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PREM 19/1523

Open Government

Part 1

HOME AFFAIRS

Pt 1:
May 1979

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~7.1.84~~							
~~11.1.84~~							
~~17.1.84~~							
~~9.2.84~~							
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~~9.8.84~~							
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~~12.12.84~~							
~~21.12.84~~							
~~11.1.85~~							
~~18.1.85~~							
~~28.1.85~~							
16/10/85							
Pt 1 ends							

PREM 19/1523

PART 1 ends:-

M. STALK to PS 16.10.85

PART 2 begins:-

MS/PCO to HOMG SEC 22.6.88

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
H(79) 11	08.06.79
H(79) 2nd Meeting, Minute 1	13.06.79
CC(83) 1st Conclusions, Minute 4	20.01.83
H(85) 4	11.01.85
H(85) 2nd Meeting, Minutes	22.01.85

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed P Wayland Date 6 February 2014

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

"Our right to know": a handbook published by the 1984 Campaign for Freedom of Information

Signed C Wayland Date 6 February 2014

PREM Records Team

70 WHITEHALL, LONDON SW1A 2AS

01-233 8319

From the Secretary of the Cabinet and Head of the Home Civil Service

Sir Robert Armstrong GCB CVO

PS(85) 21

16 October 1985

Dear Private Secretary,

The Campaign for Freedom of Information are organising a conference on access to personal files, to be held on 7 November under the chairmanship of Sir Patrick Nairne. They have invited at least one Department to send observers. It may be that other invitations are in the pipeline.

--- I enclose a copy of Lord Gowrie's letter of 2 February 1984 to Mr Wilson, in response to an earlier invitation to civil servants to participate in a dialogue with the Committee for Freedom of Information. Although on this occasion Mr Wilson is apparently inviting civil servants to attend only as observers of the proposed conference, the same principles set out by Lord Gowrie in February 1984 apply, and I suggest that it would not be appropriate for Departments to send observers.

It would be useful if you could let me know if such an invitation is received in your Department.

--- I am sending copies of this letter to the Private Secretaries to the Permanent Secretaries on the attached list.

Yours sincerely,

(Signed) M C STARK
(Private Secretary)

PERMANENT SECRETARY HEADS OF DEPARTMENTS

Sir Michael Franklin KCB CMG	MAFF
Sir Angus Fraser KCB TD	Customs and Excise
Sir Clive Whitmore KCB CVO	MOD
Sir David Hancock KCB	DES
Sir Michael Quinlan KCB	Employment
P L Gregson Esq CB	Energy
T M Heiser Esq CB	DOE
Sir Thomas Hetherington KCB CBE TD QC	DPP
Sir Antony Acland KCMG KCVO	FCO
Sir Kenneth Stowe KCB CVO	DHSS
Sir Brian Cubbon GCB	Home Office
Sir Lawrence Airey KCB	Inland Revenue
Sir Derek Oulton KCB	Lord Chancellor's Dept
R J Andrew Esq CB	NIO
Sir Crispin Tickell KCVO	ODA
A R Barrowclough Esq QC	PCA
Sir George Engle KCB QC	Parliamentary Counsel
Sir William Fraser GCB	Scottish Office
Sir Brian Hayes KCB	DTI
Sir Peter Lazarus KCB	Transport
Sir Peter Middleton KCB	Treasury
J B Bailey Esq CB	Treasury Solicitor
R A Lloyd Jones Esq CB	Welsh Office
Miss A E Mueller CB (for information)	Cabinet Office

POMAAC

P.C. 2nd form Sec
Mrs. Flanagan

FOI 19M

CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

2 February 1984

Des Wilson Esq
Chairman
1984 Committee for Freedom
of Information
2 Northdown Street
LONDON N1 9BG

Dear Mr Wilson,

I understand that you have written to the Permanent Secretaries of a number of Government Departments, suggesting a "friendly and constructive dialogue" with your Committee about the material which you enclosed with your letter.

The Government's view has been made clear, and was set out in the Prime Minister's letter to you of 9 December. Other political parties, as you yourself have emphasised, take a different view. I am sure you will understand, therefore, that given these political differences, the principle of Civil Service impartiality should be preserved. This would make it altogether inappropriate for Permanent Secretaries or other Departmental civil servants to take part in the kind of discussion which you have in mind.

Yours sincerely,

Gowrie

LORD GOWRIE

pdc p.a
DMB
29/1

10 DOWNING STREET

Prime Minister (2)

You asked to see a copy of Robin Squire's Bill - immediately below

Clause 4 deals with access to documents. Exemptions are in the Schedule.

Bill Returned to Questions
DMB
28/1

10 DOWNING STREET

Prime Minister (2)

May I look at the Bill. It is not attached and

A bit surprising, perhaps, that H were not more worried about parallels being drawn with central Government, especially on the disclosure of documents.

DnB
25/1

Prime Minister
29/1

PRIME MINISTER 25 January 1985

FREEDOM OF INFORMATION/OPEN GOVERNMENT

LOCAL GOVERNMENT (ACCESS TO INFORMATION) BILL

This private member's Bill of Robin Squires (Hornchurch) has now been seen by both H and L Committees. With some reservations, these Committees have found the Bill desirable.

You will be interested in the progress of this Bill because it extends your legislation - The Public Bodies (Admissions to Meetings) Act 1960. Certain Local Authorities have indulged in undemocratic abuses of the system and sensitive political issues have been dealt with increasingly in private sub-committees of the council, to which the public and press are excluded. The Bill has the admirable aim of extending this Act to allow access to such sub-committees.

This law may not be entirely effective, as attempts may be made to convene private caucus meetings, but, nonetheless, this part of the Bill should be supported. It is consistent with the Government's stated policy of open government. The same is true of agendas, explanatory material and, arguably, minutes of such meetings.

The New Departure

The Squire's Bill proceeds onto new territory. It demands the disclosure (Clause 4(i)) of "any internal

document, including memoranda, letters and interim reports about any matters to be discussed in public at that meeting".

H Committee did not generally feel that this would be a hostage to fortune. Although, on the face of it, this Bill makes the non-disclosure of these documents at a national level less defensible, it was felt that sufficient safeguards were read into the schedule to the Bill. I attach the Bill. The Secretary of State for the Environment wished to have the power to add other categories to these exclusions by order in council. This appears to be a satisfactory solution.

N.b attached

Conclusion

This Bill deals with one of the two areas where there appears to be public concern about the issue of freedom of information. The other area is access to personal files. The Cabinet Office have still not responded to your request concerning the second of these two issues. We do not suggest any action in relation to the Squire's Bill, but if you are still concerned in the second issue could you repeat your request for action.

BF

I will chase them

DMB 25/1

HARTLEY BOOTH

HOUSE OF COMMONS

Friday, 5th February, 1960

The House met at Eleven o'clock

PRAYERS

[Mr. SPEAKER *in the Chair*]

NATIONAL INSURANCE (WIDOWED MOTHERS) BILL

Mr. L. M. Lever (Manchester, Ardwick): On a point of order. Is it the intention of the House to proceed today with the Second Reading of the National Insurance (Widowed Mothers) Bill, a matter of very great importance throughout the country and a Bill which all hon. Members would like to support?

Mr. Speaker: I cannot comment on the views which the hon. Member expresses about any Bill. It is one of the Orders of the Day set down for today and will in due course be read as an Order of the Day.

Mr. Lever: I am much obliged.

ORDERS OF THE DAY

PUBLIC BODIES (ADMISSION OF THE PRESS TO MEETINGS) BILL

Order for Second Reading read.

11.7 a.m.

Mrs. Margaret Thatcher (Finchley): I beg to move, That the Bill be now read a Second time.

This is a maiden speech, but I know that the constituency of Finchley which I have the honour to represent would not wish me to do other than come straight to the point and address myself to the matter before the House.

I cannot do better than begin by stating the objects of the Bill in the words used by Mr. Arthur Henderson when he introduced the Bill which became the Local Authorities (Admission of the Press to Meetings) Act, 1908, which was also a Private Member's Measure. He specified the object and purpose as that of guarding the rights of members of the public by enabling the fullest information to be obtained for them in regard to the actions of their representatives upon local authorities.

It is appropriate at this stage to mention that the public does not have a right of admission, either at common law or by statute, to the meetings of local authorities. Members of the public are compelled, therefore, to rely upon the local Press for information on what their elected representatives are doing. The original Measure was brought as a result of a case in which the representatives of a particular paper were excluded from a particular meeting.

The public has the right, in the first instance, to know what its elected representatives are doing. That right extends in a number of directions. I do not know whether hon. Members generally appreciate the total amount of money spent by local authorities. In England and Wales, local authorities spend £1,400 million a year and, in Scotland, just over £200 million a year. Those sums are not insignificant, even in terms of national budgets. Less than half is raised by ratepayers' money and the rest by taxpayers' money, and the first purpose in admitting the Press is that we may know how those moneys are being spent.

[MRS. THATCHER.]

In the second place, I quote from the Report of the Franks Committee:

> "Publicity is the greatest and most effective check against any arbitrary action."

That is one of the fundamental rights of the subject. Further, publicity stimulates the interest of local persons in local government. That is also very important. But if there is a case for publicity, there is also a case for a certain amount of private conference when personal matters are being discussed and when questions are in a preliminary stage. It is in trying to find a point of balance between these two aspects—the public right of knowledge and the necessity on occasion for private conference—that the difficulty arises.

An attempt was made by the 1908 Act to meet this difficulty, and I now turn to the history of the Measure which I am about to present. Provision was made by the 1908 Act for Press representatives to attend meetings of local councils and meetings of education committees in so far as they had delegated powers, and, also a number of other bodies which have now ceased to exist because successive Parliaments have substituted new bodies to carry out the powers which the 1908 Act formerly permitted the Press to publicise.

Long before the events of the past summer, there was a very good case for amending the 1908 Act. The first good case arose when the Local Government Act, 1929, abolished boards of guardians, to whose meetings the Act admitted the Press. Boards of Guardians were responsible for the administration of hospitals and many other matters. The first attempt to bring the law of 1908 up-to-date came in 1930, when the right hon. Member for South Shields (Mr. Ede) introduced a Private Member's Measure, which I am happy and relieved to learn received a Second Reading. It did not get any further because of a rather precipitate change of Government, which I do not think even the most optimistic hon. Member opposite would believe was imminent at the moment. The case for the Bill then was that boards of guardians no longer existed and the Act needed amending, firstly, by reference to its past performance, and secondly, by reference to the new legislation of 1929.

Then came another major local government Measure, the Local Government Act, 1933. That Act has very considerable significance, because in Section 85 local authorities were empowered to appoint any committees they chose. As a result, many authorities began to go into committee of the full council, not merely for the purpose which is in the spirit of the 1908 Act—that is to say, in order to discuss something which was truly of a confidential nature—but in order merely to exclude the Press, without addressing their minds to whether such exclusion was justified by reference to the matter to be discussed. That began to provide the first major legal loophole in the Act. Where previously local authorities had to deliberate in open council, with the exception of circumstances arising from the business which justified the exclusion of the Press, after that Act they were enabled to resolve themselves into committee merely as a matter of administrative convenience.

Two more Private Members' Measures attempted to bring the 1908 Act up-to-date—one introduced in 1949 by the hon. Member for Westbury (Sir R. Grimston) and the other introduced in 1950 by the hon. Member for Solihull (Mr. M. Lindsay). In the meantime, the need was becoming even greater, because in 1944 came the Education Act, which removed from the sharp light of publicity education committees which had been within purview of the 1908 Act. So we find that the purpose of this Act which governs the position now is no longer effective, because its provisions have become greatly out-dated. That is one of the major grounds for attempting now to bring the 1908 Act up-to-date and make its purpose effective by means of a new Act.

I now turn to the Bill before the House and will try to deduce its general principle from the Clauses there set down. There are six points I should like to make. The first point is, on what occasions in local authority work will this Bill entitle the Press to be present? I use the word "entitled" because there are many authorities which already practise the admission of the Press to a far greater extent than the Bill would necessitate their doing if it became law. This is meant to establish a minimum legislative code of practice for the Press

authorities. Therefore, the first question is to which meetings of local authorities would the Press be entitled to be admitted by virtue of the Bill. I would refer hon. Members to Clause 2 (2), which contains the major point with reference to committees, and I will try to put the point in fairly simple language—rather simpler than the complicated drafting we find here.

May I point out that committees of local authorities whose only power is to recommend a course of action to the council—a course of action which must be taken by the council and which cannot be taken by the committee without reference back—are not included at all in the Bill? Therefore, any committee of a local authority whose only task is to recommend a course of action to the council is not within the purview of the Bill.

I am well aware that a number of committees of local authorities have two different kinds of power—power to recommend and power to discharge the function of the local authority itself because that local authority has specifically delegated that task to the committee. Where the committee has both of these functions, it comes within the realm of the Bill if, and only if, a substantial part of its functions consists in discharging delegated powers. Where a committee only has the odd delegated power referred to it, it will not come within the Bill. Where local authorities have made a practice, as some have, of delegating their own functions to committees, these committees have substantial delegated powers, and therefore come within this Clause.

The Press will be admitted to the main council meetings of local authorities and to those meetings which effectively discharge the functions of the council; that is, the committees with substantial delegated powers, but others are not included. I know that some authorities include them, and I would like to see more authorities include them, because I think it would be in the interests of local government, but they are not entitled to be included under this Bill.

Having got the Press in to these meetings, or having entitled them to be in, there must inevitably be occasions, such as personal circumstances coming under discussion, matters preliminary to legal proceedings, matters with regard to the acquisition of land, or such matters which would inevitably come up, when the Press were entitled to be present, unless some effective provision was made to exclude the Press on these occasions.

My second point, therefore, is: having got the Press in, upon what grounds is a local authority entitled to exclude it? There must inevitably be some occasions. We have had great difficulty in drafting the Clause to fit all cases. I had hoped to draw up a schedule of circumstances in which local authorities would be entitled to exclude the Press. That was not possible, and we have had to go back to a kind of omnibus Clause. I refer hon. Members to Clause 1 (2), which is the operative Clause for this purpose. I suggest most earnestly that when the Press is excluded it must be because of some particular reason arising from the proceedings of the local authority at the time, and there must be very good reason for the exclusion. The real reason for excluding the Press is that publicity of the matter to be discussed would be prejudicial to the public interest.

There are two prongs to this Clause. Publicity would be prejudicial for two main groups of reasons. The first group is where the matters under discussion are of a confidential nature. They may relate to personal circumstances of individual electors. They may relate to a confidential communication from a Government Department asking local authorities for their opinion on a subject which the Minister would not like to be discussed in open session until he is a good deal further on and has received the views of local authorities.

There is another group of subjects which perhaps could not be strictly termed confidential but where it would be clearly prejudicial to the public interest to discuss them in open session. They may relate to staff matters, to legal proceedings, to contracts, the discussion of which tender to accept and other such matters. On this prong the Press has to be excluded for a special reason which would need to be stated in the resolution for exclusion. Where the matter is confidential it would not need to be specified further in the resolution for exclusion. Where it was for a special reason, that reason would need to be specified in broad general terms in the resolution for exclusion. This subsection is effectiye

[MRS. THATCHER.]

and wide enough in its drafting to cover all occasions upon which a local authority could possibly have good grounds for going into private session. Those are the two main operative Clauses of the Bill.

My third point relates to documents. I understand that there is a very wide variation in practice between the number of documents which different local authorities give to the Press. I do not know how many hon. Members have tried to obtain information about a local authority of which they are not a member but happen to be a ratepayer. One sometimes goes to a council meeting without any idea of what is to be discussed. One sits there for about 15 minutes and all one hears is numbers being counted up to about twenty and starting all over again. Unless the Press, which is to report to the public, has some idea from the documents before it what is to be discussed, the business of allowing the Press in becomes wholly abortive. Therefore, Clause 1 (3, *b*) makes provision for a limited number of documents to be supplied to the Press at its request in advance of the meeting. It specifies that the agenda must be supplied to the Press if it so requests and is prepared to pay for it.

Agendas vary very much. Some are couched in terms which do not betray for one moment the subject which is to be discussed. One sees such items as "To discuss the proposal of Mr. Smith" and, "To receive the recommendation of Mr. Jones". As distinct from the supporting accompanying documents, the agenda itself is usually a comparatively brief document. I have, therefore, thought fit to put into the subsection a provision that the agenda shall be supplied to the Press together with such further statement or particulars as are necessary to convey to an outside person the nature of the subject to be discussed. Therefore, the Press must have some idea from the documents what is the true subject to be discussed at meetings to which its representatives are entitled to be admitted.

If the whole agenda was supplied, it might include some things which would be likely to be taken when the Press was excluded. I understand that the practice in many councils is to have Part I and Part II, to take subjects in public session first, and then have a resolution and go into camera for the next group of subjects which come up in private. The corporation, acting through its proper officer, to whom it would have to give instructions, is entitled to exclude from the agenda matters which are likely to be taken in camera so that no confidential matters will leak out by that process. Another provision in the Clause is that the corporation may, if it thinks fit—not must—include supporting committee reports or documents, but it would have to exercise its mind to include them. The Press would not be able to demand such documents as of right.

Fourthly, I have been approached and asked about the question of qualified privilege for local councillors and people who serve on local authorities. I have been approached by people who suggest that the privilege should be made absolute. I could not possibly accede to that, as I think that absolute privilege should be given very rarely indeed. However, there is a consequential provision in the Bill which means that where qualified privilege at present exists for statements made by people serving on local authorities that qualified privilege shall not cease to exist merely because the Press is present. That retains the present position and removes one of the reasons why people can object to the Press being present, because unless there were a consequential provision it might serve to remove the qualified privilege.

Fifthly, I understand from various sources that my proposals are under some criticism because they contain no sanctions or penalties upon local authorities. I should therefore like to state briefly what I am advised the position is when any statute is breached. There are general sanctions available at law for this purpose. Where a public right is infringed, as it would be in the event of the Bill becoming law and local authorities wrongfully excluding the Press, any person can apply to either the Attorney-General or the Solicitor-General for what is known as a relator action. He must state on the application the grounds and enclose counsel's opinion that there is a good cause of action, that is to say, that it is probable that the council wrongfully excluded under particular circumstances. The person must supply also—I have no doubt that this is very important—a

solicitor's certificate to the effect that the person to take action and to go to the courts is a person who is likely to be able to meet the costs, because the Attorney-General will not foot the bill. He only lends his name to the action.

When that is done, the courts can adjudicate on whether that exclusion was legal or illegal. In the event of the litigant getting a declaration that the exclusion was illegal, he would get costs, and the district auditor already has power to surcharge those costs upon the members of the local authority whose misconduct was responsible for the illegal action occurring. I submit that those sanctions that are available by the ordinary law are sufficient to enable this Measure to be enforced.

My sixth point relates to the Schedule. I shall not go through the Schedule in any great detail, except to point out that a considerable number of the bodies referred to in it are the successors in title to those mentioned in the 1908 Act—the divisional executives established under the Education Act, the regional hospital boards and so on. Hon. Members will note that some committees of authorities are specifically excluded—those whose functions consist solely of determining matters of a confidential nature.

For example, committees of regional hospitals boards are specifically excluded. Committees of executive councils are specifically excluded, which means that any disciplinary matter relating to doctors, nurses, and so on, would not come before the public eye because the committee discharging the function does not come within this Measure.

I hope it is evident from what I have said that we are trying very hard to put into the form of legislation a code of practice that will safeguard the rights of the public. There was, last summer, one instance of the letter of the 1908 Act being contravened, and in a number of instances certainly the spirit of that Act was contravened. It is not, therefore, only a matter of bringing the 1908 Act up to date; because of the abuse of the law, there is a case for safeguarding the rights of the citizen. I hope that hon. Members will think fit to give this Bill a Second Reading, and to consider that the paramount function of this distinguished House is to safeguard civil liberties rather than to think that administrative convenience should take first place in law.

Finally, Mr. Speaker, I should like to acknowledge the help given to me by my right hon. Friend and his Department which, I understand, has been as great as any Government Department could give to a private Member. I want also to acknowledge the help of those who have been good enough to subscribe their names to the Bill, and I should like to thank the House for its very kind indulgence to a new Member.

11.34 a.m.

Mr. F. V. Corfield (Gloucestershire, South): I beg to second the Motion.

It is a very great pleasure and privilege to express my congratulations, which, I am sure, will be echoed in all parts of the House, to my hon. Friend the Member for Finchley (Mrs. Thatcher). It is not often that one gets the opportunity in this House to congratulate an hon. Member on an outstanding maiden speech, which has been delivered with very considerable clarity and charm, and to congratulate the same hon. Member on introducing a piece of by no means unimportant legislation in a manner that would do credit to the Front Benches on either side of the Chamber.

Her very great interest in this matter is reflected in the manner in which my hon. Friend has covered, not only the general subject, but the detailed provisions of the various Clauses of her Bill. It is, therefore, with no sense of mere formality, but very sincerely, that I say that we look forward to hearing more from her in future debates, to which she has so obviously a contribution to make. I have also to congratulate her on her success in the Ballot, and on choosing this Measure which is perhaps not wholly uncontroversial and which raises matters and principles of the greatest importance.

In considering the underlying principles of the Bill—and, indeed, those of the 1908 Act that it purports to replace—I am very much aware of the dangers of trying to draw too close a parallel between the business conducted at local authority meetings and that conducted on the Floor of this Chamber. Much local authority business is inevitably of an administrative nature, and is more

CONFIDENTIAL

CNO

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

N

The Rt Hon Viscount Whitelaw
Lord President of the Council
68 Whitehall
LONDON SW1A 2AT

17 January 1985 17/1

Dear Willie.

H Committee is due to discuss on 22 January the proposal in Kenneth Baker's letter of 4 December to you about Robin Squire's Bill. I have read the various comments from colleagues with interest and thought that I should indicate my own conclusions.

I agree with others that our most important concern must be to minimise any danger of a spillover from extending Freedom of Information in local government into central government. Quintin Hailsham has concluded that this should lead us to resist the Bill entirely while other colleagues have agreed with Kenneth Baker that the best strategy would be to support the Bill but seek to place limits on any damage which it might do. I find the arguments on this finely balanced and I think that we must accept that we will be criticised by the Freedom of Information enthusiasts whichever course we take and that we will have to fight hard to resist amendments to extend the scope of the Bill during its passage. On balance I agree with Kenneth Baker.

In taking this view I would very strongly echo the views of colleagues that we must seek to place strict limitations on the Bill's provisions. I would support the exclusion of access to purely internal local authority documents and the restriction of scope to elected local authorities as usually understood. Kenneth Baker refers to the exclusion of water authorities: similarly there are bodies in the education sector to which I would not at present wish to see such provisions extended. It would also be my aim that provisions concerning the operations of local councils, and their committees and subcommittees, should not spillover into similar requirements regarding say the proceedings of the governing bodies of schools or colleges (which in large part have already been the subject of recent legislation).

