

**Day 3 – Wednesday, 28 November 2007**  
**Plenary Session 1.30pm-3.30pm**

Speaker: Maurice Frankel

Position: Director

Organisation: Campaign for Freedom of Information, United Kingdom

Presentation Title: Policy advice and politically sensitive requests –  
the UK experience

The UK's freedom of information legislation has now been in force for almost three years. Challenges to decisions may involve a multi-stage appeal process (internal review, Information Commissioner, Information Tribunal and High Court on a point of law. The process can be short-circuited by a ministerial veto, which has not so far been used, but which is itself subject to judicial review. One effect of this process is delay: some requests made when the FOI Act first took effect in early 2005 are still moving through the appeals system.

A second, less expected result, has been the robust approach to requests for access to policy advice or internal discussions. At the time of writing, the Information Tribunal has decided 6 such cases and in each occasion has either upheld or gone beyond the Commissioner's decision. The result has been to require virtually full disclosure of the material involved in each case. No appeal by the government to the Tribunal involving policy advice or deliberative material has yet succeeded.

The government has argued that disclosure of high level discussions had not been foreseen, was not intended, and would "strike at the heart of civil service confidentiality". It is challenging two of the cases in the High Court.

The presentation examines how the Government, Commissioner and Tribunal have approached the classic elements involved in dealing with requests for policy advice. These include the interpretation of the public interest test (which in the UK, as in many other jurisdictions, is central to the relevant exemptions), the validity of class arguments, the distinction between pre-and post-decisional disclosure, the weight given to evidence predicting the likely effects of disclosure and the treatment of politically controversial material.