. 211)). In order to participate in democratic practices, including e-government initiatives (objectives that underpin government's stated policies), all citizens need greater digital literacy skills in order to handle more complex tasks (see for example, Buente 2015; Correia 2002; Mossberger *et al.* 2014; van Dijk & Van Deursen 2010). Online (internet) skills are a specialisation according to van Deursen and van Dijk (2011, p. 896); in their model of digital literacy requirements, the highest level is related to content, particularly information skills. These skills, they argue, range from the ability to choose an appropriate resource through the formulation of search queries that focus on the information problem, the selection of documents, and the ability to evaluate them.

I would argue that other skills are also required if students are to be successful in finding information on complex and constantly changing websites, including those of government agencies. If the use of Google is now the conceptual model of search, then a basic knowledge of how search engines work would be helpful; for example, what can or cannot be indexed through the 'spidering' process that produces a list of results of potentially useful websites. Even more essential, is the understanding that government websites' indexes are not the same as Google; rather what degree of indexing is set often algorithmically by web technicians. When information 'disappears', as demonstrated by this case study, an awareness of website archiving by the Internet Archive, and for Australian government

websites, the Australian Government Website Archive at the National Library of Australia, is indispensable. Finally, it is particularly crucial to be aware of the dangers of personalised search that can lead to a filter bubble (Pariser, 2011), since political literacy "entails a capacity crucial to democracy, that of being able to identify alternative position on issues" (Milner 2010, p. 19).

Civic and political literacies and trust in government

> *by actively participating in the civic life, rather than allowing others to make decisions in their own interest, people learn and grow. In this view, involving the public can make better citizens, better politics, and better governance* (Norris 2002, p. 5)

Civic literacy and political literacy are not the same concepts. Miller (2010) for example, believes that to be politically engaged, all citizens—the Internet generation in particular—have a need for "informed political participation", a phrase he suggests is synonymous with civic literacy, "since being politically informed and putting that information into practice are closely associated" (p. 17). However, the basis for both civic and political literacies is to be informed, as pointed out by Crick and Porter (1978) when they stated that political literacy "*involve[s] having notions of policy, of policy objectives, and an ability to recognise how well policy objectives had been achieved as well as being able to comprehend those of others . . . [and] respond to them morally"*(p. 96). Miller (2010) also contends that to achieve political participation, education about political decision-making institutions and political issues is needed.

In Australia, according to Bede Harris (2014), civics education is poor. Australian textbooks for citizenship education show a lack of emphasis on critical thinking skills (Davies & Issitt 2005), and when a new national curriculum was introduced in 2014, a review concluded there were serious gaps, one of which was information about "the role of the Prime Minister and Cabinet and the executive arm of government, the hierarchy of laws and the policymaking process . . . . key component[s] of citizenship" (Donnelly & Wiltshire 2014, p. 198). Compulsory voting has been in place in Australia since 1924 and voter turnout is commonly stated to be 95%, although statistics from the Australian Electoral Commission suggest they are lower; in 2016 the turnout was 91.0% for the House of Representatives and 91.9% for the Senate (Australian Electoral Commission 2016), a decline that is consistent with worldwide

trends (Desilver 2018; International Institute for Democracy and Electoral Assistance (IDEA) 2013). Significantly, Lawrence Saha's study (2005) reported that 87% of Australians aged 18-25 said they would vote because it was mandatory and only 50% if it were not, but noted that it was a "measure of the level of commitment to carry out citizenship responsibilities . . . [that] the students say they will vote, not because they feel they will have to, but because they want to" (2005, p. 5).

The case study students, according to the lecturer (personal communication 20 November 2014), appeared at times to show attitudes of distrust of government: "is this a case of deliberate inaccessibility?", "they've taken [the documents] away" and "they don't want us to see them [submissions]". There is a substantial amount of literature concerning lack of trust in government and political institutions (see for example, Hetherington & Rudolph 2008; Levi & Stoker 2000; Norris 2011) and on its impact on political participation (Hooghe & Marien 2013), although the study done by (Goldfinch *et al.* 2009) concluded that trust was not necessarily associated with greater political participation in voting and e-government. In fact, the higher the use of online communication among citizens, the higher the level of trust, a result that Sharoni (2012) suggested was part of the paradoxical effects on the use of ICTs. Other factors that appear to have a detrimental effect on trust are political scandals (Bowler & Karp 2004). There were numerous reports of Australian political corruption, influence-peddling and the resignation of a state premier, widespread spin doctoring of government messages (Duffy *et al.* 2005; Rees 2012), and some disquiet that journalistic reliance on governmental public relations media releases may compromise news content (Lewis *et al.* 2008). As Faulkner *et al.* (2014, 169) wrote about social studies students, "reading and paying attention to articles about political probity can alter trust in specific political and non-political institutions."

Given the fact that the students of the case study were in a class with a high level of content on civil justice, law, ethics, and politics, it is not unreasonable to speculate that the majority would have been engaged with issues of civic literacy. But it is questionable whether they had the high levels of digital and civic literacies required to interact with the effects of the practices that underlie and are embedded in the publication of government information on agencies' websites. A very complex set of information publishing practices are in play, which can confound even the most skilled and result in lack of accessibility. These practices involve the web technology itself, its dynamic nature, automated processes and workflows,

architecture, contemporary design trends and dynamic nature; the selection of content other than what is mandated by legislation and the ramifications of other legislative requirements; and the consequences of regulatory mechanisms such as the renaming of government departments and the redistribution of portfolio responsibilities.

Managing the technologies

If user experience is the hallmark of accessibility, then as we have seen, the web management team needs to deliver more than basic compliance with WCAG 2.0, since usability is more nuanced than the specified guidelines. While the case study concentrates on the documents that the legislation mandated to be published on the agency's website, in reality much of the web content is sourced from document and content management systems from the multiple functional areas of a government department. Consideration must be given to cross-area information polices, processes, workflows to ensure department-wide consistency in file-naming devices, topic and document classification schemes, metadata requirements and application, settings for website search engines, and processes for removing and/or archiving content, including that regulated by the Information Publication Scheme. These complex issues can be summed up as good information architecture, which Pribeanu (2014, p. 89) describes as "clear website structure, intuitive navigation schemas, and descriptive category names", or what can be called 'access points' to the content. The case study demonstrates a microcosm of accessibility challenges for governments when a website is the major vehicle for disseminating information to the public.

Consider the WCAG basic criterion to be "operable". Section 2.4 of this criterion states there must be "ways to help users navigate, find content . . . [which ensures] more than one way is available to locate a Web page within a set of Web pages." This is a clear statement of good information architecture, in which one element is a well-constructed site map (Sarantis & Askounis 2010) that has two important functions to aid finding content. In the first instance, it acts as a navigation device for the user, providing that a "constantly visible overview [site map] will dig deeper into the site structure" (Danielson 2002, p. 611). In the second, it facilitates automatic indexing of the content by enabling a search engine (either a web search such as Google, or an internal or in-site search service) to crawl the pages of the site, a process that creates a searchable index.

The original DBCDE website had a site map in which the Independent Inquiry was listed and could be found by using the search function. In contrast, in late 2014, the time of the

students' search, there was no sitemap on the new Department of Communications website and because of website archiving technologies, as already noted, the usefulness of the search function could not be tested. The current website[19] of the department (now the Department of Communications and the Arts) does have a sitemap, but it is not very discoverable since it is at the bottom of a very long homepage, a design trend in current Australian government websites. One can probably assume its presence is for search engine optimisation and automated indexing, since most people search rather than browse—deep site penetration behaviour (Nicholas *et al.* 2006). The usefulness of descriptive category or topic names is also an element in good web architecture (Pribeanu 2014); the sitemap does not include the topics *inquiries*, *submissions* or *consultations*, but does include the topic *archives*, which might not be intuitive for everyone, but it does alert the user to the AGWA, although there is no link (Figure 13).[20]

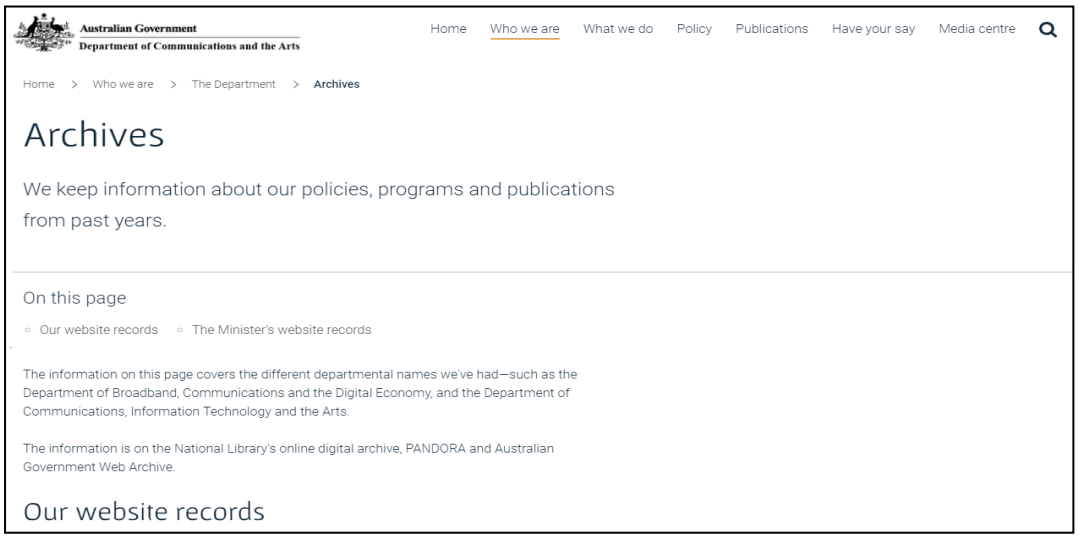

Figure 13 Department of Communications and the Arts website indication of the existence of the AGWS, 14 February 2019
Source: Department of Communications and the Arts

It should be noted that at the time of the case study, the website did not contain any mandatory descriptive metadata that provides further elements for site searching; at the time of writing,[21] the agency is now compliant with the Australian Standard AS 5044-2010.

[19] https://www.communications.gov.au/ (14 February 2019) although an examination of the source coding of snapshot of this page at the Internet Archive showed that this had been present on 30 April 2013.

[20] This image is difficult to read primarily because the web design uses pale grey text on a white background, which failed the WCAG 2.0 Level AA contrast test (requires 4.5:1) conducted 20 February 2019.

[21] 14 February 2019.

A final comment about accessibility and web design. As I have already discussed in the forensic analysis, at the time of the students' search the main menu provided no indication that the website was a repository of government documents (Figure 14).

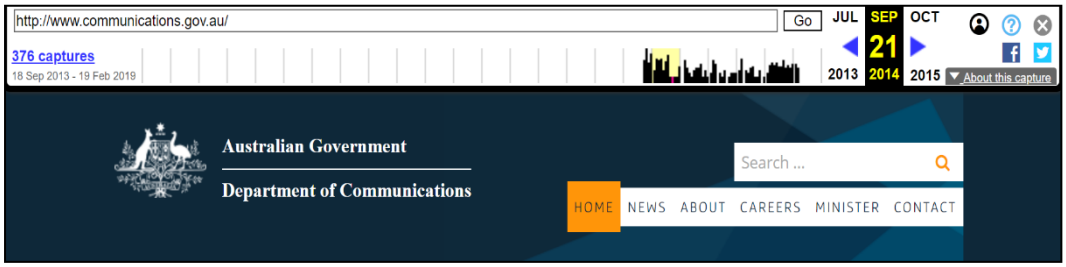

Figure 14 The menu bar of the Department of Communications 21 September 2014
Source: Internet Archive

Early studies have shown that governments have a propensity to consider their websites simply as a public relations tool (Grimmelikhuijsen 2011; Mahler & Regan 2007; Malone 2004) and others have commented that these websites publish information about what they do, whether it is mandated or not, and often this is not what the citizens are looking for (Gilbert 2010; Heald 2006b; Margetts 2006; Pina *et al.* 2010). While the current (19 February 2019) homepage of the Department of Communications and the Arts provides a menu indicating there are publications and policies, current trends in web design appear to support this conclusion, as indeed was the finding in this case study, leaving us wondering (as Pina *et al.* (2010, p. 15) have wondered) "whether governments are interested in establishing websites simply to give an image of modernization and responsiveness to their citizens" rather than an information-rich portal.

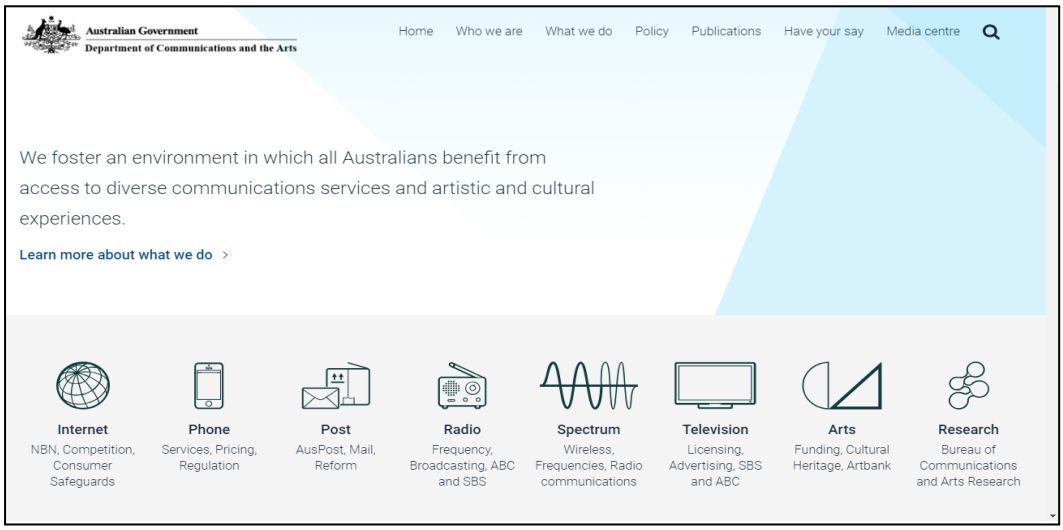

Figure 15 Current homepage of the Department of Communications and the Arts 19 February 2019
Source: Department of Communications and the Arts

Information management practices

One of the very difficult challenges highlighted by this study is the availability of the material once it has been published, its short-term maintenance and long-term preservation. The literature shows that the ultra-volatility and dynamic nature of websites affect content availability through 'disappearing' pages and link rot (Koehler 2004; Lawrence *et al.* 2001; Pennock 2013), and that web technologies are a major issue. The specific details of the workflows and the decisions of the web management team are not known, but they would include the automated processes for short-term maintenance such uploading from content management systems and the internal archiving practices of removing specific pages and levels; this is not the same as archiving entire websites, which is the process for long-term preservation. As Lin and Eschenfelder (2010) point out, many of these difficulties arise from the essential conflict between content management systems and the fluid nature of government content and the evolving web content management practices.

The fluidity of web content, caused either manually or automatically, clearly demonstrates that the need for long-term practices to preserve the web content for the future is essential. The overarching government policy of digital-only publishing therefore clearly defines web archiving as one solution to providing public accessibility; it also creates major issues and challenges. That government collecting agencies should provide these archiving services is evident, since the case study shows that a departmental website, in effect its publishing house, is susceptible to many political and bureaucratic factors—not least of which are changes in government and its policies affecting the continuity of the publication record. There are two mechanisms in Australia for ensuring this long-term preservation, the first a legislative requirement, the second a national service.

The Archives Act requires that copies of government websites be transferred to the National Archives, although the legislation also limits public access to this material. The Act specifies that the public has a right to access Commonwealth records in the open access period, which was amended in 2010 to begin after 20 years instead of the previous 30 years from its year of creation. In the case of the complete set of documents of the Finklestein Inquiry, the open access period would be 2032 (*Australian Information Commissioner Act 2010*). More immediate access to material not in the open access period is therefore a matter for a Freedom of Information request, a process which is neither immediate, automatic, nor necessarily free

of charge. In part it is these restrictions that led the National Library, in recognition of the vulnerability of digital materials, including government websites, to develop PANDORA and the AGWA. As Masanès (2006, pp. 7-8) remarks,

> *[T]he first step for preservation is to have it done by a different type of organization, driven by different goals, incentives and even a different ethic. The Web as an information infrastructure cannot solve what is mainly an organizational problem. Therefore, archiving the Web is required as an activity made independent from publishing.*

Conclusion

The case study has challenged government assumptions that if web publishing processes meet regulatory and technical accessibility standards, the content is easy to discover, access and useable. However, I argue that not only is accessibility far more nuanced and multidimensional than a bureaucratic understanding of website content accessibility, but information skills and digital and civic literacies are also essential components if citizens are to have true accessibility to online government information and services. The analysis concludes that the majority of the 700 students appeared to tick all the boxes of digital inclusion criteria: physical access, motivation, relatively high levels of information, digital and civic literacies, and possibly most importantly in the context of this study, psychological access. The students expected that a government website would have the needed information, that there was the possibility that their "[information] problems can be solved" through this service (Dervin 1973, pp. 15-6). Instead it became apparent that despite their belonging, in digitally inclusive terms, to an elite group within the general citizenry, it emerged there is a wide difference between the service provider's assumptions and the expectations of the users.

In the most recent Global Information Technology Report (Baller *et al.* 2016) Australia was ranked 18th in the Networked Readiness Index,[22] a measure of how to make the best use of ICTs in order to improve citizens' political participation, social cohesion, governance and business innovation. And according to the latest statistics, 97% of all households with children have access to the Internet (Australian Bureau of Statistics 2018). The case study is concerned with a cohort of university students who were highly motivated to find documents

[22] At the time of the research, Australia was placed 17th in the index.

needed to complete an assessment task, who had access to high-speed broadband and excellent computer facilities. However, the study demonstrates there are serious implications for citizens in general. In spite of the positive statistics, one in five Australians is digitally excluded, including remote Indigenous communities, very low income households, elderly people, non-English speaking individuals, and those with disabilities (Swinburne Institute for Social Research 2015). The case study reveals a worrying disparity between the rules of mandated access as an institutionalised practice and the expectations and trust of all citizens that government information is truly accessible, a disparity that raises issues of social justice in a democratic society.

Chapter 5: Legitimation, law and implementation

This chapter examines the Freedom of Information mechanisms by which citizens have a right to request access to unpublished information. The research begins with an analysis of the complete official government statistics of requests and their outcomes, in order to draw some conclusions about the patterns of usage from 1982-2018. It then analyses the texts of real-world submissions and associated documentation to gain insights into the bureaucratic and administrative power and practices that can result in the nondisclosure of the requested information.

Introduction

> *a fine thing, my fellow Athenians is the preservation of public records. For records do not change, and they do not shift with traitors, but they grant to you, the people, the opportunity to know, whenever you want, which men, once bad, through some transformation now claim to be good*
>
> Aeschines, 330 B.C.[23]

This is the second of three case studies exploring access to Commonwealth government information through a frame of the tensions between openness and secrecy. The focus of this chapter is an analysis of the mechanisms that facilitate and constrain citizens' access to information that is not publicly available, but may be requested formally or informally. In this context, this information is the *archive* of the codified records of government administration, the records of decision-making processes and deliberations concerning policy, governing and service provision. The case study is an analysis of the juridical, political and bureaucratic processes and decisions that are made on disclosure and non-disclosure of government information, and of the usefulness and effectiveness of the major legislative mechanism, the Freedom of Information Act, that controls citizens' access. The study has

[23] Quoted in Sickinger (1999, p. 1).

several parts, each of which is based on two fundamental premises: that access to its policy-related and decision-making information, rather than personal information, is evidence of government openness; and that the applications and outcomes of freedom of information (FOI) requests can be considered as surrogates of openness.

The study begins with an analysis of all FOI requests and outcomes since the inception of the Act in 1982. It uses rational or technocratic (statistical measurements) criteria, a method employed by Hazell and Worthy (2010) in their evaluation of the performance of the early implementation of FOI legislation in several countries, including Australia. Using these criteria—number of requests, proportion of requests fully or partially granted and reasons for refusal—the study analyses 36 years of data, from 1982 to 2018, the most recent available, to identify patterns of FOI use and outcomes that may be indicative of government openness. However, this technocratic analysis has its limitations; while the apparent trends may indicate the factors at play, statistics, as Julnes and Holzer (2001, p. 696) caution, "do not operate in a vacuum" but must be considered in their political and cultural contexts.

The political contexts of access through FOI are explored in three individual cases, which are exemplars of different attitudes to and limitations of that access. Each of these is bounded by a specific timeframe, 2013-2016, and is concerned with access to a different type of record. Each example combines an analysis of the formal and informal texts of the conversations between the FOI requestor and the bureaucratic decision-maker (Walby & Larsen 2012) with the emergent pattern of request outcomes within the specific political context of the case. This combined analysis enables us to come to some conclusions as to the effectiveness of FOI as a mechanism to assess the openness or secrecy of government.

The politics of the first case is the framing of a government policy for an anti-racism campaign; an activist and public intellectual for multiculturalism submitted two requests, one for a commissioned report, the second for the submissions to a non-public government inquiry. The case demonstrates that openness can be undermined by bureaucratic power, contentious issues within the legislation itself, and poor information management processes. The second case, a request for departmental emails underlying an overtly political decision to rescind the legislation put in place by the previous government, demonstrates how the public interest can be subverted by a decision that was widely regarded as an effort to curtail openness. The final case, framed by a politically motivated and highly contentious policy for

the processing of asylum seekers, examines journalists' requests for the transactional health records of refugees, and explores the implications of a direct challenge to institutionalised government secrecy.

In summary, each of these analyses of requests for access to the Commonwealth government's administrative records—the *archive*—addresses the legislative and regulatory mechanisms and their inherent, manipulatory and accidental limitations, including conditions for disclosure or non-disclosure, fees and charges, issues of records management and personal or political influences. The analyses seek to determine the validity of the assertions of scholars such as Snell (2001), Roberts (2006) and Luscombe and Walby (2017) that governments may use Freedom of Information as an obfuscating mechanism while maintaining a veneer of legitimacy.

Legislative and regulatory mechanisms

There is a range of legislation that facilitates and limits public access to government-held information and data, particularly the Freedom of Information Act 1982 (Cth) and Freedom of Information Amendment (Reform) Act 2010 (Cth). Other legislation germane to this case study are the Archives Act 1983 (Cth), the Privacy Act 1988 (Cth) and the Australian Information Commissioner Act 2010 (Cth).

The objects of the current Freedom of Information Act 1982 (Cth) are

> *(1) . . . to give the Australian community access to information held by the Government of the Commonwealth, by:*
>
> *(a) requiring agencies to publish the information; and*
>
> *(b) providing for a right of access to documents*
>
> *(2) . . . to promote Australia's representative democracy by contributing towards the following:*
>
> *(a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;*

(b) increasing scrutiny, discussion, comment and review of the Government's activities [and]

(4) . . . as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

The Freedom of Information Amendment (Reform) Act 2010 (Cth), in conjunction with the Australian Information Commissioner Act 2010 (Cth), brought about a series of major changes to the Freedom of Information Act (FOI Act); those that are relevant to this case study are

1. the introduction of the Information Publication Scheme (s 8 2(g)), which stipulates
   agencies and ministers are required to maintain a 'disclosure log'. Information given to a person in response to an FOI request must be published on a website within 10 days, or details provided of how the information may be obtained (OAIC 2011a, p. 18)*;*

2. an internal review procedure that specifies
   a person who is denied access to a document can appeal against the decision of the agency or minister to an independent tribunal, which can review the merits of that decision and make a fresh determination that is binding on the agency or minister (except, prior to 2009, when a conclusive certificate was in place) (OAIC 2011a, p. 14);

3. the removal of ministerial or conclusive certificates that had enabled ministers to establish "conclusively the grounds on which access to documents could be denied" (Stewart 2015, p. 101), and introduced a two-tier system for exempting documents from disclosure: 1) exemptions that have no conditions attached, and are not subject to an overriding public interest test (Part IV Division 2), and 2) conditional exemptions where access to the document must be given unless disclosure would, on balance, be contrary to the public interest (Part IV Division 3)

   some exemptions were recast as 'conditional exemptions'. Access to a conditionally exempt document can be refused only if, in the circumstances of a particular case, access at that time would, on balance, be contrary to the public interest. This

single public interest test replaces a range of public interest tests previously in the Act (OAIC 2011a, p. 16).

Table 4 lists the 10 types of documents that are 'unconditionally exempt' and the eight types of documents that are 'conditionally exempt'. It is the latter that are the major focus of this case study, and particularly s 47F personal privacy that

> *protects personal privacy by providing that a document is conditionally exempt if its disclosure under FOI would involve the unreasonable disclosure of personal information of any person (including a deceased person)* (Freedom of Information Act 47F Division 3—Public interest conditional exemptions)

Unconditional exemptions	Conditional exemptions
s33 affecting national security, defence or international relations	s 47B Commonwealth-State relations
s 34 cabinet documents	s 47C deliberative processes
s 37 affecting enforcement of law and protection of public safety	s 47D financial or property interests of the Commonwealth
s 38 secrecy provisions	s 47E certain operations of agencies
s 42 subject to legal professional privilege	s 47F personal privacy
s 45 containing material obtained in confidence	s 47G business (to which s 47 applies)
s 45A Parliamentary Budgetary Office documents	s 47H research
s 46 which would be contempt of Parliament or court	s 47J the economy
s 47 disclosing trade secrets or commercially valuable information	
s 47A electoral rolls and related documents	

Table 4 Types of documents that constitute exemptions under the FOI (Reform) Act 2010

4. an administrative clause in the Act, allowing refusal or a request on practical grounds:

   An agency or minister may refuse a request if a 'practical refusal reason' exists (s 24) but only after following the 'request consultation process' set out in s 24AB . .

   - *a request does not sufficiently identify the requested documents (s 24AA(1)(b)); or*
   - *the work involved in processing the request:*
     - *in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations (s 24AA(1)(a)(i)), or*
     - *in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions (s 24AA(1)(a)(ii)).*

The Archives Act 1983 (s. 3 Interpretation) as gazetted 6 June 1984, considers the records to be

> *document[s] (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disc, microform, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is, or has been, kept by reason of any information or matter that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance or thing.*

A new amendment (2007) to the Archives Act acknowledged the digital age by stating a record is "not format specific", a definition that has been interpreted specifically in the guidelines from the Australian Public Service Commission[24]

> *. . . This means that records include all emails, letters, briefs, memos, minutes, diaries, notes, Post-it® notes, lists and documents (however described, whether in digital or hardcopy form, and including drafts of same), SMS messages, hard drives, back-up tapes and so on.*

Surrogates for openness: a technocratic analysis

The basis of this analysis is an assumption that the Freedom of Information Act is a legal mechanism for citizens to request access to published government information and that the numbers of requests and their outcomes can be regarded, at least on one level, as proxies for government openness or secrecy. Data concerning FOI requests have been available since the inception of the Act. Originally it was published in FOI annual reports; more recently, since the 2009-2010 legislative reforms to the Act that set up the government's data repository,[25] the complete datasets are available in the open .csv format as well as in Excel® format. The data include numbers of requests and their outcomes: granted, partially granted,

[24] Viewed 24 February 2019 https://www.apsc.gov.au/1-what-record.
[25] https://data.gov.au.

refused, reasons for refusal, including exemptions and practical refusals, and appeals and costs. The four individual datasets used in this analysis are listed in Table 5. There are also other sources, such as government agencies' FOI logs and publicly available FOI requests submitted through the activist website *Right to Know.*[26]

Dataset	Period
FOI requests, costs and charges	1982-2018
FOI quarterly returns data by agency	2011-12 — 2014-18
FOI annual returns data by agency	2011-12 — 2014-18
FOI Annual reports	1982-83 — 2014-18

Table 5 FOI data availability in the Australian Government data portal

The data however are not entirely complete and is inconsistent, in part due to the legislative changes of 2009-2010. Early data on application fees (1982-1986) and internal review fees (1982-1987) do not exist, since all requests were free of charge, or from 2012 onward as application fees were abolished in November 2011.

Two very important changes were made in 2000 and 2011. In 2000, 13 years after the Senate Standing Committee on Constitutional and Legal Affairs (SSCCLA) noted there was "no method of determining what proportion of FOI access requests are for such [non-personal] material" (1987, p. 15), the data now separate requests into those for personal information and data, and for 'other', that is "documents, such as documents concerning policy development and government decision-making" (Attorney General's Department 2009, p. 2).[27] More granular data became available in 2011 when the reforms required every agency to submit quarterly and annual reports to the Office of the Australian Information Commissioner (OAIC). Much of this granular data had to be wrangled from the paper-based annual reports, but in 2014 it was made available in spreadsheet format.

While the emphasis of the case study is policy and decision-related information available only since 2000, there is some relevancy in beginning with an analysis of the complete record of FOI requests, since through the emerging patterns we may be able to discern changing

[26] https://www.righttoknow.org.au.

[27] Throughout this chapter all data concerning 'other' requests will be referred to as policy-related' requests.

attitudes of government and society regarding access to information. The analysis looks at two types of patterns:

1. the number of requests as an indicator of the public's trust in the legislation, and
2. the outcomes (that is, disclosure or non-disclosure of the information) as indicators of the government's commitment to openness.

Emerging trends: patterns of requests

In the early years of FOI legislation, after a slow start in November 1982, there was a rapid rise in the number of requests until 1985-1986 (a total of 94,271 for the four years), at which point there was a rapid decline to one of the lowest numbers overall—23, 543 in 1989-1990, second only to the historical low of 21,587 in 2009-2010 (Figure 16). This fall can in part be attributed directly to the 1985-1986 introduction of fees for applications and processing charges "on the basis that users of the legislation should be required, where appropriate, to contribute towards meeting its cost" and levied no matter what the outcome (Attorney General's Department 1987, p. 72).[28] The decision to introduce fees appears to have had a similar effect on FOI requests in other countries, for example, Roberts (1999) noted an overall decline of 35% in Canada after introduction of fees in 1990s; in Ireland after their introduction in 2003, the number of requests fell overall by 50% and by 75% for non-personal information (Information Commissioner of Ireland 2004, p. 1).

In 1991 a cap was put on the fees for personal information requests, possibly accounting for the steady rise of requests until 1996. And finally, there is a steady rise from 2010 when all fees were removed for application requests, internal reviews and for requests to amend or annotate personal records or data. As well, processing charges for personal information were removed and for all other requests, the first five hours of processing incurred no charge (OAIC 2012). Figure 16 shows rising levels of requests that correspond to periods of fee imposition and removal, but this does not explain the dramatic decrease in requests from

[28] Application fee for access to non-personal information $30, decision-making time $20/hour, search and retrieval $15/hour and $0.10 per page to photocopy.

2005-2006 until the upward trend after the 2009-2010 reforms; other explanation[s] for this decrease must be found.

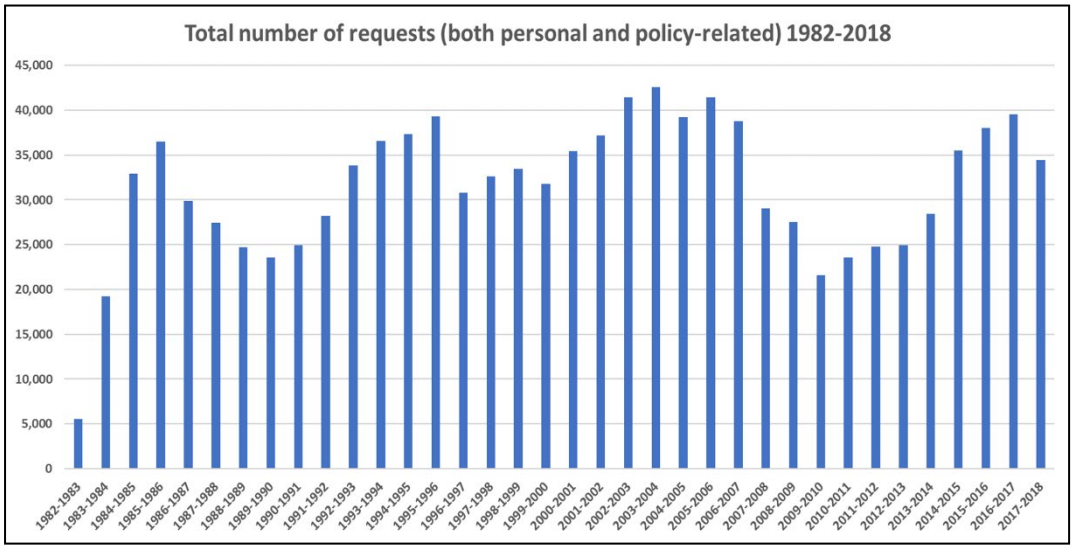

Figure 16 Total number of FOI requests since introduction of FOI Act 1982
Data source: ***FOI requests, costs and charges, 1982-2018***

There are at least two possible explanations, both of which rely on separating the requests into those that are for personal information and those that are policy-related requests (see Figures 17 and 18). The first possible reason for this decrease is that greater access to information, particularly personal information, was becoming available through other means, a result of e-Government policies (see Australia. Department of Finance and Deregulation 2010b). For example, in 2007-2008 the Department of Immigration and Citizenship registered a 47% drop in requests; Centrelink, 18%; and Department of Veterans' Affairs, 9% (a combined total decrease of 9,889 requests) as information could be requested and received through channels outside the originally legislated framework

> *. . . .many agencies have a policy of satisfying routine requests for information outside the scope of the FOI Act. This is consistent with section 14 of the FOI Act, which makes it clear that the FOI Act is not intended as the sole means of access to documents held by government agencies. Indeed, the FOI Act sets a minimum standard, rather than a maximum standard, for access to information. Giving access to information outside the FOI Act, therefore, is consistent with the intention of the FOI Act to promote open government* (Attorney General's Department 2009, p. 1).