I am copying this letter to the Prime Minister, members of H Committee, Grey Gowrie, Kenneth Baker and Sir Robert Armstrong.

Yours ever, Keith.

HOME AFFAIRS

Open Government

May 79.

YdS

CONFIDENTIAL

DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

nbpm
Dmk
2/1.

The Rt Hon Viscount Whitelaw CHMC MP
Lord President of the Council
68 Whitehall
London SW1

December 21st.

Dear Willie.

FREEDOM OF INFORMATION IN LOCAL GOVERNMENT : PRIVATE MEMBER'S BILL

Kenneth Baker copied to me his letter of 4 December and I have also seen the letters from The Lord Chancellor and Grey Gowrie.

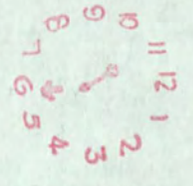
I agree that this Bill raises sensitive issues with wide implications but it is likely to command extensive all party support and we are more likely to secure the safeguards we need if we give it a fair wind. Provided therefore adequate provision is made for certain exemptions of the kind referred to in the second paragraph of Kenneth Baker's letter, my view is that we should take a positive attitude towards it. DHSS's concern must be to press for the same safeguards for health and personal social services matters as we secured last year in the Data Protection Act. This Act of course was concerned only with access to records and the scope of Robin Squire's Bill is a lot wider. This means that we would need to seek protection for proceedings in any council or council committee or sub-committee meetings where the personal affairs of clients are discussed.

I am copying this letter to the Prime Minister, members of H Committee, Grey Gowrie, Kenneth Baker and Sir Robert Armstrong.

Yours

NORMAN FOWLER

Home Affairs: Open Government May 79.



FROM THE MINISTER FOR HOME AFFAIRS AND THE ENVIRONMENT

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU
TELEPHONE: 01-233 3000

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

19/12

19 December 1984

Dear Willie,

FREEDOM OF INFORMATION IN LOCAL GOVERNMENT: PRIVATE MEMBER'S BILL

I have seen a copy of Kenneth Baker's letter of 4 December to you, and also of Grey Gowrie's of 11 December and Quintin Hailsham's of 12 December.

As everyone has recognised, the most awkward implication of Robin Squire's Bill is that it must revive the arguments - which are bound to be pressed strongly - that the same principles ought to apply equally to central government. I also take Quintin's point that these pressures would become even greater should the Bill pass into law. Nevertheless, I agree with Grey that the best way to meet these arguments and pressures is head-on, by a suitably robust refutation of them on the grounds set out in the Prime Minister's letter of 7 December 1983, and not to seek to avoid them. The decisive consideration seems to me to be that the Bill offers considerable support to our local government policies, and indeed would deal to a large extent with one of the abuses which the committee of inquiry announced by Patrick Jenkin is expected to look at: the exclusion of councillors who are not members of the majority group from the business of important committees and sub-committees, even to the extent of denying them access to papers.

I also agree that the provisions in the Bill about public access to internal documents are likely to be impracticable or excessively expensive as they stand. This is a point which has been made by the Convention of Scottish Local Authorities, and I think it is a reasonable one. Furthermore, an extended right of public access to documents is the aspect of the Bill which the local authorities are most likely to allege is likely to increase their costs and their manpower needs. We must obviously beware of seeming to be imposing another significant burden on authorities. We should therefore try, as Kenneth Baker suggests, to persuade Robin Squire to accept changes in this part of his Bill.

Finally, if it is decided to give the Bill a fair wind, I think it should extend to Scotland. The question is bound to be raised anyway, and I do not think that we could argue that the position in Scotland is different enough in this respect for the Bill not to apply of both sides of the Border.

I am copying this letter to the Prime Minister, members of H Committee, Grey Gowrie, Kenneth Baker and Sir Robert Armstrong.

Yours Michael

MICHAEL ANCRAM


19 DEC 1984

CONFIDENTIAL

CC NO

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

14 December 1984

Dear Kenneth

FREEDOM OF INFORMATION IN LOCAL GOVERNMENT: PRIVATE MEMBER'S BILL

Thank you for your letter of 4 December about Robin Squire's Bill.

You will have seen that Grey Gowrie would be content with your line but that Quintin Hailsham is opposed to it. The issues are clearly important and difficult enough to justify discussion at a meeting of H Committee. As Second Reading will be on 1 February I think it would be helpful if you could circulate a memorandum in time for discussion at the meeting arranged for 4.30 pm on 16 January.

I am sending copies of this letter to the Prime Minister, the members of H Committee, to the Chancellor of the Duchy of Lancaster, the Minister without Portfolio, the Attorney General, the Paymaster General, First Parliamentary Counsel and Sir Robert Armstrong.

Yours

Kenneth Baker Esq MP

CONFIDENTIAL

~~Legislative~~

Home Affairs: Open Court May.

HOUSE OF LORDS,
SW1A 0PW

12 December 1984

My dear Willie: Freedom of Information in Local Government: Private Member's Bill

Kenneth Baker has copied to me his letter to you of 4th December in which he states that Robin Squire intends to introduce a Bill on freedom of information in local government which is likely to be similar to the Bill introduced last session by Simon Hughes.

In relation to the latter Bill, Patrick Jenkin wrote to John Biffen on 18th June saying that he thought there might be some merit in these proposals, but did not feel the Government could support them until the Local Authority Associations had been consulted. He suggested that the Government should neither support nor oppose that Bill. John Biffen however suggested that it should be opposed on Second Reading. Since this exactly coincided with my own views, I did not intervene in that correspondence.

Now, however, the local authorities have been consulted, and Kenneth Baker takes the view that Robin Squire's Bill should be supported in principle. I fear that I do not share this view, for three main reasons.

First, as Patrick Jenkin - rightly, I am sure - stated in his letter of 18th June, one of the factors which must influence us in reaching a decision (though by no means the only one) is the attitude of the local authorities. Ostensibly they appear to support the Bill but, as Kenneth Baker makes clear in his letter, their support is tainted by hypocrisy.

/They

The Right Honourable
The Viscount Whitelaw CH MC
Lord President of the Council

They give an appearance of support because they cannot publicly adopt any other stance, but in practice they do not favour the Bill. That being the case, their views can and should be disregarded.

We must therefore look at this Bill entirely objectively. This brings me to my second point. I entirely take the point made by Kenneth, that the right of the public to inspect internal documents may lead to the exposure of abuses of the democratic process. However, I think it much more likely that any local authority which really is abusing the democratic process would have little difficulty in bringing the relevant papers into the class of confidential documents exempt from disclosure. What seems to me rather more likely is that the classes of documents to which the public would be given access would include documents dealing with transactions involving large sums of money, such as land developments. This could well result in improper pressures being brought to bear on those who should enter into such negotiations with only the interests of the authority in mind; it might even open the door to corruption. In fact, bearing in mind Poulson & Dan Smith I think this likely.

Lastly, as Kenneth says at the end of this letter this is "a sensitive issue with wide implications". The implications are, of course, that if such a Bill becomes law, it will make it even more difficult for the Government to resist a national Freedom of Information Bill. I am in no doubt that such a Bill must be resisted, and I need not expatiate on the reasons, since the main ones are given in the Prime Minister's letter to Mr. Wilson of 7th December 1983. But for all these reasons, taken together, I am firmly of the view that the Government should oppose Mr. Squire's Bill, notwithstanding that it is likely to obtain some support from Government backbenchers.

I am sending copies of this letter to the Prime Minister, members of H Committee, the Chancellor of the Duchy of Lancaster, the Minister without Portfolio, the Paymaster General, Kenneth Baker and Sir Robert Armstrong.

Yrs:

Home Affairs: Local Court May 79

CABINET OFFICE

From the Chancellor of the Duchy of Lancaster
Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
London SW1

11 December 1984

Dear Willie,

FREEDOM OF INFORMATION IN LOCAL GOVERNMENT:
PRIVATE MEMBER'S BILL

I am grateful to Kenneth Baker for copying to me his letter of 4 December.

I am quite sure that, if we support Robin Squire's bill, we risk our critics saying that what is good for local government is also good for central government. They will argue that our support for Freedom of Information in local government is totally inconsistent with our opposition to it in central government.

Such criticism can be countered by the legitimate argument that the relative situations of local and central government are entirely different. As the Prime Minister pointed out in her letter to the Freedom of Information Campaign last year, a general right of access to central government information would cut across Ministers' accountability to Parliament and indeed the traditional role of Parliament itself. There is no parallel in local government. But those of our critics who take the trouble to listen to the argument will dismiss it as Whitehall double speak.

If we were simply concerned with defending our position of Freedom of Information within central government, the safer course would undoubtedly be to leave Mr Squire's Bill to find its own way. But, as Kenneth Baker says, the Bill would bring real benefits in local government terms. In the circumstances I think we should support the bill, and risk and robustly tackle any criticism. I would hope however that

we would be able to persuade Mr Squire to take out the provisions which would give the public the right to see and copy "internal documents".

I am copying this letter to the Prime Minister, members of H Committee, and to Sir Robert Armstrong.

I believe the "internal documents" point is an important one.

Yours,

GOWRIE

CONFIDENTIAL

Mr Barclay to TMB 4/12 see

Minister for Local Government

Department of the Environment
2 Marsham Street London SW1P 3EB
Telephone 01-212 3434

4 December 1984

Dear Mike,

FREEDOM OF INFORMATION IN LOCAL GOVERNMENT: PRIVATE MEMBER'S BILL

Robin Squire, who has gained 3rd place in the Private Member's Ballot, has made it clear that he intends to introduce a Bill on Freedom of Information in local government. He is likely, in the first instance at least, to take over a Bill already prepared by the Campaign for Freedom of Information and probably similar to that which Simon Hughes introduced, but did not proceed with, last Session.

The main features of the Bill provide for the public to have access to local authority reports and minutes and for the press to have access to local authority meetings - unless the subject matter falls within specified exemptions where confidentiality must be respected, for example in respect of commercial negotiations, financial standing of individuals or businesses, personal privacy and matters likely to become the subject of legal proceedings.

The rights of access would apply regardless of whether the meetings at which papers were considered comprised the full council, council committees or council sub-committees. Agenda and the reports which they cover are to be made available, save in certain specified circumstances, three days before the meeting in question takes place. The public are also to be entitled to see and copy at their own expense internal documents leading up to reports save in specified circumstances, notably those listed areas where confidentiality has to be respected. Councillors are to have the same right, though free of charge.

We take the view that the Bill is welcome in principle, even though certain of its provisions, for example the right to inspect internal documents, may be wrongheaded and various impracticalities need to be weeded out. Its aim of opening up the workings of local authorities accords with Patrick Jenkin's proposal for an inquiry into conduct of local business, and cannot but shed light on the undemocratic abuses prevalent among certain urban authorities in particular. In addition, the Bill seems likely to command extensive all-party support across the entire political spectrum. The Campaign claim some 35 Conservatives, almost 100 Labour and some 20 Liberal/SDP backbenchers as active supporters of this particular Bill. The local authority world itself is, predictably, cautious. In anticipation of an interested Private Member proving successful in the Ballot, we consulted the local authority associations. Many of their detailed criticisms validly point to practical defects, but others tend to undermine their professions of support in principle

for freedom of information. In short, we would expect the associations to attempt to dilute a Bill as far as possible but to subscribe ostensibly and publicly to its overall intentions.

Against that background, our conclusion is that the Bill, viewed solely from the local government angle, deserves a fair wind. We should therefore encourage Robin Squire to proceed, while making it clear that changes and improvements to the Bill will be needed.

We need, however, to assess the possible impact of the Bill on other areas besides local government where freedom of information is under debate. The point arises, for example, in respect of the water authorities. They were reconstituted under the Water Act 1983 as independent statutory bodies unconnected with their origins in local government. They are intended to run on business-like lines, and we have appointed their members accordingly. Water authorities have constituted consumer-consultative committees whose papers and meetings are open to the press and public. It is the practice of water authority Chairmen to hold a press conference after every authority meeting. Although newspaper editors lobby and write editorials about them, these arrangements serve the public and the press well. They were fully debated in both Houses during the passage of the Water Act, and we have told Parliament recently that we are satisfied with them. We can draw a clear distinction between water authorities and local authorities in debates on a Bill about freedom of information.

More significantly, the repercussions for freedom of information in central government need to be weighed. The Prime Minister has already made the Government attitude plain in her letter of 7 December 1983 to Des Wilson, coordinator of the Campaign: a legal right of access would cut across Ministerial accountability to Parliament and is not to be entertained. I enclose a copy of that letter. The constitutional position of local government, however, is - and can be shown to be - different. In the first place, no question of infringement of Parliamentary authority can arise for a freedom of information Bill affecting local government. Moreover, legislation is already precedented in the local government field, under the Public Bodies (Admission to Meetings) Act 1960 which was sponsored by the Prime Minister as a backbencher and which the Bill in effect seeks to extend. The local authority world will doubtless be reluctant to accept such arguments, but there is no reason to suppose that their predictable view will carry weight should legislation relating to central government be attempted.

The distinctive position of local government as compared with other areas where freedom of information legislation may be canvassed and the general desirability of the Government appearing sypathetic where freedom of information can be justified seem to point towards maintaining the conclusion that we should view Robin Squire's Bill positively, and in that light should seek to persuade him of such changes as we consider desirable. This is, however, a sensitive issue with wide implications and I should therefore welcome your opinion.

CONFIDENTIAL

I am copying this letter to the Prime Minister, members of H Committee, Grey Gowrie and Sir Robert Armstrong.

KENNETH BAKER

3F

The Rt Hon the Viscount Whitelaw CH MC

10 DOWNING STREET

THE PRIME MINISTER

7 December 1983

Dear Mr. Wilson

Thank you for your letter of 14 November, setting out the objectives of the campaign of which you are Chairman.

It is the Government's policy to make available as much information as is possible, while preserving the confidentiality essential to the effective working of government. The proviso is necessary, as your own document acknowledges. The real question, therefore, is how the public interest in disclosure - or on the other hand confidentiality - of particular information is to be determined.

I am afraid I cannot offer any encouragement to your proposal of a Freedom of Information Act, imposing a statutory obligation on Ministers to disclose information held by Government departments. Under our constitution, Ministers are accountable to Parliament for the work of their departments, and that includes the provision of information. A statutory right of public access would remove this enormously important area of decision-making from Ministers and Parliament and transfer ultimate decisions to the courts. No matter how carefully the right were defined and circumscribed, that would be the essential

/constitutional

constitutional result. The issues requiring interpretation would tend to be political rather than judicial, and the relationship between the judiciary and the legislature could be greatly damaged. But above all, Ministers' accountability to Parliament would be reduced, and Parliament itself diminished.

You are anxious that your campaign should be seen as one "to improve the accountability of quality of government". I believe that, if this part of your objectives were achieved both accountability and quality would suffer. We said in our 1979 Manifesto that we would see that Parliament stands at the centre of the nation's life and decisions. In our view the right place for Ministers to answer for their decisions in the essentially "political" area of information is in Parliament.

I accept, as you say, that the campaign is not intended as a criticism specifically of this Administration. Our predecessors in office were also convinced of the fundamental constitutional objection to legislation of this kind. But we have gone further in ensuring Parliamentary accountability In particular we helped to set up, and are fully supporting, the departmental Select Committees, whose dialogue with departments is producing a wider range of information than at any previous time. The Committees are institutionally appropriate to our constitution; a Freedom of Information Act is not.

In summary, I welcome any moves that will help to ensure that public demands for information are heard, and as far as possible satisfied. But I firmly believe that major constitutional changes such as your campaign is

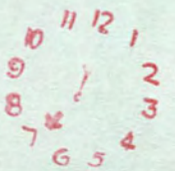
/proposing

proposing are inappropriate and unnecessary. We already have a clear policy to make more information available and the necessary machinery to do so.

Yours sincerely

Margaret Thatcher

Des Wilson, Esq.



The 1984 Campaign for Freedom of Information

2 Northdown Street London N1 9BG
Telephone 01-278 9686

pa DMS 14/9

Prime Minister

You may have seen in the Press that several former civil servants, including Pat Nairne, have agreed to serve as advisers. DMS 13/9

Embargo: 0.30 am Thursday
September 13, 1984

FORMER TOP CIVIL SERVANTS TO ADVISE CAMPAIGN FOR F.O.I.

The Campaign for Freedom of Information is pleased to announce that a number of distinguished former civil servants have accepted its invitation to serve on a panel of advisers.

The panel, chaired by Sir Douglas Wass, former Joint Head of the Civil Service (1981-1983) and former Permanent Secretary of the Treasury (1974-1983), will include:

- Lord Croham, who, as Sir Douglas Allen, was Head of the Civil Service and Permanent Secretary of the Civil Service Department (1974-1977) and Permanent Secretary of the Treasury (1968-1974).
- Sir Patrick Nairne, who was Permanent Secretary of the DHSS (1975-1981).
- Sir Kenneth Clucas, who was Permanent Secretary at the Department of Prices and Consumer Protection (1974-1979) and Permanent Secretary of the Department of Trade (1979-1981).
- Mr. Michael Power, who was an Under-Secretary in the Ministry of Defence from 1973 to 1981.
- Mrs. Barbara Sloman, who was an Under-Secretary in the Civil Service Department, subsequently the Cabinet Office (1975-1984).

The panel will be available to advise and comment on aspects of the Campaign's legislative proposals in the light of their own experience.

It is hoped to add further to their number as the need arises for advice in specific areas.

Jointly announcing this arrangement, James Cornford, Chairman of the Council for Freedom of Information, and Des Wilson, Chairman of the Campaign Committee, stated:

"We are naturally very pleased to have access to the advice of this group of former civil servants with such lengthy and invaluable experience in government.

"We should make it clear that they are not only people of distinction, but independence of mind, and we have not asked, nor would we expect, that they support all of our detailed objectives. (In this respect their position is similar to that of our parliamentary supporters, and supporting organisations, who share our broad aims but not necessarily every detail of our proposals.)

"Our preliminary discussions have demonstrated, however, that they are unanimous in their view that Section 2 of The Official Secrets Act should be repealed, and that legislative action is required to create greater freedom of information.

"The fact that these busy people have generously offered their time to advise the Campaign speaks for itself of the depth of their concern about the extent of unnecessary secrecy, and we are much encouraged by this.

"Given that we will also be consulting regularly with the Civil Service unions, including the First Division Association, we believe the Campaign is demonstrating its genuine desire to strike the correct balance between the introduction of statutory freedom of information and the need to take into account any real problems of administration and the importance of protecting adequately information which in the public interest must remain confidential."

END

For further information contact:

Des Wilson 01-278 9686

010

CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

DMB 16/8

Hugh Taylor Esq
PS/Home Secretary
50 Queen Anne's Gate
LONDON SW1H 9AT

9 August 1984

Dear Hugh,

Lord Gowrie thought that other Ministers might like to see the attached exchange of correspondence with Tim Eggar MP.

Mr Eggar is a keen advocate of greater openness within the Government's policies. He understands the impossibility of releasing all the material contained in departments' management documents. But he has consistently pressed for a reasonable amount of detail to be released, in line with the Government's commitments on open government generally and on FMI in particular (cf paragraph 51 of last year's White Paper, Cmnd 9058 and paragraph 30 of this year's Cmnd 9297).

Copies of this letter go to Private Secretaries of Ministers in charge of Departments (list attached).

Yours sincerely,

Louise Phippard

MISS S C PHIPPARD
Assistant Private Secretary

CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

Tim Eggar Esq MP
House of Commons
LONDON SW1

9 August 1984

Dear Tim.

Thank you very much for your letter of 31 July.

I entirely agree that practice needs to match promises. I doubt whether we shall ever get complete consistency of practice in this area because judgements of what can be released are rightly for individual Ministers in charge of Departments, and different Departments hold different sorts of material. It is sadly true that the more detailed and useful management documents are, the more likely they are to contain material which it would be inappropriate to publish.

I think we have made not a bad start - if I can put it that way. There are large amounts of fairly detailed management information now available, and I notice that a number of your replies referred to intentions to release more material as systems develop. But there is always room for improvement. No doubt you will continue to keep us to the mark.

Your postscript about your victory in the Institute of Public Relations debate hardly does it justice. I knew you would put up a first rate performance. But it was very good to win the Vote against a statutory right of access. I hope to hear more about it next time we meet.

I thought colleagues would be interested to see your reactions to their replies, so I am sending them copies of your letter and of this reply.

Yours ever,

LORD GOWRIE

698

From: TIM EGGAR, M.P.

MR RUSSELL
MOS (SP)
BF 15.8

HOUSE OF COMMONS
LONDON SWIA OAA
Private Secretary 01- 219 3544
Constituency Office 01- 363 0653 (24 hours)

31st July 1984

Rt Hon The Earl of Gowrie,
Minister of State,
Privy Council Office,
Whitehall,
London SW1.

Dear Lyn,

You may know that I recently put down a series of PQs asking Departments to place their FMI documents in the Library.

The replies have been instructive. A number have needed the PQ prompting to place anything in the Library. Your voluntary approach to open government appears to require nudging ! Several Departments simply referred me to the new FMI White Paper - which does not give nearly enough detail to enable anyone to make a sensible judgment of their systems (or lack of them!).

Is it not possible for you to use your open government and MPO hats to persuade Departments to be a bit more forthcoming?

Yours ever,

T.

P.S. Much to my surprise we won the I.P.R. debate by 70 : 50.

COPY LIST: PRIVATE SECRETARIES TO:-

Prime Minister

Lord President of the Council

Lord Chancellor

Secretary of State for Foreign and Commonwealth Affairs

Chancellor of the Exchequer

Secretary of State for Education and Science

Secretary of State for Northern Ireland

Secretary of State for Energy

Secretary of State for Defence

Secretary of State for Scotland

Secretary of State for Wales

Secretary of State for the Environment

Lord Privy Seal

Secretary of State for Social Services

Secretary of State for Trade and Industry

Chancellor of the Duchy of Lancaster

Secretary of State for Employment

Minister of Agriculture, Fisheries and Food

Secretary of State for Transport

Attorney General

Minister for Overseas Development

Lord Advocate

10 DOWNING STREET

With the compliments of

F E R BUTLER

MRS M E HEDLEY-MILLER c Mr Catford

FREEDOM OF INFORMATION -
PERSONAL RECORDS

Many thanks for your minute of 15 May. I am entirely content with your minute to Miss Dickinson and I am very grateful to you for protecting our interests in this way.

I agree that the point about the 1967 Parliamentary Commissioner Act could be useful.

F E R BUTLER

15 May 1984

MR F E R BUTLER

c. Mr Catford

FREEDOM OF INFORMATION : PERSONAL RECORDS

I was most grateful to you and to Mr Catford for your helpful notes of 2 and 8 May respectively.