The second possible explanation for the decrease in requests in this period is a data error, since the reported statistics for policy-related requests shows a 'coincidental' drop of exactly 100% between 2008-2009 (5,528 requests) and 2009-2010 (2,764 requests).

Looking at the graphs comparing the overall total number of requests with those of the separate categories of requests, as one might expect, there is a remarkable similarity between the patterns of requests for personal information and the total number of requests.

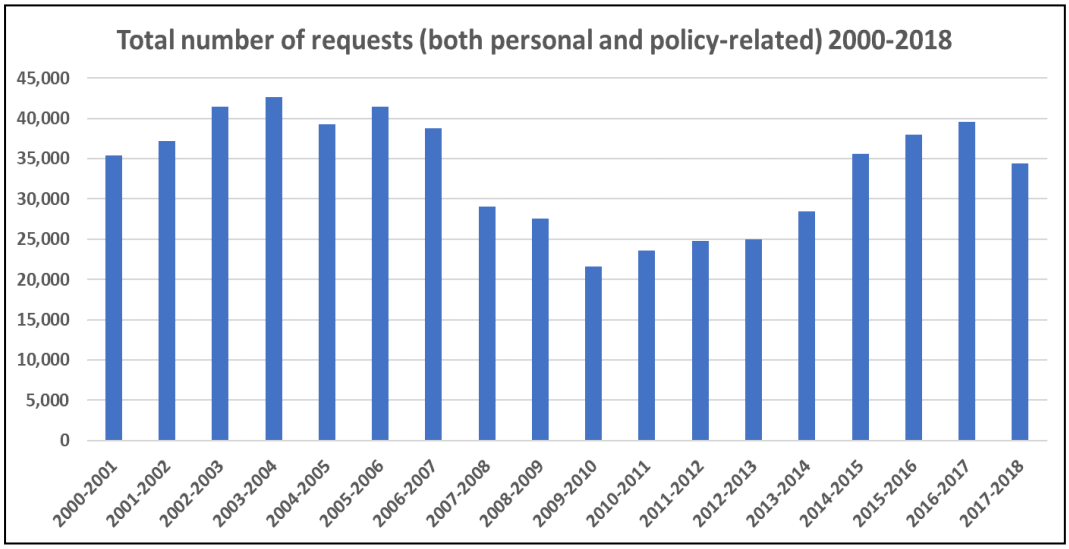

Figure 17 Total number of requests for personal information 2000-2018
Data source: ***FOI requests, costs and charges, 1982-2018***

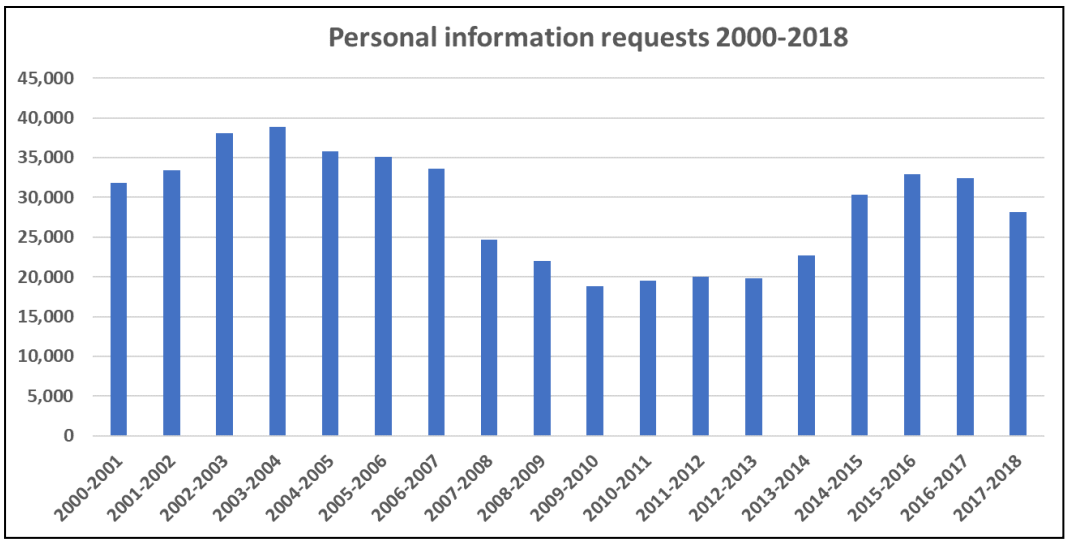

Figure 18 Total number of requests for policy and decision-related [other] information 2000-2018
Data source: ***FOI requests, costs and charges, 1982-2018***

Trends of policy-related requests, on the other hand, while similar in the period after 2005 (with the exception of the 2008-2009 data already discussed as a possible error), are quite

different. First, the period from 2000 to 2005 shows the number of requests to be relatively stable in the range of 3361-3766. The more obvious dissimilarity is the disparity between personal information and policy-related information requests, particularly after the 2009-10 reforms, and again in the years 2014-2017 (see Figure 19 and Table 6).

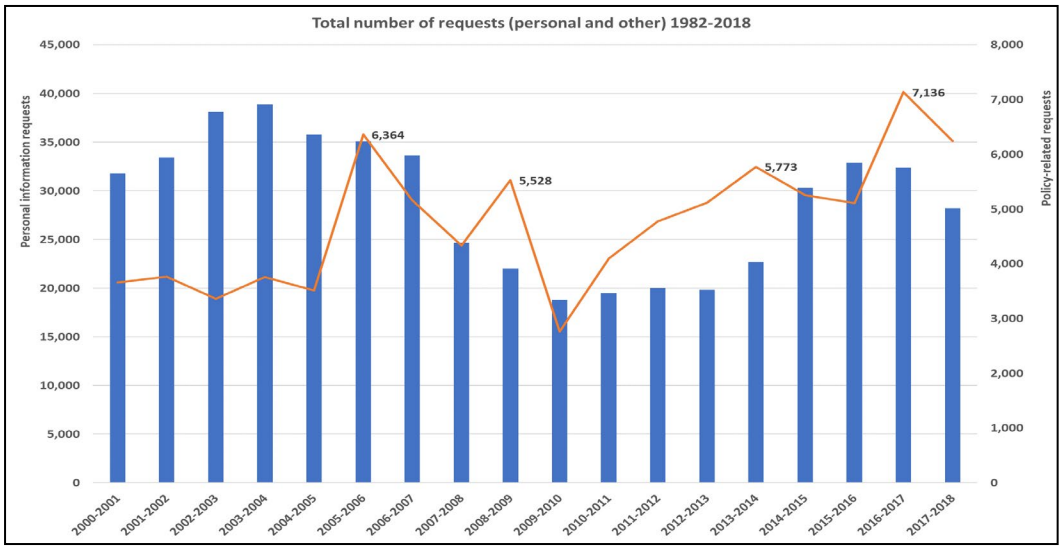

Figure 19 The number of all requests compared to the trend in policy-related requests 2000-2018
Data source: ***FOI requests, costs and charges, 1982-2018***

Year	No. of personal requests	% Change	No. of policy-related requests	% Change
2000-2001	31,777	—	3,662	—%
2001-2002	33,403	4.9%	3,766	2.8%
2002-2003	38,120	12.4%	3,361	-12.0%
2003-2004	38,870	1.9%	3,757	10.5%
2004-2005	35,748	-8.7%	3,517	-6.8%
2005-2006	35,066	-1.9%	6,364	44.7%
2006-2007	33,625	-4.3%	5,162	-23.3%
2007-2008	24,684	-36.2%	4,335	-19.1%
2008-2009	22,033	-12.0%	5,528	21.6%
2009-2010	18,823	-17.1%	2,764	-100.0%
2010-2011	19,504	3.5%	4,101	32.6%
2011-2012	19,988	2.4%	4,776	14.1%
2012-2013	19,827	-0.8%	5,117	6.7%
2013-2014	22,690	12.6%	5,773	11.4%
2014-2015	30,297	25.1%	5,253	-9.9%
2015-2016	32,884	7.9%	5,112	-2.8%
2016-2017	32,383	-1.5%	7,136	28.4%
2017-2018	28,199	-14.8%	6,239	-14.4%

Table 6 Annual changes to personal and policy-related requests 2001-2018
Data source: FOI requests, costs and charges, 1982-2018

While the trends for both types of requests show steady increases in the period 2010-2014, and taking into consideration, as noted above, the availability of access through other means, the increase in policy-related requests (109%) far outstripped the increase for personal information (21%). Policy-related requests began to dip slightly in 2014-2016 as personal requests continue to rise, but then dramatically rose again by 28% the following year, while personal requests remained relatively stable. Then, in 2018, both groups saw a similar fall of 14%.

The significant increases in requests for policy-related information again may have two possible explanations. First, the growth coincides with the FOI reforms that ended ministerial conclusive certificates (the mechanism that empowered ministers to declare a document was exempt from disclosure), instead legislating that certain documents would be conditionally exempt based on a public interest test. It is conceivable that this reflected a public perception that the reforms had led to a government more favourable toward access of documents through the formal FOI mechanism. The second possibility is that the rise was event-driven, since this was the period in which the number of asylum seekers arriving by boat began to rise. This was a politically sensitive issue at the time; the country was in election mode, and government policies towards refugees and asylum seekers was a key election issue. An examination of requests made to individual agencies during this period shows that the Immigration portfolio was at the top of the list (Table 7), possibly due to activists and journalists, more details of whom are discussed in the section *Journalism and the perception of secrecy*.

Agency	No. of requests 2009-2015	No. of requests 2009-2018
Immigration portfolio	2,435	4,159
Australian Taxation Office	2,019	3,426
Health portfolio	1,217	2,230
Department of Defence	1,137	1,708
Australian Securities and Investments Commission	823	1,286
Department of the Prime Minister and Cabinet	813	1,353
Attorney-General's Department	708	1,193
Department of the Treasury	682	1,164
Trade Marks Office[29]	657	1,411
Department of Foreign Affairs and Trade	555	1,096

Table 7 Top 10 agencies by number of policy-related requests 2009-2018
Data source: *FOI Annual Returns 2000-2018*

[29] This figure is for 2009-2017; there was no data for 2018.

While there is an overall drop in requests in 2017-2018, the continuing rise in overall requests from 2015 to 2017 might also be reflecting the high number of requests to the Immigration portfolio (Table 8), possibly as a result of the ongoing contentious issues of asylum seekers and offshore processing of refugees.

Agency	No. of requests
2015-2016	568
2016-2017	519
2017-2018	619

Table 8 Number of requests across the Immigration portfolio 2015-2018
Data source: ***FOI Annual Returns 2015-2018***

If it can be assumed that the increase in the number of requests is, at least in part, due to these events, then the analysis of the factors affecting FOI trends can be shown graphically (Figure 20).

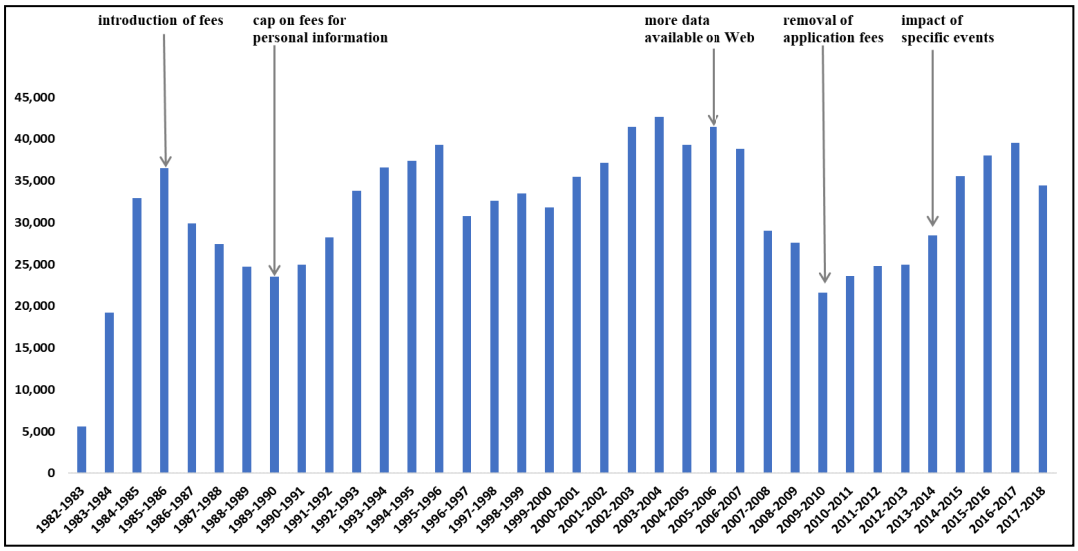

Figure 20 Factors affecting general patterns of all FOI requests 1982-2018
Data source: ***FOI requests, costs and charges, 1982-2018***

Emerging trends: openness or secrecy

The previous section for the most part examined the patterns suggested by the numbers of FOI requests over the entire period of the legislation. This section focuses on the years during which there were two important changes in FOI policy: the separating out of policy-related requests in 2000, and the FOI reforms of 2009-2010, which enabled a more detailed analysis. A rise in requests is not necessarily indicative of openness of government; it is the outcome of the request—granted, partially granted or refused— that is all-important. This analysis, therefore, examines the two emerging patterns in the data concerning the outcomes of all these FOI requests:

1. the disparity between requests for personal information and for policy-related information, and
2. the number of policy-related requests that fall into the category of conditional exemptions, and are therefore subject to a public interest test.

As noted, in 2000 the statistics differentiated personal from policy-related requests. Since then, over the entire period an average of 70% of personal requests have been granted in full, in comparison to 37% of policy-related requests (Table 9), making it difficult to dispute the argument that "[d]espite government assertions that the scheme was working well, a closer examination revealed a disturbing pattern of government secrecy . . . [as] most governments like to be judged on how much personal information they released under their FOI regimes" (Rick Snell, interviewed by Merritt 2007, p. 14).

Decision	Personal	Policy
Granted in full	70%	37%
Partially granted	24%	40%
Refused	6%	23%

Table 9 Average outcomes for personal and policy-related requests across the entire period 2000-2018
Data source: *FOI Annual Returns 2000-2018*

After the 2010 reforms, it is apparent the situation has not changed. Not only is there an overall decline in the number of requests that are fully granted; personal information is released on average more than twice as often as policy information (62% to 25%), and the disparity has been widening since the reforms (see Figure 21).

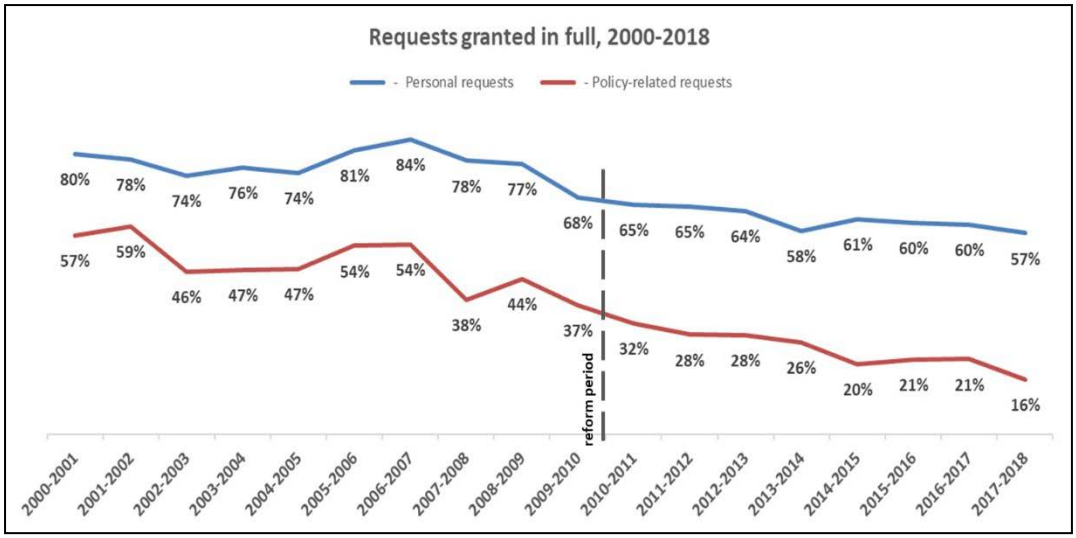

Figure 21 Percentage of total number of requests that have been granted in full 2000-2018
Data source: ***FOI Annual Returns 2000-2018***

As well, the number of policy-related requests that have been refused might, at least on the surface, confirm a lack of openness. As can been seen in Figure 22, there is a very steep rise from a low of 9% in 2007-2008 to 54% in 2018, more than six times the number of personal requests that were refused.

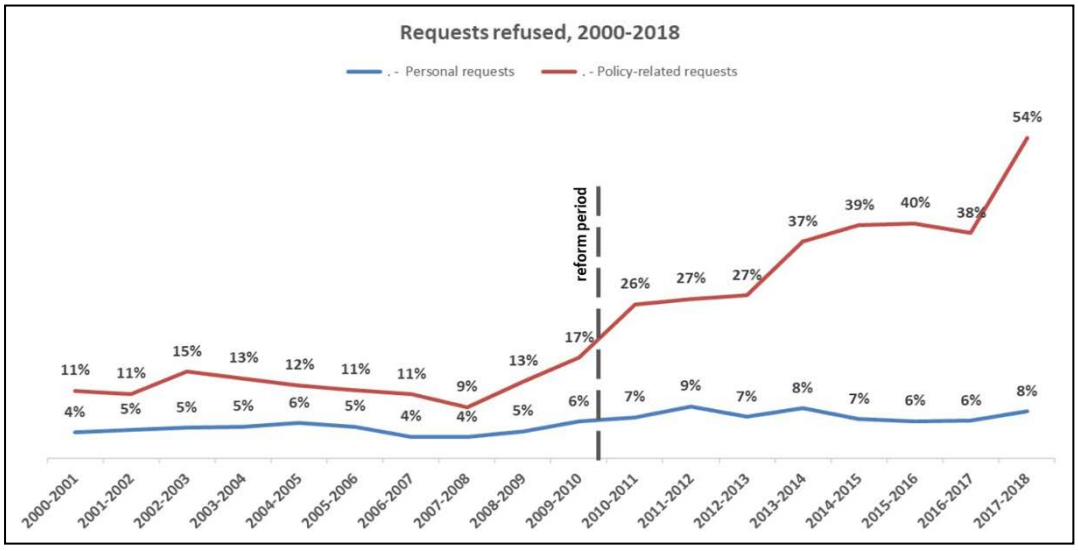

Figure 22 Percentage of total number of requests that have been refused 2000-2018
Data source: ***FOI Annual Returns 2000-2018***

The removal of conclusive certificates under the FOI reforms may have been a factor in the rise of requests for policy-related information. Looking at the high percentages of partially granted requests, particularly those for policy-related documents, which on average in 2010-2018 is significantly higher (41%) than for personal documents (30%), it appears that there is indeed an emphasis on openness (see Figure 23).

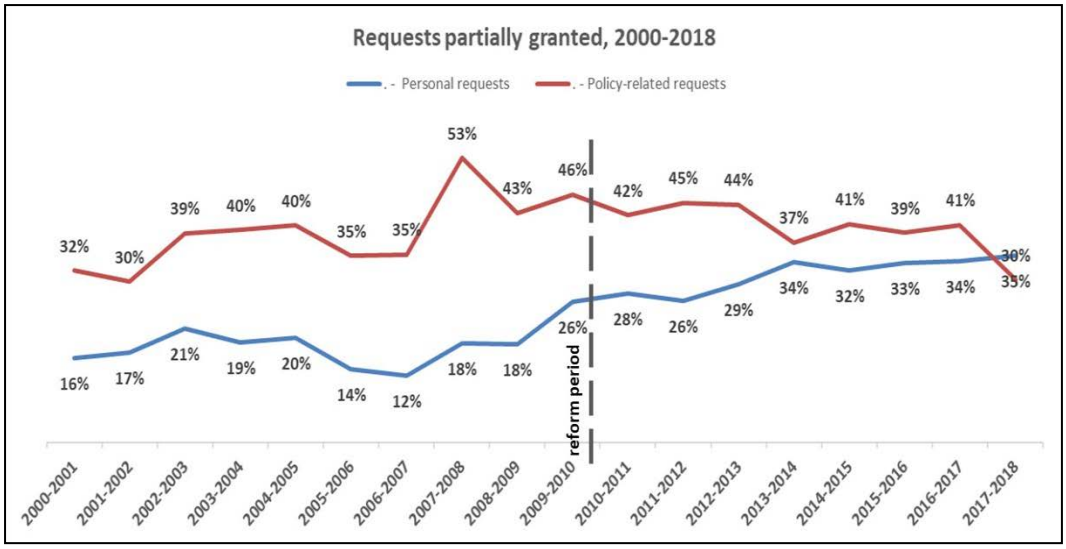

Figure 23 Percentage of total number of requests that have been partially granted 2000-2018
Data source: *FOI Annual Returns 2000-2018*

But what is not obvious from the data is the percentage of *content* of the documents disclosed. While all released documents must satisfy privacy concerns by anonymising the documents unless this is deemed not to be in the public interest, it is the extent to which the other information is redacted or censored that indicates the level of access to government policy-related information. Anecdotally, the amount of content not released is high; certainly studies of journalists' use of FOI conclude that there is heavy redaction—drowning in black ink—to the point of uselessness (Bluemink & Brush 2005; Cuillier 2011).

The final step in this analysis of the outcomes of FOI requests, is examine the grounds on which decisions are made for no disclosure or partial disclosure of requested documents. This requires an inspection of requests in the light of the 2009 reforms' elimination of conclusive certificates, and their replacement with changes to the exemptions: a) 10 types of documents that are unconditionally exempt and b) eight that are conditionally exempt subject to a public interest test (see Table 4 in the section *Legislative and regulatory environment*). The numbers and categories of exemptions since 2013 are shown in Figure 24.

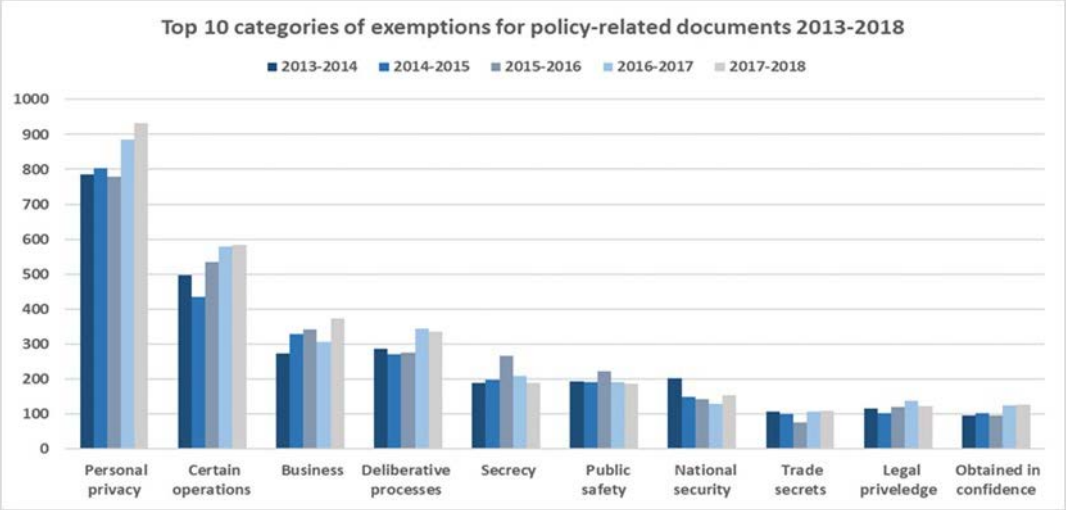

Figure 24 The top 10 categories of exemptions for policy-related documents 2013-2018
Data source: ***FOI Annual Returns 2013-2018***

It is significant that the top four categories are all conditional exemptions (personal privacy, certain operations, business, and deliberative processes), thus requiring a validation that the decision for denying access to the information is 'in the public interest'. As can be seen, of these four, personal privacy s(47)F is the most widely cited reason for non-access to information across all agencies (see Table 10).

Agency	Total conditional exemptions	Personal privacy (47F)	% of total
2011-2012	1,432	630	44%
2012-2013	1,851	836	45%
2013-2014	1,028	785	76%
2014-2015	1,912	804	42%
2015-2016	2,037	779	38%
2016-2017	2,191	886	40%
2017-2018	2,321	931	40%

Table 10 Policy-related personal privacy conditional exemptions compared with total
Data source: ***FOI Annual Returns 2011-2018***

The last factor that needs to be considered in this analysis is an administrative clause in the Act; it is contentious and potentially manipulative and has ramifications for access to documents. This is the *practical refusal reason* by which many requests could be treated as one since they "relate to documents, the subject matter of which is substantially the same." The data show that all agencies make use of this clause, but the 2009 reforms brought in a new mechanism to lessen, or at least give an avenue for appeal, against practical refusals and

other ministerial or bureaucratic decisions. This is the *internal review* procedure. Table 11 shows the numbers of notifications of refusals and subsequent processing after an appeal, and as an example, gives data for the immigration portfolio. As will be discussed later in the journalism case study, a 'subsequent processing' is to reverse the refusal, and to process the submission in the usual way.

	Notification of refusal		Subsequently processed	
Year	All agencies	Immigration portfolio	All agencies	Immigration portfolio
2011-2012	193	35	54 (28%)	0 (0%)
2012-2013	466	40	206 (44%)	49 (100%)[30]
2013-2014	714	150	182 (25%)	15 (10%)
2014-2015	896	233	230 (26%)	19 (8%)
2015-2016	634	105	214 (34%)	16 (15%)
2016-2017	732	96	259 (35%)	13 (14%)
2017-2018	2168	102	244 (11%)	12 (12%)

Table 11 Practical refusals for policy-related requests (2012-2013)
Data source: ***FOI Annual Returns 2011-2018***

As can be seen in Table 12, since the FOI reforms, across all agencies, an average of 25% of the original decisions were changed after an application for an internal review.

Year	Applications	Granted in full	Granted in part	Granted after deferment in different form	% Decision changed
2011-2012	273	18	53	11	30%
2012-2013	262	16	65	4	33%
2013-2014	284	10	47	2	21%
2014-2015	221	12	35	4	23%
2015-2016	328	17	46	4	20%
2016-2017	272	18	60	4	30%
2017-2018	334	11	49	4	19%

Table 12 Applications and outcomes for internal reviews of policy-related requests
Data source: ***FOI Annual Returns 2011-2018***

[30] Immigration portfolio 2012-2013, 9 requests had been held over from the previous year.

Finally, it is disturbing to note that the data of refusals for policy-related information show that secrecy is now increasing (Figure 25), in line with international trends, where secrecy and resistance to transparency may in part be caused by the rise of terrorism (Kreimer 2008; Roberts 2014).

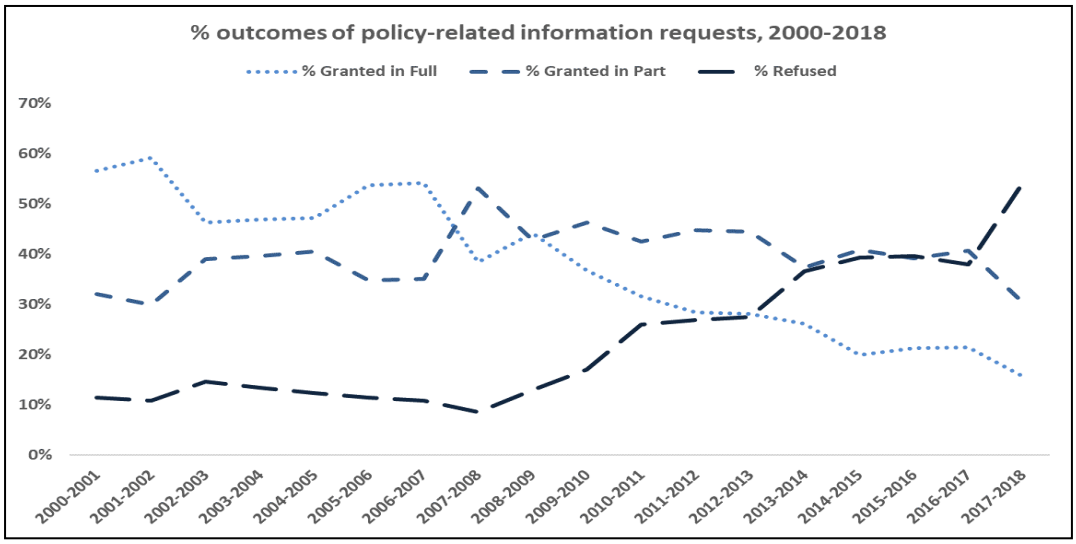

Figure 25 Percentage outcomes for policy-related information requests, 2000-2018
Data source: ***FOI Annual Returns 2000-2018***

In conclusion, if the public's use of the freedom of information mechanism is a surrogate for openness, then the government's claim of openness as the default position is valid. But the technocratic analysis data show a process that rarely restricts a citizen's requests for access to their own information (personal requests), but simply gives an impression of openness. If the disclosure of policy-related information so the public can make judgements is the hallmark of transparency and accountability, on the data alone, this impression is disingenuous.

The political contexts of freedom of information

Activism and power

> *In most cases, what is concealed from the public is concealed not because a Minister or departmental head or a specific law has said it must be kept secret, but because some low grade functionary feels that caution is the better part of valour*
>
> (Campbell 1967, p. 75)

This is a tale of two FOI requests for access to documents, which in retrospect should not have fallen foul of the 'rules' governing public access. Both of the requests concerning attitudes to racism/immigration were submitted by a high-profile Australian sociologist and activist for multiculturalism, and in both cases the sociologist was acting from the conviction that anti-racism was a matter of public interest. These two requests highlight the issues of fees and charges, record-keeping practices and of the influence of social networks. The first application (FA11/07/00962) was for access to a 1998 government-commissioned market research report, the second (FOI14/105) for copies of submissions to a 2014 proposed amendment to the Racial Discrimination Act 1975.

At this time, Australia as a multicultural country was facing much public debate about government policy, generated particularly by new groups of refugees seeking asylum (Jakubowicz 2016). In 1996, Phillip Ruddock, the Minister for Immigration and Multicultural Affairs, commissioned Eureka Research Ltd to conduct research on Australian attitudes to cultural diversity. The report would form the basis of the government's proposed anti-racism campaign, since "increasing community awareness through community education is our best viable long-term approach" (Eureka Research 1998, p. 2). However, the final report was not made public. Professor Andrew Jakubowicz requested a copy of the report through an FOI application (FA11.07/00962), contending the report a) contained important social research data funded by the taxpayer and therefore should be available for researchers, and b) to inform public debate on attitudes to cultural diversity. In particular, what was required was access to the quantitative data, the survey questions and answers in the report (A. Jakubowicz, personal communication 18 May 2016). The following is Professor Jakubowicz's description of the outcome of the FOI request:

> *My own attempts to secure a copy of the report go back to its completion in 1998; it was never published and indeed was so sensitive that I was told the Prime Minister had ordered its sequestration, protected under rules of Cabinet secrecy. Nearly every new Multicultural Affairs Minister/Secretary since then I have approached for access, always denied, [by] being told that the report was secret! Even Rudd's Parliamentary Secretary Laurie Ferguson refused to release it, his office claiming it was of no current interest. However a change in the government's perception of its documents (keep everything secret unless you are forced to release it, has moved to let everything out unless there's a good reason to keep it locked up) had a Department officer suggest[ed] to me in passing I might want to ask again. Three months or so later, and the document arrives, comprising a qualitative and quantitative report (Jakubowicz 2011 para 4).*

However, the released copy of volume 2 of the report (the quantitative report) was not complete. It did not include the government's brief for the research and while the questionnaire was included, the only data released were sample demographics and segment demographics. According to Professor Jakubowicz, the only useful social science data were sample answers embedded in the qualitative report (personal communication, 18 May 2016). As already discussed, FOI disclosure logs are mandated to be published on agencies' websites. However, the 2011 disclosure log for the Immigration Department provided only the disclosure date and a description of the documents requested, and no information about refused requests, so there is no knowledge as to why the request was refused.

The second request, to the Attorney General's Department (FOI14/105), was for access to the submissions pertaining to the government's proposed amendment to legislation that was announced on 25 March 2014.

> *The Government Party Room this morning approved reforms to the Racial Discrimination Act 1975 (the Act), which will strengthen the Act's protections against racism, while at the same time removing provisions which unreasonably limit freedom of speech. . . The legislation will repeal section 18C of the Act, as well as sections 18B, 18D, and 18E. The draft amendments are released for community consultation. The Government is interested in hearing from all stakeholders on the proposed reforms. Submissions can be made until 30 April 2014.*

According to the department's listing of now closed consultations[31] "submissions will not be made public without consent from the author. Personal information will be collected for the purposes of verifying submissions are not duplicates and in providing advice to government. Please advise if you wish to remain anonymous or wish to use a pseudonym when sending your submission." An additional item was added to this page after the submissions' closing date stating, "[n]o submissions are available for this consultation." It was access to these submissions that was requested.

The following are the communications exchanged over six weeks between the requester (Jakubowicz) and the bureaucrat dealing with the request

A letter from an assistant secretary that stated he estimated 107 relevant documents consisting of 856 pages and that the estimated process charge would be $259.83, of which a deposit of $64.95 was required by 13 August 2014 (letter 14/7644, 15 July 2014). The total amount was paid, and 15 documents were released on 25 August 2015, which prompted the requestor's response:

> *This summary is significantly different from the summary I was given when the charges were made . . . I am to be provided here with 15 documents with about 180 pages in all. However the original letter from the Department identified 107 documents with 856 pages. Given that I have paid for the charges as assessed for 107 documents and I am only being given 15 there seems to be a problem here that requires action. Can I expect the remaining 92 documents and approximately 670 pages to be forthcoming and if so, when?*

To which the Department replied

> *The Department provided you with an estimate of charges, which estimated that 107 documents were required to be processed so as to determine how many documents were able to be released to you . . . Of the documents which have been processed, 15 documents as per the Department Statement of Reasons, were able to be released under*

[31] https://www.ag.gov.au/Consultations/Pages/ConsultationsonamendmentstotheRacialDiscriminationAct1975.aspx.

> *the FOI Act. I understand that the 15 documents you were granted access to have now been sent to you (email, 4 September 2014)*

The final communication from the requestor

> *As I understand it the department determined there were 107 documents that met the criteria (submissions by organisations that had agreed to have their submissions made public) that we had agreed on at your suggestion, to overcome the problem you identified of too many documents covered by my original request. The Departments then chose to provide 15 of them – given that I have paid for the decision making about the document could you please specify what criteria were used to determine that those specific 15 would be released but the other 92 which met the same criteria were not to be released?*
> *I note that none of the charges go to any costs associated with actual provision of the documents [that is only for the schedule of documents]. As I have paid for the schedule of documents I would be grateful if this can be provided as an email attachment by return, being the schedule but no content of all documents considered* (email, 4 September 2014)

There was no further communication, either providing the required schedule of documents, an explanation, or the documents, or indeed any refund. While the legislation does provide for a request for an internal review of the decision, John McMillan, the former Australian Information Commissioner, made an apt comment: "I have a great concern that agencies will say "Let's just deny it. The person can appeal to the OIC [sic] it may take them a year or two to get around to it,' in which case the sensitivity will go out of the issue" (McMillan in Farrell 2014, para 17).

Both of these examples show the difficulties in administering and implementing Freedom of Information legislation. While the reforms to the Act in 2009 attempted to institute greater openness, secrecy can still exist; not because of legitimate reasons for non-disclosure, but because there are consequences of power and possible mismanagement. In the case of the first FOI request, it is possible that the refusal was based on a claim by Eureka Research that the data were commercial in confidence and/or should be refused on the grounds of personal privacy. More likely, the outcome of the request is a case of power; it is the power of the

Minister who issued what amounted to a conclusive certificate, couching it as unconditionally exempted under s 34(1)(a)–documents created for submission to Cabinet. It is hard to imagine that after the reforms that abolished conclusive certificates, a highly placed, and therefore powerful, politician could conclude that a document should remain secret after it was of "no current interest." While the report does include data that are the intellectual property of the company (commercial power), this reasoning was not cited in the decision, and indeed the data were simply removed from the report when finally released in 2010. The fact that a personal contact, "a Department officer", suggested that things had changed and it would be worthwhile to ask again informally, and that the report subsequently arrived, indicates there is a power relationship at play. It would seem that a bureaucrat with knowledge of the FOI reforms, but also with personal knowledge of the sociologist and the saga of his request, suggested the report would be now available—a power relationship that defies the implied basic equity of the Freedom of Information legislation.

The second case is either one of secrecy or the consequence of poor information managerial processes, or both. Firstly, under the reformed FOI Act there is certain information that must be made public in agencies' information publication scheme (IPS). Section 8(2)(f) applies to public consultation arrangements of a broad kind, including consultation undertaken by an agency when making a legislative instrument, as required by the *Legislative Instruments Act 2003* s17. According to the Australian Solicitor General's legal briefing of 26 February 2014, such an instrument is 'taken to be of a legislative character' if it determines the law or alters the content of the law (p. 2). It would appear that submissions to this consultation fall into this category, but were never published—the department's webpage stating "no submissions are available for this consultation." Since no further communication from the department was forthcoming, it is impossible to know why submissions by organisations that had agreed they would be made public were not published under the IPS, and more germane to this case, why all 107 documents were not released under FOI. The requestor believes it to have been a political/bureaucratic decision (A. Jakubowicz, personal communication 18 May 2016), reflecting his belief not only in the power of bureaucratic obfuscation, but of the potential for politicisation of, or at least to exert pressure on the bureaucracy concerning issues of political sensitivity.

Secondly, according to the email correspondence over a period of six weeks, at least three different departmental employees (bureaucrats) were involved in this FOI request, with the

last person not replying at all. It would seem that at the very least there was no consistent process for information handling, which Roberts (2006) considers is the main work of bureaucrats. Questions of policies and processes must be raised. In contrast to the evidence that a recordkeeping system, TRIM, was in place and a search of it provided the schedule of 107 relevant documents, it became apparent that work practices that should provide a coherent work flow of FOI processes were fragmented, at least in this case. The submissions to be published on the website were not as demonstrated by an unavailability notice, leading to the possibility they were either inadvertently not forwarded or they were deliberately kept secret. Whose power has prevailed in this case? Certainly not that of the FOI applicant who, in frustration, simply gave up.

This case study is fundamentally about individual work practices and personal networks within the frame of a legislative instrument that is a surrogate for openness, transparency and accountability. Unfortunately, too often the ideal of openness is disregarded through bureaucratic power, contentious issues within the legislation itself, or poor information management processes; it is a disregard that all too easily can be considered secrecy.

A failure of the public interest test

> *Factors favouring access to the document in the public interest include whether access to the document would do any of the following: (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A); [or] (b) inform debate on a matter of public importance . . .*
>
> (Freedom of Information Act s 11B (3))

The context for this case study is political in all senses of the word: it is one of power and political self-interest in an attempt to remove the legislative mechanism, the Australian Information Commissioner Act 2010, the very purpose of which was to enable the openness of government. All FOI requests for policy-related information are couched 'in the public interest'; but the 'public interest' is not defined in either the original Act or in the current one, and is "necessarily broad and nonspecific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered" (OAIC 2014, p. 3). This is particularly germane in this case study, where the outcome reveals a failure of the 'public interest'.

In the 2014-2015 Budget the Commonwealth Government, citing the benefit of saving $10.2 million over four years, announced that from 1 January 2015 the status of Office of the Australian Information Commissioner (OAIC) as a Financial Management and Accountability Act 1997 agency would cease; funding for ongoing functions would be transferred to other agencies, and that new arrangements for privacy and FOI regulation would commence from that date (Australian Government 2014). In October 2014, the government introduced a bill, the *Freedom of Information Amendment (New Arrangements) Bill 2014*, to repeal the Australian Information Commissioner Act 2010, and included the abolition of OAIC, moving all FOI responsibilities to the Administrative Appeals Tribunal and to the Attorney General. When the new Bill had not passed the Senate by the end of 2014, in January 2015 Peter Timmins, an expert in FOI and a leader in the open government movement, submitted an FOI application to the OAIC

> *[for] documents concerning discussions with the Attorney General's Department about the conduct of OAIC functions from 1 January 2015 including proposals put to or received from the Department concerning funding and staffing, and any agreement or*

understanding reached on these and related matters (FOIREQ15/00006, Conduct of functions of OAIC from 1 January 2015).[32]

The request also noted that

I seek waiver of charges on the grounds that disclosing the documents would be in the public interest. The office is a key element in the Freedom of Information framework and in the exercise of citizen rights conferred by the act. The OAIC describes the information commissioner functions as "designed to ensure maximum coordination, efficiency and transparency in government information policy and practice". Disclosure of documents concerning discussion about the conduct of these functions would advance public debate on this topic of current importance.

In March 2015, the FOI officer determined that 64 documents were relevant; these were emails between OAIC and the departments of the Attorney-General, the Prime Minister and Cabinet, and the Australian Human Rights Commission. None was granted in full and 20 were redacted as irrelevant material (s 22(1))

[if] an agency or Minister decides . . . that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access . . . it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that . . . the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request . . .

The other 44 emails were considered subject to the deliberative processes exemption; 13 were refused outright and 31 highly redacted. Under the public interest test, the factors cited were

the Bill has not passed through parliament [and] disclosure of the documents could reasonably be expected to impact on the ability of the OAIC to obtain full opinions and recommendations from relevant agencies [which] factors against disclosure are

---

[32] This request was lodged through the *Right to Know* organisation and all documents are available at https://www.righttoknow.org.au/request/conduct_of_functions_of_oaic_fro_2#incoming-3379 It should also be noted that the same request was made to the Attorney-General's Department with similar results (FOI15/015) https://www.righttoknow.org.au/request/conduct_of_functions_of_oaic_fro#incoming-3254.

significant and at this point in time and outweighs [sic] the factors in favour of disclosure

This judgement apparently equated the fact that the Bill had not yet passed with the guideline *where disclosure could prejudice an investigation*. The decision for non-disclosure flies in the face of government's default position of openness, and as argued by Paterson negates the public's need for access "in order to be able to participate meaningfully in, or to be able to understand and evaluate the decision-making of government agencies" (Paterson 2009, p. 3). The deliberations concerning the abolition of the government agency, which by legislation is responsible for freedom of information, is very much in the public interest. But an examination of the documents redacted under the conditional exemption of deliberative processes shows that this was not the judgement of the FOI officer. In fact, little would advance transparency and openness in this matter since, with the exceptions of communication pleasantries and the email trails, all relevant content is a 'river of black', a literal reference to the blacking out redaction practice (Figure 26).

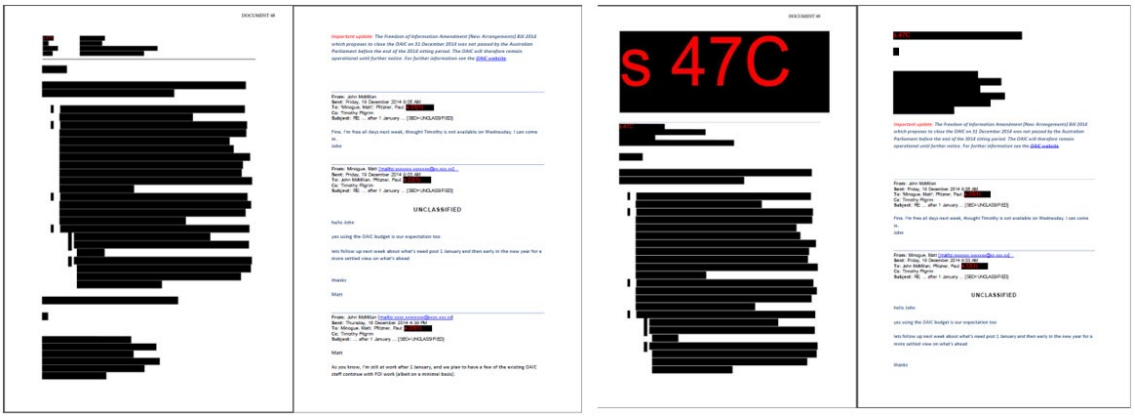

Figure 26 Examples of FOI requests redacted under conditional exemption 47C
Source: Rig*ht to Know*

It might also be speculated that the emails would disclose an overriding preference for saving money by rescinding legislation and transferring ultimate responsibility to the Attorney-General for the administration of the freedom of information, instead of encouraging openness of government.

Epilogue

There is a postscript to this matter—when the Senate adjourned the second reading on 30 October 2014, it referred the substance of the bill to the Senate Legal and Constitutional Affairs Legislation Committee, requesting an inquiry and a final report into the proposed bill. The inquiry received more than 30 submissions from FOI experts and civil rights advocates, and the report recommended that any passage of the bill should be subject to "the government as soon as possible respond[ing] to the Hawke Review, and conduct[ing] a consultation process as recommended in the Hawke Review."[33] The report was tabled on 25 November 2014, but according to the Senate Bills List from 19 April 2016, the bill lapsed due to prorogation of the first session of the 44th Parliament on 17 April 2016.

Subsequently, according to the 2016-17 Commonwealth Budget papers (Attorney General's Department 2016, p. 128)

> *The government has decided that it will not proceed with the legislation and that the OAIC will remain responsible for privacy and freedom of information regulation. Funding provided to the Commission for privacy functions will be reappropriated in full to the OAIC in the 2016–17 Budget*

However, the Australian Information Commissioner Act 2010 establishes an office with three commissioners and prescribes the functions and authorities of each. As Peter Timmins (2016) wryly remarked,

> *if the government intends to proceed with one commissioner, in the court of public opinion at least, this would seem 'smart lawyering' and contrary to the framework established by parliament—three positions, three different functions, three people.*

[33] The Hawke Review of 2013 was a response to the statutory requirement that there be a review of the 2009-2010 reforms two years after their implementation.

Journalism and the perception of secrecy

> *The government's attitude to genuine media inquiry on matters of asylum is overtly hostile, and a politicised public service has been infected by this attitude. The massive machinery of the department's media room does not exist to answer journalists' questions and assist in the dissemination of information of public interest. It exists to deny, and to obfuscate*
>
> (Doherty 2016, p. 34)

This case study is framed by a politically motivated and highly contentious government policy in which freedom of information requests, a major legislative mechanism for openness and transparency, appear instead to be treated with all the hallmarks of secrecy. The role of journalism, particularly in liberal democracies, has been essential and long-standing in the right-to-know movement. The importance of journalistic access to government policy and decision-making processes has been asserted for at least 300 years. This began with the Swedish Freedom of the Press Act of 1766 and William Corbett's advocacy for a free press through his publishing of *Parliamentary Debates* in 1803, the precursor to the modern Hansard, and went through to the journalist Harold Cross's 1953 book *The People's Right to Know: Legal Access to Public Records and Proceedings*, considered to be the language of the first modern freedom of information legislation. Journalists accede to the responsibility of disseminating this information to the public in order to support or challenge government's claim to legitimation, and it was always intended by the advocates for the proposed Australian Freedom of Information Act that it would be highly beneficial to the Fourth Estate.

The 1987-1988 FOI Annual Report notes (perhaps with some sense of disappointment) that "there is still little sign outside one or two major newspapers that the media are interested in using the Act to gain more detailed information on the context and implications of Government actions" (1988, p. iv). The following case is an example of why Stephen Lambie commented in 2004 that "Australian media generally seems to have given up the fight in relation to FoI" (Lamble 2004, p. 8).

The earlier analysis of the patterns emerging from the numbers of FOI requests has showed that the government's immigration portfolio has received the highest number of policy-

related information requests, suggesting spikes in numbers may be caused by news events. It is often journalists and activists who in their investigations submit these requests; the following case that takes place over the timeframe 2013-2016 may validate this suggestion.

The background to this case is the criticism levelled at government secrecy and more specifically, the department of immigration's policies over asylum seekers who have arrived by boat, and their detention and treatment in the offshore facilities on Nauru and Manus Island. A simple search on Factiva[34] for Australian newspaper coverage between 2010 and 2015 on the topic yielded more than 450 newspaper articles which contained phrases such as *the secrecy surrounding its maritime operations*, *inordinate and unacceptable secrecy, secret prison ship*, and *shrouded by a veil of secrecy*. Even the Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre [RPC] in Nauru, commenting on the department's contractual arrangements, concluded that given the "pervasive culture of secrecy which cloaks most of the department's activities in relation to the Nauru RPC, it believes that a far greater level of scrutiny, transparency and accountability is required" (2015, p. 124).

As already noted, the Immigration portfolio[35] of all government departments has the highest number of all FOI requests for policy-related information (a total of 4,159 since 2009, and 2,435 at the height of interest in the issue of asylum seekers). According to the FOI annual returns of the immigration portfolio, the majority of the requests were either fully or partially released (see Figure 27), which gives an apparently positive view of the level of access to its information. Note: the following graphs give the figures for 2011-2018, but the timeframe for this case is shown within the red lines.

[34] The syntax used was *immigration AND secrecy AND (Nauru OR Manus)*.

[35] Since 2000 when personal FOI requests were separated from policy-related requests, the government department concerned with immigration has gone through a number of amalgamations and changes of names, structures and responsibilities—Department of Immigration and Multicultural Affairs (DIMA) 1996-November 2001; Department of Immigration and Multicultural Affairs and Indigenous Affairs, November 2001-January 2006; Department of Immigration and Multicultural Affairs, January 2006-January 2007; Department of Immigration and Citizenship, January 2007-September 2013; Department of Immigration and Border Protection, September 2013-December 2017, and Department of Home Affairs, December 2017– . All the data have been collated into the category *Immigration portfolio*.

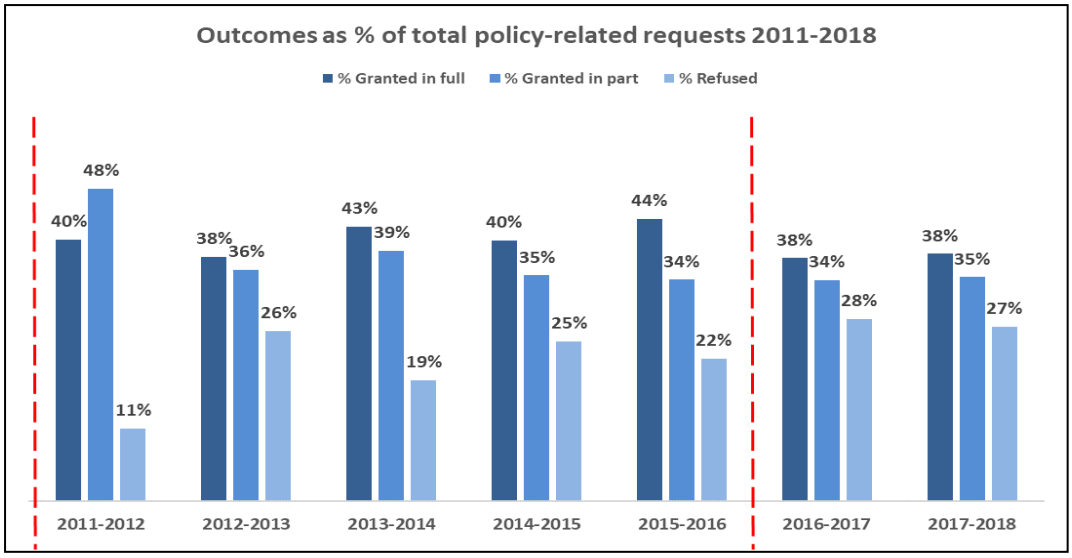

Figure 27 Outcomes as a % of total policy-related requests across the Immigration portfolio 2011-2018
Data source: ***FOI Annual Returns 2011-2018***

Of the total number of requests between 2011 and 2016, 395 were refused, representing between 19% and 25% of the totals each year (Figure 28).

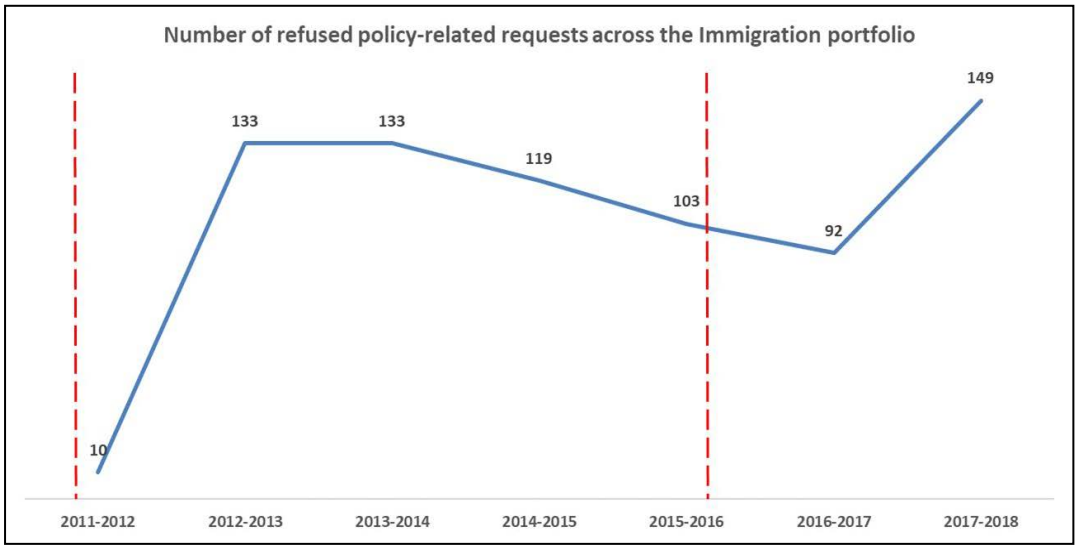

Figure 28 Number of refused requests across the Immigration portfolio 2011-2018
Data source: ***FOI Annual Returns 2011-2018***

The 2014-15 and 2015-16 annual reports of the Department of Immigration and Border Protection (2015, 2016) note that a significant proportion of the increase of requests was by "illegal maritime arrivals" (IMAs) seeking documents in order to apply for temporary protection visas, which, it may be conjectured, were treated as personal information requests, or were policy-related requests and granted in full.

In order to substantiate the perception of government secrecy held by journalists and activists specifically concerning the offshore processing centres on Nauru and Manus Island, two methods were employed: a) an examination of the FOI disclosure logs of the immigration portfolio which are collated in calendar years; and b) the FOI annual returns data, which are organised by financial years. The analysis begins with the disclosure (FOI) logs to locate requests concerning asylum seekers in the Nauru or Manus detention centres, in order to assess the information value of those documents that are partially granted to requestors. There are, however, limitations to this approach; the logs of Australian government departments are not exhaustive, since they do not include requests for documents that a) have been refused, or b) have already been released to the media (see Figure 29).

Figure 29 Department of Immigration and Border Protection 2013 FOI disclosure logs
Source: Department of Home Affairs (viewed 26 February 2019)

Secondly, the 2011-2013 logs of the immigration department give the disclosure date and a description of the documents requested, but provide no indication of the outcome; therefore, only the logs for the 2014 and 2015 calendar years were examined. There was a total of 186 items, of which 58 were granted in full and 128 partially granted. Because only those requests relating to Nauru or Manus Island were relevant, the 186 requests were filtered to those with the words Nauru and/or Manus in the description. There were 16, six of which were fully disclosed (dealing with issues of communication contract clauses, financial arrangements, hazardous materials, and TB infections), leaving 10 requests which were heavily redacted under the personal privacy conditional exemption s 47(F).

Turning to the FOI annual returns of the immigration portfolio, these are collated by financial years; although the preliminary analysis focuses on the data of 2011-2016, the period at the

centre of the issues about the offshore processing centre. Data through 2018 have been included in this thesis to see if any conclusions can be drawn about journalistic news cycles and outcomes of FOI requests. Looking at the data shown in Figure 30, the conditional exemption most often applied in refusing disclosure is personal privacy, and under most circumstances reasonably so, since immigration concerns people whose privacy is of major concern.

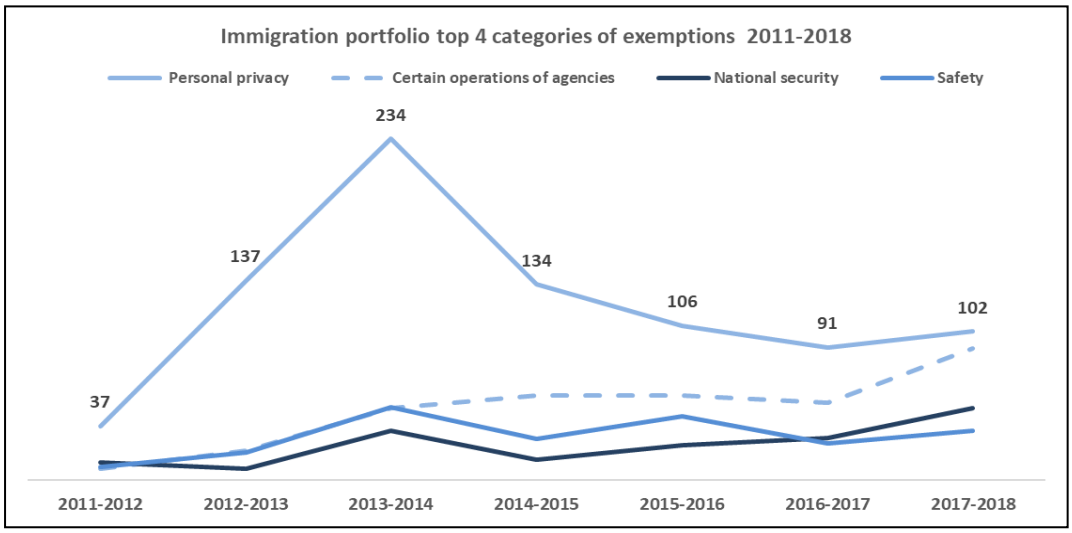

Figure 30 Top 4 exemption categories across Immigration portfolio 2011-2015
Data source: *FOI Annual Returns 2000-2015*

However, it can also be seen that after a very steep increase in the number of refusals for access up until 2013-2014, there is a sharp drop, possibly because the election campaign was over, suggesting the data reinforce speculation that the issue of asylum seekers had been exploited during the campaign for the 2013 federal election. When the number of all the categories of exemptions begin to rise again after 2017, in particular, the exemption 'certain operation of agencies' that reflects many government statements that "we do not comment on operational matters", may be indicative of the beginning of a new election campaign, to which journalists and activists are responding with more requests for information.

I now turn to a specific case in which journalists and others, possibly activists, attempted to get access to government records concerning the offshore facilities in Nauru and on Manus Island. As already noted, government departments are not required to list in their disclosure logs requests that have been refused, but the *Right to Know* activist organisation hosts a website enabling anyone to lodge an FOI request, and publishes, with the applicant's consent, all the documentation: the application itself, its status (granted, partially granted, refused or

withdrawn), the ensuing correspondence between the applicant and the department, and copies of the requested documents. Of particular import is the availability of refused applications and their correspondence.[36] While the previous analysis shows that some requests may be partially refused on privacy grounds, this case study demonstrates that total redaction of all details of medical and health incidents on conditional privacy grounds can only confirm public perception that appalling conditions, abuse and self-harm are being kept secret.

In June and July of 2013, as part of a concerted joint effort, 121 separate requests for the incident reports were lodged as part of the *Right to Know* Detention Logs project founded by a group of independent journalists, including Paul Farrell, who was at the time a journalist at The Guardian (he is now at the Australian Broadcasting Corporation). The requests were made in two stages, the first totalling 100 requests, the second 21. All were refused under s24(2) of the FOI Act, the administrative clause of a "practical refusal" in which all requests could be treated as one since they "relate to documents, the subject matter of which is substantially the same." One of these requests was submitted by Paul Farrell (Right to Know FA 13/07/00163[37] and part of the second group of 21 requests) and was refused on two grounds; the first under s24(2) and second, also a practical refusal that "the processing of the request would substantially and unreasonably divert the resources of the agency from its other operations . . . estimat[ing] that, at a minimum, it would take the department approximately 57 hours to process this request" thereby subsequently deciding to treat the practical refusal as a 'withdrawal' of the request. Under the internal review clause of the 2010 reforms, James Popple, the Information Commissioner, reviewed this decision, stating:

> *the Department can treat the 121 FOI requests as a single request, or as two or more requests, under s 24(2) of the FOI Act [but]*
> *the Department* ***cannot treat as having been withdrawn those of the 121 FOI requests*** *[my emphasis]whose applicants advised the Department, during the request consultation process, that they did not wish to withdraw or revise their requests, and*

[36] In the previous case study 'A failure of the public interest test', the FOI submission was lodged through the *Right to Know* website.

[37] https://www.righttoknow.org.au/request/266/response/915/attach/3/Deemed%20withdrawn%20notice.pdf.

> *the Department must now continue to process those requests of all government departments (Farrell and Department of Immigration and Border Protection [2014] AICmr 74 (31 July 2014)).*[38]

Ultimately, the department upheld its decision that a practical refusal reason did exist, and refused access to the documents.

Then, on 29 February 2016, an FOI request (FA 16/03/00145) was made through the Right to Know Organisation for

> *documents relating to claims, requests and reviews made by those detained in offshore detention centres regarding the facilities, more specifically medical services provided and the facilities to go with. The dates i [sic] seek of these documents are from Jan 2015 and throughout 2016.*

This request was partially granted on 8 July 2016. It was the complaints register of IHMS, the company providing medical and clinical care for immigration detention services, consisting of four documents totalling 126 pages, the structure of which is shown in Figure 31.

Date complaint received	Date added onto Complaints Register	IHMS Facility	Origin of complaint	Category	Description	Date and time initial response provided	Action taken	Resolution date	Comments

Figure 31 Structure of the IHMS complaints register for the offshore detention centres

The FOI officer's decision reasoned

> *I have interpreted the scope of your request to exclude personal identifiers (such as names), and as such, IHMS did not provide this information*

The documents did not contain any personal identifiers, but the FOI officer's reasoning continued

> *I am satisfied that the information contained in the documents which I am exempting is the personal information of the individuals concerned. The personal information*

[38] http://www.austlii.edu.au/au/cases/cth/AICmr/2014/74.html.

> *includes the specific medical conditions and treatments of numerous detainees which, even without names, is specific enough that it could be used to identify detainees . . . [and] that the release of the third parties' personal information contained in the relevant documents would not have any bearing on or relevance to any matter of public debate. . .*

As a result, every one of the 126 pages has the same two columns totally redacted (rivers of green rather than the stereotypical rivers of black)—the description of the complaint, and the subsequent comments, rendering the request for information concerning "specific medical services" useless (Figure 32). It is possible that one might conclude the decision is disingenuous, particularly as there were no "third parties' personal information contained in the relevant documents", it is an example of why journalists may be sceptical about the efficacy of FOI legislation.