... 2. I did not show you the attached reply to Miss Dickinson in draft, hoping to spare you a chore : but you will of course say if you want to amend it.

3. You will see that I tried to keep the suggested line short : and that I decided not at this stage to rehearse for others Mr Catford's important points about differentiating honours and appointments.

4. I am going to study the Data Protection Bill, but I fear that there will be no loopholes.

5. Miss Dickinson reminded me that the 1967 Parliamentary Commissioner Act excludes from investigation "The grant of honours, awards, or privileges within the gift of the Crown, including the grant of Royal Charters" (Schedule 3 paragraph 11); and that not a word was said about Honours when a Select Committee looked into the working of the Act. This tends to suggest that we may not be pestered during the present Freedom of Information campaign.

MRS M E HEDLEY-MILLER
15 May 1984

MISS DICKINSON

c. Mr F E R Butler
Mr R Catford

FREEDOM OF INFORMATION : PERSONAL RECORDS

We have spoken about your minute to me of 30 March. I explained that it is essential for discussion of this matter, in so far it relates not only to Honours but also to Crown and Prime-Ministerial appointments, to be extended to bring in the Principal Private Secretary and the Secretary for Appointments at No.10 Downing Street: both of whom I have consulted before responding to you this time. Damage may have been done because of lack of consultation in relation to the Data Protection Bill, and we do not want to take any further risks.

2. So far as concerns Honours and Appointments the material in paragraphs 4 and 5 below could be used publicly, but only defensively, if the subject is raised with Ministers. Discussion of either should not be volunteered or initiated, even as an example of categories in respect of which access to records could not and would not be allowed.

3. Ministers would need to be absolutely firm in their rejection of access. They need make only two points.

4. First, access to papers relating to Honours and to Crown and Prime Ministerial appointments would be wholly inappropriate because it would breach the confidence and good faith of those - a high proportion of them private citizens - who offer or provide advice or recommendations. It would be like providing access to private correspondence.

5. Second, there is no case for breaching such confidence. There is a crucial distinction to be made between, on the one hand, information relating to Honours, and appointments; and, on the other, information which might affect those 'rights' of the individual with which the present campaigners for Freedom of Information are concerned. There are the 'rights' to which an individual may claim to be entitled within the limits of the legislation governing them. Honours and appointments are discretionary, not entitlements. Ministers should not be drawn further than this.

6. There is, for background, a final clinching argument, but it could side track the discussion in an undesirable way, and it would be best not to use it publicly. If individuals had access to honours records, a fair honours system would become unworkable and would have to be abandoned. Recommendations of many deserving people would not come forward : and we could not rely on objective and unbiased assessments of people within the system. Similarly, in the preparation of advice on Crown and Prime Ministerial appointments, those concerned are highly dependent on confidential information. Sources would quickly dry up if the confidence in which the information is given could not be maintained: and the system would not operate.

7. I am sending copies of this note to Mr Butler and to Mr Catford at No.10, who will let us know if they wish to change the wording or the emphasis.

MRS M E HEDLEY-MILLER
15 May 1984

10 DOWNING STREET

From the Secretary for Appointments

Mrs Hedley-Miller
Cabinet Office

Freedom of Information: Personal Records

Robin Butler copied to me his note to you of 2 May. There is not much which I can add from the view-point of my own responsibilities except, perhaps, to associate myself with what Robin has said. For much of the way, what is true for honours is true also for appointments, as we discovered when studying rather similar considerations in the context of the Data Protection Bill last year and earlier.

In the preparation of advice on Crown and Prime Ministerial appointments (whether church or non-church) we are highly dependent on confidential information - both solicited and unsolicited - which we receive about candidates. Without it we could not operate, and our sources would quickly dry up if we were not able to maintain the confidence in which the information is given. It is as simple as that.

Robin Butler refers to 'honours and appointments' in the same breath in most of what he wrote to you on 2 May. The only point on which, perhaps, there might be a differentiation between the two is where, in his third paragraph, he argues that they are not 'rights' to which an individual may be entitled. I suppose it is strictly speaking true that no appointment is ever the 'entitlement' of a possible candidate, but it has to be said that whereas some appointments are honorific others are offices of profit. As an example, Lord-Lieutenants of counties, appointed by the Crown, do not receive any emolument (beyond certain expenses) and the same would be true of a large number of appointments in the museums and galleries sector which are another big block. On the other hand, however, senior preferments in the Church of England, also made by the Crown, are very much career appointments for those who receive them and often, in secular terms, might be described as promotions. Senior judicial appointments are also made by the Crown and would be in the same category.

Robin Catford

8 May 1984

Pile JD
cc RC

10 DOWNING STREET

From the Principal Private Secretary

Mrs. Hedley-Miller,
Cabinet Office.

Freedom of Information: Personal Records

Thank you for your minute of 26 April. I am glad to have been consulted on this matter. I think that our opportunity for arguing for an exemption from the Data Protection Bill was damaged by the fact that we were not consulted at an earlier stage. In replying to Miss Dickinson perhaps you would ask her to bear in mind the interest of No.10 as a dependant of MPO. I am copying this minute, together with yours and its enclosures, to Robin Catford, who will want to comment from the point of view of his responsibility for Church and other appointments.

As regards honours, I agree with the line in paragraph three of your minute. I think your argument is very powerful and that the impracticability of running systems like this governing honours and appointments if individuals had access to all assessments collected in connection with them is a consideration which can legitimatley be brought to bear against the proposals.

I think that there is an additional argument which distinguishes honours and appointments from, for example, social security benefits. It can be argued that education, proper health care, social benefits, housing are "rights" to which the individual is entitled within the terms of the legislation governing them. If secret information were held which affected an individual's access to those rights, it could be argued that it would be unjust for the individuals not to have an opportunity to correct inaccuracies in that information. But honours and appointments are not "rights". They are entirely discretionary; and it follows that the claim for individuals to have access to such records for the purpose of correcting any inaccuracies is much weaker. I note that the material published by the Campaign for Freedom of Information refers to "public agencies .. providing services or with powers to affect the rights and liberties of the individual".

But both your argument and my argument are a rationalisation of one entirely practical point. If individuals had access to honours records, a fair honours system would become unworkable. Recommendations of many deserving people would not come forward, and also we could not expect objective and unbiased assessments of people within the system. For that reason we have concluded that the Data Protection Bill prevents us from putting the records of candidates for honours on to a computer system. If the potential recipients were given access to

/non-electronic

MR

non-electronic records, I believe that the honours system would become unworkable and would have to be abandoned.

2 May 1984

Mr F E R Butler

Freedom of Information : Personal Records

I think you should see Miss Dickinson's note to me of 30 March, with its enclosures. I have I fear put it aside during our busiest weeks on the Birthday 1984 List.

2. I do not doubt that - as so often with Honours matters - the least said the better. Moreover, whatever had to be said should be kept simple. We don't want any deep delving into the roots of the Honour system.

3. A Minister might say that access to papers in the Ceremonial Branch relating to individuals and Honours would not be appropriate because it would breach confidence and good faith. It would be like giving access to private correspondence. These records consist of the names of those put forward as worthy of receiving an Honour together with the reasons given by the recommender. The recommendations come from a wide variety of sources, public and private. They are made in confidence. There must be a presumption, in the majority of cases at any rate, that the fact of a recommendation is not known to the person recommended. Disclosure would be a breach of confidence. It might give pleasure in some cases. But it might cause embarrassment or even distress in others.

4. You however are closely involved in all this, and I would be most grateful for advice and comment before I reply to Miss Dickinson. I am not all that happy with my suggested line. And while I do actually doubt whether No 10 or the Ceremonial Branch would be badgered for information, we must be prepared for the worst: and clearly we must have a concerted line.

MRS M E HEDLEY-MILLER

26 April 1984

9/102

MRS M HEDLEY-MILLER

1984 CAMPAIGN FOR FREEDOM OF INFORMATION: PERSONAL RECORDS

Attached is a copy of a minute of 12 March that we sent to a number of MPO Divisions. It should have been sent to you too - I'm sorry we left you out.

2. I think, though, that we need only ask you for a brief comment. I am sure that the subjects of your files do not have access to them, or could possibly be allowed to. But it would be very helpful if you could give us a sentence or two that Ministers could, if necessary, use to explain exactly why not.

A Dickinson.

A M DICKINSON (MISS)
30 March 1984

Mr Chilcot
Mr Gurney
Mr Peterson
Mr Davie

12 March 1984

cc Mr Pearce)
Mr Dyer) Treasury
Miss Dickinson

1984 CAMPAIGN FOR FREEDOM OF INFORMATION: ACCESS TO PERSONAL RECORDS

1. You may have seen from the press that the FOI Campaign has now turned its attention to access to personal records. The Campaign hopes to get a Private Members Bill introduced soon by one of its supporter MPs. We do not know for certain whether the Bill will cover employers' records about employees, but it seems sensible to form at least a provisional view now about Civil Service and other public sector records so that if necessary we can advise Ministers at short notice. In any case there are some records (PAU and Civil Service Commission) that we keep about non-civil servants.

2. I am attaching copies of extracts from the Campaign's literature and of the holding briefing note we have provided for Ministers. There seem to be a number of distinct areas in the personnel record field (excluding those for which MOD is responsible - I have consulted them separately):

(i) records held by the Commission about both successful and unsuccessful candidates, (Mr Trevelyan)

(ii) PAU records, (Mr Peterson)

(iii) records of serving civil servants: (Mr Chilcot and Treasury, Pay and Superannuation)

a. non-industrial and

b. industrial

(iv) records of retired civil servants:

a. non-industrial and (Treasury)

b. industrial,

(v) personal security records held both centrally and by departments (though I imagine it should not be too difficult to claim exemption for these), (Mr Davie)

(vi) personnel records held by non-departmental public bodies.

If I have left any out, please let me know.

3. I should be very grateful if you could let me know, in respect of the areas for which you are responsible, what the existing law and/or practice is on allowing access to (and where appropriate erasure or correction of, or recorded dissent from)

what is on the record. We need not worry about records held on computers, since these are covered by the Data Protection Bill. But there are obviously more problems where appraisals and possibly derogatory material are concerned. I should also be grateful to have your initial reactions to any proposals to extend the existing law or to put existing practice on to a statutory basis.

4. I am copying this minute to Mr Pearce and Mr Dyer in Treasury for any comments they may have on pay/supperanuation records.

5. I suspect all that sounds easier than it is! But I should be grateful for your help nonetheless.

Genie Flanagan

MRS E C FLANAGAN
Machinery of Government Division

13. PERSONAL DATA

Q1. WHAT ABOUT ACCESS TO PERSONAL FILES/THE CAMPAIGN'S PROPOSED BILL ON THIS?

A1. We should need to see the proposals much further worked out before we could comment. For instance, the Campaign say they are still considering what exemptions there should be, and there are no proposals about enforcement.

Q2. WHY NOT COVER ALL PERSONAL FILES IN THE DATA PROTECTION BILL?

Q2. The Bill is a matter for the Home Secretary. But it is aimed at the specific threat posed to the individual by the automatic processing of personal data. The Bill would not be the right place for general provisions on access to personal data.

Notes

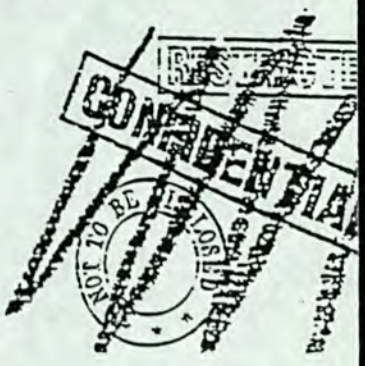
1. Attached is a copy of the outlines of an "Access to Personal Files Bill", as published by the Campaign on 2 March. The main areas to be covered are education, the Social Services, medical records (including psychiatric records) and local authority housing files; but also under consideration are prisons and police files, and "files of major financial institutions, banks, building societies and insurance houses".

2. The Campaign have collected a large volume of cases where injustice or hardship have evidently resulted from incorrect information in, or misuse of, personal files. Proposals of this kind cannot be simply dismissed out of hand. But the area of personal data is enormous, and extremely diverse. It is at the moment hard to see how a Bill of this kind could make adequate provision for enforcement. But at the present stage it would be best to offer no comment.

3. The Data Protection Bill (now in Committee) provides for individual access to personal data held on computers, and for inaccurate information to be corrected or erased. The legislation will be enforced by an independent Data Protection Registrar. But, as Home Office Ministers have made clear, the arrangements provid for in the Bill would simply not be apt to cover all records, including those kept manually.

SECRETS FILE No. 2

Fact or Fiction? Our right to check the files about ourselves



It is appropriate that in 1984 there should be considerable debate about the freedom and independence of the individual, for so many controls are now imposed by, and so many decisions taken by the state, and so much unprecedented technology exists to collect and record information.

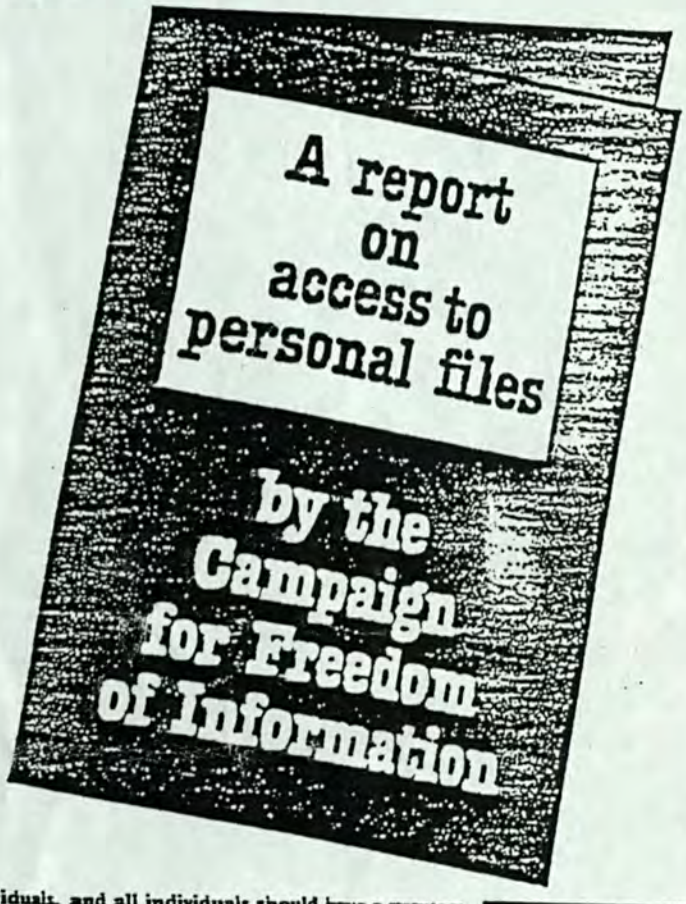
Never has the balance between the rights of the individual and the community needed to be so carefully weighed, and never has careful surveillance by the people of the use of power by the state been so essential.

In this report a number of respected organisations concerned with four community services—education, health, social work, housing — make clear that in one respect there is an unacceptable imbalance: it occurs because files are kept on individual members of the public by public servants and 'professionals' but access to those files is reserved for the public servants and 'professionals' alone. It is the unanimous view of those organisations, shared by the 1984 Campaign for Freedom of Information, that the arguments that can be advanced for denying people access to their own files are far outweighed by the case for access.

Files kept on the individual by any one of these services are in fact accessible to a considerable number of people whose main qualification would appear to be that they are "professionals". Not only does the individual not know what is in his or her file, but he or she does not know how many people have seen that file and in what circumstances, or what decisions they have taken on the basis of what information.

The number of personal files is massive and the scope for inaccuracy and injustice is so considerable that it has to be assumed that it occurs on a daily basis. There is simply no guarantee whether file entries are fact or fiction.

In nearly all of the circumstances we discuss in this report, the overwhelming case for access is that the individual can check the accuracy of his or her files, and avoid decisions being taken on the basis of inaccurate information. Furthermore, the fact that the individual has access to his or her files, should in itself lead to more careful record keeping. All this should reduce injustice.



- We believe this report makes an unanswerable case that parents and students over 16 should be given the right to see all reports and records about their children or themselves.
- So-called "clients" of the social services should have the right of access to files kept on them by social workers.
- Patients should have the right of access to the files kept on them by their doctor, or files kept by hospitals — this is particularly important in the area of psychiatric care.
- Tenants of local authority housing and those on waiting lists should have the right of access to their files.
- The right of access should be provided beyond the areas covered by this report – to social security files, to employers' files, and possibly files of major financial institutions – banks, building societies and insurance houses.

The broad principles are clear enough:
(1) the key organisations should be required to publish a list of the types of files or records they hold on named individuals, and all individuals should have a statutory right of access to those files or records.
(2) All individuals should have the right to request that inaccurate or misleading information be corrected. If the record-holding body does not agree, the individual should have the right to a formal hearing. If after that hearing there is still no agreement, the individual should have the right to put a note on the record registering his or her disagreement.

What we propose has been done in different forms in other countries.

It may be seen by professionals, operating within the exclusivity and with the benefit of the mystique of their own professional worlds, or by bureaucrats who believe they always know what is best for the citizen, as a dangerous step. This just demonstrates how far we have allowed paternalism and state control to develop in our lives.

The fact is that the right to check and correct our own files should be the very minimum requirement of a free society.

It is extraordinary that in 1984 we have to campaign for it. Extraordinary, that is, to all but readers of Orwell.

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Act allows individuals to obtain records held about them by federal agencies. However, they frequently apply for such information under the 1974 Privacy Act – which gives them the additional power to correct inaccuracies they may find.

The Privacy Act requires federal agencies to publicly identify all systems of records maintained on individuals. It places a legal duty on them to ensure that the information in these records is accurate, complete, relevant and up-to-date and allows individuals to inspect the data held about them and correct inaccuracies. Agencies must keep records of who has been allowed access to such disclosures available to the subject of the information. The individual's consent is required before an agency can use information collected for one purpose for any other reason.

There are a number of specific exemptions to subject access – for example, documents concerning national defence, criminal law enforcement, or the work of the Secret Service, while there are much wider exemptions for records held by the CIA or FBI. However, agencies do not always insist on their right to withhold exempted information. In 1981 the CIA disclosed at least some information from exempted records to 30% of requesters. Such information sometimes includes even reports of names deleted.

The American experience provides a startling reminder of how inaccurate official records may be. In 1977 the Department of Defence agreed to amend 14,939 inaccurate records – 99% of those requested. Other agencies had similarly high levels of inaccurate records: Transport Department (98%), Public Health Service (96%) and State Department (90%).

The Privacy and Freedom of Information Acts refer only to federal records – but access to some other records is possible under separate legislation. The 1974 Family Educational Rights and Privacy Act provides a right to pupil records at schools and colleges receiving federal funds. Information from a pupil's records only to certain specified bodies – for example, a school to which the pupil is transferring, the source of the pupil's grant, or certain government officials. Disclosure to others – including the police, probation service or employers – may not take place without the permission of the parents or student, who also can demand to see school or college references written about them.

In at least 24 states in the US separate legislation allows access to medical records.

Freedom of Information laws in Australia, Canada and New Zealand also allow individuals to see information about themselves on allow access to personal information under freedom of information type legislation. Such rights also exist under data protection legislation. Such laws, or administrative practice under them, in Denmark, France, Germany, Iceland, Luxembourg and Norway all allow access both to computerised and paper records. So too do bills or proposals in Greece, Japan, Spain and Switzerland. The British government, however, remains determined to restrict the UK Data Protection Bill to computerised records only – allowing no access to the vast number of records which in practice contain most of the information that the individual may need to see.

Towards an 'Access to Personal Files' Bill

An "Access to Personal Files" Bill will be introduced in the House of Commons shortly.

A sub-committee of the 1984 Campaign is at present engaged in work on the detail of the Bill, but the *broad principles* would be as follows:

1. All public agencies and some private organisations providing services or with the power to affect the rights and liberties of the individual shall be required to publish a list of the types of records they hold on named individuals.
2. All individuals (or with their permission their parents or guardians or representatives) shall have a statutory right of access to those files or records.
3. The access should be prompt and a maximum period for response should be laid down.
4. Individuals should have the right to copy or obtain copies of material in their files.
5. Individuals should have the right to request that inaccurate or misleading information be corrected. If the record-holding body does not agree, the individual should have the right to a formal hearing. If after that hearing there is still no agreement, the individual should have the right to put a note on the record registering his or her disagreement.
6. The record-holding body should publish a list of Authorised bodies having access to information on the files, and should record on each individual's files the bodies to which access or information from the files has been given. The rights to challenge and correct information should also apply in these circumstances.
7. The record-holding body should not be permitted to disclose the contents of personal files to other than the Authorised bodies without the written permission of the subject of the file.

Exemptions

The Bill would contain a number of exemptions from the above procedures.

The main exemption would be that information about third parties on an individual's file should not be disclosed to the subject of the file except where it directly affects them. (Information on individual members of a family should be stored separately, rather than in one file under the family name.)

Another would be where a member of the public provides information to the record-collecting body, while the information should be disclosed to the subject, the identity of the informant, in circumstances where the information is provided in confidence, should not.

Other exemptions remain a matter for further debate.

Education

Parents and students over 16 would be given the right to see all reports and records kept about their children or themselves, to challenge and, if necessary, to correct anything in them; and to control who else, outside the school, should be allowed to see them.

Students in higher education should in addition have the right of access to examination reports and academic assessments.

Young people charged with criminal offences should have the right of access to reports submitted to the courts by the school.

Social Services

So-called "clients" of the social services and probation service should have the right of access to files kept on them by social work and social services departments.

Foster parents should have a right of access to their own files.

Medical records

Patients should have the right of access to the files kept on them by their doctor, or files kept by hospitals – this should be as much the case for people being treated for a psychiatric disorder as for those suffering physical illness.

Housing

Tenants of local authority housing and those on waiting lists should have the right of access to their files.

Other Files

The Bill may also create the right of access to files in a number of other areas that are not covered by this report. Consideration will need to be given to areas as diverse as prisons and police files, on the one hand, and files of major financial institutions, banks, building societies, and insurance houses, on the other.

Consideration would also need to be given to the right of employees to have access to files kept on them by their employer.

An essential category would be those on social security files.

Report by Maurice Frankel and Des Wilson

Published by The 1984 Campaign for Freedom of Information.

Typeset, Designed and Printed by Redesign Tel. 533 2631.

DMB 16/4

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16 April 1984

Dear David,

FREEDOM OF INFORMATION CAMPAIGN: MR DAVID STEEL'S BILL

I sent you on 5 March some briefing notes for use by any Minister who my find himself drawn into public discussion of the Campaign for Freedom of Information and Mr David Steel's Ten Minute Rule Bill. The attached note on the Sarah Tisdall case supplements the existing Note 12 on the Official Secrets Acts and leaks generally. — will request if required

Mr Steel's Bill, due for Second Reading on 6 July, has still not been published. When it is available we will circulate a note on it.