Complaints Register

Date Complaint Received (Time 1)	Date Added onto Complaints Register (Time 2)	IHMS Facility	Origin of Complaint	Complaint Received from	Category	Description	Date and Time Initial Response Provided (Time 4)	Action taken	Resolution Date (Time 3)	Follow up required	Comments
01 Sep 15 00:00	03 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Communication	s. 47F(1)	03 Sep 15 00:00	Other - please detail in comments	03 Sep 15 00:00	No further action	s. 47F(1)
01 Sep 15 00:00	03 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Grievances		03 Sep 15 00:00	Explanation provided	03 Sep 15 00:00	No further action	
02 Sep 15 00:00	03 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Access to Services		03 Sep 15 00:00	Explanation provided	03 Sep 15 00:00	No further action	
04 Sep 15 00:00	04 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Grievances		04 Sep 15 00:00	Clarification provided	04 Sep 15 00:00	No further action	
08 Sep 15 00:00	08 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Grievances		08 Sep 15 00:00	Explanation provided	08 Sep 15 00:00	No further action	
08 Sep 15 00:00	08 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Access to Services		08 Sep 15 00:00	Explanation provided	08 Sep 15 00:00	No further action	
05 Sep 15 00:00	11 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Access to Services		05 Sep 15 00:00	Explanation provided	05 Sep 15 00:00	No further action	
05 Sep 15 00:00	11 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Access to Services		05 Sep 15 00:00	Explanation provided	05 Sep 15 00:00	No further action	
05 Sep 15 00:00	11 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Access to Services		05 Sep 15 00:00	Explanation provided	05 Sep 15 00:00	No further action	
05 Sep 15 00:00	11 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	Quality of Clinical Care		05 Sep 15 00:00	Other - please detail in comments	05 Sep 15 00:00	No further action	
10 Sep 15 00:00	11 Sep 15 00:00	Nauru Centre	Transfield	Person in Detention	access to Services		10 Sep 15 00:00	Clarification provided	19 Sep 15 00:00	No further action	

Figure 32 Redacted documents of the medical complaints in offshore detention centres
Source: *Right to Know* https://www.righttoknow.org.au/request/1677

In contrast, and undoubtedly a direct reaction against government secrecy, in mid-2016 the journalist at The Guardian received 2,000 un-redacted leaked incident reports of over 8,000 pages—the Nauru Papers—which sets out "the assaults, sexual abuse, self-harm attempts, child abuse and living conditions endured by asylum seekers held by the Australian government, painting a picture of routine dysfunction and cruelty" (Farrell *et al.* 2016, para. 2). In order to responsibly protect the personal privacy of the detainees, The Guardian's journalists, one of whom was the applicant for many of the original FOI requests, removed the names of all asylum seekers and staff, the personal identification numbers of asylum seekers (their six-digit "boat arrival numbers"), the ages of the asylum seekers named in reports, the signatures of detention staff, the nationalities with small population groups, the residential tent numbers, and in some cases further identifying information (Farrell & Evershed 2016). Figure 33 shows a published document, redacted equivalently to comply with s 47F(1) and its probable listing in the complaints register of IHMS.

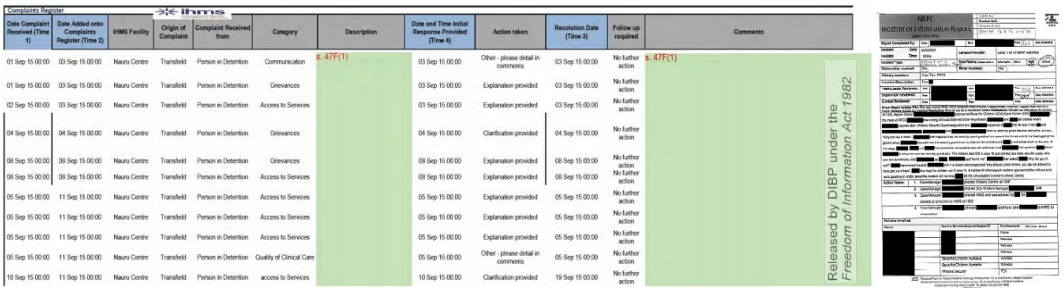

Figure 33 Comparison of redacted content in leaked document and FOI document
Sources: ***The Guardian; Right to Know***

The government's response to these published papers was careful: "the material that's been published will be examined. It's not clear over what time period it relates, at least not in the report that I saw. It will be carefully examined to see if there are any complaints there or issues there that were not properly addressed . . . it's important to stress that incident reports of themselves aren't a reporting of fact, they are just a reporting that an allegation has been made" (Turnbull 2016, p. 4). There was no overt condemnation of the publishing or any suggestion that the reports should have been kept secret. It is hard not to argue with Ester's comment that "one consequence of ineffective or non-existent Freedom of Information (FoI) laws is to force political journalists to depend on oral and/or "brown envelope" leaks" (2006, p. 162). Since attempting to access the Nauru information through FOI channels, Paul Farrell has been the subject of a long investigation by the Australian Federal Police to track his sources, and in a particular irony, his request for files of the investigation, which he contended were his 'personal' files, produced "more than 200 pages of heavily redacted police files" (Farrell 2016).

Discussion

This chapter is based on the premise that governments are obliged by their citizens to be open and transparent, and in Australia, the Freedom of Information Act is one mechanism for accomplishing this by providing citizens' access to government-held information that is otherwise not publicly available. However, it is a mechanism that not only facilitates this access but it also constrains it. Many scholars have examined freedom of information access outcomes in Westminster systems (for example, Rees 2012; Roberts 2000, 2006; Snell 2000, 2006; Worthy 2012); this chapter is an analysis of the degree to which access through the FOI access clauses, processes and procedures are indicators of government openness in Australia.

The study employs two methods, a rational or technocratic analysis of FOI requests on the assumption that requests and their outcomes are surrogates for openness, and a series of

individual cases that considers the data in their political contexts. Together, they have revealed inherent tensions and inevitable conflicts in governments' need to achieve a balance between openness and transparency on one hand, and the need for legitimate but often self-interested secrecy on the other.

Number of requests: a surrogate for openness

On the numbers alone, it seems clear that freedom of information as an access mechanism is successful; the analysis of the FOI requests over the entire period of the legislation in Australia (1982-2018) shows an average of 31,453 requests per year. However, the raw numbers give no details of the content of the information requested. It was not until 2000 that the data separated personal information from policy-related information, and little in the way of the political or cultural contexts in which the requests were made, both factors being necessary in a study based on the premise that access to policy-related information is evidence of openness of governments.

The number of requests, superficially at least, is a surrogate for openness. Since 2000, when statistics for policy-related requests became available, the average number of requests that were either refused or only partially granted is very high (23% and 40% respectively), many of which were conditionally exempted. Requests for personal information by contrast were 6% refused and 25% partially granted. While few would question the validity of non-disclosure of information pertaining to national security, public safety or defence, the legislation concerning conditional exemptions and the public interest is less definitive and therefore more questionable, since it may be a matter of subjective interpretation. Furthermore, as demonstrated by requests for documents about the offshore detention centres, the practical refusal mechanism can be challenging and provocative because it is closely tied into FOI fee structures.

Mechanisms for denial of access

The 2009-2010 reforms to the Freedom of Information Act have abolished many of the restrictive processes of the early years, but the case study reveals that many of the restrictions and attitudes still exist, albeit in different forms. In the early years, Terrill (1998) remarked on the "tendency of the bureaucracy (and others, not least politicians) to use constitutional rhetoric to defend self-interest" (p. 94), while Hazell and Worthy (2010) noted that "despite

high levels of use and disclosure" Australia's performance "suffer[s] from a high level of appeals, a lack of political support and consequent restrictive reform" (p. 358). An appeal is a direct consequence of a decision to exempt documents from access, and according to the early FOI annual reports, in the years 1982-1985 there were 94,271 requests which generated 1,349 complaints (appeals) asking for either an internal review of the decision or a review by either the ombudsman or the Administrative Appeals Tribunal. It has been speculated that this high number of appeals was a result of a heavy use of the veto (what was called a ministerial or conclusive certificate) that could be could be exercised by a single minister (ibid.).

According to the Australian Law Reform Commission, conclusive certificates were in effect a 'ministerial veto' and it argued that "highly sensitive information, release of which would not harm the public interest but which would precipitate a public accountability debate, is exactly the sort of material to which the FOI Act is designed to give access because it involves responsibility at the very highest levels of government" (1995, p. 79). The High Court of Australia upheld this right in 2006, citing the public interest (*McKinnon v Secretary, Department of Treasury [2005] FCAFC 142*), but the first Act of the reforms legislation removed them (the Removal of Conclusive Certificates and Other Measures) Act 2009).

As this study has shown, the advent of conditional exemptions has increased public access to documents, but the public interest test can be problematic. While all FOI submissions are framed "in the public interest", this can be a matter of interpretation, as the case of Peter Timmins's request for the emails surrounding the decision to rescind the OAIC Act shows. Although there is always the possibility that there is a genuine misinterpretation of the public interest, there is also room for distrust or cynicism. As Walter Lippman (1955, p. 42) once commented, "the public interest may be presumed to be what men would choose if they saw clearly, thought rationally, acted disinterestedly and benevolently."

Fees are a deterrence to openness

The nature of fees for FOI is contentious; while the reforms of 2010 removed application fees, leading to an increase in the numbers of requests, processing and appeal fees remain, as is shown by the case of the offshore detention of refugees. The Office of the Australian Commissioner (2012) concedes that agencies and ministers have the option to impose "access

charges [as] a way of controlling and managing demand for documents . . . [and for] defraying some of the cost of FOI to government" (p. 1). Indeed the OAIC (2012) review into fees highlighted the "difficulties agencies face in using s 24AB of the FOI Act (the 'practical refusal' mechanism)" to achieve a balance of these competing interests (ibid., p. 4). In these circumstances, it becomes apparent that bureaucratic and ministerial power has the potential for "gaming the system", as in the case of the immigration portfolio. Since the reforms, the number of practical refusals by the Immigration Department increased by an average of 245% and of those, in 2014-2015, the time of the study only 8% were subsequently processed after an appeal, in contrast to 26% across all agencies (Table 9). In her study comparing the UK cost of democracy fee policy and the Australian user-pays model, Danielle Moon (2018) concluded that fees and practical refusals mitigate against full disclosure. The FOI editor for the Australian Broadcasting Corporation (2015) suggested that the cap of a 40-hour timeframe, as well as the fee structure, may be a "deliberative disincentive", particularly when the journalist pays all the money and spends all the time[39] and the competitors benefit.

Privacy as an excuse for secrecy

One of the most problematic aspects of access to government information is the conflict with personal privacy. As Paterson (2005) notes, in some cases, information that would be withheld under privacy legislation may be required to be disclosed under FOI; or the converse, personal rights to information can be exempt from disclosure under freedom of information. The case study of the immigration portfolio provides one instance of a perceived lack of openness using the personal privacy conditional exemption, and the FOI data show that since 2011, the personal privacy exemption s(47)F has been used 5,651 times, representing 46% of all conditional exemptions.

The protection of personal data is fundamental in liberal western democracies to prevent abuse of individual privacy by state powers, organisations and individuals. If one of the aims of freedom of information is to enable transparency, then it must be balanced against the right to privacy. Transparency, it is suggested by Richard Oliver, is the "flash point at the

[39] FOI requests "in the public interest" are generally given a 50% discount on the compliance costs.

intersection of the public's right to know and the individual's or organization's right to privacy" (2004, p. x). The fact that those same state powers that collect large amounts of people's data and communications set up different types of conflicts around what data can be used by governments for national security, public safety or implementation of services is an important topic. However, recognition that these potential conflicts exist is underscored by legislation (the Privacy Act 1988) and, at the time of the 2010 FOI reforms, the Attorney General's request for a Australian Law Reform Commission inquiry, *Secrecy Laws and Open Government in Australia*; an inquiry into "options for ensuring a consistent approach across government to the protection of Commonwealth information, balanced against the need to maintain an open and accountable government by providing appropriate access to information" (ALRC 2009, p. 21).

The impact of administrative incompetence

Finally, there is the assumption that there are good information management systems in place in order to find the requested documents efficiently and expediently. As demonstrated by the example of the Jakubowicz FOI requests, this is not always the case, leading to McMillan's questioning whether the "resource burden of a particular request is attributable more to the unsatisfactory nature of file management or FOI processing in an agency than to the nature of the request" (2002, p. 25). As Snell and Sebina commented "the ideal is a seamless or well managed information traffic system that can manage the intersections between access schemes, privacy regimes and records management" (2007, p. 58). Indeed, the survey of government agencies conducted by OAIC in 2013 noted that many of the agencies stated robust asset management was one of their most challenging problems (Office of the Australian Information Commissioner (OAIC) 2013). When information is scattered across many systems with an organisation rather than being accessible through a good information management system, the cost of finding, or not finding, increases, leaving the FOI requestor either frustrated, as in the case study, or severely out of pocket because of the search and retrieval fees. If "information held by the government is to be managed for public purposes, and is a national resource" (*Freedom of Information Act 1982*, Section 3), then good information management must be a priority for effective FOI administration. There is, of course the assumption that the records do exist, that bureaucrats and politicians do not circumvent the spirit of FOI by not creating the records. As Andrew Podger commented, "some senior public servants are too concerned to please and serve partisan government

interests by failing to keep proper notes, destroying diaries and ratcheting up security classification of documents" (quoted in Timmins 2012a para 4).

Freedom of Information legislation, and in particular the reforms of 2009-2010, has significantly increased citizens' access to government information. Nevertheless, many of the mechanisms are imperfect; there is always more to be done to maintain openness in government. As John McMillan cautioned "[e]ven when one achieves a far more open and transparent system, the default system within any organisation is for greater confidentiality, greater information control, which some regard as greater secrecy. So, whatever system is in place for information oversight with a view to greater transparency, it requires constant pressure across government to ensure that the messages for transparency are heard and properly implemented" (Senate Legal and Constitutional Affairs Legislation Committee 2014, p. 29).

Conclusion

> *the true measure of the openness and transparency of a government is found in its attitudes and actions when it comes to freedom of information. Legislative amendments, when there is need for them, are fine, but governments with their control over the information in their possession can always find ways to work the legislation to slow or control disclosure*
>
> (Brandis in Senate Debates Australia. Senate 2009, p. 4849)

The legitimation of liberal democratic governments depends on openness, accountability and transparency of its policies and decisions for governing and the provision of services. The codification of administrative records is integral to this process, and granting the public access to them is essential. In Australia, as in most liberal democracies, there are legislative and regulatory mechanisms to provide this access, including proactive publication on government websites or through a formal or informal request. This case study has examined the legal instruments that enable a citizen's right to request government information that is not immediately made public. The major legislation is the Freedom of Information Act 1982 and its ancillary regulations and guidelines, but the study demonstrates that this legislation is as much about codifying restrictions to the records as it is about asserting the public's right to its access, what Ann Rees (2012, p. 56) suggests is the "codification of secrecy"; that it uses the rhetoric of openness to legitimate secrecy.

This study shows that since the 2009 reforms to the Freedom of Information Act and the passage of the Australian Information Commissioner Act in 2010, government secrecy has been diluted. Some of the more contentious provisions of the FOI Act were either abolished or modified, including the removal of ministerial vetoes and conclusive certificates and application fees, and eight exemptions were designated as 'conditional', subject to a single public interest test and the mandatory publication of FOI disclosure logs was introduced.

On the statistics alone, it would appear that the public may successfully gain access to government records. While this is particularly so for access to personal information, the individual cases of access to policy-related information, which is the stuff of governance and transparency, fares increasingly less well. Mechanisms such as 'practical refusals' and decisions for partially granting access to documents, as well as inadequate information management processes, are particularly problematic, which possibly confirms the contentions of Snell (2001) and Luscombe and Walby (2017) that governments may use FOI as an obfuscating mechanism to maintain secrecy while providing a veil of legitimacy. Finally, it remains to be seen whether the recent rise of destabilising events such as mass refugee migrations and the increasing number of terrorist attacks, already being seen as a restricting factor, will decrease the transparency and openness of governments.

Chapter 6: Commercialisation of information and the public interest

This chapter begins with an overview of the complexity of legislation surrounding government business and commercial entities that can constrain access to information. It then presents a discussion of government's reliance on the private sector for the provision of services and the implications for access to commercial information. Using official statistics of government tenders, government contractual information is examined to discern the extent of the use of commercial-in-confidence clauses that public access. This is followed by a comparative analysis of two valuable government geospatial datasets, which explores the impact on the public interest when one of the datasets considered to be valuable for economic development, is privatised and no longer available for public access.

Introduction

> *knowledge is and will be produced in order to be sold, it is and will be consumed in order to be valorised in a new production: in both cases, the goal is exchange*
>
> (Lyotard 1984, p. 4)

This chapter is based on the assumption that the public interest is fundamental to any democratic relationship between government administration and its citizens. The concept of "the public interest" and "in the public interest" is vague and indeterminate (Box 2007; Wheeler 2013), and its meaning has changed across time, political regimes and democratic contexts (Dahl 1989; Douglass 1980; Sorauf 1957). It is used as a "rhetorical phenomenon" in these case studies: transparency achieves it (Roberts 2006) or it preserves secrecy (Freedom of Information Act) and it "depends on the particular facts of the matter and the context in which it is being considered" (OAIC 2014, p. 3). In the law it is a "public good" (Olejarski 2011); in the government context, it obliges ethical bureaucratic action and avoidance of conflicts of interest (Wheeler 2013). It balances "all interests of the several members who compose it [the community]" (Bentham 2000[1781]). In this chapter, the public interest is a process that balances what can be deemed to be good for the whole of

society as declared by all the people, in that it informs government policy decision-making and "serves the advancement of the interest or welfare of the public, society or the nation" (McKinnon v Secretary, Department of Treasury [2005] FCAFC 142, #9).

Governments have two roles in their relationship with their citizens: to govern and to provide essential services. In both roles they generate information and data; in the two previous chapters, citizens accessed this information for its informative value, since "is of value only if it can affect action" (Hirshleifer 1971, p. 564). This chapter is framed by governments' role in the provision of services, by which governments, as well as citizens, *use* the information. This framing is based on several premises:

- "if information—whatever it may be—can be owned and valued, it can be a commodity" (Mowshowitz 1992, p. 230);
- that the Australian government owns its information, that is, has the intellectual property rights to it;
- it places a commercial and often monetary value on it;
- that data, one format of information, is a commodity and therefore a good;
- this can be used to provide a service; and
- such services should be socially beneficial and contribute to economic development in the public interest.

The provision of goods and services has traditionally been seen as a public sector role (Broadbent & Guthrie 1992; Lane 2000), which Stiglitz (2015) frames as public expenditure. But widespread ideological changes in the political economy during the 1970s and 1980s (Larner 2000; Mirowski & van Horn 2015) gave rise to policies that saw many of the functions of the public sector carried out by the private sector (Boyne 2002; Lienert 2009). These changes saw government information as a public good (Samuelson 1954), which is non-rivalrous and non-excludable (there is no cost for an additional individual to have it, and no one can be excluded from having access to it), become commercialised.

Access to all formats of government information is essential if citizens are to be able to read the policy and decision-making documents or data analytical reports (text-based information) in order to evaluate the services provided. Eaves (2010, p. 145) contends that for transparency and accountability, people "want *the right* to see how, and with what, it was

made [the data]." Access to government data (datasets)—open government data (OGD)—has an even more important aspect; it must be freely available to be used; to be "transferred and analysed" (Davies 2010, p. 2). This is a point that Halonen (2012) makes when she compares the reactive freedom of information mechanism as access for a *reading society* to an open system that enables a participative *writing society* where citizens are able to re-use open data in creative ways.

This chapter proposes that government policies concerning how and by whom services of all types are provided and managed, are related to information policies that are based on an assessment of the economic and monetary value of its information. Both types of policies may be considered fiscal policies, encompassing economic, financial and monetary elements, and are associated with the outsourcing of various public services to third parties, including the private sector. In the case of text-based information such as government contractual agreements and outputs, the value is informative, but may also be of commercial value, making it potentially inaccessible through Freedom of Information mechanisms. Government data, on the other hand, has very little intrinsic value. Its value emerges as a public good from the raw data—unprocessed sets of observations—either when a) it is analysed to deliver informative value for policy and managerial decision-making or b) when it has a direct value (revenue from selling it), a commercial value (revenue generated by entities who have purchased or used it) or an indirect economic, social or downstream public value such as national security, environmental sustainability and equality (Moore 1995).

These government policies have consequences for citizens' access to information; theoretically, the policies can restrict access to the information and in practice, often do so through its monetisation and subsequent sale as a commodity in the marketplace, an action effectively putting it behind a paywall. This chapter is a socio-economic analysis of the broader issues that emerge when governments in an information or knowledge economy adopt ideological positions that implement information, managerial and service provision policies that drive a continual commercialisation of its information. These policies can cause significant repercussions for access to that information and ultimately, for government transparency and accountability.

The study comprises two analyses of government information that is affected by commercialisation policies. The first is text-based information that is generated through

government partnerships and relationships with the private sector to provide public services. This information can include many items comprising content that is valuable in an economic sense, such as reports created or commissioned by government agencies and formal contracts for the provision of services by private sector organisations. The analysis uses two public datasets, the *Freedom of Information Annual Returns* and the *AusTender* contract data to demonstrate how material can be shielded from public scrutiny, precisely because it is commercially valuable.

The second study compares government datasets that are made available under two different policies that support economic growth and to serve the public interest. One dataset is treated primarily as a commodity, a good, the other, a service; and both are considered to be "goods and services" that contribute to Australia's economic development. In both cases, the goods are geospatial data that economists consider to be some of the most valuable of all government datasets (ACIL Tasman 2008; Stott 2014). One comprises integrated state and Commonwealth data that cannot be accessed by the public, the purported owners, because a government fiscal policy transferred the ownership to a private sector company, Public Sector Mapping Agencies (PSMA). The other, the data of the Australian Bureau of Meteorology (BOM), through a different (earlier) policy, remains in the public sector with full public access. In both cases, the analytical data are drawn from annual reports and secondary economic analyses. The study shows that both business entities, BOM and PSMA deliver extensive economic and social benefits that contribute to economic development, but it also explores the notion that both approaches may not be in the public interest.

Legal frameworks for socio-economic development

A plethora of legislative and regulatory mechanisms govern how goods and services are provided in Australia. The 'goods' are government information, which is Crown property, and consists of tangible items such as reports and data, which according to the Australian Government Intellectual Property Manual (2012, p. 196) includes "spatial data, statistics, data products and databases, maps and administrative data." New policies and regulations that emerged in 2010 under the Freedom of Information Act 1982 (FOI Act) did not contest the legitimacy of Crown copyright, but in response to the 2009 2.0 Taskforce recommendation, s11(b) of the 2010 Statement of Intellectual Property Principles enabled the *re-use* of this government data

> *consistent with the need for free and open re-use and adaptation, public sector information should be licensed by agencies under the Creative Commons BY [CC By] standard as the default . . . or other open content licences"* (Attorney General's Department 2010, p. 6).

However, the Australian Government Intellectual Property Manual (2018, p. 177) also states

> *in some limited circumstances, agencies may also need to consider the use of a more restrictive, non-open content licence, which will further restrict permitted uses of the material, where it is genuinely necessary to do so in order to protect the material or the Commonwealth's interests*

and may choose not to release them at all, particularly if the data are commercially valuable

> *some agencies were reluctant to release PSI assets if doing so would compromise a potential revenue stream for the agency. The particular concern was that the private sector could monetise the information asset or otherwise derive a profit from its use. This concern was strongest where the agency had already commercialised its information assets – for example, by selling scientific survey or monitoring data for commercial use. Agencies were concerned that releasing such assets under open licensing terms would compromise the value and profitability of a saleable asset* (OAIC 2013, p. 23)

Government information, under the 2009 FOI reforms, applies to contracts relating to provision of services on behalf of an agency to the public or a third party (s6C). There are four categories of information (documents) deemed to be exempt from release on commercial grounds; one is 'unconditionally exempt', that is, there is no condition that allows its disclosure, and three are conditionally exempt, subject to a public interest test. The first instance is

> *s47 Documents disclosing trade secrets of commercially valuable information;*

and the three conditional exemptions are

> *s47D Financial or property interests of the Commonwealth*

s47G Business, other than documents to which s47 applies; and
s47J Documents affecting the Australian economy.

There is also provision for protecting privacy in the FOI Act; this is the conditional exemption, *s47F Documents affecting personal privacy*.

Service provision is controlled by several mechanisms: a) the Public Governance, Performance and Accountability Act 2013 (PGPA Act), and b) the Commonwealth Competitive Neutrality Policy Statement. The PGPA Act is the legislative framework for all Commonwealth entities, both non-corporate, such as a government department, and corporate entities. Corporate Commonwealth entities (CCEs) are considered to be Government Business Enterprises (GBEs). Section 5 of the Act currently prescribes eight GBEs—two are corporate Commonwealth entities and six are Commonwealth companies[40]—the governance of which is set out in s8. The companies are established under the Corporations Act 2001 and while wholly owned by the Commonwealth, they act in their own capacity, exercising certain legal rights such as entering into contracts and owning property. In this case study there are two service providers: the Bureau of Meteorology and PSMA Limited. The Bureau of Meteorology is subject to the PGPA Act. Significantly, PSMA, a private company whose shareholders are the Commonwealth and States, is subject to the Corporations Act, but not to the PGPA Act, an irregularity we will examine later in this chapter.

Finally, under the Commonwealth Competitive Neutrality Policy Statement (Australia 1996)

> *government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership . . . [and] requires that governments should not use their legislative or fiscal powers to advantage their own businesses over the private sector*

[40] The Commonwealth Corporate Entities are Australia Post Corporation and Defence Housing Australia; the Commonwealth Companies are ASC Pty Limited, Australian Naval Infrastructure Pty Ltd, Australian Rail Track Corporation Limited, Moorebank Intemodal Company Limited, NBN Co Limited, and WSA Co Ltd.

According to O'Connor (2015, pp. 4-5), key principles of statement are tax, debt and regulatory neutrality, a commercial rate of return and its prices reflect costs incurred. The statement directly addresses

> *exemptions from various taxes, access to borrowings at concessional interest rates, exemptions from complying with regulatory arrangements imposed on private sector competitors and other benefits associated with not having to achieve a commercial rate of return on assets.*

An OECD report found that this policy worked well in Australia since it led to reforms and implementation by GBEs that brought about efficiency gain and "substantially eliminated the advantages of government ownership" (Capobianco & Christiansen 2011, p. 16).[41]

Transparency of contractual information

> *an increase in the use of outsourcing arrangements for operations, which had been previously provided solely by government. . . .[has] resulted in a rapid expansion of government contracts and a simultaneous rise in claims that government contracts, or part thereof, were confidential, in particular commercially confidential. The use of confidentiality clauses in government contracts has the potential to impede scrutiny and accountability of government expenditure* (Australia. Finance and Public Administration References Committee 2014, p. 1)

It is now common practice for western governments, including in Australia, to contract and outsource to third parties the provision of previously government-supplied goods and services. This practice is achieved through the establishment of government commercial enterprises, through one-off contracts with private consultants, non-government organisations or private sector providers, or through partnerships with the private sector (public-private

[41] In 2017 the Commonwealth Government established a review to "evaluate the effectiveness of the current 1996 Competitive Neutrality Policy Statement (the CN Policy) in achieving a level playing field between government business activities and their competitors . . . [to report on] whether the scope of the current CN Policy remains appropriate including, in particular, the level and relevance of the threshold for a 'significant' business activity, and the possible application of competitive neutrality to other government activities" (Review of the Commonwealth Government's Competitive Neutrality Policy: Consultation paper, March 2017. Available at https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting_documents/CN%20Review%20Consultation%20Paper.pdf.

partnerships). Mulgan (2015) draws the distinction between a transactional contract, which is a one-off transaction with all elements clearly specified, and a relational contract, as in the contractual arrangements of public–private partnerships (PPPs). Here, the terms are more open-ended, enabling ongoing adjustments, therefore making them "less informative as documents and depend more on discretionary judgments which may be harder to access and disclose to the public" (p. 10). This section will examine both types of contracts.

One way of determining the transparency, accountability and value for money of these practices is through the public record, which is available to citizens and government agents, including parliament. However, much of this contractual information is not automatically accessible because of the very commerciality of the practices, and the exemption clauses in the Freedom of Information Act may prevent its disclosure completely. The Act is unequivocal about 'trade secrets', a term that is not defined in the FOI Act, but which the Federal Court has interpreted as information possessed by one trader that gives an advantage over its competitors while the information remains generally unknown (OAIC 2014). The 2012-2018 Freedom of Information annual returns show that small numbers of requests for policy-related information, possibly including contractual information, were refused on the grounds of containing trade secrets. The number of documents that were subject to a public interest test (conditionally exempted) was also small (2,034), representing a little over 7% of all policy-related requests for that period (Table 13).

Year	Trade secrets	Financial interests	Business	%Economy
2012-2013	124	11	305	3
2013-2014	107	16	274	2
2014-2015	100	15	328	1
2015-2016	75	16	341	1
2016-2017	106	20	306	0
2017-2018	110	21	374	0
TOTALS	622	99	1,928	7

Table 13 Freedom of Information requests exempted or conditionally exempted
Data source: *FOI Annual Returns 2012-2018*

To get a sense of government openness about its contractual relationships, a more useful dataset is *AusTender*, a register of Commonwealth contracts, since it flags contracts that have specific confidentiality clauses that limit public access to the content. These flags apply to

the contract documentation ("confidentiality of contract") and to any output from the contract ("confidentiality of output"), for example, the commissioned Eureka Research report that was discussed in Chapter 5. Any contract that has a value of $100 000 or more must be recorded, including details about the contractor, the amount of the consideration, the subject matter, and

> *whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality* (Australia. Finance and Public Administration References Committee 2014, p. 27).

Under the guidelines for government procurement (Australia. Department of Finance 2019),

> *[t]here are two broad types of confidentiality clauses used in contracts*
>
> - *general confidentiality clauses, which either restate legislative obligations for confidentiality such as under the Privacy Act or a secrecy provision; and*
> - *specific confidentiality clauses, which protect the confidentiality of information obtained or generated in performing the contract – such clauses can be used to protect commercial information that an entity [business] has determined is confidential or for the protection of Australian Government material, for example, the entity has access to the supplier's confidential intellectual property during the performance of the contract or the contract is for a consultant to prepare a confidential report which is expected to deal with sensitive public interest issues.*

This dataset was examined and, based on the publication date of the contract, between January 2012 and December 2017, there was a small number of contracts flagged as confidential, in some cases for more than one reason (see Table 14).

	2012	2013	2014	2015	2016	2017
Total no. of contracts	73.883	66,115	64,635	70,022	66,770	64,093
Contract confidentiality flags						
Costing/profit information	586	590	613	601	486	439
Intellectual property	121	111	70	85	172	317
Privacy Act	121	118	129	118	173	192
Statutory secrecy	32	74	137	20	38	33
[discussion is contrary to the] Public interest	42	128	88	224	261	194
Other	323	229	230	204	255	282

Table 14 Confidentiality flags on contracts, 2012-2017
Data source: ***AusTender CN Data***

The first two, costing/profit information and intellectual property, are certainly relevant to areas of commercial-in-confidence and trade secrets. The data, however, do not record whether required documentation has been provided to substantiate claims of confidentiality, particularly when the claim that the disclosure would be contrary to the public interest.

One example is illustrative of the conflicts presented by 'the public interest'. In Chapter 5, I presented a case of government secrecy concerning the contentious issues surrounding the treatment of refugees in the offshore processing centres on Nauru and Manus Island. According to the data published on *AusTender*, between 2010 and 2013 the Department of Immigration and Border Control signed 39 contracts for healthcare services in both onshore and offshore detention centres, for a total consideration of $1,104,538,657. Of these 39 contracts, only two were flagged as confidential, citing costing/profit information, and whose outputs (reports and documentation) were also flagged confidential, citing privacy. Both were transactional contracts with International Health and Medical Services Pty. Ltd. (IHMS) for the provision of *offshore* detention services and the total consideration for these two contracts was almost $1 billion. Given the controversial nature of the government's policy, this might be construed as an instance of David Levine's charge of an "unstated ulterior motive like avoiding public scrutiny" (2011, p. 62). At the very least, the inability to access this information is antithetical to transparency, accountability and, arguably, the public interest.

The Senate Finance Public Administration References Committee, in its framework for accountability in Commonwealth contracts (2001), noted there was an increasing number of government contracts for the provision of services, and that there was a simultaneous rise in claims of commercial confidentiality. It suggested that "[a]cceptance of such claims can considerably limit scrutiny of the expenditure of public money, and those who make them must be prepared to justify them" (p. 3). The committee's report initiated a Senate Order (Australia. Finance and Public Administration References Committee 2014) that required better scrutiny of confidentiality clauses in government contracts. According to the Australian National Audit Office (ANAO) which conducts audits of Commonwealth contracts, noted in its 2014-15 audit (ANAO 2016), that while the reported use of confidentiality clauses was the lowest since the commencement of the Senate order (3%), "errors in application and reporting relate to insufficient assessment of contracts including a lack of documentation of assessments of suppliers' claims against the Confidentiality Test" (ibid., pp. 7-8). Of the 94 audited contracts that claimed confidentiality, 62% failed to provide the required documentation substantiating the claim, and the ANAO concluded there continued to be "a high degree of inappropriate use and misreporting by entities of the types of confidentiality provisions and reasons for their use (ibid., p. 23).

The discussion above deals with contracts between government agencies and external suppliers. Similar issues of openness and transparency can arise when the government itself is a contractor in partnership with the private sector. While Teisman and Klijn (2002, p. 197) suggest that the nature of such public–private partnerships (PPPs) is debatable, "a language game", the Commonwealth considers a PPP to be

> *a service contract between the public and private sectors where the Government pays the private sector (typically a consortium) to deliver infrastructure and related services over the long term . . . [and] The private provider usually finances the project* (Australia. Department of Infrastructure and Regional Development 2008, p. 7).

By 2002, the Commonwealth had not entered into any PPPs; all such partnerships were state-based, particularly in NSW and Victoria, and were contracted in a variety of forms that are combinations of public and private arrangements. Currently Australia, along with the UK and Canada, is a world leader in PPP policy, since it is "one of the countries with the most PPP action" stretching over two decades (Hodge, Greve*, et al.* 2017, p. 274).

These complex bundled contractual arrangements, often including subcontracting, all handled through one consortium give rise to serious issues of accountability. In the early years of PPPs, Hood *et al*. (2006) analysed the formal oversight mechanisms of PPPs in the UK and concluded that "data collection and transparency of information about PFI[42] contracts are most notable by their absence" (p. 43) and suggest that "transparency and evidence-based policy making, vis-à-vis value for taxpayers, are more rhetoric than reality" (p. 41). Nearly 10 years later, the 2014 report of the UK Committee of Public Accounts[43] recommended that

> *open-book contracts should be the norm; that the National Accounting Office should have access to all the relevant information associated with contracts with the public sector; and that Freedom of Information provisions should apply to public sector contracts with their companies* (p. 4).

An OECD report (2008, p. 81) commented that

> *ready access to information at all stages of PPP procurement assists both the public and private partners and improves transparency, accountability and the management of projects . . . [furthermore] transparency helps to ensure that a project tender is fair and that the planned costs are open for public scrutiny.*

The World Bank study (2013) found that NSW and Victoria provided good models for providing access to PPP information, but recent research in Australia showed that transparency of PPP contracts is still problematic. Hodge *et al.* (2017) noted that some PPP professionals argued that "transparency has increased while others warn against commercial confidentiality clauses", with experts declaring when you deal with the public sector I think that this idea of commercial-in-confidence doesn't work" and "we need to go further in terms of transparency because . . . the public doesn't have confidence" (ibid., p. 345).

[42] Private Finance Initiative, a type of PPP.
[43] Available at https://publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/777/777.pdf.

The commercialisation of a public good

> *The Australian Government commits to optimise the use and reuse of public data; to release non-sensitive data as open by default; and to collaborate with the private and research sectors to extend the value of public data for the benefit of the Australian public.*
>
> (Australia. Department of Prime Minster and Cabinet 2015, p. 1).

The impact of the open government movement, driving the demand for public access to data for transparency and accountability purposes (Eaves 2010), quickly developed into a call for open government data (OGD) to enable the development of new applications. Vickery (2011) observed that the scale of Australia's future contribution to opening up access to data would need to be policy-driven, and as already noted, as governments recognised the commercial value of their data, they developed policies and processes to release their datasets under a Creative Commons licence.

There have been various studies estimating the commercial value of government information (see Vickery 2011 for a general overview). One of the earliest was the study done by PIRA International (2000), which estimated the EU's government datasets to be €68 billion. Six years later, Dekkers *et al.* (2006) showed it to be between €10 and €48 billion, perhaps confirming a certain amount of the hyperbole about 'rivers of gold'. Most of these studies indicate that it is geographic data whose value is achieved in the commercial sector, when users, individuals or enterprises, add value to the dataset along a value chain (Fornefeld *et al.* 2008). By 2010, studies of the value of Australian datasets were being initiated and in 2014, Gruen *et al*., writing for Lateral Economics, estimated the value of government data in Australia—with aggregate direct and indirect values—could be AUD25 billion per annum (2014, p. vii). Even so, the Productivity Commission lamented that even for internal administrative purposes, Australia "makes relatively little use of its public [sector] data resources, even though the initial costs of making data available would be low relative to the future flow of benefits" (2013, p. 1). There were several possible reasons for this situation. According to the Office of the Australian Commissioner (OAIC 2013, p. 11), these included the fact that many government departments and agencies had no assets register, the complexity of establishing confidentiality/privacy concerns, third-party intellectual property rights, the risk of compromising a potential revenue stream, and indeed even knowing what

data are in public demand. By 2014, according to the National Commission of Audit (2014) only 3,164 datasets were available through the Australian government data portal; however, at the time of writing[44] there were 4,946 datasets listed, of which more than 2,900 were openly licensed.[45]

Geospatial data

The Micus report (Fornefeld *et al.* 2008), commissioned for the European Union after its directive to release government datasets for re-use, found the data with the strongest impact on markets were geographic information and legal and administrative information. At the same time in Australia, the ACIL Tasman report (2008), one of several reports into the value of geographic information, conservatively estimated that industry revenue in 2006-07 could have been of the order of $1.37 billion annually. It estimated the industry gross value added around $682 million, and that it would contribute to a cumulative gain of between $6.43 billion and $12.57 billion in Gross Domestic Product. The report also suggested this would continue to grow as data applications were developed, increasing the impact in existing industry sectors by 50% but even higher as it finds new applications in a wider range of industries. By 2015, a survey of open government data (Australia. Department of Communications 2015), found that the most common data (60%) being used to create new or improved products and services were geospatial and mapping data, and that by 2017 about 80% of the Australian OGD deposited in the data portal was overwhelmingly scientific, particularly environmental and spatial data contributed by nine agencies (Productivity Commission 2017, p. 73).

Geographic information is an exclusive term. Spatial data are information about a physical object, such as its location and metric relationship to other objects (ACIL Tasman 2008). It is often combined with or referenced against physical geography, in which case it is generally called spatial or geospatial data. The types of geospatial datasets are many, and include

[44] 15 March 2019.

[45] A word of caution here—a large proportion of the total datasets listed are the same data in multiple formats. For example, in March 2019 there were over 2,200 spatial datasets (files) listed in the portal, although a large proportion were the same data in multiple formats (KML, WMS, SHP, GeoJason etc).

global positioning systems (GPS) and imagery, hydrographic and meteorologic features, geology, land parcels (cadastral) and land cover, postal and physical addresses and administrative boundary units.[46] Given the various evaluations of this type of data, it is not surprising that geospatial data are considered economic drivers and should be considered for release as open data, but this is not always the situation, as the case study will show.

The World Bank, for example, considers the core reference data for economic growth include not only "maps, address databases, demographic data from the Census, data about roads and other transport links" (Stott 2014, p. 15). That this type of data is a high-value asset is borne out by the experience of Denmark, when its address register (a geocoded list of physical addresses and postal codes) was made available as open data in 2002. Between 2005 and 2009, the cost of doing so was €2 million, but the yield was an estimated €62 million in direct financial benefits to society, including improved government back-end capabilities and more efficient service delivery (McMurren *et al.* 2016).

In Australia, geospatial data, among other types of data, has been recommended by the Productivity Commission to be designated national interest datasets (NIDs), whose release (since it is "low-hanging fruit") should be prioritised (2017, p. 295). If government geospatial data are believed to be prioritised for release because of its direct, commercial and socioeconomic value, this raises implications and consequences for what is or, could be regarded as *open* government data. To explore these questions, the following case studies examine and compare access to two types of government geospatial data. The first is meteorological data that are collected and created by the Bureau of Meteorology (BOM) and is freely accessible on its website, but is also repackaged through a monetised process into a specialised fee-based service. The second datasets are spatial, both cadastral and address data that are completely monetised, that is, a private good, available only through a fee-based service delivered by a private company, PSMA Australia Limited (Public Sector Mapping Agencies).

[46] See Infrastructure for Spatial Information in the European Community (INSPIRE) https://inspire.ec.europa.eu/ and Spatial Information Council http://www.anzlic.gov.au/.

Bureau of Meteorology

The Commonwealth Bureau of Meteorology (BOM) is a statutory authority. It was established under the Meteorology Act 1906, consolidating various jurisdictional services, and which authorised the conclusion of arrangements for transfer to the Commonwealth of the meteorological records and facilities of the States (Zillman 2001). However, by the 1950s, "especially following the establishment of the World Meteorological Organization (WMO). . . . the Meteorology Act had become seriously out of date" (Zillman 2001, p. 1604), and the Meteorology Act 1955 established the current Bureau of Meteorology. It extends to all territories, including the Australian Antarctic Territory. In 2002 it became an executive agency under the Public Service Act 1999, within the portfolio of the Department of the Environment. BOM operates within a complex legislative and regulatory environment: two Commonwealth Acts—the Meteorology Act 1955, the Water Act 2007 and the Commonwealth Water Regulations 2008.

The Meteorology Act 1955 requires the BOM to function

> *in the public interest in general, and in particular*
> *(a) for the purposes of the Defence Force;*
> *(b) for the purposes of navigation and shipping and of civil aviation; and*
> *(c) for the purpose of assisting persons and authorities engaged in primary production, industry, trade and commerce (s 6 (2)).*

The Water Act 2007 (7 s121) requires the BOM to issue national water information standards, collect and publish water information, conduct regular national water resources assessments, publish an annual National Water Account, provide regular water availability forecasts, give advice on matters relating to water information, and enhance understanding of Australia's water resources. The Bureau also has a number of international obligations prescribed under the Convention of the World Meteorological Organisation (WMO), UNESCO Intergovernmental Oceanographic Commission (IOC), International Maritime Organization (IMO), and the International Convention for the Safety of Life at Sea (SOLAS).

BOM is Australia's national meteorological service (NMS) and water agency, and the major collector and supplier of Australian observational, meteorological, hydrological, space

weather and oceanographic data.[47] An NMS has three essential components that form its economic framework:

1. the raw data collection and processing that underpins the provision of the full range of services;
2. the delivery of a basic service that discharges government's sovereign responsibilities to protect life and property, contribute to citizens' general welfare and the quality of their environment, and to meet its international obligations under the Convention of the World Meteorological Organization and other relevant international agreements; and
3. a range of special services may include the provision of special data and products, their interpretation, distribution and dissemination, and consultative advice (Zillman & Freebairn 2001, p. 207).

The basic or raw data are open government data (OGD), and combined with the basic service that potentially delivers universal access to the data and its products, it is a public good. On the other hand, the special service has a value-added component that is tailored to a single entity, and is therefore a private good. Zillman and Freebairn also point out that some specialised data services can be easily provided electronically at very low cost on a confidential one-on-one basis, and therefore exhibit the mixed good properties (ibid., p. 47).

The Australian Bureau of Meteorology, with its typical NMS economic framework, has several internal portfolios that provide a range of basic services, including public weather and flood forecasting and warnings, climate and water information services, and an 'observations' portfolio for sharing international meteorological observations.[48] The data underpinning these services are generated, collected, published and/or delivered to individual citizens, to the public sector (including government and non-government agencies) and to the private sector. While the Bureau is "committed to providing as much data as possible online free of charge" (BOM n.d.), it also provides a number of specialised fee-based only services to both

[47] Troccoli (2018, p. 22), in his discussion on meteorological services, draws the distinction between weather, i.e. forecasting, and climate services which include temperature, rainfall, wind, soil moisture and ocean conditions.

[48] Measuring, collecting and reporting on a comprehensive suite of meteorological, hydrological, oceanographic and space weather observations; collaborating internationally to provide ground support for the operation of meteorological satellite programs and access to satellite observations.

government and non-government clients, discussed below in the section *Subsidising the public good*.

Identifying economic and social benefits

The majority of data (80% according to BOM, 2016) is freely available online: public weather and flood forecasting, and hazard prediction services, climate, water and environmental information. The economic impact of these data services is high. According to a commissioned study by London Economics (Duke *et al.* 2016), BOM would deliver a net economic benefit of $28.6 billion over the next 10 years, of which 96% is generated by benefits to five sectors:

1. agriculture (39% or $12.2 billion over the next 10 years)
2. general public (27% or $8.3 billion)
3. other business sectors (15% or $4.6 billion)
4. natural disaster damage avoidance (14% or $4.5 billion) and
5. aviation (1%).

The figure for the aviation sector seems low; the study quantified only fuel savings of $302 million over the next ten years. However, since international aviation requires meteorological advice and Australia provides data covering 10% of the world's surface, this analytical approach "would add $166 billion to the ten-year benefit calculation, and an additional $227 billion if flow-on benefits to the tourism sector are included" (ibid., p. iv).

A more specific example, based on one of the key functions of BOM is

> *the issue of warnings of gales, storms and other weather conditions likely to endanger life or property, including weather conditions likely to give rise to floods or bush fires* (Meteorology Act 1955 s 6 (1c)).

The analysis by Gunasekera (2004) of the economic value of the bush fire weather services demonstrated that the provision of free weather data to Victorian fire agencies costs $800,000 per year including the cost of providing an enhanced service. As the annual damage cost of bush fires in Victoria was $37 million per year, the reduction in overall damage costs was $13-$26 million over a seven-year period (p. 25). On a national basis, the overall potential benefits would be 18 to 36 times the cost (p. 27).

Quantifying social benefits of meteorological services is difficult, but may be expressed by indicators such as reductions in weather-related human fatalities due to cold snaps and heat waves, cyclone and flood warnings. One of the most extensive analyses of the social and economic benefits of Australia's meteorological services was conducted in 1998 (Anaman *et al.* 1998). It found that the categories of non-financial benefits received by citizens were assistance in general household planning and decision making (36%), planning of outdoor and recreational activities (14%), planning family holidays and social events, and enabling more free time (9%). While Terminal Aerodrome Forecasts (TAFs) produced high economic benefits across the aviation industry, social benefits were passenger time savings, reduction of inconvenience and anxiety due to diversions, and reduction of greenhouse emissions due to fuel savings (ibid., p. 106). In the mining industry it was estimated that the basic public weather and climate services produced a social–benefit cost ratio of approximately 17.4. The "minimum societal benefit–cost ratio for BOM as a whole was about 2:1 "when only the householder benefits of the public weather services were used to derive the benefits component of the ratio" (ibid., p. 114).

The London Economics study (Duke *et al.* 2016) also noted that the unquantified benefits included international leadership in capacity building in neighbouring countries, the contribution to scientific research and development (see Table 15), and to bio-security. Emergency and community services all cite benefits of forecasting and weather services, such as hazardous surf conditions and ocean swells for surfers, rock fishers and boaters (Anaman *et al.* 1998). By 2011 the Bureau had begun its

> *transformation to being the nation's authority in environmental intelligence. . . [by being] a critical listening post for changes in rainfall and temperature, the chemical composition of the atmosphere, surface and groundwater availability, land cover and soil condition, the temperature and chemical balance of our oceans, and pollutants in our air, water, soil and oceans* (Australian Bureau of Meteorology 2010, pp. 5, 7).

Finally, the datasets available for free download from the Bureau are a very valuable resource for research.[49] A simple search on Scopus® showed there were at least 424 research papers across a variety of disciplines using BOM data (Table 15).

[49] On 10 March 2018 the data catalogue listed 163 datasets with start time: '1900-01-01' and end time: 2018-01-01, 99 of which were freely available.

Discipline	No. of papers	Discipline	No. of papers
Computer Science	44	Immunology and Microbiology	5
Agricultural and Biological Sciences	24	Chemical Engineering	4
Energy	22	Chemistry	4
Social Sciences	14	Health Professions	4
Materials Science	12	Business, Management and Accounting	2
Biochemistry, Genetics & Molecular Biology	10	Economics, Econometrics and Finance	2
Physics and Astronomy	8	Multidisciplinary	1
Decision Sciences	7	Nursing	1
Immunology and Microbiology	5	Veterinary	1

Table 15 Research derived from Bureau of Meteorology data, listed in Scopus®

In all, economists have calculated that public access to government's meteorological datasets delivers not only financial benefits, but make an enormous socio-economic contribution to Australian society through the provision of public sector services.

Subsidising the public good

Historically meteorological information has been considered a basic necessity and therefore a justifiable government expenditure; but in recent years governments have looked for alternative, or at least supplementary, revenue to fund basic services, including "the possibility of cost-recovery and commercialization in connection with the provision of relevant services" (World Meteorological Organization 2000, p. 15).

> *Value-added special services for use by individuals or small groups of specialized users have private or mixed good properties, their benefits accrue to only a limited number of people and they are appropriately funded by user fees* (Zillman & Freebairn 2001, p. 207)

The 2011 Munro Review of the Bureau of Meteorology, prompted by extreme weather events in 2010-11, found that there was "a high degree of respect for the Bureau's capability and people, and general satisfaction with the Bureau's services . . . coupled with a widely articulated desire for enhanced products and higher levels of service" (Munro 2011, p. iii). As a national service, the Bureau has responsibilities for the states and territories, and in response to this review, it standardised their emergency services, stipulating it would not charge any fee for the standard service (flood, fire weather, extreme weather and hazard

impact event management). However, other supplementary services are charged on a cost-recovery basis; these include grid data[50] from the digital forecast database, for example, non-cyclonic storm surges and rainfall information (see Intergovernmental Agreement on the Provision of Bureau of Meteorology Hazard Services to the States and Territories, 2017).

The Bureau receives government funding to cover the bulk of its activities. These base funds are supplemented by government equity injections, and by revenue from independent sources for cost-recoverable and commercial services (Munro 2011). It delivers

> *selected products and services free of charge to meet its basic service responsibilities. But it also provides some data on cost recovery terms and in certain cases, full cost recovery rates for tailored services and products specifically requested by users* (Australian Bureau of Meteorology 2016, p. 7).

These include the sales of goods and services (data and for example, analytical and consultative reports) through the Hazards, Warnings and Forecasts portfolio to Commonwealth, state, territory and local government agencies (see Table 16), as well as industry sectors such as aviation, finance and insurance, transport, mining and energy, marine and agriculture. The types of data and information include:

- climate data requests,
- certified copies of meteorological data,
- hail assessment services,
- archived forecasts, warnings and radar,
- subscription services (climate data, spatial data, thunderstorm confirmations, and gridded climate data), and
- risk assessment and design analyses, including customised hydrometeorological services.

[50] A data format that can be imported in geographic information systems for visualisations.

Agency	2013	2014	2015	2016	Totals
Australian Radiation Protection and Nuclear Safety Agency	49,585			267,724	317,309
Department of Agriculture and Water Resources		446,573		500,000	946,573
Department of Defence	6,488,569	6,239,532	6,594,168	7,174,593	26,496,862
Department of Infrastructure and Regional Development			115,098		115,098
Geoscience Australia				27,500	27,500
Murray-Darling Basin Authority			18,940		18,940
Totals	6,538,154	6,686,105	6,728,206	7,969,817	27,922,283

Table 16 Sales of Bureau of Meteorology data to federal government agencies 2013-2016
Data source: ***Historical Australian Government Contract Data***

Since 2008, the value of these sales and services has grown steadily (although there was a slight decrease in 2016-17), and over this period the average return as a percentage of government funding is 29.8% (Figures 34 and 35). This revenue becomes part of the Bureau's operational budget as well as funding for capital investments in technological infrastructure.

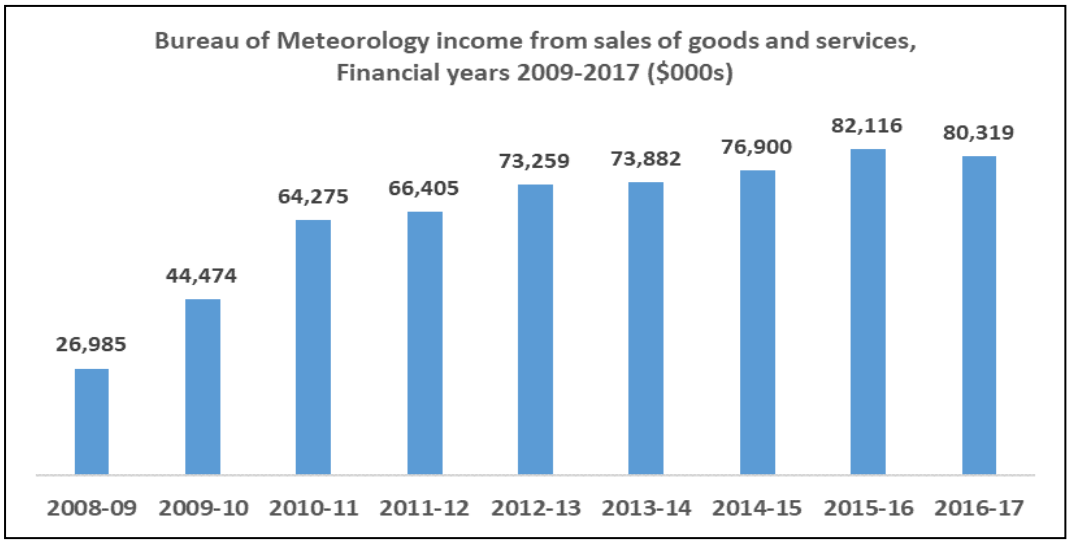

Figure 34 Bureau of Meteorology income from sales of goods and services 2008-2017
Data source: ***Bureau of Meteorology annual reports, 2008-2017***

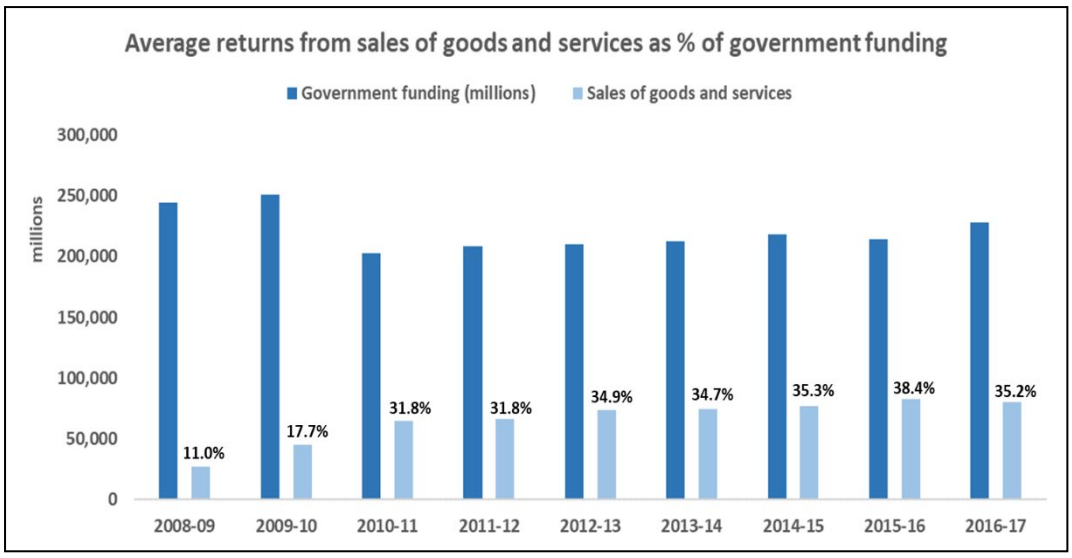

Figure 35 Average return from sales as a percentage of government funding
Data source: *Bureau of Meteorology annual reports, 2008-2017*

In the period since the policy of open government data was proclaimed, the Bureau of Meteorology, a public sector service, has provided all of the range of meteorological, climate and hydrological services that the Australian public expects. At the same time, it contributes enormous socio-economic benefits, and has added billions of dollars to the country's economic development. Through commercial mechanisms it has also generated much supplementary revenue to help underwrite these public goods and services, and has contributed to national and international societal welfare initiatives such as the Australian Tsunami Warning System and climate change research. Given these contributions, it is difficult to dispute that the fundamentally public sector and public interest fiscal policy that created this system is an effective bridging of the public and private sectors' ideologies.

PSMA Australia Limited

This case study begins with a revealing anecdote about the privatisation of government public goods, an ensuing complex relationship between government and the private sector, and a subsequent government decision on open government data.

In 2014 the government business enterprise NBN Co Limited (National Broadband Network) purchased access to the national address dataset, leading Senator Anne Urquhart to question why the dataset which is "effectively public data" is now in the private domain, and "how much did those companies [Pitney Bowes and PSMA] pay to have the monopoly right?" (Australia. Senate 2014, p. 89). Drew Clarke, the then Secretary of the Department of Communications, stated that the address dataset

> *only exists because the nine Australian governments created PSMA. They did not acquire a right. The company was created to build that database and others. So it is inherent in their structure . . . the company that is licensed to distribute the boundary data— the polygon boundaries of the distribution areas—is Pitney Bowes, a well-respected business in the information field* (Australia. Senate 2014, p. 89).

Senator Urquhart then asked if an offer had been made to "reacquire the rights on behalf of the public", upon which Clarke noted that he was in the process of negotiating its release as an open government dataset (ibid.).

On 26 February 2016, the Commonwealth government announced that as part of its National Innovation and Science Agenda, it had uploaded to the open government data portal (data.gov.au) two of several government datasets previously available only through a fee-based private company: the geocoded national address dataset (G-NAF), and government administrative units' boundaries dataset. Each became available under a creative commons licence (CC BY 4.0) with attribution to PSMA Australia Limited. These are datasets that economists, national governments such as Denmark, the United Kingdom and Spain[51] (Lennert 2015; McMurren *et al.* 2016), and international organisations such as the World Bank (Stott 2014) have declared to be among the valuable of all spatial data. From February 2016 these two datasets could now be freely accessed and re-used.

PSMA Australia Limited (Public Sector Mapping Agencies) is an unlisted public company limited by shares, wholly owned by the state, territory and Australian governments, each of which has one share. Its antecedents go back to the 1980s when there were 9 mapping agencies in Australia: the seven state and territory agencies and two Commonwealth bodies—Australian Land Information Group (AUSLIG), now Geoscience Australia, and the Royal Australian Survey Group, currently subsumed into the Department of Defence. There was no standardisation among their various systems, and little prospect of achieving a national one because of jurisdictional intellectual property, protectiveness and lack of trust (Holmes 2005 (revised 2009)). However, when in 1992 the Australian Bureau of Statistics (ABS) was

[51] At the time of writing, 15 March 2019, Germany's dataset was available only for a fee of approximately €100,000.

looking for mapping support for the 1996 census, the governments' surveyors-general formed a collaborative partnership (PSMA) in order to discuss how this could be done. When ABS issued a tender, PSMA submitted an expression of interest, as did AUSLIG even though it was part of the PSMA group (see Peled 2014 for an account of the acrimonious relationshps and mistrust within PSMA partners). Ultimately, ABS awarded the $3.4 million tender to PSMA; although PSMA was not at the time a legal entity, the contract was signed in June 1993 by the New South Wales Land Information Centre as the lead agency. The contract provided for a small royalty return to PSMA Australia from the retail sale of CDATA96 (census) products, and an annual maintenance fee of $100,000 (Holmes 2005 (revised 2009)). The Commonwealth government joined the partnership in June 2001 and PSMA Australia Limited was incorporated, with each government owning one share, with an investment of $1.[52]

PSMA is a wholesaler of government data, which it standardises and integrates into new products and services that it licenses or sells direct access to, in effect becoming the clearinghouse for all national or multi-jurisdictional geospatial data. PSMA's original contract with ABS was to build a national cadastral map to support the 1996 census data; this could not be done from the 'raw' data of the different mapping agencies. Thus the value-added services provided by PSMA are 1) the negotiation, aggregation, standardisation and verification of data across all jurisdictions, and 2) the subsequent integration of the datasets to develop new information products (Figure 4). These services are arguably beyond the financial resources, and possibly the motivation, of the individual data custodians (Paull & Lowell 2010), and in fact PSMA itself outsources the data management (integration and maintenance) to the private sector. In 2012, PSMA negotiated new licensing agreements that established that the company owns the intellectual property rights in the data that comprise their current data products (PSMA Australia Limited 2012):

1. Administrative boundaries (geographic areas, post code area, local government areas, electorates, and marine zones);
2. G-NAF (Coded National Address File);

[52] Government of New South Wales 2001, *Public Authorities (Financial Arrangements) Amendment) Regulation 2001*, Gazette No 103 of 29 June 2001, page 4700.

3. Land tenures (cadastres);
4. Transport and topography;
5. Features of interest; and
6. Geospace (built environment data anchored to geospatial base).

PSMA was designed to be self-funding; after it received the initial "seed" money of the 1993 ABS contract, no further government funds would be provided to support its activities. However, when the government released G-NAF and the Administrative Boundaries datasets as open data, $28 million was paid to PSMA. This amount was reached through an independent audit by a private company, and was to be offset by reductions in departmental funding across the Commonwealth (Hansard, 22 February 2016, pp. 10-13). PSMA "does not obtain government data at a nil cost and pays licensing fees, equal to or greater than market rates, to access data" provided by the jurisdictional data custodians (Paull & Lowell 2011, p. 5), and it pays annual royalties back to them on products sold ($11.7 million over the period 2008-2017). It should be noted that PSMA refers to the governments as being "custodians" of the data, although under its agreement for releasing the data, the intellectual property belongs to PSMA. According to Reichman and Samuelson this is not unusual as "some government data compilations, of course, serve as "raw material" for value-adding providers who claim proprietary rights in the end products" (1997, n. 32).

The PSMA business model is user-pays. In 2002, the government's cost recovery policy (which was in accordance with the *Commonwealth Competitive Neutrality Agreement 1996*) stated it "considers that cost recovery arrangements should have sound economic underpinnings and should not be undertaken solely to raise revenue for Government activities."[53] However, the current (2016) guidelines state that Australian government entities "should generally set prices for commercial charging activities to recover the costs of the activity and to earn a rate of return."[54] PSMA is not a government business entity (GBE),

[53] Government Response to the Recommendations of Productivity Commission Report no. 15 'Cost Recovery by Government Agencies'.

[54] *Australian Government Charging Framework FAQ* http://www.finance.gov.au/sites/default/files/charging-framework-frequently-asked-questions.pdf.

and its price point for access to its products and services is designed to cover costs and to fund future developments, not to maximise profits. As well, it is to deliver to government a small financial return to be reinvested in activities associated with data collection, management and maintenance.[55] It is interesting to note that since its incorporation in 2001, no financial dividend or distribution has ever been paid to the shareholders, although jurisdictional royalties are paid to the owners of the raw data. It should also be noted that PSMA Australia Limited "seeks to avoid competing with its member agencies by focusing on *national* applications for its data assets" (Peled 2014, p. 90).

Access to these value-added information products is made available commercially to both private and public sector users, either directly or through a reseller network, managed by PSMA Distribution Pty Ltd. The resellers, VARs (value added resellers), may provide full access to both the standardised raw data and to the integrated products (currently thirteen VARs including Pitney Bowes) or may provide embedded access to products that use PSMA (currently seven). PSMA last provided a list of its direct customers in 2016 (PSMA Australia Limited, p. 13) and it included the Australian Bureau of Statistics, NBN Co, Transport Certification Australia, Geoscience Australia and State Government departments including Tasmania's Department of Primary Industries, Parks, Water and Environment, Western Australia's Landgate and Queensland's Department of Natural Resources and Mines.

PSMA data revenues have grown steadily since the company's incorporation in 2001—according to its 2017 annual report, from $200,000 in 2002 to almost $14 million in 2017. The three main sources of revenue are royalties and access fees from value-added resellers (VARs), and fees charged to corporate or direct clients (Table 15).

[55] *Understanding PSMA Business Model* October 2015 https://www.psma.com.au/blog/corporate-publication/understanding-psmas-business-model.

Years	VARroyalties	VAR access fees	Corporate access fees	Total data revenues
2007	3,146,004	417,979	662,025	4,226,008
2008	4,003,411	382,814	715,600	5,101,825
2009	4,496,982	397,865	603,747	5,500,603
2010	4,794,073	428,223	597,273	5,821,579
2011	4,904,516	423,141	556,888	5,886,556
2012	5,052,346	442,424	875,669	6,372,451
2013	5,378,069	462,150	1,411,345	7,253,577
2014	5,276,451	588,272	2,403,049	8,269,786
2015	5,524,157	474,018	4,385,306	10,383,481
2016	5,495,975	420,701	6,524,389	12,441,065
2017	3,952,173	224,151	9,556,505	13,732,829

Table 17 PSMA Australia Limited data revenue streams 2010-2017
Data source: ***PSMA Annual Reports 2010-2017***

PSMA's profits have also grown steadily (Figure 36). It can also be seen that there has been a steady increase in access to the datasets by corporations, which includes government agencies, statutory authorities and business entities; by 2017 this segment was 70% of the company's profits. In contrast, royalty revenues from the resellers (VARs) dropped from 82.4% to 28.8%, and direct access fees by VARs halved (63% to 3.1%).