I am copying this letter and enclosures, as before, to Private Secretaries to members of Legislation Committee and other Ministers in charge of departments; and for information to Tim Flesher at 10 Downing Street and Richard Hatfield.

Yours sincerely,

Mary Bowes

P L CANN
Assistant Private Secretary

12A. THE SARAH TISDALL CASE

Q1. THE SENTENCE?

A1. I have no comment on the sentence on Miss Tisdall, or on the Court of Appeal's decision to refuse leave to appeal.

Ministers are not responsible for the decisions of judges. Under our constitution the judiciary are completely independent of the Executive.

Q2. THE DECISION TO PROSECUTE/TO PROSECUTE AT THE OLD BAILEY?

A2. The Attorney General, rightly in my view, regarded this leak as a serious offence.

Even if section 2 of the Official Secrets Act 1911 had been revised exactly as the Franks Committee recommended, it would still have been an offence.

Q3. WAS THE PROSECUTION POLITICALLY MOTIVATED?

A3. Certainly not. Governments - of any party - must be able to trust the Civil Service not to betray their confidences. No Government could carry on business if civil servants were allowed to leak information whenever they disagreed with the policies of Ministers.

Members of other parties who doubt this had better think, if they hope one day to hold office, of the rod they may be making for their own backs.

Q4. WHY WAS THE GUARDIAN NOT ALSO PROSECUTED?

A4. That is entirely a matter for the Attorney General. He gave his reasons in a Parliamentary Written Answer on 12 April.

Q5. OVER-CLASSIFICATION OF DOCUMENTS?

A5. Documents may possibly be over-classified now and then, though we try to prevent this because it devalues the system. But even a document with no classification at all should not be leaked.

Notes

1. Note 12 deals with the Official Secrets Acts and leaks generally.

2. Attached are extracts from Hansard for 27 March (the Prime Minister) and 9 and 12 April (the Attorney General).

3. The responsibility for classifying a document rests with the originator. The Ministry of Defence are satisfied that the memorandum on the delivery of cruise missiles that was leaked to the Guardian by Miss Tisdall was properly classified SECRET.

4. The Security Commission's report on security procedures and practice in the public service (Cmnd 8350 - May 1982), recommended a thorough review of the classification system. Following this review some revised guidance, aimed at avoiding over-classification, has been issued to departments. But this, unavoidably, is itself classified and could not be made public.

Mr. Lewis *rose*——

Mr. Speaker: Order. In fairness, I shall give the hon. Gentleman another chance to complete his original question.

Mr. Lewis *rose*——

Mr. Speaker: Order. The hon. Gentleman may complete his question in a moment. I have just called Mrs. Knight.

Mrs. Knight: In between her engagements today, will my right hon. Friend consider whether it might be possible to divert the attention of Mr. Arthur Scargill from the business of investing hundreds of millions of pounds' worth of funds to the best possible commercial advantage to the fact that the miners' strike will put people out of work if they are not careful?

The Prime Minister: I believe that my hon. Friend is referring to problems at certain foundries that are short of coke; Scunthorpe has not enough for steel making. Scunthorpe has made strenuous efforts to get its steel output up to a high quality and to sell it at avery competitive price. The jobs of some of those people would be at stake. They have worked extremely hard. It would be ironic if as a result of the strike people were made unemployed as customers would go overseas for steel and the products of foundries, and their custom, would never return.

Mr. Terry Lewis *rose*——

Mr. Speaker: Order. I ask the hon. Member for Worsley (Mr. Lewis) to take care in framing his supplementary question.

Mr. Lewis: Does the Prime Minister agree that the time has arrived when sentencing policy should be reviewed in terms of cases that affect national security compared with those that do not?

The Prime Minister: No, Sir. Sentencing is a matter for the courts. The hon. Gentleman will be aware that in certain cases we are proposing next year to introduce a right of appeal against a sentence, but it would not apply to the particular case. It would apply only where it was thought that a sentence was unduly low and would be guidance for the future.

Local Authority Services (Privatisation)

Q2. Mr. David Atkinson asked the Prime Minister if she is satisfied with the progress being made by local authorities to privatise services.

The Prime Minister: No. I am still dissatisfied with the progress that local authorities are making in seeking better value for money by putting their services to the test of competition. We are continuing to study what measures can be taken to speed up the process.

Mr. Atkinson: I welcome that reply from my right hon. Friend. Does she agree that there is now ample evidence from those Conservative councils that have had the guts and the vision to put out their services to private enterprise that that is the most positive form of capping rates? Will my right hon. Friend consider introducing legislation that will oblige all local authorities to compare existing costs for those services with the costs if they are tendered to the private sector?

The Prime Minister: I agree with my hon. Friend that there are great opportunities for reducing expenditure by submitting contracts to private competition. So far, progress has been very disappointing. Only 23 contracts have been let, but they result in a saving of £7 million annually. I hope that we can be much more successful in persuading local authorities to go out to private competition, but I should be reluctant to commit us to legislation, because that would be a very technical measure to put through the House.

Miss Maynard: Is the Prime Minister aware that there is great anxiety that the Territorial Army will be increased to 86,000——

Mr. Speaker: Order. The question concerns privatisation.

Engagements

Q3. Mr. Blair asked the Prime Minister if she will list her official engagements for Tuesday 27 March.

The Prime Minister: I refer the hon. Gentleman to the reply that I gave some moments ago.

Mr. Blair: When people can be imprisoned for six months for, in effect, telling the British public what the Government should have told them, does the right hon. Lady not agree that there is an urgent need for legislation so that, while the interests of our national security are protected, the Government cannot conceal the scale of what they are doing from the British public and Parliament?

The Prime Minister: No. I do not believe that any Government can carry on their business unless they can trust those in the Civil Service, who have charge of secret documents, to keep those documents to themselves.

Mr. Ashby: Did my right hon. Friend read in the *Leicester Mercury* the report of Mr. Jack Jones, who said:

"We are not violent men but we will not be intimidated. We have voted to work and even if we——"

[HON. MEMBERS: "Reading."]

Mr. Speaker: Order. The hon. Member must not read.

Mr. Ashby: Mr. Jones said:

". . . even if—"

[Interruption.]

Mr. Speaker: Did the Prime Minister hear that question? If this type of baying goes on, neither the Prime Minister nor I will be able to hear the question. Will the hon. Member please repeat his question.

Mr. Ashby: Did my right hon. Friend read the report of the leader of the miners in Leicestershire, Mr. Jack Jones, who said:

"We are not violent men but we will not be intimidated."

[HON. MEMBERS: "Reading."]

Mr. Speaker: Order. The hon. Member must not read.

Mr. Ashby:

"We have voted to work and even if we are operating the last 4 holes in the country, we will work."

The Prime Minister: I am not sure that I could hear all of that question precisely. The Conservative party is totally and utterly against intimidation of people who are trying to go about their law-abiding business normally. We believe that the police are doing a superb job enabling those people to get through to their place of work.

Q4. Mr. Tim Smith asked the Prime Minister if she will list her official engagements for Tuesday 27 March.

The Prime Minister: I refer my hon. Friend to the reply that I gave some moments ago.

Mr. Smith: Is my right hon. Friend aware of the disgraceful campaign being conducted by the GLC against its abolition?—*[Interruption.]*

Mr. Speaker: Order. This type of behaviour is very unseemly.

Mr. Smith: That campaign includes threats amounting to blackmail of its suppliers, including my constituents. Will my right hon. Friend confirm that she remains determined to abolish the GLC and the metropolitan counties?

The Prime Minister: Yes, the Greater London council and the metropolitan counties will be abolished in accordance with the provisions in our manifesto. A paving Bill will be introduced in the House shortly.

Mr. Kinnock: In his negotiations in Brussels today, has the Foreign Secretary been given instructions to ensure that any agreement that he makes will contain provision for rebates to the United Kingdom that are sufficient to offset the additional £675 million contribution that will arise if our own resource subscriptions were to increase from 1 to 1·4 per cent.?

The Prime Minister: He is instructed, if I might use —*[Interruption.]* My right hon. and learned Friend is under the same instructions as I impose upon myself. The Foreign Secretary would, of course, refer back if there were to be a change.

Mr. Onslow: Does my right hon. Friend think that any Government could carry on their business effectively if the Official Secrets Act 1911 were so amended as to legalise the wilful betrayal of trust by civil servants? Could not a civil servant of any grade who supposes himself or herself to be the victim of a conflict of loyalties ask to be transferred to non-controversial work or resign from the service?

The Prime Minister: Yes. I wholly agree with my hon. Friend. I note that when the matter came up during the lifetime ot the previous Labour Government, in June 1976, the then Prime Minister said:

"There must be absolute confidence that papers and discussions that take place are kept within the circle to whom they are given."

I note that the then Leader of the Opposition said:

"Is the Prime Minister aware that we fully share his view about the gravity of this matter? It is essential that confidentiality of discussions and documents should be assured."—[*Official Report*, 17 June 1976; Vol. 913, c. 738-739.]

The then Prime Minister was right, and I was right to support him.

Mr. Winnick: How can the Prime Minister possibly justify the all-embracing section 2 of the Official Secrets Act, which was described by the present Home Secretary six years ago as indefensible? Do a Government who have shown such contempt for civil liberties welcome such a section to deal with all those who happen to displease them?

The Prime Minister: The Franks report on the Official Secrets Act was published in 1972. The Labour Government held office from 1974 until 1979. During that five years they could have introduced legislation, but they did not. In 1979 we introduced legislation which did not find favour with the House. We have no intention at present of introducing further legislation.

Mr. Leigh: Is my right hon. Friend aware that an internal CND document—[HON. MEMBERS: "Leak."]—on cruise just published, instructs CND members to render the deployment of cruise missiles militarily useless by informing the world, including our enemies, of exactly where they are sited? Does my right hon. Friend agree that that confirms the impression of many Conservative Members that Lenin's willing dupes in the CND are now doing the Soviet's dirty work for them?

The Prime Minister: That is correct. They are making a fundamental attack on the defence, security and liberties of our country, including the liberties that enable them to have freedom of speech and demonstration.

Mr. Beith: Would not the country be far better governed if freedom of information legislation protected those areas that should be in the public domain and left the apparatus of the law to protect far fewer secrets?

The Prime Minister: We try to keep protection to such matters as are vital. The hon. Gentleman must understand that it is vital to keep certain matters confidential for security reasons and certain negotiations confidential for commercial reasons.

Mr. Heddle: I refer to my right hon. Friend's answer to Question No. 2. Has she yet read the Audit Commission's report, which shows that local authorities have amassed £250 million in rent arrears? Does she agree that that is a classic case for putting out, at least to the voluntary housing movement, the collection of rent and the housing management function?

The Prime Minister: I agree with my hon. Friend that it would be possible to put the collection out to the private sector, possibly with profit to the public sector.

Mr. Frank Cook: Will the Prime Minister take this opportunity to make a clear and unequivocal statement of support for the principle that the wishes of the Clevelanders must be paramount?

The Prime Minister: I make a clear and unequivocal statement of support for the manifesto upon which the Conservative party fought the general election.

ATTORNEY-GENERAL

Building Industry (Litigation)

36. **Mr. Chapman** asked the Attorney-General if he is satisfied with the status and number of official referees dealing with litigation in the building industry.

The Attorney-General (Sir Michael Havers): I refer my hon. Friend to my speech on this subject in the debate on the Adjournment on Friday 30 March 1984 — to which my hon. Friend made such a substantial contribution—at columns 626-28.

Mr. Chapman: Is my right hon. and learned Friend aware that the building industry welcomed the announcement made in that Adjournment debate of the increase in the number of official referees from four to six? Will he use his good offices to try to improve the facilities for those courts, which do an important and valuable job?

The Attorney-General: We are very much aware of the need for improved accommodation. The matter is being given urgent consideration.

Official Secrets Act (Prosecutions)

37. **Mr. Winnick** asked the Attorney-General if he will list the criteria used for deciding whether to prosecute under section 2 of the Official Secrets Act.

The Attorney-General: I take my decisions on the basis, first, of an objective assessment of whether sufficient evidence is available to prove the offence. On this and on other aspects of the case I, of course, have the advantage of the advice of the Director of Public Prosecutions. Having satisfied myself on that, I then consider whether, in the particular case, the public interest requires a prosecution. I have no hard and fast rules. Each case is judged on its own particular facts and with special regard to the circumstances both of the alleged offence and of the alleged offender. This is simply an application of my general guidelines on the criteria for prosecution which I issued in March last year and a copy of which is in the Library. Official Secrets Act cases receive no different treatment.

Mr. Winnick: Is the Attorney-General aware that there will be much disappointment about the refusal of the judges to permit Sarah Tisdall permission to appeal against an unjust and unnecessary sentence? How does the right hon. and learned Gentleman explain his attitude to section 2 of the Official Secrets act when he was in opposition and the manner in which a clearly politically motivated prosecution was brought in this case? Was Sarah Tisdall's real offence that she objected to Parliament being deceived over the delivery of cruise missiles to this country?

The Attorney-General: I suspected that the hon. Gentleman would say that the prosecution was "politically motivated". Whether Franks, the 1889 Act or the 1911 Act had been in operation, it would have been an offence just the same. What Miss Tisdall did was a grave breach of trust. She lied a number of times about what she had done and sought to blame her colleagues for her own crimes. I decided that the case should be tried at the Central Criminal Court, and today the Court of Appeal has upheld the decision of the trial judge.

Mr. Stanbrook: Although the recent prosecution and sentence in the Tisdall case were fully justified in all the circumstances, is it not a fact that not all confidential information in the Government's possession needs the protection of the criminal law? Will my right hon. and learned Friend therefore consider whether we have got it right in the present law?

The Attorney-General: My hon. Friend will recall that in 1979 we tried to legislate in respect of the Franks report. It went through some stages in the other House, but there was a concerted attack on it by Fleet street and many other organisations and it was withdrawn. Recently my right hon. Friend the Prime Minister has said that the Government have no intention of introducing further legislation on the subject.

Mr. John Morris: During the weekend the Attorney-General stressed the need for reasonable consensus in law reform. Does he recognise that there is a growing consensus for reform of the catch-all effects of section 2 of the Official Secrets Act which the Franks committee described as a mess? Should not the Government seize this nettle and accept that, in a democratic society, there should be provision to protect only such of the Government's information that can be proved to require protection? Does he further agree that the Government should not continue to demand coverage of such a wide umbrella, which has been described as a blot on the statute book and results, unhappily, in many people questioning the need for protection at all?

The Attorney-General: If the right hon. and learned Gentleman will take the time and trouble to examine the cases that have been brought under section 2 since I have been Attorney-General, he will find that each was absolutely justified. The catch-all provisions are dangerous only when employed by a Government to prosecute the type of case that he described when such prosecutions are unnecessary. I am pround of my record during the five years that I have been Attorney-General. I have used section 2 sparingly and only when absolutely necessary.

Mr. Mark Carlisle: Although I do not dispute the need to re-examine section 2 of the Official Secrets Act, will my right hon. and learned Friend, in view of the comments of the hon. Member for Walsall, North (Mr. Winnick), take the opportunity this afternoon to reiterate that individual sentences must be matters for individual members of the judiciary and the courts? It would be disastrous if the House attempted to impose its views on matters such as whether the sentence is too harsh or too lenient.

The Attorney-General: My right hon. and learned Friend, who I welcome back, is right. He will have noticed that I did not refer to sentences when the original question was put to me. It is an important part of our constitution that the Executive and the judiciary are kept entirely separate. It would be quite wrong for any Government to comment on sentencing, as that could damage the independence of the judiciary, on which we pride ourselves.

Mr. Merlyn Rees: If there is to be no reform of the Official Secrets Act—it is a difficult matter—will the Attorney-General examine the report of the Franks committee, on which I served 12 years ago, which devoted much time to classification, which is a subjective rather than an objective matter? Even if there is to be no reform

of the legislation, surely the Government could consider classification, which I am sure plays a part in the nature of the sentence if the classification is too high.

The Attorney-General: I entirely understand the right hon. Gentleman's point. I refreshed my memory on the Franks report this morning. According to proposal No. 6, it is quite clear that, even if we had implemented Franks by statute, the offence by the girl in question would still have been an offence. However, that is not a matter for me as the right hon. Gentleman, as a former Home Secretary, knows. I shall ensure that the right hon. Gentleman's comments are drawn to the attention of my right hon. and learned Friend the Home Secretary.

38. **Mr. Dubs** asked the Attorney-General how many people have been proceeded against under section 2 of the Official Secrets Act since 1979.

The Attorney-General: Approaching such cases on the basis that I outlined in my answer to the hon. Member for Walsall, North (Mr. Winnick), there have been 14 prosecutions under section 2 of the Official Secrets Act 1911 since 1979.

Mr. Dubs: Is it not a fact that the case of Sarah Tisdall differs from the others that the Attorney-General has mentioned in that no damage whatever was done to British security, even if it caused major embarrassment to the British Government? Is it not wrong in principle that section 2 should be used in that way and that we have an offence which in the United States and other countries is not an offence but is part of the rights of citizens in a democratic society to know the facts about their Government?

The Attorney-General: As I read the Franks report and understand the law in other countries, I do not agree with the hon. Gentleman. The classification of documents —a matter raised by the right hon. Member for Morley and Leeds, South (Mr. Rees)—depends on the position when the classification was imposed. The position at the time of trial, as the Franks report pointed out, is irrelevant. When the Ministry of Defence classified the documents as secret, it was obvious for security reasons that plans for the movement of nuclear weapons should be kept secret. Their disclosure on the occasion in question could have heightened the risk of attempts by people opposed to the deployment of cruise missiles to interrupt the deliveries, thus increasing the risk of possible violent confrontation between security forces and demonstrators. It was also potentially a major source of embarrassment to us in our relations with those allies who were consulted about the timetable.

In retrospect — I am referring to the damage assessment given to the court at the Old Bailey when Sarah Tisdall stood trial—because of some quick alterations in planning and timing made by the Ministry of Defence, those expected damages, for which the classification was applied, did not occur.

Mr. Jerry Hayes: On a point of order, Mr. Speaker.

Mr. Speaker: I shall take points of order after Question Time.

OVERSEAS DEVELOPMENT ADMINISTRATION

United Nations Children's Fund

41. **Mr. Dalyell** asked the Secretary of State for Foreign and Commonwealth Affairs how much it would cost to increase the United Kingdom's per capita contribution to the United Nations children's fund to the average per capita level of the Nordic countries.

The Minister for Overseas Development (Mr. Timothy Raison): The average per capita contribution level for all purposes of Denmark, Norway and Sweden in 1983—using 1982 population figures—was US $4. Such a level for the United Kingdom would require a contribution of about US $223 million or some £156 million.

Mr. Dalyell: Compared with $5·03 per head does the Minister think that $1·6 per head from the United Kingdom is a satisfactory contribution for the United Nations children's fund?

Mr. Raison: I understand and share the belief of many hon. Members in the value and importance of the work that UNICEF does, but we have many pressures on our aid programme and must decide how best to use our resources. The £6 million that we give to UNICEF is not a paltry sum.

Mr. Rhodes James: Although it is not a paltry sum, and we are grateful for what the Government and taxpayers provide for UNICEF, is that not one of the great success stories of the United Nations family and should not the Government be even more involved in that success story?

Mr. Raison: I agree that it is a great success story of the United Nations family, and many hon. Members share that view. Each year I shall consider what contribution we can make, but we have many pressures on our resources.

Mr. Stuart Holland: The Minister is keen to give the House figures on aid in current rather than real terms. What is the difference between the British and Norwegian contributions to UNICEF in relation to the real cuts in the aid budget? The right hon. Gentleman likes to give the House the impression that he is doing the best he can for development, but does he realise that if that is all the contribution that he can make to UNICEF, he may as well be the prince of darkness for all it benefits Third-world children?

Mr. Raison: Our contribution of £6 million makes a significant difference. I have not sought to disguise the fact that the per capita contribution of Nordic countries is both substantial and greater than ours. Nevertheless, we are doing a good job.

Sir John Biggs-Davison: Will my right hon. Friend consider a transfer of funds from the British contribution to UNESCO to this desirable cause? Does he agree that when we judge our contribution, we should recall the generosity of British citizens to the Save the Children Fund?

Mr. Raison: I am aware of the generosity of British citizens to the Save the Children Fund. We are examining carefully our position in relation to UNESCO, but I cannot guarantee that we shall give more to UNICEF in the near future.

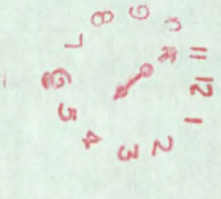
EXTRACT FROM HOUSE OF COMMONS HANSARD
VOL. 58 NO. 141 COL. 304/5
12 APRIL 1984

"The Guardian"

Sir Anthony Kershaw asked the Attorney-General why no criminal action was brought against *The Guardian* in respect of its publication of the secret minute passed to them by Miss Tisdall.

The Attorney-General: When *The Guardian* published the secret minute in full on 31 October 1983 it was appreciated for the first time that the newspaper must have the document or a copy in its possession. Following its disclosure, the prime consideration was to discover the source of the leak, who was apparently in a sensitive position, so that if he or she were not discovered national security would have been at stake. To that end I considered that the appropriate action was to compel surrender of the document through the civil courts. Despite its continued opposition *The Guardian* was compelled to hand over the minute after the hearing by the Court of Appeal on 16 December 1983. Miss Tisdall was eventually discovered after the photocopy could be examined. The view was taken that hers was the primary offence and she was duly prosecuted. So far as *The Guardian* staff were concerned, in addition to the possible evidential difficulties in establishing a case against them, there was not the same element of breach of trust and there was also the fact that the evidence against them had been obtained by a civil compulsory process. In the circumstances it was not thought right to prosecute them.

HOME AFFAIRS : Green Govt
May 79.



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CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

Des Wilson Esq
Chairman
1984 Campaign for Freedom
of Information
2 Northdown Street
London N1 9BG

12 March 1984

Prime Minister (2)
A robust reply to Des Wilson's latest letter on freedom of information.

DMB 13/3

Dear Mr Wilson,

I read your letter of 24 February with some surprise. I suggest you read my letter of 22 February (attached) again and this time with more care.

You will see when you have another look that my letter had nothing to do with preventing discussion of freedom of information and still less to do with the destruction of democracy. Nor was it concerned with the contribution civil servants can and do make to information and discussion outside the party political arena. Perhaps your work on the campaign gives you no time to listen to the radio. If it did you would be able to hear civil servants talking about their work on such programmes as "No, Minister", "But Chancellor" and the current "With respect, Ambassador" series. Such programmes are only one example of the way in which the Government is giving more information than ever before about the way government works - and civil servants are playing a full part in the process.

The issue raised by your invitation to Permanent Secretaries was a quite different one. It was simply whether civil servants should take part in public discussion of matters of party political controversy. You evidently believe that they should. We disagree.

Yours sincerely,

GOWRIE

LORD GOWRIE

Questions to Ministers

3.37 pm

Mr. Geoffrey Lofthouse (Pontefract and Castleford): during Question Time, my hon. Friend the Member for Stockton, North (Mr. Cook) raised with the Table a personal difficulty that had arisen, because he had, unfortunately, lost his voice. He requested in those circumstances to be allowed, if he were fortunate enough to catch your eye, to put his question in writing to be read by a colleague or have it put by the Chair. I understand that the Table ruled that that would be out of order. Will you give a ruling on that matter, Mr. Speaker?

Mr. Speaker: Order, The House well knows that I am extremely anxious to help Back Benchers, and, indeed, the Front Benches, in any way that I can. Although that may have been technically out of order, if any hon. Member loses his voice and happens to catch my eye, we would have to consider the matter again.

Several Hon. Members *rose*——

Mr. Speaker: Order. Let me complete this. If it was a question that was to be called, it would be a matter at which I would look sympathetically.

Dr. M. S. Miller (East Kilbride): Further to that point of order, Mr. Speaker. In connection with your last ruling, would it be in order for a medical certificate to be granted to the individual?

Mr. Speaker: Order. We have a heavy day in front of us. I do not think that that would be necessary.

NEW MEMBER

The following Member made the Affirmation required by law:

Tony Wedgwood Benn, Esq., for Chesterfield.

Freedom of Information

3.43 pm

Mr. David Steel (Tweeddale, Ettrick and Lauderdale): I beg to move.

That leave be given to bring in a Bill to establish a general right of access to official information for members of the public, subject to certain exemptions; to establish the machinery for enabling the right of access to be exercised by members of the public; and for connected purposes.

The Bill that I seek leave to introduce is one that is being promoted by the 1984 Campaign for Freedom of Information, a body that is supported by Members of all parties and of none. Although I accept that it is unusual for a party leader to use the ten-minute rule procedure, I have accepted the request to introduce the Bill in order to draw maximum attention to the measure itself. The Bill is supported by Members of all parties, but I must apologise to some hon. Members as more volunteered to be sponsors of the Bill than those I am allowed to name this afternoon. The text of the Bill follows closely the attempt by my hon. Friend the then Member for Isle of Ely (Mr. Freud) in the 1978-79 Session to introduce legislation, an attempt which fell with the general election in 1979.

The Bill would provide for people to have the right of access to such governmental papers as affect their lives, excluding obviously such documents as would endanger the security of the nation or be detrimental to the administration of the country. Such information currently falls under the Official Secrets Act, which stipulates quite simply that everything should be secret.

My Bill proposes a total change of attitude so that everything shall be open unless specific exemption is made. Those exemptions would include defence and security matters, relations with foreign Governments, law enforcement and legal proceedings, commercial confidences and individual privacy. One important addition to the Bill introduced by my hon. Friend is that my Bill seeks to exclude opinions or advice tendered to Ministers for policy-making purposes.

It has been suggested that if there were a dispute about which matters should be exempt the person to whom judgment would fall would be the Parliamentary Commissioner for Administration. I accept that there would have to be some enlargement of his office. Nevertheless, if open government cost money, that must be measured against the wastefulness of closed government. Events have proved that the costs of secrecy can be substantial.

We should establish a public right of access to categories of documents. Only last week we received the report of the Royal Commission on environmental pollution, which referred back to the reports of its predecessor in 1972. It pointed out that the Royal Commissioners repeatedly pressed for unnecessary secrecy to be reduced. It referred to what the 1972 commission said about the widespread insistence by industry, river authorities and local authorities on maintaining confidentiality about the types and amounts of industrial waste discharged to land, air, sea and rivers.

The commission commented:

"We doubt some of the reasons for this confidentiality . . . It is a practice which on occasion hinders the flow of information needed by responsible people concerned with the abatement of pollutions and it leads to risks of misunderstanding on the part of the public which may be harmful to industry and Government

[Mr. David Steel]

alike . . . Although some progress has been made, we are not satisfied that the tasks set by the Second Report . . . have been tackled systematically enough or with sufficient urgency."

One clear purpose of the Bill would be to establish the categories of information that were clearly open to the public.

We should allow individuals access to information on their files held by all public authorities. For example, someone on the waiting list for a local authority house should be entitled to check that the information on his personal file is correct. People should be entitled to see information on the school reports of their children or on their personal National Health Service records. Yet none of those is currently open to the public.

I referred earlier to section 2 of the Official Secrets Act, which forbids disclosure of all but authorised information. My Bill seeks widely to extend the category of authorised information. As long ago as 1972 the Franks committee reported to the Government and the House that section 2 of the Act was in need of reform. The report concluded:

"The main offence which section 2 creates is the unauthorised communication of official information (including documents) by a Crown servant".

The report concluded:

"The leading characteristic of this offence is its catch-all quality. It catches all official documents and information. It makes no distinctions of kind, and no distinctions of degree."

I am told that even today such documents as those relating to the meetings of the NEDC are classified as restricted, and that members of that body are required to sign the Official Secrets Act.

The Franks report 12 years ago concluded:

"Any law which impinges on the freedom of information in a democracy should be much more tightly drawn."

That is what the Bill seeks to do.

I hope that the Bill will receive widespread support today. I hope that testing opinion in the new Parliament will lead a Member who draws a high place in the ballot next Session to pursue the matter. Possibly Members of another place will do so. I accept that the Government of the day, whoever they happen to be, are unlikely to act in this matter.

If there were ever a subject in which the collective will of Parliament should prevail over that of the Government of the day, this surely is it. I am reinforced in that view by some words of the Home Secretary, when in opposition, in a debate on the Official Secrets Act in 1978. He said that

"that section of the Act"—

section 2—

"is simply indefensible, yet it is still there. Why is that? It is still there, in spite of the Government's assurances, because they have not had the courage to fight and overcome the strenuous rearguard action mounted in the more obscurantist corners of Whitehall. That is the real explanation."—[*Official Report*, 15 June 1978; Vol. 951 c. 1271.]

I do not expect the Home Secretary to join us today because it is not in the nature of Governments for their members to do so, but I believe that the Government have to be convinced that, whatever the immediate advantages to Governments of secrecy, their policies will be more fully considered, better understood, more acceptable and more readily implemented if they allow Parliament and the public greater participation in policy making.

We are fortunate in having plenty of other legislation to guide us. The United States, Canada, Australia, New Zealand, Sweden, the Netherlands and France have all introduced positive laws on public information because I believe, they have recognised that, regardless of which party is in office, the processes of government and the power of the Government over the individual are increasing all the time.

Therefore, we must look to democratic Parliaments to keep the balance in proper order. That is the main reason why we should follow, rather belatedly, those other democracies. Great Britain is at the moment quite firmly among that class of democracies in which the Government's privilege to conceal is apparently valued more highly than is the people's right to know. It is that state of affairs that my Bill seeks to bring to an end.

3.53 pm

Mr. Dennis Skinner (Bolsover) *rose*——

Mr. Speaker: Does the hon. Member wish to oppose the Bill?

Mr. Skinner: I have listened very carefully to what the leader of the Liberal Party, the right hon. Member for Tweeddale, Ettrick and Lauderdale (Mr. Steel), has had to say about the fairly woolly proposal he has put forward, but I am somewhat displeased by the very narrow definition he has given of what is needed. It is mainly for that reason that I feel it necessary to oppose to some extent what he has said. Many people will want to know, after listening for 10 minutes to the right Gentleman, just what people will be able to get to know if his Bill is passed. The only specific matters that I recall the right hon. Gentleman mentioning were the waiting lists for council houses, which is admirable, and National Health Service files, which is also admirable. However, there were some other matters which he did not touch on.

Once this Pandora's box is opened, it will take some closing. I am thinking in particular about political parties and the right of the public to know what makes a political party tick and where its money comes from. The Labour party, which is struggling with its finances, is at least able to publish every year every penny that comes to it. The Tory party gets a lot of money from various companies throughout the country. Most of it is logged by the Labour party research department, because some of our friends see to that.

If the right hon. Gentleman wants to introduce a Bill about freedom of information, he must be prepared to lay it on the line that the finances of the Liberal party are all clear and above board and that every Liberal Member knows about them.

Mr. Steel: Of course they are.

Mr. Skinner: The leader of the Liberal party says "Of course they are." I remind the House that there is a slush fund in the Liberal party which only a few people know about—*[Interruption.]* Now we know who is doing the heckling, Mr. Speaker. Liberal and Social Democratic Members are behaving like hooligans because they do not like to hear the truth. The truth is that there is a slush fund and that only a few people in the Liberal party, including the Leader, know about it. When the previous leader had his hands on that slush fund, we know precisely what happened to some of it.

When this box is opened by a Freedom of Information Bill, I want to have a right to examine Liberal party accounts, just as people have a right to examine Labour and Tory party accounts. I also want to be able to find out

precisely what the Social Democratic party accounts are. Where does that party's money come from? Information has been passed to me that in the past 12 months— *[Interruption.]* The public has a right to know. During 1983 receipts from membership fell by £175,000 and other unspecified donations to the Social Democrats rose by £310,000. The public has a right to know what makes political parties tick. Where did those unspecified donations to the Social Democratic party come from?

Those are some of the things that the leader of the Liberal party forgot to mention, and would never wish to mention. But there is another reason why I oppose the Bill. Half way through the Session, we find ourselves dealing with a matter of great importance. Many of us would wish to support a much broader Bill, but the narrowly defined one that the leader of the Liberal party is trying to sneak through is a bit of propaganda and gimmickry. The right hon. Gentleman knows full well that it does not stand a cat in hell's chance of making any progress.

The Campaign for Freedom of Information is run by Des Wilson, who was anxious to find an hon. Member to sponsor the Bill. He carted it around Labour Members because he knew that most Labour Members—if not all —wished to support such a measure. We told him that such a Bill would not stand a chance of being passed during the present Parliament, and that he would do better to use the private Member's Bill procedure. The leader of the Liberal party has ended up as Des Wilson's poodle. I have to tell him, too, that I do not believe that the leader of the Social Democratic party would have done what he has done. *[Interruption.]* The Alliance Members are heckling again, Mr. Speaker. They cannot stand it. It is a delight to hear them jabber away, but they do not worry me——

Mr. Speaker: Order. It is not such a delight for me.

Mr. Skinner: It is too late, and the right hon. Gentleman has not defined precisely what he wants the Bill to do.

There have been some serious attempts to get such a Bill passed. The leader of the Liberal party mentioned one of them. However, on 6 February 1981, Frank Hooley, who then represented Sheffield, Heeley, introduced a Bill under the proper procedure which stood more than half a chance of succeeding, although the Tory party did its best to stop it. On that Friday, more than 100 Labour Members turned up to support my hon. Friend, but, although the leader of the Liberal party was not on a sabbatical on that day, he did not turn up to support the Bill.

Question put and agreed to.

Bill ordered to be brought in by Mr. David Steel, Mr. Jonathan Aitken, Sir Bernard Braine, Mr. Robin Corbett, Mr. Clement Freud, Mr. Bruce George, Dr. David Owen, Mr. Richard Wainwright, Mr. Kenneth Warren, Mr. Dafydd Wigley and Mr. David Young.

FREEDOM OF INFORMATION

Mr. David Steel accordingly presented a Bill to establish a general right of access to official information for members of the public, subject to certain exemptions; to establish the machinery for enabling the right of access to be exercised by members of the public; and for connected purposes:

And the same was read the First time; and ordered to be read a Second time upon Friday 6 July and to be printed. [Bill 117.]

Public Expenditure

Mr. Speaker: We now move to the public expenditure debate. I must announce to the House that I have selected the amendment in the name of the Leader of the Opposition.

4.1 pm

The Chief Secretary to the Treasury (Mr. Peter Rees): I beg to move,

That this House takes note of the White Paper on the Government's Expenditure Plans 1984-85 to 1986-87 (Cmnd. 9143).

Although this debate takes place in the shadow of my right hon. Friend the Chancellor of the Exchequer's Budget statement next week this is, or should be, a most important debate even though it follows such a coruscating exchange between the hon. Member for Bolsover (Mr. Skinner) and the Leader of the Liberal party. In a sense, this debate will complement our Budget debate. The House is fortunate to have the Select Committee's report. We also have the speeches of the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley), which I hope will deepen our understanding of the Labour party's approach to these matters. We also have the return today of the right hon. Member for Chesterfield (Mr. Benn) to whom I offer my personal congratulations. No doubt he will make notable speeches in our debates, perhaps even in today's debate.

As the Chief Secretary responsible for this year's public expenditure White Paper, which covers the three years 1984-85 to 1986-87 I would not claim that it is either a brief or a particularly simple document. It fills two volumes, covers 192 pages and is replete with tables. Many people have worked for many months over it and I pay public tribute to their industry and assiduity. There are some, and I know that they are to be found in the Select Committee, who would have liked the White Paper to have been published earlier. I recognise their anxiety on this score. I have to point out that the intervention of the last general election involved the loss of at least one month in the arduous work of preparation and that with so much material to be brought together and reconciled it was just not possible to produce the document sooner. I doubt whether we shall face the same problems at least in the next couple of years.

If I had to distil two themes from the mass of facts in the White Paper they would be transparency and stability. I hope that the first will gain the support of the Leader of the Liberal party. I am sorry that he has already left his place, but I know that the matter will be taken up by others of his hon. Friends. [SEVERAL HON. MEMBERS: "He is here."] I welcome him back.

The Government's plans for public expenditure are all there for the world to read and, although it might surprise some people, they are in essence the same plans as were published before the general election. There was no secret manifesto and there was no secret public expenditure White Paper. At the time of the election we undertook to maintain a firm control over public spending. We said that we had published our plans for the next three years and that we intended to stick to them. The White Paper shows that we are doing just that.

In 1984-85, the planning total is £126 billion— exactly the same as the provisional figure for that year published in last year's White Paper and confirmed in the

[Mr. Peter Rees]

autumn statement. For 1985-86 we have set a provisional total of £132 billion—again broadly the same as the figure in the last White Paper. For the new year of the survey period, 1986-87, we have planned for total expenditure in cash of £136 billion. That is consistent with our general intention that public expenditure in real terms should remain broadly stable throughout the period.

Some commentators on the White Paper have suggested that the Government's objectives for expenditure are uncertain. We can argue whether they will be achieved —that is a different matter and I will come to it during my speech—but we have made our approach crystal clear. Our intention is to hold to cash plans in the White Paper and with inflation continuing downwards this should mean holding the level of expenditure broadly constant in real terms during at least the next three years.

As the economy continues to grow, public expenditure will take a decreasing share of the nation's output. This will provide the scope over time to reduce the burden of taxation. That also is the theme of the Green Paper that we shall publish next week as our contribution to the debate on long-term public expenditure and the options facing the country. I know that many of my right hon. and hon. Friends, but perhaps not so many Opposition Members, show keen interest in this subject and I should like to give them that news. By limiting the Government's need to borrow, a lower level of spending will help to keep down interest rates. Lower taxes and lower interest rates are the basis for lasting industrial recovery, I hope that the right hon. Member for Sparkbrook, who clearly believes that we can support a higher level of public expenditure, will devote at least part of his speech to this matter. I see that he is nodding. We look forward with keen anticipation to what he will say. I hope that he will move from broad generalities to numbers. He might even care to pre-empt my right hon. Friend the Chancellor's Budget by letting us know what type of public sector borrowing requirement he thinks we could support.

I have emphasised the stability that is demonstrated by our plans in two senses. We have stayed within the levels of expenditure that were originally determined when cash planning was introduced in 1982. Our cash plans, with the reduction in inflation, which has been the successful outcome of the Government's economic policies, should mean that expenditure in real terms during the period covered by the White Paper will follow a flat path. That is in marked contrast to the record of the past 20 years in which public expenditure has risen steadily in real terms and as a proportion of national output. Since 1963-64—just 20 years ago—public spending in real terms has almost doubled. Expressed as a percentage of gross domestic product, it has increased by well over one quarter. The steady upward march was halted only after the crisis of 1976, which no doubt the right hon. Member for Sparkbrook remembers with painful clarity—but the halt was only temporary. If, however, the totals are to remain stable it does not, of course, follow that the individual programmes will remain stable. Each Government must set their own priorities.

The changes since 1978-79 reflect our priorities which have been put to the electorate in two successive general elections and strikingly endorsed. For example, expenditure on defence, law and order, health and pensions has increased while housing and other subsidies have been decreased. I understand that the Opposition amendment will criticise us for that. The Opposition are entitled to do that but they will be appealing against the verdict of the electorate. We have based our plans for the next next three years on a close control of expenditure. However, we have also kept to our other election pledges such as those on health, pensions and defence.

On health, since coming into office in 1979 we have doubled health spending—an increase of 17 per cent. above the increase in retail prices. This will no doubt come as a surprise to Labour Members who affect to imagine that we have cut NHS spending. The new plans more than meet our election commitments. Spending will be £845 million more in 1984-85 than in 1983-84 and £877 million more in 1985-86 than in 1984-85.

On defence, the provision up to 1985-86 meets the Government's commitment to the NATO aim of 3 per cent. real growth a year with Falklands costs on top. The commitment has not been extended beyond 1985-86. The 1986-87 defence budget, including the Falklands cost, will be some £600 million higher than in the previous years. We make no apology for our commitment to defence.

For social security, the plans show an increase in the programme of £1·3 billion in 1984-85 and £1·6 billion in 1985-86, and we are firmly committed to our pledge to maintain the value of pensions and linked long-term benefits. The increase in child benefits by 11 per cent. in 1983 brought it to its highest level ever in real terms. These were achievements of some magnitude in a period of economic difficulty.

In 1984-85 we are planning to spend some £2·1 billion on special employment and training measures. These measures are currently reducing the unemployment total by about 470,000, but to reduce the level of unemployment in the longer term, we must look to more fundamental improvements that we are now seeing in the structure of the economy. I notice that the right hon. Member for Sparkbrook touches on this in his great pronouncement to his electors. No lasting improvement can be achieved simply by boosting public expenditure and public borrowing. I hope that at some point in his speech, the right hon. Member for Sparkbrook will explain how he would reduce interest rates and create lasting jobs by increasing public borrowing.

We have come to await the Select Committee's reports with a mixture of expectancy and apprehension. It would be a pleasant and unusual surprise if it overwhelmed us with praise. I was grateful, therefore, for the Committee's appreciation of some of the improvements that we made in the White Paper, particularly to volume II.

I am sorry that the Comittee was not satisfied with the general economic background information underlying this public expenditure White Paper. I think that it is fair to say that no Government so far have attempted to provide more information for this and other public expenditure and economic debates. This Government have, after all, introduced the autumn statement and the medium term financial strategy, and my right hon. Friend will be bringing this up to date in a week's time. This Government are to publish next week their contribution to the long-term public expenditure debate. More fundamentally, the Committee has concluded that the plans for this year's White Paper are over-optimistic and likely to be exceeded in practice. I do not think that this can be substantiated by reference to this Government's record. Table 1.1 of the White Paper shows clearly that by reference to the March

5 March 1984
Policy Unit

PA
Dmk
6/3

PRIME MINISTER

FREEDOM OF INFORMATION BILL

David Steel is introducing a Ten-Minute Rule Bill tomorrow. In view of recent allegations about undue secrecy, the Government's response to this needs careful handling.

Some of the demands for access to documents are entirely reasonable. Steel's Bill leaves aside the issue of repeal of the Official Secrets Act. It claims to concentrate on the right of parents to see their children's school files, of patients to see their own medical records, and those on council waiting lists to check information about their status.

If the Government's tone it too harsh tomorrow in response to this proposal it could be damaging. The aim should be to bolster the Government's work on data protection by showing sensitivity to these issues.

Could Michael Alison put this to those concerned before the matter is raised in the House?

Yes please MA

JOHN REDWOOD

Note: There is no formal Government response to the Bill. I discussed with Mr Redwood, and passed his comments (as endorsed by the PM) to Lord Gowrie's office.

Dmk
6/3

CONFIDENTIAL

Mr. Butler

Ref. A084/701

MRS FLANAGAN

cc Mr Stubbs
Miss Dickinson
Mrs M E Brown
Mr Le Cheminant

Freedom of Information Campaign: Sir Douglas Wass

I spoke to Sir Douglas Wass on the afternoon of 2 March about his intention to become an adviser to the 1984 Freedom of Information Campaign.

2. I said that the Campaign was in the realm of political controversy, particularly given the different positions taken by the Prime Minister on the one hand and Leaders of Opposition parties on the other. I had to say from that point of view that I should regret it if Sir Douglas Wass, as a recently retired Permanent Secretary, became involved in the Campaign in the way envisaged. He would certainly make life no easier for his former colleagues still in the Service, and would not do anything to help the image of the Civil Service as a non-political professional body.

3. Sir Douglas Wass was not, however, to be moved. He claimed that the word "adviser" was a misnomer (though I see that it is used in The Times this morning); he suggested that Freedom of Information was an issue which could cross political boundaries; he reminded me that other former Permanent Secretaries (notably Sir Frank Cooper and Sir Patrick Nairne) had taken public positions on Freedom of Information; and he said that he felt that he must be free to enter public debate on issues about which he had views which in conscience he felt it his duty to make known. In further discussion I sought to counter all these points; but, as you will have seen from this morning's newpapers, I was unsuccessful.

RtA

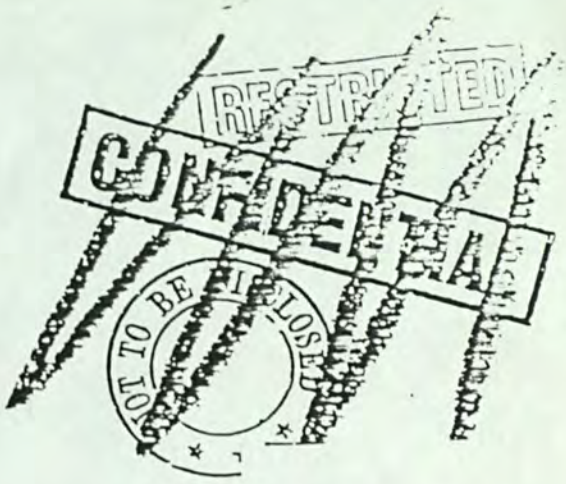
ROBERT ARMSTRONG

5 March 1984

CONFIDENTIAL

The 1984 Campaign for
Freedom of Information

2 Northdown Street London N1 9BG
Telephone 01-278 9686



February 24, 1984

Lord Gowrie
Management and Personnel Office
Great George Street
London SW1

Dear Lord Gowrie,

Thank you for your letter of February 22.