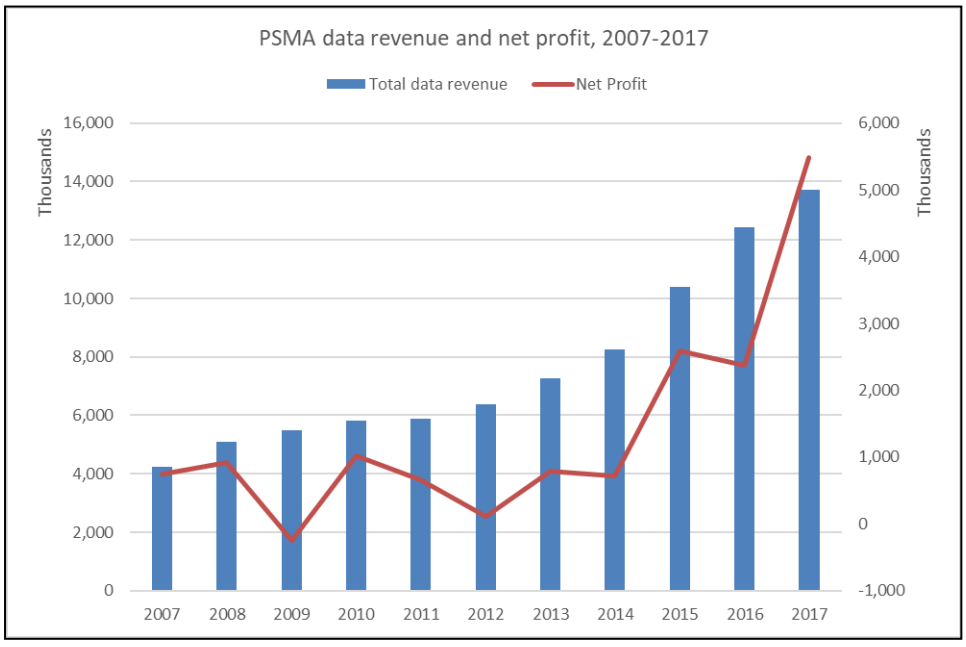

Figure 36 PSMA data revenue and net profits, 2007-2017
Data source: ***PSMA Annual Reports 2010-2017***

That governments should buy back their own data seems counter-intuitive. According to the World Bank it is not unusual; it cites for example, that one third of the downloads from British Columbia's data portal was from the provincial government (Stott 2014, p. 9). Furthermore, Pollock (2006) argues that when it is repurchased by government, it "simply moves costs around within the government apparatus rather than being true 'cost-recovery'" (p. 14, a model certainly practised within the Australian Commonwealth government). One of PSMA's consistent VARs is Pitney Bowes Australia, a subsidiary of the US company that specialises in location data. It acquired the Australian company MapInfo Australia, originally Peripheral Systems, which was interested in obtaining national mapping products as early as 1996 (Peled 2014, p. 87). Since 2006 Commonwealth government departments alone have awarded Pitney Bowes Australia under its various names (MapInfo, Mapdata, etcetera) tenders worth over $5 million for data, mapping software and services (data source: Historical Australian Government Contract Data 1900-2016).

The complex relationship between Australian government datasets and the private companies PSMA and Pitney Bowes is a case study in whether decisions concerning public and private goods, pricing and access to what is essentially government data have been made in the public interest. The morphing of a consultancy into a company was an expedient solution to the immediate problem of the 1996 census data, and subsequently provided a public service by harmonising Australian jurisdictional raw data into a national asset—a public good—a service for which there must be a financial consideration. However, PSMA as a business entity has the appearance of irregularity. It is a company that is not a GBE (government business entity) but whose sole shareholders are governments who receive no dividends. It is a company that rightly owns the intellectual property of the information product (G-Naf), but also that of the data itself, which it bundles into a private good that it sells in the marketplace. Furthermore, its largest on-seller of the information products is an international company that sells software to governments for using the data.

It is debatable that other government decisions have not always been transparent and in the public interest, in this case those members of the public who wished to re-use the data. The decision to give the administrative boundaries datasets to PSMA is not entirely transparent, and their on-sale pricing is questionable since it is done on a "case-by-case basis . . . [and that] potential licensees will need to be able to provide a description of the planned use(s) for the data" (PSMA Australia Limited 2006, p. 19). This would appear to be what Cook (2010)

suggests is an attempt "to appropriate surplus value that a buyer would be willing to pay over a price that might be sustainable with price signalling under open market conditions, the result is discriminatory pricing under circumstances that lack transparency . . . [and that it] is difficult to make assessments about competitive neutrality where there is a lack of transparency" (p. 19). The subsequent government decision to release the boundaries data as open government data is also not entirely transparent; according to public requests and comments posted on the data.gov.au blog before the release, the most requested data were the cadastral dataset, which was not released. According to the PSMA production description of the Land Tenure (cadastral) dataset, it is available under the licence agreement brokered by PSMA Distribution. Undoubtedly these datasets, through industry and government re-use, contribute a great deal to national economic development. But when a national initiative led by the CSIRO to provide a data portal for emergency services could not include PSMA data since it "costs approximately $A50,000 per year to licence" (Power *et al.* 2012, p. 24), it seems the public interest was not served.

Discussion

This chapter is based on the assumption that national, or indeed international, economic development should be in the public interest; that is, socio-economic policies and their outcomes "serve[s] the advancement of the interest or welfare of the public" (McKinnon v Secretary, Department of Treasury [2005] FCAFC 142, #9). It seeks to balance competing interests and attitudes toward the value of information and information products, toward public and private goods and toward the funding of essential services. In the 21st century zeitgeist of a knowledge economy, provision of services is best left to the rule of the market (Polyani 1975[1944]), changing the relationship between government and its citizens to one of consumers and the marketplace. This change has been driven by policies that embed information with a commercial and, in some cases, a monetary value, which has consequences for government transparency and accountability. The various components of this case study explore the consequent issues of ownership, intellectual property and confidentiality that give rise to these competing interests, and the balance that needs to be achieved for the most equitable socio-economic benefits.

One of the more obvious potential conflicts arises from commercial-in-confidence claims in government contracts for outsourcing goods and services, both one-off transactional contracts

and contracts embedded in public–private partnerships. The case study has shown the relative ease in claiming commercial-in-confidence in the tendering process, and in unconditional and conditional exemptions under Freedom of Information. In the case of public–private partnerships, the World Bank (2013) has argued that significant disclosure, particularly proactive disclosure, can help deliver significant economic benefits that are good value for money. There is, however, scepticism among some scholars regarding the actual level of disclosure, particularly in earlier years (for example Barrett 2004; Hood *et al.* 2006; Roberts 2006), although it would seem that in Australia, access to information about public–private partnerships is beginning to improve (Hodge, Greve*, et al.* 2017). Nevertheless, others have argued that PPPs have created a significant change in the relationship between governments and the citizens. Jean Shaoul (2011) for instance, has suggested that PPPs operate as de facto public authorities, rendering obsolete the traditional mechanisms of accountability for public expenditure, accountable to their shareholders rather than the public and shifting the power relationship of the state to the private sector.

In its review of economic studies of the economic and social benefits of open government data, the Commonwealth Bureau of Communications Research (Kreimer 2008) concluded that contemporary wisdom is that the provision of open government data is strongest for raw data since it is likely to exhibit the strongest public good characteristics, and hence the broadest benefits from its release. It suggested that in general, net public benefits will be greater if significant value adding is left to the market, since it will generally have more informed insights in identifying what value-add is of benefit to the users—"value-adding in open government data is generally better left to the private sector" (ibid., p. 33). On the other hand, an analysis of providing open access to the Australian Bureau of Statistics (ABS) data showed the cumulative returns ($25 million per annum) outweighed the cost of providing access ($4.5 million) by a factor of five (Houghton 2011, p. iv). Gruen (2009) reported that "government revenue will often benefit more from taxes on the economic growth stimulated by open access to PSI [public sector information] than it will suffer where governments lose direct revenue for the sale of PSI" (p. 60). Furthermore, the 2017 European report on open data (Berends *et al.* 2017) suggests that the potential for governments, economies, and societies as a whole "becomes even larger when public sector information is combined with privately held data of public interest" (p. 3).

Economic commentary on geospatial data is extensive (see for example, Gunasekera 2004; Ruijer & Meijer 2016; Weiss 2010); there is no question that its benefits, both social and economic, are significant. As early as 1990, the Australian Land Information Council considered it to be "at the core of efficient, effective and economic land information management" (ALIC, p. 5), while Barr and Masser (1997, p. 219) suggested it is a resource, a commodity, an asset and an infrastructure with "public interest dimensions" both nationally and internationally. From the service point of view, Troccoli (2018, p. 16) pragmatically suggests that "the distinction between commercial (or private) good and public good . . . is essentially irrelevant if the aim is to deliver an effective service." He also suggests that

> *thinking that a public good service should be treated differently [from a private good] just because the user will not be directly charged . . . can be a serious mistake, particularly if the service development process is led by non-commercially savvy people* (ibid.).

If this is the case, then it does beg the question why the Australian government has two different policies to achieve the same outcome.

In 2000 Stiglitz *et al*. (2000) developed a set of 12 principles for the provision of government goods and services in a digital economy. These are categorised into green light activities that governments should undertake with little concern; red light activities, which they should generally not undertake; and yellow light activities, which governments should undertake with caution. Of these principles, two of the yellow light activities are germane to this discussion.

> *Principle 4: The government should exercise caution in adding specialized value to public data and information [and] Principle 5: The government should only provide private goods, even if private-sector firms are not providing them, under limited circumstances . . . [and he argues that government] should exercise increasing caution as it adds more and more value to raw data or information, or as it provides a more and more specialized service* (ibid., pp. 51, 9).

In the case of the Bureau of Meteorology, it would seem that the arrangements for access to its data meet these principles, by providing access to all its emergency weather data and 80%

of all other data to the general public, as well as fulfilling its legislative mandate to government, national and international agencies. In conducting these activities, the Bureau is typical of other national meteorological services, with one important differentiation—commercialised weather services. These types of services deliver weather forecasting and weather-indexed insurance schemes, including weather derivatives. These last, are the ultimate in commercialisation of the raw datasets of national meteorological services; they are financial instruments, developed in the 1990s in the US after the deregulation of the energy industry. They are based on indexes of historical and observed weather conditions, particularly temperature-based data. The weather forecasting services in the United States and Europe are multi-million dollar industries (Mandel & Noyes 2013; Pettifer 2015), but in Australia there is only a small number of private sector companies, for example Weatherzone and Pocket Weather (BOM 2016). In the absence of large-scale private-sector competition, BOM delivers these specialised value-added services to individual clients. Since the Bureau provides access to all its data not only in weather emergencies and does not compete with the private sector in delivering excellent commercial weather services, it would seem to be an optimal solution.

In contrast, with PSMA the distinction between public good and private good is more opaque. The fact that PSMA is a private company owned by state and Commonwealth governments, but is not a government commercial entity, makes it difficult to reconcile its position vis-à-vis the playing field of other government commercial entities. Firstly, GBEs pay income tax, and secondly, as already discussed, they are regulated by the 1996 Commonwealth Competitive Neutrality Agreement (CCN), agreed to by COAG (Council of Australian Governments) in 2002 and updated in 2016. The situation is further complicated by the fact that COAG represents the individual states who are the shareholders in PSMA and the custodians of the raw datasets which separately provide revenue streams to those individual states. For the first 22 years of its corporate life (1993-2015), PSMA Australia Limited paid no income taxes. However, with the COAG's signing of the CCN in 2002, PSMA requested a ruling on its tax obligations and was advised by the Australian Tax Office that it was "considered to be exempt from income tax under the provisions of Section 24am of Division 1ab of the Income Tax Assessment Act 1936 on the grounds that it is a state/territory body." The playing field became a little more level in 2015 when, under a private ruling from the Australian Taxation Office, "the company and group are considered taxable" (PSMA Annual report 2015, p. 30).

This case study suggests that it is not coincidental that the rise of neoliberal government has occurred in the age of the network society. Government information and data are fundamentally a public good, a national resource paid for by taxpayers. Since governments clearly regard much of this data as revenue generators (OAIC 2013; Productivity Commission 2017), they may easily become a private good and access to it may depend on the willingness and ability to pay a market-set fee. Furthermore, outsourcing of government goods and services through contractual arrangements and partnerships with agents outside government has been made possible, or at the least facilitated by networks. Castells suggests that the network society is structured around financial flows in a "commodified democracy of profit-making" (Castells 2010, pp. 502-3); that the owners, producers, managers and servants become "increasingly blurred in a production system of variable geometry, of teamwork, of networking, outsourcing, and sub-contracting" (ibid., p. 506). Castells' financial flows as the integral component of the networked society have found credence with Bates (2014a), who points out the increasing power of the financial markets, particularly the weather markets' weather derivatives and weather-indexed insurance schemes.

All these factors are part of a modern democratic government's role in delivery of strategies for socio-economic development; but they are also shifting the power relationships between governments and their citizens, and between the public and private sectors. It also raises questions as to what exactly is public in "public sector information". And of the public interest, as Chris Wheeler says:

> *Every policy decision, such as a decision to build a road or to approve a development application, requires a weighing up and balancing of interests, at least to some extent. Most cases will not have a win/win outcome - there will be winners and losers. The decision maker needs to consider all of those who may be affected as individuals, but more importantly how the community at large may be affected* (Wheeler 2013, p. 44).

Conclusion

It is the responsibility of governments in modern liberal democracies to provide goods, services and socio-economic benefits in a manner that is in the public interest and accountable to its citizens who pay for them. By the last quarter of the 20th century, the intersection of governments' growing awareness of the commercial value of their information

with new concepts of economic efficiency gave rise to an increasing reliance on the private sector to deliver both goods and services. Government raw data, a public good, can be consigned to the private sector through commercialisation and subsequent transfer ownership, and essential infrastructure and other services are delivered by private sector entities under contractual arrangements with government.

The statistical analysis found the proportion of FOI requests that were refused for commercial reasons was relatively small, but when combined with the number of confidentiality flags on private sector tenders, it appeared relatively easy to claim commercial confidentiality. Government oversight considers that more administrative reform is required to prevent abuse. The case study did not examine statistics of public-private partnerships, since this type of contract is rare within the Commonwealth government. Nevertheless, while international supra-organisations such the World Bank consider Australia's transparency model to be good, professionals within this area are more sceptical.

The case studies of the valuable geospatial datasets demonstrate the shift in government policies concerning its relationship with the private sector and raise considerable doubts about the public interest of these policies. The decision to contract the private sector to harmonise a specific set of government raw data was a pragmatic solution to a one-off problem, but as the case study shows, there was little justification for complete privatisation. Furthermore, the research showed there was little transparency in the government's subsequent establishment of a private company in which the states and territories and the Commonwealth government are shareholders, although none of them has ever received a dividend.

The comparative analysis of the two datasets showed that both delivered socio-economic benefits. The dataset that remained in the public sector, completely accessible to the public, contributed more broadly to the national and international research and environmental communities. But the assignation of the other dataset to a user-pays model could be considered to be more in the interest of the private sector than in the public interest.

Chapter 7: The discussion

This chapter, with regard to the proposition that there are three dimensions of access to the information of the Australian Commonwealth government, reviews the findings of the study that are presented in *Chapter 4 The mechanisation of and management of Web-published information*, *Chapter 5 Legitimation, law and implementation*, and *Chapter 6 Commercialisation of information and the public interest*. It presents the conclusions to the principal research questions of the thesis: 1) how, why and under what circumstances has the government's expression of openness delivered citizen access to its information and to its data; and 2) how are the limits to information access exercised and justified? It submits an account of the ways in which the research extends the field and capital theories of Pierre Bourdieu.

Introduction

There is a natural asymmetry of information between governments and their citizens, one that is often contradictory to the Australian government's assertion of openness. The case studies, in their examination of this apparent contradiction, raise a number of issues that have a significant impact on citizens' access to government information. The key issues coalesce around four main themes.

1. the disruptive power of information and communication technologies;
2. conflicts of power within government;
3. the two-way relationship between government and the many institutions and individual actors that seek access to its information; and
4. the reasoning and strategies that governments employ to maintain secrecy.

This discussion explores these themes as an equation of power struggles to alter or retain government's natural inclination for secrecy. It demonstrates that overshadowing both sides of the equation is the dominating power of constantly evolving information and communication technologies.

In the previous chapters, three case studies provided an analysis of a specific aspect of government policy that by law, usefulness or pragmatism provides or contests requests for public access to the information government either generates or collects. The first study challenged e-government assumptions that the content published on the web is what citizens require, and that if web information processes for its publication meet minimal regulatory and technical standards, citizens' expectations that the information is available and easily found are satisfied. The study showed that this is not the case, that there is a mismatch between the government's assumptions and the citizens' expectations. The second case study was an analysis of Freedom of Information requests in order to ascertain if and when the legislation and governmental procedures for its implementation enable access or legitimise its restriction; its findings demonstrated that government power, invested in its agents and bureaucrats, often used legal disclosure exemptions on contentious grounds in order deflect inquiries or refuse access. The third study explored the reasoning behind the government's divergent and often inconsistent decisions that prevented access to government information, particularly datasets created through the processes of national socio-economic development, and effectively consigned them to the private realm. The study concluded that different ideological positions produce contradictory results, many of which are not in the public interest.

Bourdieu's field theory provides a way to think relationally; to peel back the layers of power, ideological and convenient alliances, and hostilities that brought about a shift in the government position from one of statutory secrecy to one of declaratory openness. This shift has not taken place in a singular linear trajectory. There has been a pattern of ebb and flow of concessions, enthusiasms, pushback and convenience, triggered by different forces, with intended or unintended consequences. It is a pattern played out among many actors: those who write, implement and adjudicate the rules of access, and those who want that access.

These actors are 'the government', which in the Westminster system, is represented by parliamentarians and their advisors, the political field. Separate from the government are the public or civil servants, the agents and institutions of the bureaucratic field, and the juridical field. Included in the juridical field are the legal profession, which belongs to both the political and bureaucratic fields through is place in autonomous government agencies such as tribunals and commissions. Outside government are the fields of journalism and civil society—Bentham's third and fourth public, the watchful, informed citizens and the media—

and the market. The following discussion will uncover the visible and invisible, temporary and permanent relationships (Bourdieu 2005a, p. 31) by which citizens ultimately gain at least some access to government information. Underpinning this discussion are several assumptions: that in theory, government secrecy is inimical to democracy; that governments of a liberal democracy should act "only for the public good" (Locke), that is, in the public interest; and that the rules of the game being played by the agents and institutions support the public interest.

The field of contestation

Access to government information takes place in what Bourdieu considers a field of contestation (Wacquant 2007), or as Lewin more bluntly says, a battlefield (see Martin 2003). To use Bourdieu's metaphor of a game (see Bourdieu & Wacquant 1992), the contest is over government secrecy or openness, where the players (contestants) employ antagonistic, supportive and contradictory strategies to further one or other position, depending on temporary or permanent self-interested circumstances. Information and communication technologies (ICTs) do not constitute a field in a Bourdieusian sense, but they are an actor, a dominant power in the field of government information. This is not to suggest they are deterministic; rather they are change agents that shift other fields and their actors into different relationships and positions of power within the field of government information.

The following sections explore this field of contestation through a reflexive process that uncovers the reasoning, strategies and relationships underlying the positions taken by different actors within the field, and the subsequent impact in the contest between secrecy and openness of access to government information.

Information technologies: driving change in secrecy

The findings of all three cases show that information technologies (ICTs) are a dominant power that materialises as essential actors driving change in the field of government information. They challenge or are complicit in the power conflicts that contest information access. They disrupt the norm of government secrecy by implicitly presenting a paradoxical challenge to that secrecy when governments employ them as visible or invisible actors in everyday administrative practices, and when they are used by non-government and other autonomous actors to force more openness.

There are two aspects of ICTs that have significant bearing on the ways governments provide or restrict public access to their information. The first is the inherent properties of the technologies themselves: hardware, software, algorithms and networks. The second is the technocratic power or technical expertise required to develop, operate and maintain them. Combined, these aspects of ICTs are fundamental to both web publishing and the structuring, storing and disseminating of datasets, and therefore are highly visible mechanistic actors. At other times they are invisible actors, masking 'real' actors, which for example, upload content to websites or execute search processes in fulfilling freedom of information requests.

As change agents, new information technologies have always challenged government secrecy and heralded great transformation. In the shift from the industrial revolution to the digital revolution, their power has become a dominating factor, driving all aspects of the networked knowledge society (Castells 2010), including the ways that governments generate, store and disseminate their information. In Australia, government secrecy has been the norm for most of its history, legislatively unchallenged through the Official Secrets Order (McGinness 1990; Meijer 2008; Snell 2006). This type of secrecy legislation, a concept that Weber (1970[1948]) suggested was an invention of the bureaucracy, enabled the state, the overarching meta-institution, to be the dominant power in the field of government information, controlling as it does its information and knowledge. But in 2010, the Australian government reversed this position, declaring open government was the default position and that access to government-held information was the hallmark of that openness (OAIC 2011b):

> *in order to promote greater participation in Australia's democracy, it is committed to open government based on a culture of engagement, built on better access to and use of government held information, and sustained by the innovative use of technology* (Australia. Department of Finance and Deregulation 2010a, para. 3).

This remarkable change in government rhetoric is, in part, the result of the ever-increasing reliance on the digital technologies that underpin the concept of e-government. The ubiquity of e-government as the primary vehicle for transferring information between government and its citizens is the basis of a new government–citizen relationship (Gruen 2009; Henman 2013). It has been described by Sprecher (2000) in technological terms, suggesting a purely technocratic relationship, as "any way to simplify and automate transactions between

governments and [their] constituents" (p. 21); and in informational and relational terms, as a way that

> *improves citizen access to government information, services and expertise to ensure citizen participation in, and satisfaction with the government process … [and] to improve[e] the relationship between the private citizen and the public sector through enhanced, cost-effective and efficient delivery of services, information and knowledge* (United Nations & American Society for Public Administration 2001, p. 1).

In both cases, there is an emphasis on costs and efficiencies in government processes and practices, a constant theme revealed in all the case studies as a relationship between the technocratic power of ICTs and economic power—reducing publication costs through web publication,[56] refusal of FOI requests through search and retrieval fees, and the ultimate commercialisation of datasets through privatisation and user-pays models.

Efficient management of the enormous amount of information being generated, first became critical in the wake of the second World War, when much of this information became centralised within the federal government (McGinness 1990). It was increasingly stored in new digital or electronic formats, particularly datasets (see for example, Burkert 1992; de Brisis 1995; Leadbetter 2011; Pollock 2010; Ubaldi 2013). A further administrative cost-cutting and efficiency decision, and one that had significant ramifications for later government information policies, was the decision to outsource the collation and dissemination of its information to private sector information industries (Piotrowski *et al.* 2018). On the surface, it would seem that these administrative decisions served to dilute government's informational capital by consigning its information management systems to private corporations, a decision that Schiller (1991) regarded as undemocratic. In fact, this thesis argues, the outsourcing policy led to a power-sharing relationship with the private sector, a relationship that has evolved into today's public–private synergy policies (Bourdieu 1969), and to extensive privatisation of what is essentially public information.

[56] According to the staff of the Royal Commission on Australian Government Administration, by 1975 the dissemination of information, which was the responsibility of public relations and public information services activities, employed 800 people at an estimated cost in excess of $100 million (McMillan 1977).

From a government perspective, e-government is very useful for providing a two-way flow of information in which it can collect data through surveys of citizens and engage with them on its policies through a feedback loop—use of social media being the ubiquitous technology, albeit one outside the remit of this thesis. It is also a vehicle by which government controls the content (discussed below) on which the feedback is based, effectively lessening openness, and avoiding the paradoxical consequences of citizens' demands for less secrecy. An earlier, parallel example illustrates how a technology altered government secrecy by citizens' demands for more information. The broadcast technology of television delivered previously 'hidden' information concerning the wars in Vietnam and Cambodia during the 1950s and 1960s; it was a disruptor of the norm of government secrecy, bringing "a confirmation of the reality of the events" (Meyrowitz 1985, p. 89). This reality had far-reaching consequences for access to government information. It was an impetus for change to government secrecy through Freedom of Information legislation in the United States (Sunstein 1986) and Australia (Terrill 1998; Whitlam 1972). It shaped a relationship between government and the media that is both antagonistic and collaborative, as discussed in the section *Contesting power*.

Technocratic power: delivering transparency or opacity

Technocratic power in the form of technical expertise is fundamental to the relationship between citizens and ICTs. Different levels or types of expertise are required to enable the two-way flow of information through a website. The quality and degree of this expertise are determining factors for success, without which there can be a sequestering of important government information. Technical expertise is required across the entire continuum of web publishing, from information management systems and user design skills, through the automated selection and deselection of documents, to citizens with high levels of expertise in searching for information. As part of the Internet, the Web is often regarded as the ultimate information commons (Benkler 1999; Bollier 2007). It elevates citizens' expectations of unfettered access to government information, an attitude that raises many issues that can result in what is essentially a sequestering of information when governments rely on their websites as the primary vehicle for information dissemination. The elements relevant to these issues include automated processes, content selection, levels of education and motivational power of the users, and contradictory assumptions and expectations. The first case study analysed the impact of these elements as they applied to a specific government

departmental website, which showed that the required public documents had, in effect, been sequestered.

On the other hand, as noted above, ICTs and their implicit technocratic power can disrupt secrecy when employed by actors outside government. The forensic analysis of the Department of Broadband, Communications and the Digital Economy could not have been done without this same technocratic power invested in other autonomous fields with high informational and symbolic power of social justice: the National Library of Australia and in civil society, the Internet Archive which can reverse intended or unintended government secrecy.

Transparency through a computerised system activity, often referred to as computer-mediated transparency (Grimmelikhuijsen 2012; Koliska & Chadha 2016; Meijer 2009), is often lauded for its ability to provide "objective information". However, the case study demonstrated that using the search function can deliver information that is lacking in context. Relying exclusively on computer-mediated functions runs the risk of delivering information that "appears indiscriminately, directed at no one in particular, in enormous volume and high speeds, and disconnected from theory, meaning, or purpose" (Postman 1993, p. 70). It is also of concern that automated processes, as Smith *et al*. commented, are "left to perform tasks on their own, and have the *authority* over these processes" (2008, p. 11). These are processes that automatically index content as demonstrated in the case study, that can delete or archive content by some arbitrary date, and algorithmically harvest content from content management systems; all of which can render content invisible, if not completely sequestered. As a consequence, neither the government assumptions nor citizens' expectations are met. In the case of the 'disappeared' government documents, from the government's point of view the rules had been complied with. The Information Publication Scheme (IPS) clause of the Freedom of Information Act (ACT Act) mandated the documents to be published on the website from where they would be "easily discoverable". That they were not, revealed a conflict between citizens' expectations (*illusios*) and the government's presumed assumption that web publishing is equivalent to transparency (Bannister & Connolly 2011a).

While the discussion above suggests that web publishing mechanisms may have resulted in an unintentional hiding of information, I contend it is reasonable to at least consider that the choice of web content, either by selection or omission, is a deliberate strategy to further

government secrecy. Although the IPS mandates what government content must be published on an agency's website, there is the broader issue of content selection, since a vast amount of other government information is published online. This includes datasets, e-government content concerning service delivery, citizen participatory information such as social media, and much other textual data including full documents in the paper sense; for example, reports, including reports of non-public inquiries, media releases, content selected from documents, and specially created content for web pages such as FAQs and announcements. Eschenfelder (2004) has observed there are many uncertainties about how and by whom this content is selected and deselected, including, as noted above the influence of visible and invisible power of technology.

In website development, there is an obvious relationship between ICTs and 'real' actors, the persons making decisions for the content of websites This raises serious issues about the availability of government-controlled access to information, particularly what is published and what, when or if it is to be removed. These policy decisions are made on many grounds, including reasons of secrecy, political expediency, or for its usefulness in presenting a positive view of government. The early studies of Musso *et al*. (2000) and Sprehe (1999) showed the potential for political manipulation of public information, although Mahler and Regan (2007) found little evidence of political intervention in web content selection either through automated processes or 'real' actors. In the case of the documents of the Finkelstein inquiry, which was initiated by a Labor government, my analysis found that politicisation was not a factor, since the documents were maintained by the new government, albeit not with the same degree of enthusiasm.

There is concern, however, about the power of invisible actors, the wire-pullers as Russell (2004[1938]), p. 34) called them, in the selection of content released, or not released, on government websites. These invisible actors are the political staff, the media and policy advisors, whom the Members of Parliament (Staff) Act 1984 (MOPS) defines as "partisan", since they are personally employed by the minister rather than holding a public service position (Maley 2018). In 2017 there were 432 of these advisors in Commonwealth Government departments (Australia. Senate. Finance and Public Administration Committee 2017), with increasing potential to exert ministerial direction (Shergold 2014). Clearly the role of media advisors is to control the message of governments in order to gain public acceptance of their policies, and where there is a potential for misrepresentation through the

power of language (Bourdieu 1987). As Eschenfelder (2004, p. 353) commented, there is the potential for these political advisors to use their influence to compromise the view of government web sites as "neutral conduits of facts", instead, as the findings in the case study suggested, they may deliver a message that is not conducive to the public's perception of their impartiality (Aucoin 2012, p. 181).

The case study also showed that new trends in web design using design elements such as full screen banner ads, heavy use of images, almost invisible search bars, and long vertical scroll bars, tend to emphasise the message of 'what we do'. This style of interface gives the impression that governments consider websites as public relations tools, selling the message that what they are offering is good for citizens and the economy. The third case study suggested that in the knowledge economy, the relationship between government and its citizens is changing to one of consumers and the marketplace. In the rhetoric of e-government, there is a similar emphasis on consumerism (see for instance, Colman 2007), which, when combined with the entertainment focus of the ICTs of the Webosphere, may distract from valuable government information content, effectively hiding it from citizens.

The technocratic power driving all aspects of information dissemination, including the ability to access it, is based on a relationship with information technologies. Just as the industrial revolution demanded workers who could "read instructions, could follow drawings, and had at least a smattering of scientific knowledge" (Kelly 1952, p. 18), the knowledge revolution requires highly specialised knowledge. Much has been written on various aspects and models of digital literacy (see for example, Miller & Bartlett 2012; Mossberger *et al.* 2014; Van Deursen & van Dijk 2009; van Dijk 2005), often emphasising abilities such as search skills and concepts of the digital divide. Both these concepts were apparent in the first case study. The forensic analysis of the Department of Communications website showed that having motivation and good information searching skills—technocratic power—could deliver results appropriate to the seeker of information. The case study suggested that without technical skills and access to digital technologies, information on government websites remains hidden; that the emerging notion of digital informational capital is a combination of highly complex digital technologies and increasingly new specialised technocratic power, without which "most of the knowledge input into political decision-making, access [will] … become restricted to a very few" (Braman 2006a, p. 315). Finally, as a transparency mechanism which proactively publishes government information on websites, the enormous power of

ICTs can have a paradoxical effect. Just as they are able to deliver information efficiently, often in real time, without human checks on automated processes they just as effectively drive secrecy.

Contesting power

This section explores three instances through which different fields have contested greater access to government information. The first contest is the power struggles to secure freedom of information (FOI) legislation, the mechanism for achieving what I have termed the second dimension of access to government information. The second are the specific battles between the major political parties, since they are important actors effecting changes through their power to initiate the legislative mechanisms. The final contest comprises the government's shifting relationships, sometimes antagonistic, sometimes friendly, with the media and market fields.

The battle for legislation

The right of citizens to request access to unpublished government information was, and continues to be, portrayed as a binary contest of power between government and citizens. I argue that it has been a multifaceted contest to deliver the primary mechanism to legislate this right, the Freedom of Information Act; if 'the government' is the political field, then as Justice Patricia Wald commented, this right "cannot be left solely to the politicians" (Wald 1984, p. 654).

Legislating access to government information is a complex field of contestation in which the actors in the all the fields of power—political, bureaucratic, juridical, journalistic, civil society and the market—and their ideological, pragmatic and convenient relationships shift from the hostile to the cooperative and back again in order to achieve a goal. While the goal of interest in this discussion is the passage of freedom of information legislation, each of the fields had specific objectives which, when achieved, have had far-reaching consequences for the initial passage, implementation and subsequent need for reforms of the FOI Act of 1982. Into this complex mix go the economic, administrative and political drivers for the decisions made by each of the fields; while the market field is always present, as the second and third case studies demonstrate, its power is more obvious in the contest over the 2009-2010 reforms to the legislation. There are two major triggers in this power struggle; the first was

initiated by the political field, and the second was predominantly the result of actions by civil society.

As previously discussed, the enormous growth of a legislatively secret central government required an increasingly powerful administrative bureaucracy, in which decisions were not transparent. It was, as suggested by McMillan (2009, para. 3), a situation in which "government was growing in size and was exercising more administrative authority and discretionary power" that represented the autonomy and dominant power of the bureaucratic field. By the late 1960s, calls were coming from politicians, the actors in the political field, for a judicial review of administrative law in order to secure changes that would lessen the bureaucratic discretionary powers and independent decision-making. It was in effect a battle by politicians for more decision-making power. Under the common understanding that judicial review can entrench good governance (*Commonwealth (Latimer House) Principles on the Three Branches of Government [2003]*), the stage was set for a power struggle that aligned the political and juridical fields against the bureaucratic field, a contest that had major implications for juridical power in the adjudication of FOI requests.

In an effort to curb the power of the bureaucracy, in 1968 the Liberal-National Party (LNP) government commissioned the landmark Commonwealth Administrative Review Committee, known as the Kerr Committee, headed by former federal judge Sir John Kerr. Its purpose, as the committee members saw it "was to protect citizens against government" (McMillan 2009, p. 1) and was

> *a direct response to concerns about the conflict inherent in government secrecy, and the closed nature of its decision-making, in a climate in which the decisions were impacting more and more on the lives of citizens* (Downes 2009, p. 3).

Writing in 2015, Justice Duncan Kerr, another member of the Kerr Committee, described the committee's purpose was "to review the reviewer", and to "balance between the interests of the citizen and the government, a balance which is critical in a free society" (Kerr 2015, p. 3). As for the bureaucratic field, Justice Anthony Mason commented:

> *[l]et there be no mistake about this. There was a very strong bureaucratic opposition to the Kerr Committee recommendations. The mandarins were irrevocably opposed to external review because it diminished their power* (Mason, quoted in Kerr 2015, p. 11).

This is the same position bureaucrats take in refusing FOI requests; that disclosing information about deliberative processes would curtail their power for frank policy debate (Shergold 2014, p. 41). The significance of the Kerr Committee's recommendations for access to information were to bring in several administrative reforms, including new legislative oversight mechanisms, and in particular the Administrative Appeals Tribunal Act 1975 (AAT Act). While this had the intended effect of curtailing the power of the bureaucrats, it extended the already powerful juridical field in the field of government information, creating possibly unintended consequences for oversight of politicians through freedom of information. It is not coincidental that FOI scholars (see for example, Thynne & Goldring 1981; Zimmermann & Favell 2011) consider these administrative reforms of fundamental importance in breaking down government secrecy.

The AAT Act created new players in the juridical field, which had critical repercussions for the FOI Act. The first was the Administrative Review Council [ARC], which continues today. It reports on a wide range of administrative law matters relevant to the case studies, for example, government business enterprises and tendering and contracting by public sector agencies (Segal & Creyke 2007). The ARC also collaborates with other government agencies on policy reviews, one of which noted the critical impact of the AAT Act "on the way agencies make decisions and the way they record information" (ALRC 1995, p. 13). The second was the establishment of the Australian Administrative Appeals Tribunal. Until the 1970s, the concept of an ombudsman was relatively alien in Australia, it was, as Snell (2007, p. 100) wrote, a concept "on the edge of public administration, assigned a secondary and assistant role." Importantly, the Administrative Appeals Tribunal Act precipitated the passage of the 1976 Ombudsman Act, which ultimately established the Australian Information Commissioner Act (OAIC). It was this legislation that provided oversight of FOI implementation and adjudication of decisions; it was this legislation that became the battlefield between the two political parties described in the second case study and elaborated on in the later section, *The ebb and flow of political contests*.

The juridical field acts "in practice relatively independent of external determinations and pressures" (Bourdieu 1987, p. 816) and its power lies in its "fidelity to the basic value of adjudication" (Hoole 2014, p. 431) to be an 'honest broker' and work in the national interest, particularly, as we have seen, in the interest of civil society and its citizens. In any field of contestation, relationships can be simultaneously antagonistic and collaborative, as in the administrative reforms of the 1970s discussed above, when a political party commissioned the judicial review that challenged the autonomy of the bureaucracy. At other times, the Australian Law Reform Commission (ALRC), an autonomous juridical actor within the Attorney-General's portfolio, undertakes research and provides recommendations to reform the law on topics selected by the Attorney-General. One such request was the 2000 inquiry into the Judiciary Act to examine proceedings relating to claims against the Commonwealth (Barnett 2001).

More frequently, the ALRC is asked to examine an opposing political party's policy, or on a policy of the political party in power. In such cases, although the integrity and impartiality of the ALRC is beyond question, the nature of the requests can be a partisan attempt at dominating policy debate. Two examples of such requests, as the case studies demonstrated, had long-term ramifications for FOI requests. The first was the report on *Privacy* (ALRC 1983) commissioned by a LNP government to examine, among many issues, the tensions between personal privacy and freedom of information legislation. The second was commissioned by the Labor government to review the FOI Act; its terms of reference clearly requested recommendations for the removal of barriers to better access to government information (ALRC 1995).

The final push to secure the passage of the legislation returned the contest back to government versus the people, but the relationship with government had subtly changed. With the passage of the United States freedom of information legislation in 1966, the political sentiment in Australia was one of commitment to similar legislation. Partly driven by the implicit influence of new information technologies, politicians acceded to the need for more transparency. This position shifted the contest to a power struggle between temporarily allied political parties proposing legislation and the bureaucratic field that opposed it, and through a sequence of interrelated events, the ultimate passage of the legislation was the achievement of the field of civil society.

In the political field, Gough Whitlam's 1972 election promise of FOI legislation came at a time when the conservative LNP government was "tired and secretive after 23 years in office, [and] had no effective response" (Terrill 1998, p. 92). Once in power, the Labor government under Whitlam fulfilled its campaign promise by establishing an interdepartmental committee (IDC) to propose legislation. The committee delivered two reports (the second requested by a new LNP government in a spirit of collaboration), both of which were indicative of the intransigence of the bureaucratic field. Of the 1974 report, Whitlam commented the proposed legislation could not "overcome the resistance of its most senior and respected public service advisors" (1985, p. 621). The second, delivered two years later, "would do more to entrench the Administration's right to withhold official information than to secure the public's right of access to it" (McMillan 1977, p. 279).

A later significant consequence for FOI legislation was Whitlam's decision to make another attempt to rein in the autonomy of the bureaucracy on the grounds of improving economic efficiency. This was the Royal Commission on Australian Government Administration (RCAGA), which concluded

> *that public bureaucracies are inherently inefficient in their use of resources … that the bureaucracy was insufficiently responsive to the needs of its political masters, that it pursued its own ends for various reasons, some intentional, some not, and thus frustrated the objectives of ministers and governments … [and had a] lack of responsiveness to community desires and pressures and [an] undue reliance on the "exclusive" relationship between the public servant and the minister* (Hamilton & Hamilton 1976, p. 304).

Its significance for FOI came in the form of an attached appendix, authored by the activists and public figures Paul Munro and John McMillan. The appendix, known as the Minority Report Bill, concluded "[there is] little impetus toward forms of access to governmental information which conflict with the self interest of bureaucrats or politicians in office" (Munro & McMillan 1976, quoted in McMillan 1977, p. 395). More importantly, it included Munro's detailed draft freedom of information bill, which Terrill, writing in 1998 considered that it "remains the most liberal proposal for legislation yet developed in Australia" (p. 93).

The balance in the contest within the political field shifted when the Minority Report Bill was published, galvanising the public campaign for FOI legislation. Already there was an activist pressure group that included public figures, the Committee for the Freedom of Information Legislation (F.O.I.L. Campaign) whose members included, among many, officers of the Library Association of Australia, the ACTU (Australian Council of Trade Unions), the Australian Journalists' Association, the Women's Electoral Lobby and senior politicians from both parties.[57] It has been suggested by scholars (for example, McMillan 1977; Snell 2000; Terrill 1998) that the eventual passage of the legislation was due to this public pressure group. Seven years later, a LNP government passed the legislation in 1982; it was a pragmatic end to a long and bitterly fought power struggle that was in part due to the influence of information technologies. As Terrill commented:

> *[after] three years in opposition his [Malcom Fraser's] party was sufficiently distant from 23 years of practising government secrecy to be able to reverse its position … demonstrating how open government was becoming the new orthodoxy* (Terrill 1998, p. 92).

In the aftermath of the passage of the FOI Act, it quickly became obvious that the legislation was far from perfect; the second and third case studies demonstrated that by the 1990s the legislation was no longer an effective mechanism to counter government secrecy. As will be discussed in more detail in the section *Legitimating secrecy*, politicians and bureaucrats, often in concert, were using a range of strategies to either restrict the number of FOI requests or to prevent the disclosure of requested information. For example, citing a burden on the workload of departments, fees for making a request were introduced in order "to contribute towards meeting its cost" (Attorney General's Department 1987, p. 72); or refusing requests under rules that gave ministers or bureaucrats almost unrestricted veto power (see for

[57] The leading pressure group was the "Freedom of Information Legislation Campaign Committee (members of which included the chief officers of the ACTU, ACOSS, Australian Conservation Foundation, Library Association of Australia, Australian Union of Students, Australian Consumers' Association, Council of Australian Government Employee Organisations, Australian Journalists' Association and Women's Electoral Lobby; politicians (Senator John Button, ALP and Senator Alan Missen, Lib) and academics (Gareth Evans and John McMillan)" (ALRC 1995, p. 16).

example, Hazell & Worthy 2010; McMillan 1977; Terrill 1998). This veto power (conclusive certificates) had been introduced "at the insistence of paranoid antipodean Sir Humphrey Applebys[58] and their ministerial masters", arguing the review bodies set up by the 1977 administrative reforms "would be unreliable in protecting sensitive information" (Snell 2004, p. 10). By the mid-1990s, there had begun a new battle to reform the original FOI legislation. It was a battle that ended with the reforms of 2009-2010, during which there was another shift in power relationships. In collusion with the bureaucratic field, there began a new struggle for the dominant position; this time it was between the same two major political parties that had previously formed a convenient relationship to achieve a degree of openness that matched government rhetoric.

The ebb and flow of political contests

Political contests have produced an ebb and flow pattern in Australia's transition from secrecy to open government. The previous discussion has shown this transition involved complex relationships and power struggles among the various players, and included shifting positions between the political parties. The cases studies enabled an analysis of these shifting positions, antagonistic behaviours, political attitudes and self-interestedness in a contest for political power between the two main political parties: the Australian Labor Party and the more conservative LNP Party. The timeline (Figure 37), representing the events that have had a profound impact on access to government information, has all the hallmarks of an ideological contest.

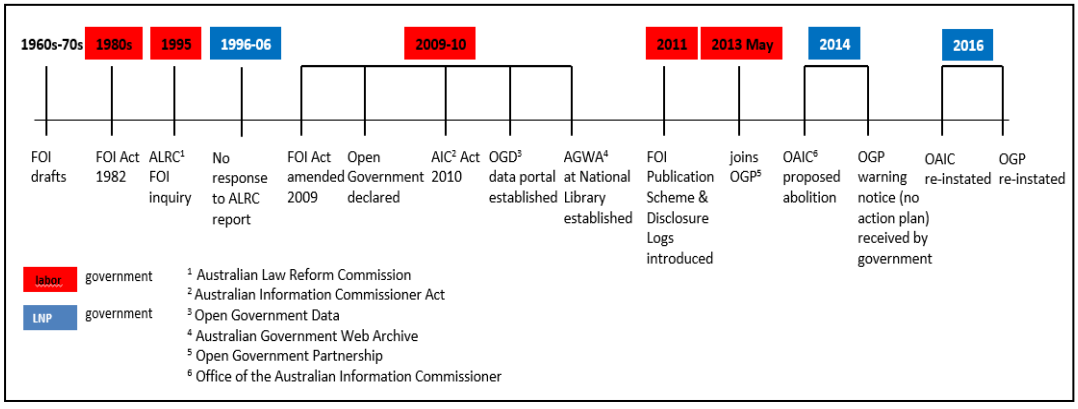

Figure 37 Summary timeline of significant events in reforming government secrecy in Australia

[58] A fictional senior civil servant with talent for obfuscation and manipulation of his political masters in a popular British TV comedy series, "Yes Minister" and later, "Yes Prime Minister".

It was the Labor party that delivered the Freedom of Information Act in 1982 and initiated the 1995 inquiry into the problems of the legislation, in order "to extend as far as possible the right of the Australian community to access to information in the possession of the Government of the Commonwealth" (ALRC 1995, p. 5). After the Labor party regained government in 2008, it passed the 2009-2010 FOI reforms, implementing the majority of the inquiry's recommendations. In 2014, the LNP government introduced the Freedom of Information Amendment (New Arrangements) Bill 2014 that would rescind the Australian Information Commissioner Act (AIC Act). While citing budgetary constraints, the bill was widely seen as a blatant political power move to strip away the review processes overseeing political decisions in FOI cases. Without any budget for the Office of the Australian Information Commissioner (OAIC) and the AIC bill languishing in the senate, the LNP government had substituted economic power for legislative power to accomplish its political goal. This action, according to an FOI expert, "harm[ed] not only the usability of federal FOI in Australia, but undermine[d] the current federal government's claims of being accountable and transparent" (Lidberg 2014, para. 5)—and earned the ire of the juridical field, who argued that not only was the bill unconstitutional, but "[g]reater secrecy has been reintroduced" (Smith *et al.* 2015, para. 6). Nevertheless, a less conservative LNP Party Prime Minister in his 2016–2017 budget allocated $37 million over four years to re-fund and therefore effectively reinstate the OAIC—three times the amount that had previously been declared "too expensive".

Unsurprisingly, the shadow attorney general, Mark Dreyfus, at the time commented

> *given its liking for secrecy the Abbott government is now seeking to abolish the Office of the Australian Information Commissioner and to introduce other measures to close the door on open government . . . [which] has been seeking to work in secrecy and to avoid its obligations under the existing FOI Act since it came to office"* (Australia. House of Representatives 2014, p. 12296).

One final event, revolving around an invitation extended to Australia to join the Open Government Partnership (OGP), aimed to "bring together government reformers and civil society leaders to create action plans that make government more inclusive, responsive and accountable" (OGP n.d., para. 1). By November 2014, after three years of inactivity, during

which there had been government instability, a new LNP government received a letter from the Executive Director of OGP that stated

> *The Government of Australia has not submitted its first NAP as of November 1, 2014, four months after the deadline of July 1, 2014. This letter is therefore to inform you that the Government of Australia has acted contrary to the OGP process for this cycle of action plan development …* (Frey 2014 para. 2-3).

One year later, the LNP government under the same less conservative prime minister who reinstated the OAIC office, notified the OGP that "the Australian Government will finalise Australia's membership with the Open Government Partnership . . . [and that] the Australian Government's National Action Plan [will] be submitted by 1 July 2016." (Turnbull 2015, para. 1). Two days later, the government launched a public consultation to develop the plan, which was delivered in November 2016.

We can debate the degree of overall commitment to openness of the political field, but through their actions concerning legislative mechanisms, the Australian Labor Party appears to show itself to be a champion of openness, and the more conservative elements of the Australian LNP party appears to be more concerned with maintaining secretiveness.

Shifting relations: news media, the market and economic power

Possibly the most vocal relationships with governments are those of the news media and the market, interactions that are reciprocally beneficial and antagonistic. These relationships revolve around access to and use of government information and creation of information. The role of the journalistic field in advocating for right to know legislation has been well documented, driving the movement for FOI legislation. On the other hand, in the era of big data, the market has been forceful in its demand for access to government datasets. The interactions with FOI and the use of datasets to create information have been fundamental to the relationships between the government and the news media and market fields, with subsequent impact on broader issues of access to government information.

The case study of FOI requests certainly reflected the adversarial relationship between journalists and government over requests for information about government policies and actions. The Australian FOI dataset does not provide data on those submitting requests,

although the case study analysis of requests for policy-related information indicated journalists and activists had high levels of usage; however, other studies conclude that it is the actors in the market who are the most frequent users of FOI (Kwoka 2015; Relly & Schwalbe 2016). This group of users are not adversarial to government, but are exerting economic power by which business entities request competitor information for business intelligence purposes; astonishingly, according to the research done by Kwoka (2015), there is an entire industry of companies whose business model is to submit FOI requests and resell the resultant information for profit. There is, however, a circumstance in which the market is adversarial toward government. Without any data on requestors, it is only possible to speculate that government agencies submit FOI requests to gather information on the business entities which they regulate. According to the study conducted by Relly and Schwalbe (2016), in a contest between economic power and legislative power, business lobbyists in the United States are actively campaigning to reduce FOI access. Among journalists, however, the use of FOI is decreasing, perhaps indicating a subtle shift in relations between government and the journalism field. The case studies show the bureaucratic and political strategies for closing off access to information are a successful deterrent to its use (see details in the section *Strategies of secrecy*), a conclusion supported by international news organisations (Cuillier 2017). These deterrents, particularly costs and slowness, have led to a different strategy; there is evidence that journalists are turning to open government datasets, in which they use their digital informational capital to analyse the data for productive and faster outcomes (Cuillier 2011; Stoneman 2015).

Governments, on the other hand, use their relationships with the news media to their advantage in a number of ways. We have already noted the large number of media advisors in ministerial offices; not only can they influence, or even write content for department websites, but they also write press releases which are often the news story of the day (see for example, Franklin *et al.* 2009; Lewis *et al.* 2008; Pearson & Patching 2008). Governments also deliberately leak information to compliant journalists (Roberts 2006). These targeted leaks, that is, deliberate choices made by high-level officials, increase governments' political power and thereby "propagate their disclosure norms" (Pozen 2013, p. 519), which in Australia are "a highly adaptive mechanism of information control" (ibid., p. 635). As the case studies show, these norms are often more conducive to secrecy than to openness.

The Australian government has always had a reciprocal relationship with the market field, relying on the private sector for producing, adding value to, managing and disseminating its information and data. But since the 1970s, when changes in government policies led to its increasing reliance on the actors in the market, this relationship has created serious ramifications for transparency and accountability, and subsequent public access to its information.

The third case study shows that when the market creates information for government, for example, through consultancies, or provides services through contractual arrangements, the information has the potential to be hidden under commercial-in-confidence claims. The research showed this potential was reduced when the 2009-2010 FOI reforms required information produced in the operation of contractual arrangements be subjected to public interest tests under freedom of information legislation. However, analysis of the tenders data showed that many of the claims of commercial-in-confidence, sequestering it from public scrutiny, were not submitted with the required documentation validating the claims. Public–private partnerships (PPPs) are a primary example of reciprocal relationships between government and the market field. This research did specifically examine PPP statistics since most are state-based, and the focus of the research is Commonwealth government information. However, research conducted by the World Bank (2013) and the OECD (2008b) suggests that the Australian model for transparency was better than most, although a survey of professionals in the industry found many considered more transparency is required, since the public is not convinced (Hodge, Boulot*, et al.* 2017).

Very serious concerns for access to government information centre on government–market relationships concerning its valuable datasets. The research demonstrated the policies and processes by which the states' cadastral raw data were converted into bundled products sold in the market, removing them from public access. In contrast, another very valuable geospatial dataset remained a public good that delivered its legislated services, at the same time creating specialised data services to subsidise the public ones. There is no question that both systems delivered very important socio-economic benefits to the community. However, it is an example of information capitalism (Ignatow 2017), in which the user-pays model is essential and is not always in the public interest.

Strategies of secrecy: bureaucracy and politics

The Australian Commonwealth supports its claim that openness "is the default position unless there are compelling reasons to the contrary" (OAIC 2011b, p. 10). This section explores the legitimacy and rationale of the application of these compelling reasons, and the consequences for access to information. Since most decisions are made in government departments by designated FOI officers, this discussion can, in part, be seen through the lens of bureaucratic power and political agreement. If open government is a metaphor for transparency, trustworthiness and legitimacy, then governments must be judged accordingly and access to their information is one measurement of their claim to these concepts.

The "compelling reasons" for not disclosing information, as stated in the FOI Act, centre on very broad and abstract notions such as government accountability, informing public debate, intellectual property rights, in the public interest, socioeconomic development, and the protection of personal privacy. The difficulty in applying these notions through legalistic mechanisms such as those specified in the Freedom of Information Act, is the potential for misinterpretation, misapplication, self-interested deflection and deliberate manipulation. There are times when secrecy is important, but at other times, disclosure of information as a mechanism of transparency can have paradoxical effects, for example, suddenly exposing the public to a situation of uncertainty or public safety (Helsper 2012; Zillien & Hargittai 2009), or inhibiting government processes.

It has already been noted that the Freedom of Information Amendment (Reform) Act 2010[59] removal of conclusive certificates was an attempt to restrain political and executive power for the more egregious attempts to maintain government secrecy. The replacement of the conclusive certificates with conditional and unconditional exemptions provides the criteria against which openness can measured. Conditional exemptions are subject to a public interest test: access is granted unless it "would, on balance, be contrary to the public interest" (FOI Act ss 4(1)). The unconditional exemptions refer to information that under no condition will be released. The case studies showed that both types of exemptions were contentious,

[59] While this was the original title of the legislation, it is now subsumed into the Freedom of Information Act 1982 (Cth), and the criteria are those in the Compilation No. 92, compiled 20 December 2018 and includes amendments up to Act 156, 2018.

particularly the categories of deliberative processes, operations of certain agencies, personal privacy, business affairs and the economy. Declaring documents to be exempt on the grounds of national security or secrecy provisions were also highly contentious.

There is a great deal of scepticism about the integrity of the processes by which FOI decisions for refusal are made. This scepticism is amply borne out in this case study, especially those refusals on the grounds of being detrimental to national security, when in fact they had every appearance of a political strategy to conceal information on highly controversial policies. Of course, there are very compelling reasons why national security should not be endangered, although Roberts (2006, p. 48) has suggested that in the security sector "it may be a policy of openness rather than secrecy, that best promotes security, by avoiding the tremendous costs that can follow from poor bureaucratic decision making." Nevertheless, it can be argued, and certainly the case studies presented evidence that in many instances, refusals may be very tenuously related to national security, or are used for overtly political purposes (Blanton 2003; Cuillier 2017; Feinberg 2004; Jaeger 2007). In the experience of Aloysia Brooks (2018), who has spent many years researching secrecy and crimes against humanity, non-disclosure of Australian documents on the grounds of national security is "overused and interpreted broadly so that information is kept from the public" (p. 3).

There was also every appearance of frequent use of the conditional exemption 'deliberative processes' to prevent disclosure for political purposes. Many of the requests submitted by journalists, activists and public figures with legitimate public interest inquiries, were refused on the grounds that disclosure of the information was not 'in the public interest'. Refusing to release emails concerning the rescission of the Australian Information Commissioner Act, an action that was widely debated in the community, would seem to have been more in the political rather than the public interest. Again, there are compelling reasons for ministers, their advisors and bureaucrats to be able to have frank discussions for planning and decision-making: it is an

> *essential balance that must be struck between making information held by government available to the public so that there can be increased public participation leading to better informed decision-making and increased scrutiny and review of the government's activities and ensuring that government may function effectively and efficiently* (Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of information) [2015] at 69).

Other conditional exemptions specified in the FOI Act that can limit access to information are the 'practical refusal' mechanism, the economy, and personal privacy. The practical refusal mechanism is particularly egregious, and was shown in the case studies to often place the interests of bureaucrats above the public interest or the citizens, a situation noted by many scholars (for example, Brooks 2018; Moon 2015; Paterson 2005). The exemption of documents on commercial grounds ('the economy') which translates into the concept of commercial-in-confidence, is often seen as especially prone to abuse; from the point of accountability of government expenditure, requiring better scrutiny of confidentiality clauses in government contracts (Australia. Finance and Public Administration References Committee 2014), as well as access to government documents as was in evidence in the third case study. Paterson (2004, p. 314) suggests that this is in part due to another amorphous concept—commercial-in-confidence—one that is "both ill-defined and poorly understood". On the other hand, Mulgan (2015) places the blame for non-disclosure on the nature of open contracts that are "less informative as documents and depend more on discretionary judgments which may be harder to access and disclose to the public" (p. 10). It is obvious there needs to be improvement in the way contracts are written, specifying all contractual elements less opaquely.

The case studies showed that the majority of refusals or partial grants of requests were on the basis of personal privacy. There is an inherent conflict here between two pieces of legislation; information that would be withheld under privacy legislation may be required to be disclosed under FOI; or the converse, personal rights to information can be exempt from disclosure under freedom of information (Paterson 2005). These two pieces of legislation differentiate between an applicant's own personal information and personal information that is held in third-party documents. The FOI personal privacy conditional exemption protects the privacy of individuals whose information is recorded in documents requested under FOI, and as demonstrated in the case study, the decision on disclosure rests on whether the individual is 'reasonably identifiable' in the document, a possibility that may be impractical due to costs and difficulty of doing so (OAIC 2015, p. 20). Nondisclosure of privacy (personal) information for reasons of national security, public safety (two of the unconditional exemptions), is obviously legitimate. Exploiting this legitimacy for bureaucratic secretive purposes is an abuse of power and one apparently often used to refuse disclosure; in the conflict between the two Acts, privacy interests often prevail (Davis 2003; Groves & Lee 2007; Snell 2007).

The conditional exemptions that require decisions to be subject to a public interest test are a particularly vexed issue; principally, as the concept is not defined in legislation and is open to criticism for being inherently amorphous (Paterson & McDonagh 2017). In connection to FOI legislation, the concept is left "necessarily broad and nonspecific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered" (OAIC 2014, p. 3). This lack of specificity can lead to uncertainty and inconsistency in its application, and to a tendency to refuse release of the information, in part because of an imbalance of power that favours the decision-maker (Solomon 2008), or bureaucratic risk aversion (Pasquier & Villeneuve 2007). Of course, avoidance of accountability and embarrassment at the uncovering of poor decision-making are also powerful incentives for deflecting FOI inquiries. Even before the passage of the legislation in Australia, the Senate Standing Committee on Constitutional and Legal Affairs (SSCCLA) had commented that it is "naïve to expect that a phrase such as 'public interest' can be administered properly by public servants, who clearly have an interest in non-disclosure" (SSCCLA 1979, p. 221). Without oversight, there is a natural tendency to disclose what shows the politician or the bureaucrat in a positive light, or to withhold information that supports the arguments of critics and opposition parties (Gundersen 2008).

The discussion above has sought to interpret government's commitment to openness against its application of its use of FOI mechanisms. There is one other strategy by which access to government information is effectively removed—the privatisation of its datasets. I do not argue against the legitimacy of these policies, although the case study analysis shows that two datasets, one privatised, the other remaining in the public sector, both successfully provide socioeconomic benefits to the community, but one is no longer available to the public. Policies of privatising datasets leave citizens to wonder if the delivery of financial profits puts the interests of the private sector above the public interest or the citizens.

Extending Bourdieu's cultural capital and field theory

The shift of the government's position of statutory secrecy to one of declaratory openness can be expressed by the extent to which natural asymmetries of information have been altered in favour of the citizens. Using Bourdieu's field theory, I have positioned this research in a field of government information. It is a field of contestation in which power and the changing alliances and relationships among institutions and/or sub-fields and individual

actors have produced this shift to openness. These actors are 1) those in the political, bureaucratic and juridical fields who employ their power to write, implement and adjudicate the legislative and regulatory rules of access to government information and data; and 2) those who use or challenge the rules to gain access to the information. The latter come from within government and from fields external to the government—journalism, civil society, and the marketplace.

This relational analysis has led to an extension of Bourdieu's theories in two ways:

1. that informational capital should now be considered as *digital informational capital*; and that
2. there is new hybrid field of *digital government information* that extends the field of government information.

Digital informational capital

This study has shown that in the information society, digital informational capital is an extension of Bourdieu's theory of capital, and is the basis of power by which governments and their citizens battle over access to information. Bourdieu's theory of capital considered that cultural capital in its objectified state, its materiality, includes "pictures, books, dictionaries, instruments and machines" and its possession is the "means of "consuming" a painting or using a machine" (Bourdieu 1986, p. 285). In his later writings, Bourdieu suggests cultural capital should in fact be called "*informational capital* to give the notion its full generality, and which itself exists in three forms, embodied, objectified, or institutionalized" (1992, p. 119). These are the building blocks on which Bourdieu developed the notion of technical capital; it is the equipment and instruments, and in its embodied form is competencies and skills (Bourdieu 2005b), suggesting together a resource or power. While Emmison and Frow (1998) argued that information technology could be conceptualised as a form of cultural capital, this proposition seems to conflate the objectified state with the embodied state. I would propose that ICTs are not a capital in the Bourdieusian sense. To simply have access to the technology as a resource without the knowledge and skills, the technocratic power, for using it, is technological determinism; that without technocratic power, the role of ICTs is that of a change agent.

I argue that in the information society, digital informational capital is an extension of Bourdieu's technical capital (see Bourdieu 2005b). Within a field of cultural production, cultural capital, which includes technical capital, is a "set of actually usable resources and powers" (Bourdieu 1984, p. 114), that actors use to gain further resources and capabilities within particular social settings. It extends the concept of digital capital, a term that is used variously as a property of digital literacy requiring effective online searching skills (Miller & Bartlett 2012; Van Deursen & van Dijk 2009), or of digital citizenship that assumes regular, daily use of the Internet (Mossberger *et al.* 2008).

Research is emerging on the concept of digital capital within the framework of Bourdieusian theory. Ignatow and Robinson (2017) have sought to place it within a theoretical framework of digital sociology and Bourdieu's field theory. Ragnedda (2017) considers that digital capital is "the set of expertise, experience, skills, knowledge, digital literacy, ICT access, based on and which can be converted into other types of capitals" (p. 76). He argues it is an outcome-driven experience of the digital world, a "third level of digital divide" in which there is a lack of capabilities and opportunities (Ragnedda 2017, 2018).

It is the relationships among the actors that is the basis of field theory, whereas in Ragnedda's model, the relationship is with Bourdieu's other (social, economic, personal, political and cultural) capitals. Digital informational capital, on the other hand, is a resource linking the actors in the fields, one that recognises the "complex and mutually evolving relationship between a technology and broader social structures" (Warschauer 2003, p. 202). In the field of government information, both governments and citizens use digital informational capital as a powerful tool in their conflicts over access to information.

Digital government information

The field of government information has become a highly hybridised field in which new combinations of fields and relationships have changed its constituent make-up. I argue that this hybrid field should rightly be considered a field of digital government information, since the rules of the game have changed, and new actors with extensive amounts of digital capital have entered the field, generating and using new forms of information. The field of government information, with its emerging properties and characteristics, together with its complex relationships, has served to challenge the notion of public sector information.

The hybridisation of the field has been enabled by the ubiquity of the use of ICTs in the generation, collection, management and distribution of government information and datasets, and by the escalating relationship with the private sector. Nowadays, most government information is born digital, and in many cases older material is being digitised either proactively or on demand; its access is delivered through e-government processes and platforms. Technology networks are creating new forms and formats of 'partner-generated' government data; concepts of big data and linked open data (LOD) are producing new information that is dynamic and reliant on distributed real-time input from actors from many autonomous fields (Janssen & Kuk 2016).

The release of open government data has brought to the field a new group of produser actors, who transform the data from a bottom up direction, shaping new government information. Examples of this trend can be found in the third case study of the Bureau of Meteorology. This provides typical models of the new forms created through national and international, public and private sectors partnerships. Other government information initiatives such as open government portals and open government partnerships and data initiatives (Altayar 2018; Chatfield & Reddick 2017) all present considerable challenges to older models of ownership, intellectual property rights and licensing. These developments are dependent on new actors and relationships outside of government, and with these developing relations come new understandings of the nature of public sector information and models of its governance (see for example, Brown & Toze 2017; Talbot 2016).

While many of these new forms of partner-generated government information were not the subject of my research, the third case provided examples of the escalating relationship between government and the private sector (the market field) and the complexities that can emerge for access to information. When governments outsource the delivery of goods and services and transfer ownership of public data to a private entity, or when public meteorological datasets can be traded on the financial markets as weather derivatives and indexed insurance schemes (Bates 2014a), there have been significant changes in the notions of ownership, benefits and governance in the field of government information. To quote Manuel Castells, "who are the owners, who the producers, who the managers and who the servants becomes increasingly blurred in a production system of variable geometry, of teamwork, of networking, outsourcing, and sub-contracting" (2010, p. 506).

Administrative and bureaucratic practices have changed in the new hybridised field. Public–private partnerships, by transferring to the private sector direct control of many decisions and operations in economic development projects, have in effect "hollowed out the state", eroding the traditional Weberian bureaucratic of accountability of what and by whom, replacing it with output-driven results (Hood *et al.* 2006; Rhodes 1994; Roberts 2015). Many theoretical positions have been taken on this new reality: neo-bureaucracy (Reed 2005), post-bureaucracy (Budd 2007; Farrell & Morris 2003; Talbot 2016), late bureaucratic organisations (Meijer 2008), or debureaucratised altogether (Benish 2014). Whichever the position, they all point to a new partnership power between the bureaucratic field and the non-government sectors, including the market field. The combination of this partnership power and the information and communication technologies that generate and distribute new forms of 'partnered' government information and data is the essence of the emergent field of digital government information.