You appear to miss the two fundamental issues at stake;

First, we are still a democracy, not a dictatorship. The election of an Administration of any political party makes that Administration the temporary custodians of our affairs, not the permanent controllers. Continual debate should take place involving all sections of the community about all aspects of national life. It has been made clear to me that there has been widespread dismay at every level of public life at the way the Prime Minister and yourself have in such a heavy-handed and obstinate way tried to destroy any debate on the issue of freedom of information before it has even begun. Fortunately, such an objective is beyond even your powers to achieve. In our initial approach to the Prime Minister, we sought only dialogue, and it is deeply regrettable that her response was to display a completely closed mind and to attempt to forcibly close those of her colleagues and senior civil servants.

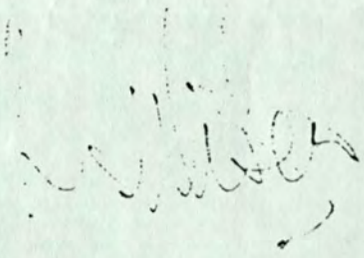
Second, the issue at stake is not just one of broad political policy, but about the administrative workings of Whitehall and other statutory bodies. An open-minded Administration should always be prepared to encourage its servants to participate at least to some extent in dialogue on such matters, if only to put their expertise about how Whitehall works, and their reservations about the advantages or disadvantages of any proposed measures, on the table for the benefit of all concerned parties. In the case of freedom of information, a coalition of 25 respected national organisations with a considerable combined record of public service, some of them partly funded by government, sought a friendly and constructive dialogue with civil servants on a matter that directly affects them in their work. Had you written to say that you would like to feel that there were some boundaries to the involvement of civil servants in the debate, this could possibly have made some sense (at least in the context of the way your particular Administration works), but a refusal to allow

continued....

them to discuss the matter at all is simply unacceptable.

I repeat - democracy continues in this country. Dialogue between all people who care about it, and its improvement, has not stopped and cannot be stopped. I am pleased to say that the civil service unions are unanimous in agreement with this, and meetings are taking place with all of them. (We will, of course, seek to have those meetings on occasions when the government special branch officers are not in the process of searching one of our buildings.)

Yours faithfully,



DES WILSON
Chairman
1984 Committee

Home Affairs: Open Govt. May 1979.

RESTRICTED

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

5 March 1984

3/3.

Dear Grey,

TEN MINUTE RULE MOTION - TUESDAY 6 MARCH

Thank you for your letter of 24 February about David Steel's Ten Minute Rule Motion on Tuesday seeking leave to introduce a Freedom of Information Bill. Both John Wakeham and I share your view that a payroll vote could not be assured of securing defeat of this motion, and that it would therefore be better for the Government not to oppose it. If there is a division, I think it would be better for Ministers to abstain. I agree with the proposal that any Bill that results from the motion should be blocked at Second Reading, and that it would be helpful for you to circulate briefing to Ministerial colleagues in advance of the motion.

I am copying this letter to the Prime Minister, members of Legislation Committee, other Ministers in charge of Departments, Sir Robert Armstrong and First Parliamentary Counsel.

Yours
John Biffen

JOHN BIFFEN

Rt Hon Lord Gowrie
Minister of State,
Cabinet Office

HOME AFFAIRS: OPEN GOV.

May 74

CF 2

Prime Minister: pa

To note that David Steel has a 10 minutes rule bill next week, on freedom of information

CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

DT 28/2

MS

The Rt Hon John Biffen MP
Lord Privy Seal
68 Whitehall
London SW1

24 February 1984

Dear John,

MR DAVID STEEL'S TEN MINUTE RULE MOTION: TUESDAY 6 MARCH

On Tuesday 6 March David Steel is to seek to bring in a Bill "to establish a general right of access to official information for members of the public subject to certain exemptions and the machinery for enabling the right of access to be exercised by members of the public; and for connected purposes".

Newspaper reports suggest that it may be based on the Clement Freud Bill which fell with the 1979 General Election. But it could equally resemble the Frank Hooley Bill which was defeated at Second Reading on 6 February 1981; or it could take some other form.

The official opposition, as well as the Liberal and SDP parties, are formally committed to introducing "freedom of information" legislation. We have made clear since June 1979 that we are in favour of releasing as much information as possible, but that we regard a statutory general right of public access to official information as constitutionally inappropriate, as well as unnecessary. As the Prime Minister pointed out in a letter of 7 December to Des Wilson (Chairman of the "1984 Campaign for Freedom of Information"), it would bring about major constitutional changes, damage the relationship between the legislature and the judiciary, reduce Ministers' accountability to Parliament, and diminish Parliament itself.

Mr Steel's motion will provide an opportunity to give renewed publicity to the 1984 Campaign for Freedom of Information which is being co-ordinated by Des Wilson. I think our best tactics are simply to ensure that any Bill is blocked at Second Reading. We would need of course to advise Ministers to vote against the motion in the event of a division. But to oppose the motion would give it a higher public profile, and we could not be sure of winning the motion on a "Payroll vote". The Campaign claims the support of at least 150 Members of Parliament.

Mr Steel's motion will almost certainly attract media attention on the day. If we do not oppose the motion we shall therefore need to ensure that the Government position is properly represented in any discussion outside the House. I shall be circulating some general background briefing on the Government's reasons for resisting legislation of this kind before 6 March so that colleagues will have the necessary material to hand if they are asked to comment.

I am copying this letter to the other members of Legislation Committee, other Ministers in charge of departments, Sir Robert Armstrong and First Parliamentary Counsel.

Yours ever,

M

LORD GOWRIE

CC T.F.

CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

Des Wilson Esq
Chairman
1984 Campaign for Freedom
of Information
2 Northdown Street
London N1 9BG

22 February 1984

Dear Mr Wilson,

I have to say that I find your letter of 7 February no less astonishing than you found mine. I don't think you have understood what I wrote.

The Government does not have any intention of trying to inhibit general public discussion of the objectives of your campaign or to suggest that "a subject no longer exists for discussion" just because we have a particular view about it, and it is absurd on your part to suggest that it has. My letter was concerned with something quite different - discussion with serving civil servants who are advisers to Ministers. The rule is that civil servants should not take part in public discussion of any matter of current or potential political controversy. That is not a new rule: successive Governments have adopted it, and the principle is of very long standing. Its purpose is to maintain the political impartiality of the Civil Service. If civil servants are to serve impartially Ministers of any political party, they cannot expect or be expected to engage in public discussions on matters which, like your campaign, involve party political controversy.

Yours sincerely,

Gowrie

LORD GOWRIE

10 DOWNING STREET

THE PRIME MINISTER

17 February 1984

Dear Mr. Steel,

Thank you for your letter of 9 February about civil servants' contacts with the Freedom of Information Campaign. I am sorry that there was a misunderstanding last Thursday. I did not realise at the time that your Question referred to Lord Gowrie's recent letter to Mr. Des Wilson.

You suggest in your letter that what Mr. Wilson proposed in his letter to Permanent Secretaries was "a mere discussion" on how the rights of the citizen and individual freedom in a free democracy might be better safeguarded. With respect, that is not what Mr. Wilson was proposing. He sought "a constructive and friendly dialogue" on the proposals launched by the 1984 Freedom of Information Campaign, and invited them to express their views.

I certainly have no wish to stop constructive public discussion of the issue. I have already written to Mr. Wilson to explain why the Government believes that Freedom of Information legislation in this country is inappropriate and unnecessary. Opposition parties may take - some do take - a different view. To have accepted Mr. Wilson's invitation would have involved senior civil servants in discussion with a highly public campaign of politically controversial matters. The long established rules governing the behaviour of civil servants (which are set out in the Civil Service Pay and

/ Conditions

Conditions of Service Code) exclude this kind of discussion of matters of current political controversy. If we are to continue to have a politically impartial Civil Service, rules of this kind are essential. That is a position which successive governments have held, and it seemed only sensible for Lord Gowrie to point this out to Mr. Wilson.

Former civil servants are subject to certain restrictions after they have left the Service. But otherwise they are private citizens and may express their views like any other citizen. Since you refer to Sir Douglas Wass, however, perhaps I could point out that he did not in fact advocate a Freedom of Information Act in his recent Reith Lectures.

Yours sincerely

Margaret Thatcher

The Right Honourable David Steel, MP.

Ref. A084/523

MR FLESHER

--- I attach a draft reply to Mr Steel's letter of 9 February to the Prime Minister.

2. There was evidently a misunderstanding during Questions - indeed it was hard to guess from Mr Steel's actual Question that he was referring to Lord Gowrie's letter of 2 February, which simply pointed out that in accordance with the long standing convention that civil servants should not engage in public discussion of matters of current political controversy it would be inappropriate for senior civil servants to take part in discussion. No general instructions have been issued expressly "forbidding" civil servants to talk to the Campaign, and none should be necessary. It is, however, just possible that some Departments may have reminded their officials on the point; and Permanent Secretaries have been sent copies of Lord Gowrie's letter for information (it was agreed with them that a reply should be sent centrally). So it might be unsafe to say categorically that no civil servant, anywhere, has been "forbidden" to meet the Campaign. But the rules are in the Pay and Conditions of Service Code - an open document - and can be freely quoted.

3. Mr Steel's Question mentioned only "the workings of Whitehall". Civil servants are not of course totally precluded from talking in public about what their Departments are doing - for example when explaining before Select Committees how their Ministers' policies are being administered. But it is hard to see how a discussion could have been confined to harmless topics in this instance. Mr Wilson's letter in any case invited them to discuss the Campaign's general literature, which was highly political. So we suggest that the Prime Minister simply points out to Mr Steel that civil servants are bound by the normal and time-honoured rules.

4. Mr Steel did not mention the possibility of civil servants talking to the Campaign in their capacity as trade unionists.

We know that the First Division Association has been invited and plans to meet the Campaign, and no doubt other unions may be approached. The dividing lines are thin, and any serving civil servant involved will need to be careful to avoid being identified with a particular view. But the FDA has made clear that they are not pressing the case for FOI legislation - which the Government has ruled out - but are simply interested in discussing various ways, short of FOI legislation, in which the Government can be more open. They regard this as an issue of professional concern to their members.

5. You may want to consider how the record can be put straight. An arranged PQ might be rather heavy-handed, but copies of the Prime Minister's reply might perhaps be put in Libraries and given to the Press. Mr Steel's intention of writing to the Prime Minister appeared in the Guardian on 10 February, so there is nothing confidential about the correspondence.

R P HATFIELD

15 February 1984

DRAFT LETTER FROM THE PRIME MINISTER TO

THE RT HON DAVID STEEL MP

Thank you for your letter of 9 February about civil servants' contacts with the Freedom of Information Campaign. I am sorry that there was a misunderstanding last Thursday. I did not realise at the time that your question referred to Lord Gowrie's recent letter to Mr Des Wilson.

You suggest in your letter that what Mr Wilson proposed in his letter to Permanent Secretaries was "a mere discussion" on how the rights of the citizen and individual freedom in a free democracy might be better safeguarded. With respect, that is not what Mr Wilson was proposing. He sought "a constructive and friendly dialogue" on the proposals launched by the 1984 Freedom of Information Campaign, and invited them to express their views.

I certainly have no wish to stop constructive public discussion of the issue. I have already written to Mr Wilson to explain why the Government believes that Freedom of Information legislation in this country is inappropriate and unnecessary. Opposition parties may take - some do take - a different view. To have accepted Mr Wilson's invitation would have involved senior civil servants in discussion with a highly public campaign of politically controversial matters.

The long established rules governing the behaviour of civil servants (which are set out in the Civil Service Pay and Conditions of Service Code) exclude this kind of discussion of matters of current political controversy. If we are to continue to have a politically impartial civil service, rules of this kind are essential. That is a position which successive governments have held, and it seemed only sensible for Lord Gowrie to point this out to Mr Wilson.

Former civil servants are subject to certain restrictions after they have left the Service. but otherwise they are private citizens and may express their views like any other citizen. Since you refer to Sir Douglas Wass, however, perhaps I could point out that he did not in fact advocate a Freedom of Information Act in his recent Reith Lectures.

THE RT. HON. DAVID STEEL, M.P.

HOUSE OF COMMONS
LONDON SW1A 0AA

9th February 1984.

Dear Prime Minister.

I am sorry that at question time today you were unaware of my assertion that the Government had forbidden senior civil servants to discuss the workings of Whitehall with the Freedom of Information Campaign. I enclose a copy of Lord Gowrie's letter of 2nd February confirming this.

You have always put much stress on the rights of the citizen and individual freedom in a free democracy, and I find it strange that a mere discussion on how these might be better safeguarded is ruled out of order - especially in view of the recent remarks of some former Permanent Secretaries such as Sir Douglas Wass on the need for improvements in this field.

Yours sincerely,

David Steel

The Rt. Hon. Mrs. Margaret Thatcher M.P.,
The Prime Minister,
The House of Commons.

CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

2 February 1984

Des Wilson Esq
Chairman
1984 Committee for Freedom
of Information
2 Northdown Street
LONDON N1 9BG

Dear Mr Wilson,

I understand that you have written to the Permanent Secretaries of a number of Government Departments, suggesting a "friendly and constructive dialogue" with your Committee about the material which you enclosed with your letter.

The Government's view has been made clear, and was set out in the Prime Minister's letter to you of 9 December. Other political parties, as you yourself have emphasised, take a different view. I am sure you will understand, therefore, that given these political differences, the principle of Civil Service impartiality should be preserved. This would make it altogether inappropriate for Permanent Secretaries or other Departmental civil servants to take part in the kind of discussion which you have in mind.

Yours sincerely,

Gowrie

LORD GOWRIE

The 1984 Campaign for Freedom of Information

2 Northdown Street London N1 9BG
Telephone 01-278 9686

cc Mr Hatfield
We made. This
via Cotter which
Sir Brian Cubbon
received.
13/1

3 January 1984

Sir,

I enclose the material published at the launch of the 1984 Campaign for Freedom of Information.

Additional copies can be purchased for circulation to colleagues.

We are anxious to have a constructive and friendly dialogue with Whitehall on this matter and would welcome your views.

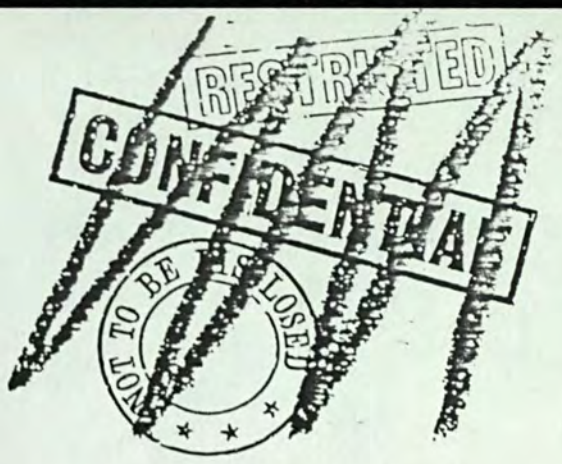
Yours sincerely

DES WILSON

Enclosures

The 1984 Campaign for
Freedom of Information

2 Northdown Street London N1 9BG
Telephone 01-278 9686



7 February 1984

Lord Gowrie
Cabinet Office
Management and Personnel Office
Great George Street
London SW1P 3AL

Dear Lord Gowrie

I have to say that I find your letter of 2 February astonishing.

First, my letter to Permanent Secretaries and the enclosed material about our campaign was clearly an act of courtesy on behalf of our campaign, and I have no doubt was understood to be so by the majority of them, and your response is, therefore, at best heavy-handed and borders on paranoia.

That said, we do of course have arrangements in hand to meet Civil Service unions and I have no doubt they would take the same dim view as our campaign of your attempt to stop reasonable dialogue between civil servants and well-established public organisations on the way our governmental system operates and how it can be improved.

I know this is 1984, but your position that once the Prime Minister and colleagues have made up their mind, a subject no longer exists for discussion, is Orwellian in the extreme.

It will be noted by all objective observers that a government that puts so much stress on the rights of the citizen, individual freedom and democracy, is literally terrified of discussion on how the rights of the citizen can be better protected and our democracy made more healthy.

Yours faithfully

Des Wilson

DES WILSON, Chairman, 1984 Committee

(Answered by the Prime Minister on Tuesday 17 January 1984)

UNSTARRED NO. 124 Mr Tony Favell:
To ask the Prime Minister, if she will place in the Library a copy of her letter of 7 December 1983 to Mr Des Wilson, about the Government's policy on the release of official information.

Copies were placed in the Library on Monday 16 January 1984.

Miss Stevens

pse arrange for this Question to be tabled. Paul Cann in Hard Copies Mce will arrange for a repeat in the Hards.

PRIME MINISTER

I am sorry to return this proposal for an arranged Question about your letter to Des Wilson to you. I should have explained that Mr. Wilson has already quoted large sections of your letter to him in the campaign document which he produced for the freedom of information campaign which he circulated to Members of Parliament and the press. Since the letter was quoted in a highly critical context, I do not think that you will be breaking any confidence by giving the full text in Hansard, simply in order to have it on the record.

Since Mr. Wilson has already published sections of your letter therefore, are you content that it should be made public by means of an arranged Question?

Yes

11 January 1984

Ref. A084/131

PRIME MINISTER

MG

Freedom of Information

This is the first meeting of Cabinet since Mr Des Wilson launched his Freedom of Information campaign.

2. It might be worthwhile for you to mention this at Cabinet, and to set the tone for Ministers' reaction to the campaign. You could make the following points:

(1) Mr Wilson wrote to you and invited you to express views. You have done so in your letter of 7 December to him. Since he quoted (selectively) from your letter at his press conference, you have placed copies of your letter in the Library of the House of Commons. That letter should guide what Ministers say, if they are asked to comment.

It has been circulated to all Cabinet Ministers by Lord Gowrie.

(2) The Government's line need not be defensive. A tremendous amount of information is released in a whole variety of ways, not least in evidence to Select Committees. It is your Government's policy to make available as much information as possible, consistently with the preservation of national security, commercial and personal confidentiality, and the preservation of necessary confidentiality in the processes of government. The Government in our system is accountable to Parliament, not to the press, and a statutory right of access would be inconsistent with that constitutional convention. In any case it would not meet the objectives intended by the campaign, since it would simply drive underground or into channels which were not covered by the statute material which governments were determined not to disclose.

(3) One of Mr Wilson's declared objectives will be to select and publicise particular cases of secretiveness which he can hold up for derision. Departments should be at pains to try to deny him these opportunities.

(4) It is desirable that in responding to this campaign Ministers and Departments should follow a coherent and consistent line. It would be helpful if they would report to the Cabinet Office approaches they receive or problems they encounter and consult the Cabinet Office as appropriate on the way in which they propose to deal with such approaches and problems. These arrangements will also help us to brief you for any questions you may get on this subject.

RtA

ROBERT ARMSTRONG

11 January 1984

Prime Minister:

No - I do not release letters I write to others. They are confidential to them not

Agree to this arranged Question?

Ref. A084/84

MR FLESHER

The "Freedom of Information Campaign"

Now that the Prime Minister's letter of 7 December to Mr Des Wilson has been given to the Press, it would seem courteous to place copies in the House Libraries before Parliament reassembles, with an announcement in an arranged PQ on Monday 16 January to forestall complaints that Members were not aware that copies were available to them.

2. This may also be helpful to the Home Secretary who has an oral Question on 19 January from Mr Archie Kirkwood MP asking him "what respresentations he has received recently on the working of the Official Secrets Act". This could clearly lead into the area of "Freedom of Information" and the Home Secretary is likely to wish to refer to the Prime Minister's letter which is the most recent statement of the Government's policy.

--- 3. I attach a draft Question and Answer. Mr John Wheeler MP, who took part in the BBC programme "The World at One" on 5 January and spoke against legislation in this area, might perhaps be willing to put down such a Question. An equivalent Question would need to be tabled in the Lords.

R P HATFIELD

9 January 1984

Question: To ask the Prime Minister, if she will place in the Library a copy of her letter of 7 December 1983 to Mr Des Wilson, about the Government's policy on the release of official information.

DRAFT ANSWER

Copies were placed in the Library on [Monday 16 January 1984].

CABINET OFFICE

From the Minister of State
Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

6 January 1984

Hugh Taylor Esq
Private Secretary to the Secretary
of State for Home Affairs
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

Dear Hugh,

You may have seen reports of a new campaign for Freedom of Information which was launched today under the direction of Des Wilson.

Lord Gowrie thought that your Minister and his department might find it helpful to have a copy of the Prime Minister's letter to Des Wilson which sets out the Government position and also of the answer to a recent Parliamentary Question on the subject.

A copy of this letter and enclosures goes to the Private Secretaries to all other members of the Cabinet, and to Sir Robert Armstrong and Sir Robin Ibbs.

Yours sincerely,

Mary Brown.

MRS M E BROWN
Private Secretary

10 DOWNING STREET

THE PRIME MINISTER

7 December 1983

Dear Mr. Wilson,

Thank you for your letter of 14 November, setting out the objectives of the campaign of which you are Chairman.

It is the Government's policy to make available as much information as is possible, while preserving the confidentiality essential to the effective working of government. The proviso is necessary, as your own document acknowledges. The real question, therefore, is how the public interest in disclosure - or on the other hand confidentiality - of particular information is to be determined.

I am afraid I cannot offer any encouragement to your proposal of a Freedom of Information Act, imposing a statutory obligation on Ministers to disclose information held by Government departments. Under our constitution, Ministers are accountable to Parliament for the work of their departments, and that includes the provision of information. A statutory right of public access would remove this enormously important area of decision-making from Ministers and Parliament and transfer ultimate decisions to the courts. No matter how carefully the right were defined and circumscribed, that would be the essential

/constitutional

constitutional result. The issues requiring interpretation would tend to be political rather than judicial, and the relationship between the judiciary and the legislature could be greatly damaged. But above all, Ministers' accountability to Parliament would be reduced, and Parliament itself diminished.

You are anxious that your campaign should be seen as one "to improve the accountability of quality of government". I believe that, if this part of your objectives were achieved, both accountability and quality would suffer. We said in our 1979 Manifesto that we would see that Parliament stands at the centre of the nation's life and decisions. In our view the right place for Ministers to answer for their decisions in the essentially "political" area of information is in Parliament.

I accept, as you say, that the campaign is not intended as a criticism specifically of this Administration. Our predecessors in office were also convinced of the fundamental constitutional objection to legislation of this kind. But we have gone further in ensuring Parliamentary accountability. In particular we helped to set up, and are fully supporting, the departmental Select Committees, whose dialogue with departments is producing a wider range of information than at any previous time. The Committees are institutionally appropriate to our constitution; a Freedom of Information Act is not.

In summary, I welcome any moves that will help to ensure that public demands for information are heard, and as far as possible satisfied. But I firmly believe that major constitutional changes such as your campaign is

/proposing

proposing are inappropriate and unnecessary. We already have a clear policy to make more information available and the necessary machinery to do so.

Yours sincerely

Margaret Thatcher

Des Wilson, Esq.