Within such a complex power-sharing field, it is hard to argue that Australian government information is still, as declared by the government, *public sector information,* that it is "to be managed for *public purposes [my emphasis],* and is a national resource" (FOI Act, s3(1)). That is, to be available for community access and use is, at best, challenging. The rhetoric runs the risk of being empty, since the field of digital government information is a complex and totally integrated set of relationships with the private sector, with enormous consequences for government openness. The concept of 'public sector' information is no longer valid; it is more appropriately, a field of digital government information.

Conclusion

Governments' affinity for secrecy and the Australian government's 2010 declaration of openness, in which public access to its information is affirmed, are contradictory. In an attempt to balance this conflict, the government has formal policies for access to its information: 1) proactive publishing on departmental websites, and 2) legislative mechanisms by which citizens have the right to request access to its unpublished information. It also restricts access to its information through negative application of the legislation and through commercialisation and privatisation policies.

The secrecy–openness conflict has been examined through a Bourdieuian metaphor of the field of government information as a battlefield in which the contestants (actors) are in the political, bureaucratic, juridical, civil society, journalism and market fields. These actors, supported by the change agency power of information and communication technologies, exerted their power to create, implement and modify these formal policies. The research demonstrated the importance of the shifts to either adversarial or supportive relationships, by which the actors reached their goal of maintaining or reducing secrecy. It concluded that while government secrecy has diminished, the formal policies are frequently inadequate to support the government's assertion it would release as much of its information on as permissive terms as possible.

The first case study showed that cost and efficiency policies led to e-government processes to disseminate information on websites, policies that had both intended and unintended consequences. Mechanisation of the publishing processes, archiving procedures and website design make it difficult to find required information and often give the appearance of secrecy. While government has always chosen what information to publish, the ubiquity of the web, particularly among users with low digital capital, leads to the expectation that if the required information is not found, it does not exist, thereby reinforcing secrecy.

The Freedom of Information Act is weakening citizens' legislative right to request access to information, particularly information concerning government policy and decision-making information. Although the FOI reforms of 2009-2010 removed many of the restrictive aspects of the legislation, the case study analysis demonstrated that concepts of confidentiality of both persons and information, in the public interest, and national security, while legitimate reasons for non-disclosure, are often used to legitimise refusals or heavily redacted disclosure of information. Journalists are abandoning FOI and using their digital capital to analyse open government datasets to uncover information, and actors in the market use it for competitive intelligence, which could be argued is not in the spirit of the ideal. The research leads to the conclusion that FOI is becoming an obfuscating mechanism to maintain secrecy rather than transparency.

Government fiscal policies for outsourcing the provision of goods and services have returned many socio-economic benefits to the national and international communities. However, the market has leveraged its economic power to close off access to information that citizens can use to hold government accountable. With government consent, it has secured the intellectual property rights to data that should be public, but is now consigned to non-public realms.

Privatisation of government information not only prevents citizens' access and re-use of the information and datasets, but the prevalence of relationships between the government and the market is an example of the trend to informational capitalism. It is a trend in which the model is user-pays, and the relationship between government and citizens is changing to one of consumers and marketplace.

Finally, the use of a Bourdieusian framework of relational analysis has enabled an extension of Bourdieu's theories of capital and field. Throughout the case studies, the pervasiveness of ICTs and the use of technical expertise—technocratic power—has led to the concept of digital informational capital. The research has shown that the field of government information has become hybridised, with new combinations of fields and actors that have changed its constituent make-up and the nature of public sector information and models of governance.

Chapter 8: The conclusion

The chapter presents the conclusions of this study into the factors that facilitate and constrain access to the information and datasets held by Australian Commonwealth Government. The implications of this research for the concept of open government and for citizen access are considered. The contribution to existing knowledge and its significance are discussed, and suggestions for further studies are proposed.

This study is based on the premise that the Australian government's declaration of commitment to openness in 2010 is an acknowledgement of the 21st century zeitgeist by which claims of legitimacy rest on a transformation from secrecy to openness, and that transparency and accountability will promote democratic practices. Government secrecy is a one-way communication. Any alteration to this norm requires a two-way flow of information between government and its citizens; that governments freely disseminate information and data concerning its policies and decisions, and provides mechanisms by which citizens can request access to information and data that has not be published. At the heart of this study is the relationship between government and its citizens viewed through a lens of the tension between openness and secrecy, and of conflict and power.

It may be tempting to suggest that access to government information is a binary concept; that information is accessible, or it is not. The research showed that access is multifaceted. There is a range of policies, practices and processes by which governmental accessibility decisions are made that affect or are affected by social, technological, economic and political factors, and that myriad powerful institutions, individuals and commercial interests are at play in these policies and practices.

Revisiting the research aims

The purpose of this thesis was to better understand the factors that facilitate or constrain access to the information and data of the Australian Commonwealth Government. It proposed that if, as the government has declared, access to its information is necessary for the

transparency of its decision-making processes, then the logical corollary is that without access, the government cannot be held accountable to its citizens. The study asks what are the formal policies and practices that facilitate citizen access of the information and data that enables an appraisal of government transparency and accountability, and under what circumstances would and could government justify limiting that openness. By assessing the information access mechanisms, the research revealed the tensions between government openness and government secrecy are politically, ideologically, socially and economically driven.

The conceptual framework underlying the research was Pierre Bourdieu's field theory and power structures in which governments use their legislative or statist power to write the policies for access to its information, as well as the rules by which those policies are interpreted, applied and implemented. This approach provided a method to demonstrate that legislative power is often challenged at each stage of policy-writing, and that these challenges are, in fact, power struggles that rely on relationships among the various actors within the political, juridical or bureaucratic fields.

The research aims were accomplished through two epistemological approaches, each of which was reflexive in nature, leading the research down unexpected analytical paths. The first approach was three case studies based on digital 'conversations' and interrogations of digital actors: government documents, websites and datasets, and in the second case study, with the digital submissions for information under the disclosure freedom legislation. The second approach was a Bourdieusian field analysis to uncover the powerful players and their motivation and actions that influenced the drafting, implementing and often amending of the information policies that impact on citizen access to government information.

The research began with the proposition that there are formal policies and practices determining the three dimensions of accessibility of government information:

1. it is publicly accessible,

2. it is not publicly accessible, but access can be requested, and

3. it is concealed from the public.

Each of these dimensions of access was examined through case studies that began with the assumption that the normative behaviour of government favours secrecy. All three case studies were designed to assess how government policies and practices would fulfil or militate against its declaration of openness. This research approach explored the layers of power in the provision of access to government information in the Australian Commonwealth jurisdiction.

Publicly accessible information

The first case study (see Chapter 4 *Mechanisation and management of web-published information*) is essentially a study of the relationship between the power of government, predominately political and bureaucratic, and the disruptive power of information and communication technologies (ICTs). The case study addressed the policies by which information is publicly accessible. The first policy stipulates the major vehicle for dissemination of information is the concept of e-government, as expressed in departmental websites. The study investigated the technological and political factors that impact on citizen access. These factors include the level of adherence to the legislative mandates for information selection, to Web 2.0 guidelines for access and content discovery and to usability factors from the citizens' perspective. The study also sought to address the potential for political bias in the selection of non-mandated content; the extent to which information and communication technologies control the publishing processes, including the selecting, uploading, indexing for searchability, removing and archiving content.

The study concluded that cost and efficiency policies led the government to adopt a technological solution to the management and dissemination of its public information. It also demonstrated the processes and policies of the concept of e-government have both intended and unintended consequences, and serious ramifications for citizen access, which the government had declared would "promote greater participation in Australia's democracy" (Australia. Department of Finance and Deregulation 2010a, para. 3).

With respect to the mandatory content to be published, a forensic reconstruction of a defunct website using civil society's Internet Archive provided evidence that the original documents had been uploaded. However the research demonstrated that in the dynamic environment of e-government, changes in government structures, and dependence on internal departmental

archiving processes can be problematic. As well, the mechanisation of publishing processes, archiving procedures and many of the functions of current trends in Australian government website design, make it difficult to find required information, often giving the appearance of secrecy. A significant finding of this part of the research was an understanding of the crucial role of the external archival institutions, the National Library of Australia and the Internet Archive, without which access to older government information is not possible.

Concerning the requirements that departmental websites must adhere to the Web 2.0 guidelines, the research provided insights into government's assumptions that access is the same as accessibility, the latter being a quality of the user experience. Adherence to Web 2.0 guidelines does not guarantee individual access to sought information; accessibility is far more nuanced, requiring high levels of motivation and digital and civic literacy skills. The ubiquity of the web, particularly among users with low technical skills, leads to the expectation that if the required information is not found, it does not exist, thereby reinforcing the perception of secrecy.

Governments' information asymmetry has always determined what information it will select to publish and what to keep secret, a fact that extends into the realm of e-government. The study could only speculate on the amount of content that was algorithmically selected from content management systems, and could not substantiate any political or bureaucratic bias in content selection. However, the study indicated that in many cases, the primary function government websites was not to provide portals to their large collections of information.

Finally, the case study revealed the significance of information and communication technologies an actor of disruption. They disrupt the norm of government secrecy, but present a paradoxical effect on transparency. By delivering information efficiently, without human checks on automated processes, they just as effectively drive secrecy. The research found that all aspects of publishing and finding government information on websites required a substantial level of technical skills or technocratic power, a finding that leads to the new concept of digital informational capital.

Information not publicly accessible

The second dimension of access to government information are policies by which the government provides mechanisms that allow citizens to request access to information that has not been published. In the Australian Commonwealth jurisdiction, the mechanism is the Freedom of Information Act 1982 (FOI). This dimension of access is a source of conflict over the rules set out in the Act and how they are often speciously applied.

The second case study sought to examine the legitimation of secrecy in government's interpretation and application of those legislative rules (Chapter 5: *Legitimation, law and implementation*). It is a study of power conflicts. It was designed to investigate the barriers (power) that citizens face when they submit freedom of information (FOI) requests. These requests are of two types: 1) policy-related government information, and 2) individual citizens' requests for their own personal information. From the perspective of government transparency, it is the first type that is of interest, a point the research demonstrates to be very important.

The research design had three separate approaches. The first approach was an analysis of a series of actual FOI submissions, chosen to reflect the fields within the field of government information, in particular, the journalism and civil society fields (Section *The case studies*). This approach analysed the texts of FOI submissions, the documentation of decision outcomes and of appeal tribunal decisions. These case studies were the triggers for two data analyses by which the policies underlying each case could be generalised or at least shed light onto FOI procedures.

The first analysis of the data was a data analytic or technocratic method employed by Hazell and Worthy (2010) and was based on the assumption that the number of requests that were granted could be a surrogate for government openness. The data used was the complete dataset of FOI requests 1982-2018 (Section *Number of requests a surrogate for openness*). The second and third analyses used the government agencies' *Annual Returns 2000-2018* dataset, since it separated personal from policy-related requests. This analysis investigated the level of disclosure of the information of individual government departments, either granted, partially-granted (redacted) or refused. The analysis was a process by which

political and bureaucratic power could be examined (Section *Mechanisms for denial of access*).

The first insight derived from the analysis was that on the statistics alone, the government acknowledges that a citizen should have the right to access his or her personal records. However, this is not an indicator of transparency; rather it is access to government's documented policies and decisions that is the criteria on which to judge the government's commitment to openness. It is the outcome of requests for what the data specifies as 'other', a discrimination made only after 2000, which is significant. The data analysis showed that almost twice as many requests for personal information were granted than were policy-related requests; and four times as many requests for policy-related information were refused outright. This outcome does not, however substantiate government lack of transparency, since a refusal to disclose information is not tantamount to secrecy. The legislation specifies there are some 'compelling reasons' by which information must not be disclosed; these are the unconditional exemptions and exemptions that are conditional on a public interest test.

The analysis of the submission texts (*The Public interest test* and *Journalism and the perception of secrecy*) revealed several reasons why requests were refused. Two requests for information (*Activism and power*) demonstrated that poor record-keeping systems and bureaucratic work practices that include fees imposed on high assessments of time required, can result in a refused outcome. While the legislation allows for the imposition of time-based fees (practical refusals) to curtail mischievous, vexatious or unreasonable requests, the research showed that this particular practice is often used as a pretext for non-disclosure of information (*Journalism and the perception of secrecy*).

Of serious impact on government openness, the case studies have shown that the concepts of confidentiality of both persons and information, 'in the public interest', and national security, while they are legitimate reasons for non-disclosure, are often used to legitimise refusals or heavily redact the information that was disclosed. These findings were supported by the data analysis, and in the cases of highly contentious government policies, was particularly apparent that privacy is often used as an excuse for secrecy.

The analyses of the case studies revealed an important aspect of the FOI legislation. Government agencies are required to publish copies of submission requests only if granted or

partially granted and the disclosed documents, but no indication of any submission that is refused, a factor that militates against transparency. This policy highlights the importance of activist institutions such as the Australian *Right to Know* through which citizens can submit requests to provide insights into government's reasoning for secrecy (*The Public interest test* and *Journalism and the perception of secrecy*).

Overall, the different components of the research led to the conclusion that freedom of information is a very imperfect mechanism to deliver the transparency that the government espouses. To the contrary, the findings provide evidence that it has become an obfuscating mechanism to maintain secrecy. Importantly, the government seeks to legitimate secrecy through the overuse or manipulatory application of the legislative clauses setting out the "compelling reasons" for not disclosing its information.

The study's results have presented an analysis of the significant power exerted by politicians and bureaucrats to make decisions over access to government information. The data analyses showed that the trend of increasing numbers of requests with a substantial increase in refusals, coincided with controversial and politically destabilising external events such as refugee migrations. The findings reveal that many of these decisions are based on political self-interest, or as a justification to hide details of contentious and unpopular policy decisions that citizens have a right to know. Finally, while the research demonstrated the obvious political, bureaucratic powers at play, it also revealed the juridical power in the writing and adjudicating of the rules of the legislation, and the power of civil society as manifested in the public institutions that shed light on government reasoning for refusing access to its information.

Information concealed from the public

The first two dimensions of access of access were based on the premise that access to government information would inform citizens of government's policies and decisions; that this information would engender transparency and openness. In such instances, the information has an informative value. In the market place, the market field, information also has an informative value when is used for decision-making; it is of commercial value. The FOI data analysis in the second case study (Chapter 5 *Legitimation, law and implementation*) demonstrated that information generated, for example, through government business entities

(GBEs), could have commercial value, and was therefore often inaccessible because of commercial-in-confidence legislative clauses.

However, information is also a product or commodity—a good as shown by economists such as Kent Hall (1981b) and Joseph Stiglitz (2003). One of the principal characteristics of a commodity is that it can be reused, not simply viewed; it is a 'good' and often a 'public good'. This case study assumes the commodity is government datasets—public goods, which the government releases for reuse by the public under a Creative Commons license. It is this perspective which frames the third dimension of access to government information.

The principle research question was concerned with the circumstances under which ideological positions facilitated or constrained access to information, and asked 'how does the perceived value of government information influence the level of access.' One of the underlying ideological principles of the Australian government is the neoliberal economic principle of the rule of the market (Polyani 1975[1944]), in which the government relies extensively on the market for its economic development program. This case study is, therefore, one that concerns government-market relationships and economic power and their effect on citizen access to government information, and that under some circumstances government information and datasets are concealed not only from view, but from reuse.

There were several research approaches to answer these questions. The first and logical approach was to extend the FOI analysis of use of commerciality clauses , already discussed, to analyse the commercial value of information generated by the government's relationships with the market— public-private partnerships (PPPs) and consultancies with private sector entities. The FOI analysis of government PPPs was not feasible since the Commonwealth Government relies on private sector contracts rather than public-private partnerships, and state-based research was outside the boundaries of the thesis. However, the approach led to new insights that shifted the investigation from generalities of the commercial value of information, to a value expressed in socio-economic terms and the public interest.

The second avenue for research was to conduct an analysis of Commonwealth contracts with private business entities, using the government dataset *AusTender*, openly available on the open government data portal. The findings showed there is a high level of tenders in which both the contractual arrangements and the subsequent generated data (contract outputs) had

been flagged as confidential. Among these flagged contracts were those that requested the research outputs, but which were not released under FOI (see the previous case study *Activism and power* and *Journalism and the perception of secrecy*). An examination of the reports submitted by the Australian National Audit Office showed that many of the confidentiality flags could not be substantiated.

The third approach was driven by a confluence of the concepts of open government, and e-government website publishing, as demonstrated by first case study, and the open government data (OGD) movement by which datasets are published on departmental websites or uploaded into the open government data portal. In a case of serendipity or information encountering, a new research approach arose to consider government policies and decisions. This was a comparative analysis of two sets of geospatial data, long regarded by both economists and governments as the most valuable data for national economic development. This comparative analysis provided insights into how the enormous economic power of the market, in conjunction with government fiscal policies could impact the notion of the public interest and citizen access to public goods.

The first datasets are the meteorological and hydrological datasets generated by and openly accessible, free of charge on the website of the Australian Bureau of Meteorology. The Bureau also produces tailored goods and services for sale to other government agencies and business entities in both the government and private sectors. It is funded by budgetary measures from the Commonwealth government, with revenue from sales to subsidise the public services. Analysis of the raw data and bundled information products revealed the enormous commercial value it provides to other government departments, for driving public and private industries, and contributing to economic development. The analysis showed that its sales of tailored goods and services to government agencies in the period averaged almost $7 billion a year (2013-2016), and sales to the private sector (approx. $77 million from 2012-2017) delivered an average return on the government's investment of 30%. While estimates of the overall commercial value the Bureau contributes to the economy is outside of the remit of this study, the socio-economic benefits to the individual citizen, to researchers using the data, and to the national and international communities would seem to be inestimable.

A second block of geospatial data—cadastral data, which is the extent, value and ownership of land—was investigated to examine government policies by which the data were

commercialised, and the ownership of what was a government commodity or public good was transferred to a private company, a company with only eight shareholders, the Commonwealth Government and each state government. The study analysed the process that enabled this company, PSMA (Public Sector Mapping Agencies), to add value to government raw data, then bundle it into data products, which it sells in the market place. The model is user-pays, which after royalty payments to each state for the raw data, generated average revenues of over approximately $10 million per year (2013-2017).

The study provided insights in to what appears to be an irregular contractual arrangement between government and the market, and of fiscal policies by which a public good can be privatised, and in the process, prevent any citizen access. The study concluded that a policy that delivers enormous socio-economic benefits from data that remains in the public sector, is more conducive to the public interest than one which also delivers considerable benefits, but sequesters it in the private sector. Finally, the research demonstrated how government policies that privilege economic power can convert governments' responsibility for the provision of essential goods and services into informational capitalism, which cannot be held accountable. It suggests that in the knowledge economy, the relationship between government and its citizens is changing to one of consumers and the marketplace.

Bourdieusian theories

Bourdieu's relational field theory was used to frame this study as a metaphorical game played in a field of government information, a field of cultural production generating information and data. The actors, individuals, groups and institutions belong to autonomous subfields within government and within the various publics, who struggle for dominance in a contest between openness and secrecy, between access or restriction of government information. The reflexive processes of field theory provided a method to examine the powers, ideologies, convenient and hostile alliances, and relationships of the political, juridical, bureaucratic, journalistic, civil society and market fields. These powers and relationships were explored in all three case studies. In each instance, it became obvious that one of the more powerful actors was the combination of information and communication technologies and technical expertise or technocratic power. It was found to be a disruptor of the normative behaviour of governments' propensity for secrecy.

This secrecy-openness conflict was demonstrated particularly in the second case study concerning the Freedom of Information legislation. In Bourdieusian terms, it was a field of contestation in which the actors in the political, juridical, bureaucratic, journalistic and civil society fields battled over all aspects of the legislation: the establishing, implementing, amending and interpreting of the rules by which citizens could request unpublished government information. The analysis provided insights into why certain decisions on disclosure or refusals occurred, and how political and bureaucratic power could legitimate secrecy.

Field theory, which is a relational tool, was useful to gain insights into the relationships among the various actors and their impact on access to government information and civil society. The first case study demonstrated that the government's relationship with invisible actors, ICTs, effectively hid information. In the second case study, it was shown that the antagonistic relationships between government and journalists often result in refused access to information, which in turn, may cause leaks that can lead to legitimate concerns for public safety. The third case study demonstrated the economic power of the market and its relationships with government that led to the privatisation of a valuable dataset, a decision which the research found was arguably not in the public interest.

Field theory also provides insights into the way relationships, through pragmatic or convenient alliances, can shift from the hostile to the cooperative and back again in order to achieve a particular goal. Such was the shifting relationships between the political parties over the introduction of FOI legislation and its reforms.

In summary, the field analysis explained how and why the Australian government shifted from secrecy to openness and then proceeded to rein it in through political and bureaucratic power and self-interestedness. The analysis of the government's relationships with the market field combined with the power of information and communication technologies has challenged the nature of public sector information.

Significance of the research

This research is a study of the tensions between the government declaration of openness and its propensity for secrecy. It aimed to provide a conceptual analysis of the beliefs and

ideologies underlying the proposition that access to government information is the bedrock of liberal democracies.

The thesis has taken an information science approach, in which the processes of organising, managing, providing access to, using and interpreting collections of information and data is integral to information science. These functions include topics germane to this research: information architecture, indexing and classification, processes for archiving content and collections, evaluation of information systems that manage these processes, and employing analytical techniques for interpreting data. Information science also explores concepts of how people interact with information systems: their practices, motivations and behaviours.

From the perspective of information science, the corpus of government information is another 'collection' that falls within its remit, and insights and outcomes from this study had added two dimensions to the existing knowledge of information science: 1) the processes and practices for access, and 2) perceptions of power influencing these processes and practices.

The study was framed by two broad questions: 1) how, why and under what circumstances has the government's expression of openness delivered citizen access to its information and data? and 2) how are the limits to information access exercised and justified?. The research was an investigation of the key barriers to citizen access to government information: inaccessibility driven by mechanisation, potential secrecy mechanisms, and the commercialisation of the information. The research design consisted of two approaches. The first were case studies based on digital 'conversations' and interrogations of digital actors: government documents, websites, datasets and freedom of information submissions. The second was to use Pierre Bourdieu's notion of field theory to explore the power and relationships that drive the conflicts manifested in the government openness-secrecy tension.

The research methods, by using real world examples, were able to situate the findings in reality rather than as a purely theoretical set of propositions. The first case study, by forensically reconstructing a defunct website and comparing it to a later version, was able to challenge the concept of e-government as a vehicle for government to provide access to its vast collection of information. The case study, while substantiating the rhetoric that e-government was an engagement tool, showed that government websites, in many instances, were not information portals. Rather, they are vehicles for which the information selected (as

mandated by FOI legislation) emphasised departmental functions, but not necessarily information that was required by the public.

On the other hand, e-government in the guise of open government data portals provided evidence of the value of open access. The second and third case studies could not have been accomplished without the data analytics that used the actual government data of FOI submissions and government tenders available in the open government data portal. Neither could the third case study have been done without access to the vast amount of information and data freely accessible at the Bureau of Meteorology website.

Overall, the significance of the three case studies within a framework of one study, provided an overview of the three dimensions of citizen access to government information. It is an overview that provides a rich set of findings to provoke further research.

The use of Bourdieu's field theory approach was a significant factor in the entire thesis. It enabled the question 'in what ways have power relationships impacted citizens' access to different types of information and data'. As discussed in the previous section, it not only generated several new concepts to the existing body of knowledge of access to government information, but also demonstrated its value as a research method within the information sciences.

Contribution to existing knowledge

This study has contributed new knowledge in several aspects of access to government information. In the first instance, the research has produced new insights into ways that e-government has created barriers rather than gateways to government information. In the second instance, the analysis of texts and data has shed light on how political and bureaucratic power is exerted to amend and implement Australian freedom of information legislation, and how it is subsequently used to legitimate secrecy. The third case study adds new understandings of the impact commercialisation has on citizen access to government information, and of the ramifications for the nature of public sector information. Finally, the research contributes new concepts that extend Bourdieu's theories of field and capital.

E-government barriers to government information access

There is an extensive literature on individual mechanisms of public access and barriers to government information published on departmental websites. This includes studies of the effectiveness of e-government as a mechanism for government engagement with its citizens (Haller *et al.* 2011; Sarantis & Askounis 2010), of accessibility features vis-a-vis Web 2.0 guidelines (Donker-Kuijer *et al.* 2010; Jaeger & Bertot 2010), and of interactive knowledge transfer (Nurdiana *et al.* 2017). Research concerning government websites as information portals tend to be in specific contexts such as health information (Andersen *et al.* 2011) or open government data portals (Anthopoulos & Sirakoulis 2015; Lourenço 2015).

The first case study, however, explored the government websites as vehicles for finding specific known documents that had somehow 'disappeared'. The research, by forensically reconstructing a defunct website, brought new insights of the issues that can hide information. These issues include the power of ICTs in the publishing process, and importantly, the archiving processes of important documents; and secondly, the expectations of citizens, believing the notion of e-government to be a gateway to the vast collections of government documents, assumed the documents did not exist.

Freedom of information: a study in power and secrecy

With respect to the second case study, overseas studies of Freedom of Information are numerous, but most Australian research emphasising the mechanisms by which governments withhold information (Snell 2001a; Hazell and Worthy 2010; Terrill 1998) were conducted prior to the FOI reforms of 2009-2010. These legislative reforms significantly changed the FOI landscape in Australia; however, only a few recent studies have been published, such as one conducted by Daniel Stewart (2015) and another by Danielle Moon (2018). With regard to journalistic use of FOI, there is a plethora of literature (Lidberg 2016; Lor & Britz 2007).

This study has provided an analysis of the impact of the FOI legislative reforms that were passed in an attempt remove the more egregious aspects of the original legislation. The analysis has delivered a study of power struggles: in particular, political and bureaucratic power contests over the writing and implementing the legislation, and of juridical power in adjudicating the reform processes and subsequent appeals of refusals for disclosure. While the many of the insights of the study are new, the major contribution is the innovative

research approach, an approach that combines the text analysis of actual submissions and of request outcomes with a data analytic approach to the entire 1982-2018 FOI government dataset.

Commercialisation of government data

The literature on government information deemed to be of commercial value, such as contracts and contract outputs, tends to concentrate on transparency and accountability issues (de Maria 2001; Greve & Hodge 2011; Hood *et al.* 2006). The momentum for releasing open government data has produced numerous Australian studies of its economic value (Kreimer 2008; Productivity Commission 2013; Stott 2014). Economic commentary on geospatial data is extensive (for example, Ruijer & Meijer 2016; Weiss 2010), and there are important valuations of Australian datasets (ACIL Tasman 2008; Stott 2014). However, there is little literature of the commercialisation of the actual datasets.

The third case study presents a comparative study of two Australian government geospatial datasets (meteorological and cadastral), both of which are very valuable in socio-economic terms. The contribution of this study is twofold. The first provides insights into how differing ideological positions in government privatise one dataset, placing it under a user-pays model, while leaving another in the public sector, freely accessible by anyone, not just Australian citizens. The second contribution of this study is a discussion of the social impacts of privatisation of government data, and how the nature of the concept of public sector information has been changed.

This study has identified and examined these factors, their implications and consequences within a context of Australian government information and data. Its contribution to the existing knowledge is an attempt, through the case studies, to provide an integrated overview of all aspects of the Australian Commonwealth government's legislative and procedural policies and mechanisms by which information access is facilitated or constrained. However, it is only an overview, but its insights and outcomes are pointers to further research. In particular, the research on the proposition that the commercial value and subsequent commodification of information sequesters information by consigning it to the private realm is one area that will benefit from further in-depth analysis.

Bourdieusian theories

By using Bourdieu's field theory as an epistemological approach, the study has generated new insights into the Australian Commonwealth Government's declaration of openness and the reality of the barriers to access of its information. It has shown the tensions that arise when the government declares its information to be "a national resource and that releasing as much of it on as permissive terms as possible will maximise its economic and social value to Australians and reinforce its contribution to a healthy democracy" (Australia. Department of Finance and Deregulation 2010b, p. 3).

The second innovation that has emerged from this study arises from an analysis of the power relationships that influence public availability of Australian government-held information and datasets. Power relationships are a prevalent theme in the literature of the social science, including information science, and Bourdieu's field theory has been used for research in a disparate range of contexts. However, a search of the literature found few instances in which this approach was used to analyse the power relationships in reference to open government.

The research findings provided a clear demonstration of the necessity for high levels of technical or technocratic skills in the generation, collection, management, dissemination, finding and using information in the digital world, including in the field of government information. Bourdieu suggests that technical skills are an instance of informational capital, a resource and a power that is used to gain further resources or capital. Since relationships among the actors is fundamental to field theory, in the field of government information that is now predominantly digital, the resource linking the actors in the fields should rightly be a digital information capital.

The field of government information has become a highly hybridised field in which new combinations of fields and relationships have changed its constituent make-up, enabled by the ubiquity of ICT usage and the escalating relationships between government and the market field. This study has shown that new actors with extensive quantities of digital informational capital have entered the field; they are generating new forms of information, particularly after public releases of government datasets. The technology networks are creating partner-generated government data; when these partners are national or international private sector actors, new models of ownership, management and governance are emerging.

This combination of partnership power and ICTs' generation and distribution of new forms of information and data, is the essence of the new hybrid field of digital government information.

Possibilities for future research

This study uncovered many issues concerning access to government information and raised the usefulness of further inquiries into this area. The study of the policies and practices for proactive publishing of information on departmental websites was narrowly defined, limited as it was, by one specific instance in which highly motivated users were not able to find documents that had been mandated to be accessible. The research concluded that in one particular case, the automated processes, current web design trends and archiving processes were contributing factors in rendering information invisible and giving the appearance of government secrecy. A comparative study of the websites of other governments, in the first instance, could confirm or deny that there is a common problem in the design of effective gateways to collections of government information. The findings would either uncover best practice standards, or move the research to a second stage in which such standards could be developed.

The second case study presents opportunities to expand our knowledge of the usage of Freedom of Information in Australia. There are two possibilities of research that would be constructive, each of which could determine if Australia's use of FOI is duplicating international trends. The first avenue of research could establish if in Australia there is a similar trend of increasing government secrecy. This could be achieved through two avenues of analysis. The first would track changes in the content of requests that are granted or partially granted. The second, would continue the current research of tracking patterns of FOI refusals on the grounds of national security, privacy, deliberative processes or operations of certain agencies exemptions. Both approaches could provide some indication of trends similar to that displayed overseas. If so, it would also be instructive to establish if political or event-based factors might be driving them.

Research done overseas has shown the majority of FOI users are business entities, and that journalistic use is decreasing, a trend that has significant ramifications for civil society and ultimately, for democratic practices. There has been no recent research on categorising users of Australian FOI, and for two reasons it is difficult to corroborate this assertion in the Australian context. Firstly, Australian open government datasets do not provide data on the

requestors, and secondly, the mandatory departmental FOI disclosure logs on departmental websites do not list requests that have been refused. A study investigating these assertions could be designed using a two-step process. The research in this thesis demonstrated that a listing of government agencies who have granted or partially granted requests for policy-related documents could be generated. Using this list, all the disclosed documents would be retrieved from appropriate FOI disclosure logs. Employing text analysis techniques could suggest categories of requestors, and an analysis of these categories over several years could validate the overseas studies.

Government's partnership relationships with the private sector have raised issues of transparency and accountability. The third case study, with its focus on the Australian Commonwealth jurisdiction, did not specifically examine the statistics relating to public-private partnerships. An analysis of FOI requests for documents concerning public-private partnerships (PPPs) in Australian state and territory jurisdictions could usefully complement the survey conducted by Hodge *et al.*(2017) in which professionals working in PPPs concluded that there were still concerns that commercial-in-confidence clauses were impacting on the perception of government transparency.

A final word

This study is about the relationship between government and its citizens, based on the proposition that in a western liberal democracy, there should be a two-way flow of information. The study has shown that there are barriers to this flow, prompting an exploration of the powers driving the conflicts and tensions between government openness and government secrecy.

The significant outcomes of the study are

1. the concept of technology as a power
2. a creation of a new field with new players, and
3. a more developed understanding of Bourdieu's concept of capital.

The new information and communication technologies are a ubiquitous and powerful actor that delivers openness and paradoxically facilitates government secrecy. They have also been instrumental in the emergence of the new of digital informational capital. Political and

bureaucratic power, including that of individual actors can subvert notions of open government, accountability and transparency, but juridical power and civil society can be ameliorating factors in the tensions between openness and secrecy. Economic power and the relationship of government with the marketplace not only can sequester government information, but has led to a new hybridised field, the field of digital government information.

Finally, the analyses of the three dimensions of access to government information, played out as a conflict between government openness and secrecy, showed that government secrecy has been diminished, but formal government policies are frequently inadequate to support its claims to openness.

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