B

Reference

EXTRACT FROM HANSARD.
DATE 23-11-1983
COL WA 171

CIVIL SERVICE

Freedom of Information Bill

Mr. Kirkwood asked the Minister for the Civil Service whether he will now introduce a Freedom of Information Bill.

Mr. Hayhoe: No. We have made clear on several occasions why we do not believe that a statutory right of access to information would be appropriate. But it is the Government's policy to make available as much information as is possible while preserving the confidentiality essential to national security and to the effective working of Government. It is for my right hon. Friends in charge of Departments to implement this policy in their own areas of responsibility and to explain to the House and to the public the decisions they take. But my general impression is that good progress has been made in increasing the amount of information which is publicly available. In particular the evidence taken by departmental Select Committees provides a large range of information on the background to policies and problems over wide areas of Government activity.

86

CODE
18 78
SS 11/78

The 1984 Campaign for Freedom of Information

2 Northdown Street London N1 9BG
Telephone 01-278 9686

November 14, 1983

Rt. Hon. Margaret Thatcher
10 Downing Street
London SW1

Dear Mrs. Thatcher,

Shortly a major campaign is to be launched by a substantial list of voluntary organisations with the support of members of all political parties. I attach its objectives.

We are particularly anxious that this should be seen as a campaign to improve the accountability and quality of government, and in no way whatsoever as a campaign against your government.

We fully accept that the level of unnecessary secrecy in both the public and private sector is an inheritance of the past.

We invite you, therefore, to comment, as other party leaders have done, on the launch of our campaign and its objectives, and hope very much that you will feel able to respond positively and thus encourage the genuine desires of all involved to achieve improvements with proper cooperation and consultation all round.

I look forward to hearing from you.

Yours sincerely,

DES WILSON
Chairman
1984 Committee

Enclosure

1984 CAMPAIGN FOR FREEDOM OF INFORMATION

OBJECTIVES

1. Broad Objectives

   (a) To secure a statutory right of access to all information held by government and other public sector bodies other than that for which specific statutory protection is provided, and to place on these bodies an obligation to disclose such information.

   (b) To place upon organisations in the private sector a statutory obligation to give access to and to disclose such information as may be required by the public interest.

2. Legislative Aims

   (a) To promote a freedom of information Act to establish a public right of access to official information, subject to those exemptions required to protect confidentiality genuinely necessary to the proper conduct of government, its relations with other governments and organisations and the privacy of individuals.

   (b) To press for legislation to establish a similar public right of access to information held by local government.

   (c) To seek the repeal of the Official Secrets Acts and their replacement by an Act to give such protection to official information as may be necessary for national security.

   (d) To monitor all Bills introduced into Parliament and to add provisions for public access and disclosure where relevant.

   (e) To identify and seek to repeal all unnecessary secrecy provisions in existing legislation.

   (f) To press for legislation to establish a right of defence in law for those who disclose without authorisation information to which there is, as above, a public right of access, or which is justified in the public interst.

3. Other Aims

   (a) To encourage public and private bodies to disclose such information on their own initiative.

   (b) To alert the public to their existing rights to information and encourage them to make full use of those rights.

WHAT THE CAMPAIGN WILL NOT SEEK

The campaign accepts that an element of confidentiality remains necessary, and in particular this campaign will not seek the disclosure of information that would:

(a) endanger national security;
(b) impair relations between the government and other governments or organisations;
(c) adversely affect the value of sterling or the reserves;
(d) adversely affect law enforcement or criminal investigations;
(e) breach genuine commercial confidentiality;
(f) invade individual privacy;
(g) breach the confidentiality of advice, opinion or recommendation tended for the purpose of policy-making.

Home D88

Dc. P87.

10 DOWNING STREET

From the Principal Private Secretary

Sir Robert Armstrong

Official Information

The Prime Minister discussed with you this morning whether a place should be made on a forthcoming Cabinet agenda for the paper on official information which the Lord Privy Seal's Private Secretary sent to this office under cover of a letter dated 8 October.

The Prime Minister's view is that this is not currently a live issue, and that a collective discussion would be unlikely to lead to any advance on present policies. She does not think therefore that collective Ministerial discussion is needed at present.

May I leave it to you to convey the Prime Minister's view to the Lord Privy Seal.

E. E. R. BUTLER

26 November, 1982.

MR BUTLER

OFFICIAL INFORMATION

I promised you a note on the proposal to circulate an MPO paper on official information (dated October 8, 1982) to Cabinet for a second reading discussion.

MPO allowed me to make some comments in the course of the drafting of the October 8 paper. My objective, having failed to head off the idea of a paper to Cabinet, was to mitigate the damage. I had small success.

My position is quite simply this:

- there is no pressing need for an initiative at this time;
- the open Government lobby does not expect much from this Government;
- there is no means of satisfying the open Government lobby, not even by legislation, and we should not expend much effort in trying to satisfy the insatiable;
- any circulation of paper or discussion at Cabinet Committee or Cabinet level would almost certainly leak, put the Government on the defensive and be counter productive to the cause of greater openness;
- this Government, like its predecessors, is not in any case unduly secretive; a vast amount of information is churned out each day - the trouble with it is that it is often undigested, unprocessed and inconveniently packaged;
- we should stop being apologetic; we should present in the most favourable light the extent to which the Government already makes information available and argue much more systematically and persuasively the practical limits on the disclosure of information and in the process expose the true objectives of many in the open Government lobby - ie. to influence or most often prevent decisions which properly fall only to a democratically elected Government whose responsibility is to reconcile conflicting interests.

We are however now faced with a paper and it may be felt we should at least do something. I am clear what needs to be done:

- continue as now but quietly, when the opportunity arises, take a more positive line rather on the basis of Paragraph 6 of the paper, though treating point (6) very carefully indeed; this might be agreed by the Prime Minister with a small group of Ministers who could be furnished with a speaking note (which would be helpful to me as part of an exercise to colour people's thinking);
- take action administratively to identify the vast amount of unclassified information which can be made freely available on computer /- when we were able to open up the computer's store to the public we could reasonably present it as a substantive exercise not in open Government but in providing a service to the public (and at the same time promoting information technology).

I think the keys are to argue our present position quietly, unostentatiously but persuasively to those who can be influenced; and to mobilise modern technology greatly to improve the service to the public (which often confuses a lack of openness with the inconvenient way in which much Government information is made available.)

Against this background, I will not attempt to argue against a code of practice which, Ombudsman's involvement or not, is profoundly to be avoided.

I believe the Prime Minister strongly shares the views set out above.

B. INGHAM
17 November 1982

10 DOWNING STREET

Mr Butler

Official Information

You may find the attached from the UK Press Gazette relevant to the argument.

22/4

The NCTJ's examinations and syllabus committee is recommending the closure of the courses at Portsmouth, Preston and Darlington. This will leave courses at Sheffield, Harlow and Cardiff.

The main cause is the fall in numbers of trainees being recruited by the provincial news, but the growth in in-company courses run by the bigger groups has made the colleges' position even more precarious.

The FE colleges as a whole employ 30 journalism lecturers, and NCTJ director for print journalists for a couple of years, and Darlington has courses in radio and international journalism.

The Newspaper Society's head of training, Geoff Hartridge, is collecting from NS members forecasts of their recruitment of trainee journalists in 1982-83, and signs are that the figure will be low.

In the year to June 1982 the NCTJ registered 451 new trainees, whereas in recent years the average has been around 650 to 700, and in some years has been as high as 1,000.

success in advertising — there is a far bigger audience to talk to.

"We have recognised and developed the element of service to the reader. Now, many paid-for papers are following suit, although it has not necessarily been part of their journalistic tradition." Mr. Fletcher said that new technology would provide areas for the free newspapers' expansion. The concept of inserting individual and variform advertising as separate from the main package was one such.

High price tag on Information Act requests

by TOM RILEY

A SPECIAL REPORT compiled by Access Reports/FOI, Washington, reveals that the US Executive Departments spent $35.1 million in 1981 on Freedom of Information Act requests while retrieving $1.5 million in fees.

These figures refer only to the executive departments — which include agriculture, commerce, defence, education, energy, health and human services, interior, justice, state, transportation and treasury — as the other agencies subject to the Freedom of Information Act, more than 90, are not required to disclose cost and fee figures in their annual reports.

ANNUAL REPORT

The highest costs were recorded in the department of defence annual report which spent $7.6 million handling 64,676 requests. However, the department of justice, which handled only 22,639 requests spent nearly as much as defence— $7,096,383.

As a result of the airlines strike in 1981 by the Professional Air Traffic Controllers Organization — since disbanded —the Federal Aviation Administration received 11,000 requests from striking workers. As a result the transportation department agency set up a special task force to deal with the requests.

The CIA, in its annual report, made another plea for relief from the FOI Act

saying that the $8.7 million spent since 1975 had resulted in only "marginal" benefit to the public.

The department of defence annual report expressed support for the Reagan Administration's proposals to amend the FOI Act but also said that a lack of funds for department-wide training and education has "hampered the overall effectiveness and management" of their FOI Act programme.

The report, which effectively puts into perspective the true costs of the administration of the Freedom of Information Act, comes at a time when the Act itself has been under close scrutiny.

There have been continuing efforts to amend the law but the proposed changes recommended by the Senate judiciary committee last spring are said to have been favourably received as the changes are seen as moderate and will create some improvement in the administration of the Act.

No changes to the law are foreseen in the remainder of this Congress.

Sources in Washington say that Representative Glenn English (Democrat-Oklahoma), re-elected in the recent elections, and chairman of the House Government Operations sub-committee on government information and individual privacy, has expressed a willingness to proceed with the Senate Bill, a stand he had previously rejected if any Bill to come out of the Senate was considered too destructive of the current law.

NEW SESSION

However, Representative English stated he would hold additional hearings sometime in the new session of Congress before taking any further action.

Meanwhile, a justice department official has said the Administration "has every expectation that we should be able to secure passage of a broad FOI Act reform Bill in the next Congress."

The reports on the costs of the FOI Act are submitted to Representative English's committee and will play a significant part in any debate as the high costs of the administration of the Act are always cited as one of the reasons it is in desperate need of amendment.

The actual costs from the reports will effectively curtail the more extreme figures put forth in recent years.

CONFIDENTIAL

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

CABINET OFFICE

OPEN GOVERNMENT

As we agreed, I have looked at the papers on open government. The Prime Minister did not express a definite view on the Lord Privy Seal's paper, except that she did not want it circulated long in advance of a Cabinet meeting, because she thought that it might leak.

The way that I suggest that we should proceed, subject to your views, is as follows.

I suggest that you might put this on the next Business Note in square brackets. I will then re-submit the Lord Privy Seal's paper with the Business Note to the Prime Minister, and we could have a word with her about it at your next Business Meeting with her. That would enable us to discover whether the Prime Minister is content that the paper should be discussed by the Cabinet in its present form, or whether she has some more substantial objection.

A E R BUTLER

12 November, 1982

CONFIDENTIAL

HOME AFFAIRS.

Please.

10 DOWNING STREET

Robin

Tim

I agree. Pl. pass the suggestion to M.. Hatfield. Meantime, presumably you are telling M.. Buckley not to circulate? FERB 11.10

To note

X was a misunderstanding between MPO and Cabinet Office, the source of which is unclear. As you will see, the PM did not wish this circulated as yet. Perhaps the best way forward would be for RTA to raise the question at a bunnies meeting.

11/10

CONFIDENTIAL

No action for the present

Management and Personnel Office
Whitehall London SW1A 2AZ
Telephone 01-273 (4400
GTN 273)

From the Private Secretary

8 October 1982

Prime Minister:

I am seeking Bernard Ingham's comments but this draft is much more neutral than its predecessor, as you requested. X is, I believe, based on a misunderstanding between Cabinet Office and MPO but do you agree that Hadley Young can circulate this paper with a view to later Cabinet discussion?

Dear Tim,

OFFICIAL INFORMATION

The Lord Privy Seal wrote to the Prime Minister on 9 March about policy on open government, suggesting some moves that could be made if the Government wished to advance their policy, and that there might be a discussion in Cabinet on the issue. Willie Rickett's letter of 18 March recorded that the Prime Minister would be happy to have a discussion in Cabinet; but would wish it to be based on a neutral paper presenting options but without making firm recommendations. The Prime Minister wanted the paper to include the option of a more systematic defence of our present stance.

Cabinet discussion at that time was of course ruled out by the Falklands crisis, but it may be appropriate to return to the subject now. I understand that provisional arrangements have been made for Cabinet to consider a paper on 14 October. Attached is a draft of the sort of paper which the Lord Privy Seal would like to circulate.

The Lord Privy Seal would be grateful for the Prime Minister's agreement to the circulation of the paper, and for any comments that the Prime Minister may have.

Yours sincerely,

Jim Buckley.

J BUCKLEY

CONFIDENTIAL

5 October 1982

DRAFT PAPER FOR CABINET

OPEN GOVERNMENT

Pressure for more open government and for a "Freedom of Information Act" is likely to intensify in the run-up to the General Election. It may be timely to consider whether fresh Government initiatives are called for.

Political background

2. There does not seem at present to be much Parliamentary pressure for legislation, though there is always the possibility of another Private Member's Bill. But some forthcoming developments may revive interest. These include promulgation of the recent Council of Europe recommendation on access to information; debate on the Bill on data protection (linked in the public mind with open government); the Court of Appeal's judgement in the Air Canada case on which leave has been given to appeal to the House of Lords; and developments in information technology. We need to show that our policy (possibly reinforced) offers a credible alternative to legislation, and exploits rather than denies the benefits of new technology.

Present policy

3. Our policy, announced to Parliament in June 1979*, is to make publicly available as much information as possible. More information is being made available now than ever before, much of it in the form of documentation to the new Departmental Select Committees set up early in this Parliament on our initiative. We have made clear that we regard legislation as unnecessary, inappropriate, and harmful in giving the courts, rather than Ministers answerable to Parliament, the final say on whether particular material should be disclosed.

Possible developments

4. The realistic options for our stance on open government appear to be:

a. continue as now

b. without any change in policy or our basic stance, take a more positive line eg

*Hansard, 20 June 1979, Cols 1315-7

i. develop a systematic approach to defining and justifying acceptable limits on disclosure;

ii. in support of that, issue new guidance to officials on disclosure;

iii. maximise use of new technology to digest and disseminate information, particularly management information.

c. take an initiative which advances our stance without conceding legislation eg by introducing a Code of Practice.

5. Continuing as now (Course (a)) has attractions. Our record of openness in government is good. We are not obliged to take any immediate action. Doing so might stimulate debate unnecessarily. Nor should we over-estimate the acclaim to be won by any move towards more openness, though we should seek to avoid the charge of a rigid and unyielding approach.

6. In taking a more positive approach (Course (b)) to the application and clarification of our policy we might:-

a. expound whenever opportunity arises the sensible limits to the release of information and the reasons for them;

b. expose the false assumption that legislation would require the disclosure of discussions between Ministers, their advisers and officials. (The recently-passed Australian and Canadian Acts and the New Zealand Bill tightly restrict this kind of information.)

c. identify notable examples of kinds of information never previously published eg MINIS;

d. point out the value of the departmental Select Committee system and the amount of information which is being made available to the Committees;

e. emphasise our willingness to respond, wherever possible, to specific requests for information, rather than resorting to expensive publication of minority interest information.

7. Other aspects of a more positive approach might involve new guidance to officials, and exploitation of initiatives on management information and information technology.

8. This Administration has not issued guidance to officials on release of official information, beyond endorsing the 1977 "Croham Directive"*. There are sound amangement reasons for reminding officials that there is a Government policy; and that its main thrust is different in important respects from that in the more restrictive "Croham Directive". A new memorandum for officials clearly stating our policy and its practical applications could also, if made public, help us in defending our position to reasonable advocates of open government, particularly our own backbenchers. But publication could be expected to provoke criticism from the 'legislation' lobby as not going far enough.

9. We might also do more to develop the 'public information' potential of our initiatives on management information for Departmental purposes. We stressed this point in our White Paper response to the Treasury and Civil Service Committee's Report on Efficiency and Effectiveness. Internal and public information needs can and should march together.

10. A further major increase in the output of published information will require a change in attitude to information which encourages officials - and Ministers - to distinguish at all stages what is suitable for public disclosure eg background facts, analysis and briefing, from policy advice and comment to Ministers. This would undoubtedly require changes in working practices. In the short term it could have quite considerable resource costs. But such a change

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*A letter from Sir Douglas Allen (then Head of the Home Civil Service; now Lord Croham) to Permanent Heads of Departments, setting out guidance on disclosure of official information. It had the then Prime Minister's backing.

would be consistent with, and indeed support and extend, our present policy of making available as much information as possible, particularly to Select Committees. Moreover, such a change is likely to be needed if we are to make the best use of information technology, for departmental purposes and for informing the public. Easy automatic processing gives us the opportunity to make a reality of responding to public requests for access to the very large amounts of everyday information to which no confidentiality attaches. We could do more to develop and publicise good intentions in this respect. In the longer term the manpower savings achievable by proper application of information technology for departmental purposes could offset the resource costs of a more vigorous approach to responding to public requests for information.

11. I have considered also the scope for a distinct advance (Course (c)) rather than consolidation and development of our present policy. A Code of Practice appears to be the only possibility worth further examination; an outline of a possible scheme is annexed. If such a scheme was to be regarded as credible, it would have to provide for some form of policing; in the outline annexed it is suggested that the Parliamentary Commissioner for Administration should be given this additional duty. A scheme on these lines would be a considerable step, and would entail some shift in the "onus of proof" as to whether information should be released, away from Ministers and in favour of a person seeking information. It would however avoid the definitional problems involved in legislation and would not substitute judicial for political judgement on what can be disclosed. It might involve some increase in resource costs. But it should reassure our own backbenchers and supporters, and other reasonable members of the public who are uneasy about the availability of information on matters which directly affect them, if there were an established framework within which issues concerning disclosure of official information could be handled, even if the 'legislation at all costs' brigade remained dissatisfied.

12. I invite colleagues to consider our stance - managerial and political - on release of official information; and specifically the three options outlined above.

ANNEX

OFFICIAL INFORMATION: A CODE OF PRACTICE

AIM

1. A Code of Practice would be declared to support the Government's policy of making as much information as possible publicly available, and of responding to reasonable requests for information wherever possible.

SCOPE

2. It would apply to Ministers and officials of all Government departments and authorities to which the Parliamentary Commissioner Act 1967 applies.

COMPLAINTS OF NON-OBSERVANCE

3. Non-observance of the Code would prima facie be subject to investigation by the Parliamentary Commissioner for Administration. Complaints might be made to him as provided for in the 1967 Act, to be dealt with according to the procedures provided in the Act.

INFORMATION MADE AVAILABLE - GENERAL

4. Except in circumstances specified in the Code, there would be no presumption that documents, as distinct from information, would be made available. But so far as is reasonable and practicable, all requests for information and for documents would be met - without retrospection however. Requests would be responded to within a reasonable time; and if the information requested could not be provided, an explanation would be given.

SPECIFIC INFORMATION TO BE MADE AVAILABLE

5. Each department or authority would periodically publish a statement of its aims, functions and organisation; and its powers and duties as they affect private citizens or organisations in the private sector. The statement would include guidance on where further information could be obtained, and would set out the charges, if any, which may be made for providing information or documents.

6. As soon as is practicable after a Code came into effect, each department would make publicly available its guidance to officials in their dealings with the public, including codes, interpretations, rules, procedures, and similar administrative manuals; subject to exclusions.

7. Departments would ensure that as much information as possible is made available, in response to individual requests and otherwise, about matters affecting public health and safety, the environment, planning proposals, and similar matters which may directly affect the private citizen.

8. Wherever possible documents setting out the factual and analytical background to important decisions about policies and programmes would be released, supplemented by additional information necessary to assist public understanding of the reasons for decisions announced to Parliament or otherwise publicised.

9. New legislation would be accompanied by 'notes on clauses' explaining the Bill's provisions.

10. The Code would not apply to release of the following:

1. communications by or to Her Majesty the Queen or any member of the Royal Households;

2. proceedings of the Privy Council;

3. proceedings of the Cabinet or of its Ministerial or official committees;

4. other processes of consultation within government between Ministers, their advisers and officials;

5. information disclosure of which is prohibited by Act of Parliament;

6. information where disclosure would be liable to prejudice

a. the security, defence or international relations of the United Kingdom, or

b. the entrusting of information in confidence to the Government by other Governments or by foreign or international agencies;

7. information whose disclosure would represent contempt of court or of Parliament, or render any person liable to proceedings for defamation, or reveal matters which are subject to solicitor/client privilege;

8. personal information about individuals.

11. Release of all other kinds of information would be covered by the Code; but restrictions might be necessary in the public interest where, for example, disclosure would be liable to

1. prejudice the economic interests of the United Kingdom;

2. prejudice the maintenance of law and order or the investigation of offences;

3. prejudice the commercial activities of the Government or of other public or private bodies, or the conduct of industrial relations;

4. result in material loss or gain to individuals; or

5. represent a breach of confidence.

12. Other reasons for not responding to requests for information might be that

1. it will soon be generally available;

2. it is unobtainable, or could only be obtained by extensive and costly research;

3. the request can reasonably be regarded as frivolous or vexatious.

13. [Provision would be needed to clarify the relationship between disclosure in accordance with the Code and obligations under the Official Secrets Act 1911]

HOME AFFAIRS : OPEN GOV.

From the Private Secretary

Home Affairs

Management and Personnel Office
Whitehall London SW1A 2AZ
Telephone 01-273 4400
GTN 273

16 July 1982

David Heyhoe Esq
Private Secretary to the
Lord President of the Council
Privy Council Office
68 Whitehall
London SW1A 2AT

NPBM
17
257

Dear David,

DEPOSIT OF UNPUBLISHED LEGISLATION IN THE BRITISH LIBRARY

Mr Pym wrote to Mr Hayhoe on 10 March, suggesting that advance copies of Acts and statutory instruments might be made available immediately after enactment at selected points within the British Library system. The purpose would be to bridge the interval between enactment and publication of legislation, and thus to counteract the criticisms made from time to time about delays before copies become generally available.

Officials of MPO, and of HMSO on behalf of the Treasury, have looked carefully into this and have discussed it with the Lords Public Bill Office. A note on the position is attached. It appears that there could be no certainty of making copies of Acts available to the British Library immediately (or very shortly) after Royal Assent; and that in most cases the possible gain over normal publication would be very small, and the advantages outweighed by delays to the printing programme. Unless a procedure of this kind could be applied to all or most Acts as a matter of course, it would lose much of its merit as a service to the public.

The position on statutory instruments is similar; they are produced to a short timetable, and by the time advance copies had been distributed the published copies should normally be available.

Officials suggest that, where it is clear that there will be an exceptionally long delay before publication, display of advance copies - in the British Library or elsewhere - might be used as an emergency measure. But we hope such delays will become increasingly rare.

The guidance to departments about commencements of Acts, referred to in the note, has now been issued, and I enclose a copy. Where the standard two months' interval between Royal Assent and

commencement can be observed, there should be no problems about publication before the operative date; and where it cannot, HMSO should in future be able to arrange publication by the operative date in all or most cases. It is hoped that this will go a long way towards meeting the criticisms about Acts coming into operation before there has been time to publish them.

This letter has been approved by Baroness Young and Mr Hayhoe. I am sending copies to Private Secretaries of the recipients of the earlier correspondence.

Yours sincerely,

Jim Buckley.

J BUCKLEY

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 4749

8 July 1982

Dear Parliamentary Clerk,

COMMENCEMENT OF ACTS

Ministers have recently approved new guidance on the commencement of Acts of Parliament. The following should be brought to the attention of departmental legal advisers and any administrative divisions concerned with the preparation of legislation.

2. The guidance will apply to all Bills introduced after the end of the current (1981-82) Session.

Specification of commencement dates

3. Wherever possible and appropriate, the date or dates of commencement of an Act, or of different provisions of the same Act, should be specified in the Act itself.

Intervals between Royal Assent and commencement

4. In general, no Act or part of an Act should be brought into operation earlier than two months after Royal Assent. This applies whether the date of commencement is specified in the Act itself or subsequently by commencement order.

5. Where it is considered necessary to dispense with the two month minimum interval because provisions of an Act require immediate or early commencement, the responsible Minister's express authority for this must be obtained.

6. It is particularly desirable that the minimum period should be observed in respect of provisions that will directly affect the public, legal practitioners or pending court proceedings.

7. This two month minimum period does not apply to consolidation Acts, for which a minimum period of three months between Royal Assent and the earliest commencement date should continue to be allowed.

Easy identification of commencement provisions

8. Parliamentary Counsel have agreed that, subject to obvious exceptions (eg Finance Acts and Acts whose operation turns on a clearly-signalled appointed day), they will:-

i. group all commencement provisions together at the end of any Bill in which it practicable to do so;

ii. aim to include the word "commencement" in the side-note of any clause which includes commencement provisions affecting provisions outside the clause itself;

iii. put all commencement provisions in a separate clause (or schedule) in cases where their length or complexity warrants this.

9. In the (exceptional) cases where it is not practicable to facilitate the identification of commencement provisions in this way, departments should take steps to ensure that a full statement of the commencement provisions is made generally available - for example as part of the published guidance issued on an Act, or in a note made available with copies of the Act, or in a Press Notice issued at the time of Royal Assent.

Subsequent Commencement Orders

10. Where it has been necessary to provide in the Act for provisions to be brought into operation by Commencement Order, the number of Orders made and of commencement dates specified should be kept to the minimum practicable. Every effort should be made to rationalise their preparation and issue. It is obviously undesirable for Orders bringing into operation different sections of the same Act to be made within short intervals of each other, and for there to be too many different commencement dates. To avoid this, it may be necessary to arrange for collaboration between different administrative divisions or, if more than one Department is concerned, different Departments.

Consolidation of this guidance

11. In due course, this new guidance will be incorporated in the Guide to Legislative Procedures. It is, however, the subject of public Ministerial undertakings, and should be particularly noted.

12. A copy of this letter goes to First Parliamentary Counsel

Yours sincerely

A J SALVESON
Parliamentary Clerk

The Parliamentary Clerk.

With the Compliments
of the
Private Secretary
to the
Lord Privy Seal

Apologies missed off from letter J Buckley → D Heyhoe 16-7-82

Deposit of Unpublished Legislation in British library

NOTE ON PUBLICATION OF ACTS OF PARLIAMENT

1. Officials were asked to examine whether, in order to meet criticisms of delays between Royal Assent and the publication of Acts, it would be possible to make copies of legislation available in some form immediately after enactment. The suggestion was that a limited number of copies might be displayed at selected points in the British Library system, and made accessible to local libraries through the BL's central reproduction and distribution services.

2. HMSO took part with MPO in the examination, and we are greatly indebted to the Lords Public Bill Office for their advice and help.

PROCEDURE IN THE LORDS PUBLIC BILL OFFICE

The "House Bill"

3. When a Bill (whether it was first introduced in the Commons or in the Lords) leaves the first House, the Public Bill Office in that House prepares the "House Bill". This is a foolscap-size binder containing the Bill as printed for introduction in the second House. It is divided into separate pages, and facing each page is a blank sheet of paper. On these blank pages are recorded all subsequent amendments, right up to the time when Royal Assent is given (later prints of the Bill are not substituted).

4. Some amendments, new clauses etc are photocopy extracts from the printed lists provided to Parliament; others are in manuscript. In due course the blank pages may become thickly covered in amendments. Parts of the Bill may be virtually unintelligible to anyone except the Clerks, and the original clause numbering and cross referencing may have been revised many times.

5. We conclude that it would be useless to take photocopies from the House Bill, even if that were physically possible.

The "certified copy"

6. As soon as the final text of the Bill appears to be reasonably certain, a proof copy of the Act is ordered from HMSO. This is based on the latest print of the Bill, amended as necessary (the House Bill, being at that stage the sole authoritative text, never leaves the Office). The text as sent to HMSO may,

despite all care, contain errors, and it could not be made publicly available.

7. When the proof is received, copies are sent for checking to Parliamentary Counsel and the sponsoring Department. Finally it is read against the House Bill, and the corrected proof is certified by the Clerk of Public Bills as the "certified copy" and returned to HMSO. (If extensive corrections have to be made a second proof stage may be necessary, but this is rare.)

Royal Assent

8. Royal Assent is signified as soon as possible after the Bill completes its last stages, though the actual interval varies. By that time the certified copy is frequently available, but not always; there is no direct link between the two events.

PROCEDURE IN HMSO

9. We conclude that the earliest stage at which copies could be taken for display to the public is when the certified copy has been returned to HMSO (the Public Bill Office do not have suitable copying facilities). The certified copy is now authoritative. Its physical state is that of the ordinary run of corrected proofs - ie it is not entirely "fair", but it is usually reasonably intelligible. Occasionally a certified copy - eg the Housing and Local Government Act 1980 - may be so heavily amended as to be useless for copying as it stands, but this is exceptional.

10. However, any delay for purposes of copying would delay the printing and publication of the Act by a corresponding length of time; or longer, if it interfered with the programme for allocating Acts to particular printing presses as they become available.

11. The next earliest stage at which copies could be taken would be after the type had been corrected; and this would of course produce perfect copies that would be straightforward to read. But an "early run" would need setting up specially on a small press, and this would materially delay the final printing.

INFERENCES

12. There is clearly no case for displaying advance copies of all Acts. The average time between receipt of the certified copy in HMSO and publication is about 5 days. Given that the copies would have to be produced and conveyed to the British Library - and possibly further distributed by them - the gain to the public would in most cases amount to a few days at the outside, and frequently none at all. Any advantage would be more than outweighed by the consequent delays to the printing programme as a whole.

13. A procedure of this kind would only be justified in selected cases, where it was apparent that there would be a significant interval before publication (the maximum delay in the last twelve months was 4 weeks), and thus where copies could be deposited in the Library a significant length of time before the on-sale copies became available normally.

14. The number of Acts to which this would apply cannot be given precisely - it depends where the line is drawn - but we think it could reasonably be put at not more than 10% of all Acts, ie on average about 7 a year. Some of these, however, might be of little urgency, and it would be better not to go to the trouble and expense of taking advance copies. Yet, unless HMSO could be given firm criteria for deciding which Acts the procedure should apply to, the selection would be difficult for them and confusing for the public.

15. So far as we have been able to discover, most of the criticisms of delay in publication can be traced to quite a small number of Acts - the "rogue" Acts. In these cases the criticisms were, indeed, justified. But long and heavily amended Acts (which by and large these have been) are the very ones of which it would be hardest to produce tolerable copies at an early stage, and which it is most important not to delay further by adding, in effect, another stage to the printing process.

DELAYING THE COMMENCEMENT OF ACTS

16. New guidance is being issued to departments about commencement provisions in statutes. Subject to Ministers' discretion, Acts will wherever possible be brought into operation not earlier than two months after Royal Assent (three months in the case of Consolidation Acts). This should have a double effect. First, wherever the "two months" principle can be observed there should be no problems about publishing within that period. Secondly, where exceptions have to be made HMSO should now have room to give such Acts priority and, it is hoped, still publish by the operative date in all or most cases.

17. The public have, of course, a legitimate interest in legislation as soon as it is enacted. But the chief criticism has been that legislation has come into operation before there has been time to publish it; and that, at least, should happen much less frequently in future.

CONCLUSION

18. In our view there are insufficient grounds for setting up a new formal procedure to deal with the small number of cases where help of this kind to the public is likely to be both needed, and effectual.

19. Nevertheless, if it should become clear that a particular Act is going to be subject to quite exceptional delays, it may be right to take exceptional measures; and distribution of advance copies through the British Library could well be an option. But we believe such cases should be rare, and would be best dealt with ad hoc.

Management and Personnel Office
July 1982

010

Home Affairs

Management and Personnel Office
Whitehall London SW1A 2AZ
Telephone 01-273 { 4400
GTN 273 {

Chancellor of the Duchy of Lancaster

23 March 1982

The Rt Hon Francis Pym MC MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1A 2AT

NBPM

24/3

Dear Francis,

Thank you for sending me a copy of your letter of 10 March to Barney Hayhoe, suggesting that copies of Acts and statutory instruments which have not yet been published might be made available for public inspection at a few selected points within the British Library system.

I think this is an excellent idea, and I hope very much that an arrangement on these lines will be possible. Legislation is a form of information, and as part of our policy on open government we ought to ensure that new enactments are available readily and quickly. And you will know that the Law Society and similar bodies have repeatedly complained about the delays which sometimes occur between enactment and publication. If these delays cannot be eliminated - and I fully understand that they cannot be avoided altogether - we should make any practical arrangements we can to cover the interval before the printed copies become available.

If others agree that we should pursue the idea, we shall need to involve the Lords Public Bill Office. Although the publication of Acts is a matter for HMSO, the prior step is their preparation and certification by the House of Lords Clerks. I would be glad to consider with Barney Hayhoe at what stage we should consult them. It would also be necessary to consult the British Library.

I am sending copies of this letter to the recipients of yours.

Yours ever

Dave

BARONESS YOUNG

HR

bc B1

10 DOWNING STREET

From the Private Secretary

18 March 1982

Official Information

The Prime Minister has seen Lady Young's minute of 9 March. She would be happy for your Minister to circulate a paper to Cabinet, with a view to a discussion some time in the next month.

However, the Prime Minister is not entirely convinced that this paper should conclude in favour of introducing a Code of Practice on the lines of the draft annexed to Lady Young's minute. She is not sure that it is profitable to concentrate on satisfying the "open government" lobby, especially as this will probably be impossible without legislation. She feels that it would be useful to explore the option of doing more to explain why there are sensible limits to the release of official information. The Government could perhaps develop a systematic approach to defending the status quo, which could be developed in the inevitable debates on:

(a) data protection and the information technology explosion which will lead people to worry about the protection of official information; and

(b) the Report of the Duncan Wilson Committee on public records, and the Council of Europe recommendations on access to information, where the pressure will be towards allowing greater access to official information.

In short, the Prime Minister would prefer the paper for Cabinet to set out the options identified in the Chancellor of the Duchy's minute; go on to discuss the option described above; and to end without making any firm recommendations. This could then be given a "second reading" discussion in Cabinet, to explore the options and to consider whether any further work by officials is necessary.

W. F. S. RICKETT

Jim Buckley, Esq.,
Office of the Chancellor of the Duchy of Lancaster

BI

PRIME MINISTER

Official Information

You will remember that last November Lady Young wanted to issue a revised version of the "Croham Directive" on the disclosure of official information. We suggested that it would be better to let sleeping dogs lie, and not to prod the 'open Government' lobby into action.

Lady Young now wants to circulate a paper to Cabinet on this subject, setting out various options (including doing nothing), so that colleagues can have a "Second Reading debate". Lady Young herself favours the publication of a Code of Practice on the release of official information, breach of which would be a mal-administration subject to investigation by the Ombudsman.

Bernard's views are at Flag A. He does not favour a Code of Practice. He does not feel that the Government should concentrate on satisfying the 'open Government' lobby, especially as this will probably be impossible without legislation. Instead he feels that the Government should do more to explain why there are sensible limits to the release of official information. He feels that the Government should develop a systematic approach to the inevitable debates on:

(a) data protection and the information technology explosion which will lead people to worry about the protection of official information; and

(b) the Report of the Duncan Wilson Committee on public records, and the Council of Europe recommendation on access to information, where the pressure will be towards allowing greater access to official information.

Bernard suggests that an inter-departmental group of officials (or even the CPRS) should be asked to work up a paper on this.

/ You probably

You probably will not want to deny Lady Young a discussion of this subject in Cabinet. But would you like me to tell her office that you are not yet convinced of the need for a Code of Practice, and that it might be best for her paper to set out the various options, including Bernard Ingham's preferred approach, without coming to any conclusions?

WR

Yes

15 March 1982

bc. Mr Lowley F

copy filed on Enfield
June 1980
Public Attitudes towards Europe

PRIVY COUNCIL OFFICE
WHITEHALL LONDON SW1A 2AT

10 March 1982

Dear Barney,

... As you will see from the attached, Humphrey Atkins recently wrote to me about a suggested procedure for making Explanatory Memoranda on Community documents available for public inspection at four major Libraries.

This seems a good idea to me, and I have agreed to what he proposed. The thought occurred, however, whether the idea might be capable of further extension, particularly as a means of meeting the criticism that is made from time to time about the non-availability to the public of recently enacted legislation, statutory instruments, etc. As you know, there can at present be substantial delays, sometimes of several weeks, between Royal Assent and the emergence of legislation in a freely available printed form.

I should accordingly be most grateful if consideration could be given to the possible scope for a procedure whereby a very limited number of copies of new legislation might be made available by HMSO in some form immediately after enactment at a few selected points within the British Library system. The purpose behind this would be to enable interested members of the public to have access to unpublished legislation through their local library by utilising the British Library's central distribution and reproduction services.

Do you think this idea is worth pursuing?

I am copying this letter to the other members of Cabinet, to Paul Channon and Sir Robert Armstrong.

FRANCIS PYM

Barney Hayhoe Esq MP
Minister of State (Commons)
HM Treasury
Old Admiralty Building
Whitehall
London SW1

Copy filed on Euro BT June 1980
Public Attitudes towards Europe

Foreign and Commonwealth Office
London SW1

26 February 1982

Dear Francis,

PUBLIC AVAILABILITY OF EXPLANATORY MEMORANDA

Keith Stainton recently passed on to me a request from somone who runs a legislation monitoring service for charities that a file of Explanatory Memoranda (EMs) on Community documents should be made available for public inspection at the British Library.

Under the present arrangements, the automatic circulation of EMs is restricted to Parliament and Government Departments. This is not for any reason of security, since the EMs are unclassified, but I suspect partly because there has not been much of a demand for wider circulation and partly because of a reluctance to open the floodgates to other potential recipients.

In fact the cost and the administrative burden are the main arguments against wider circulation, but we have I think come up with a solution by which the public can have better access to these EMs and which should not make resistance to further requests any more difficult. This is that we should send a copy of each EM to the four 'EC Depository Libraries.'

These Depository Libraries (the Lending and Reference Divisions of the British Library, the City of Westminster Central Library and the Liverpool and District Scientific, Industrial and Research Library) already receive directly from the Commission a comprehensive selection of Community documents, including those on which EMs are prepared. Distribution to these libraries would ensure ready access for the general public, particularly through the postal arrangements of the British Library's Lending Division. We do not want to accept a commitment to supply EMs directly to each of the 45 European Documentation Centres (which are usually attached to universities), but they will be able to obtain EMs indirectly via the Depository Libraries.

/This

The Rt Hon Francis Pym MC MP
Lord President of the Council
68 Whitehall
London SW1

This wider availability of EMs would be fully consistent with our aim of promoting open government and could help to improve public understanding of the Community. I hope you will agree that the proposal is a practical one. Unless I have received any objection by 3 March I shall write to the Chairmen of the two Scrutiny Committees seeking their formal agreement (informal soundings indicate that they will be content) before we put the new arrangement into practice. I would propose to draw this new procedure to the attention of the House through an arranged PQ. If these arrangements are agreed, we will ensure that copies of EMs go to the Libraries only after we know that the Scrutiny Committees have them.

I am copying this letter to the other members of the Cabinet, to Paul Channon and Sir Robert Armstrong.

Yours ever

Humphrey

c.c. B. Ingham

Chancellor of the Duchy of Lancaster

PRIME MINISTER

OFFICIAL INFORMATION

I am sorry not to have replied sooner to your Private Secretary's letter of 9 November about guidance to departments on disclosure of official information. But your point that it might be wiser to let sleeping dogs lie and that we should raise false expectations if we offered guidance which went only a little further than the Croham directive suggested to me that it would be worth taking time for a more fundamental reconsideration of the options open to us. We should then be better placed to consider whether, and if so when, we wanted to make any move on disclosure of information.

The Options

I believe our main choices are:

a. to do nothing

b. to issue revised guidance to officials in support of our present stance; or

c. to take an initiative which advances our policy eg by introducing a Code of Practice.

I do not regard legislation to provide a public right of access to information as a realistic option. It would strike at the principle of Ministerial accountability to Parliament rather than the Courts, and at the authority of Parliament as the body responsible for calling Ministers to account, and would give the judiciary the final say about what information Ministers should disclose.

Doing nothing has attractions. Our record of openness in government is good (though there are many who will dispute that) and there are respectable arguments for maintaining our present line. At Annex B is material which we put together in response to your general questions about the effects of our policy so far and the answers to our critics. We do not have to take any action at present.

Nevertheless, I believe that there are sound management reasons for consolidating and reissuing the guidance to officials. They do not know as much as they should - if anything - about our policy.

If our pledge to make available "as much information as possible" is to be implemented we need to make quite sure that our policy is fully understood within the Civil Service. The Croham directive does not deal at all with the question of responding positively and sympathetically to reasonable requests for information, and there is a need for guidance to Departments on this. But I accept that if we do issue revised guidance for management reasons, our action would be open to the objections which you have pointed out, ie we risk waking the dogs, and will be told that we have not done enough.

It is this dilemma, coupled with doubts about the longer term credibility of our position particularly in the run-up to an Election, and a belief that we could do more to meet legitimate concerns, that leads me to think that some new initiative ought to be considered. There is genuine unease among reasonable members of the public about the availability of information on matters directly affecting them, particularly in the environment and consumer fields (health hazards , safety of drugs, environmental planning, pollution, and so on). There are good reasons why all the information held by the Government cannot be freely disclosed. But it would help to reassure the public - and our own Back Bench - if there were clear instructions to departments about responding to requests for information of this kind, and an established framework within which all issues concerning disclosure of information could be handled.

In considering a more substantial move, we have been guided by some "fundamentals". These are that we should not concede legislation conferring a statutory right to information; should offer nothing on access to key working documents recording discussions between Ministers or with their advisers and officials; should ensure that Parliament continues to be the forum where any disputes about disclosure of information are settled; and should minimise resource costs. On the other hand, if a new move is to win us some credit with advocates of more open government, we need to be able to demonstrate that there has been some shift in the "onus of proof" as to whether information should be disclosed; that an independent referee is available to arbitrate if it appears that information has been withheld unnecessarily; and that some concession has been made on the provision of information about the factors taken into account in reaching policy decisions.

A Code of Practice

These considerations have led us back to the idea of a Code of Practice, along the lines proposed in 1978 by Justice, a respectable and respected organisation. This would offer a systematic commitment on the Government's part to the provision of information, without incurring the adverse consequences of giving statutory rights of access to documents; a Code can draw the distinction between information and documents.

Attached at Annex A is an outline of how such a Code might look. This is a basis for discussion only; a final version could well look very different. The outline is based on the assumption that a breach of the Code would be "maladministration" within the meaning of the Parliamentary Commissioner Act 1967, and thus subject to the jurisdiction of the PCA. A mechanism for dealing with complaints is not of course a necessary concomitant of a Code. But the Law Officers took the view in 1978 that breach of an administrative Code was likely to constitute "maladministration", so it might be difficult to exclude the PCA in any case. It would seem sensible to make a virtue of necessity and openly build him into the system; the existence of an independent arbiter would add greatly to the presentational effect of the Code, without I believe proving too onerous either for Ministers and their Departments or for the PCA.

A Code of Practice could be introduced simply by a statement in both Houses, but might have more force if the Government were to introduce a Parliamentary Resolution, reaffirming our policy on open government and undertaking that Ministers and officials would be guided by the Code. This, together with the use of the PCA, would put the Code on a solid Parliamentary footing.

The political considerations

In his statement on 20 June 1979, Paul Channon said that a Code of Practice would be open to many of the same objections as legislation. This is still true up to a point - eg there would be some resource costs - though I do not think that the objections are the fundamental ones. But our policy has now been in operation for two and a half years and I believe that we should be on safe ground in saying that the introduction of a Code of Practice represents not a reversal of Government policy but a logical and desirable extension of it. Nonetheless, I recognise that there has to be good reason for taking any such new initiative, and careful consideration of possible timing.

Parliamentary interest in freedom of information legislation is containable at present; we have not so far had another Private Member's Bill. However, there is a distinct likelihood that developments expected in the near future will revive interest. These include promulgation of the recent Council of Europe Recommendation on access to information, expected any time now; publication of the White Paper on data protection (an issue strongly linked with open government in the public mind); and publication of the White Paper replying to the Wilson Report on Modern Public Records.

Moreover, I have not the least doubt that pressure for legislation will build up in the run-up to the General Election, if not before. All the other major Parties are committed to some move (probably

legislation) on disclosure of information. (Taking a longer view, a fairly radical move at some time during the next few years seems inevitable). The question is whether we can turn the present unstable situation to our advantage, provide a basis that will help to forestall legislation, and win some political credit in doing so. By introducing a Code we should reaffirm and strengthen our policy and demonstrate our belief in the role and importance of Parliament, as well as giving departments a strong lead on what is expected of them. There will no doubt be some who would continue to agitate for legislation, but the more reasonable advocates of open government, particularly among our own supporters, may be persuaded that a Code of Practice gives what is necessary and goes as far as is desirable. I think that this is a line which we would have good prospects of holding, at the expense of the Parties advocating more radical measures.

Timing is of course crucial. The absence of much current activity points two ways. A new move by the Government may arouse interest, and be seen as the thin end of a wedge, opening the way to future legislation. On the other hand, an initiative taken of our own accord in our own time should bring us full credit, where apparently giving in to pressure would enable the freedom of information lobby to claim success for themselves.

One possible course would be to have a Code of Practice in readiness, but keep it for introduction whenever the time seemed most opportune; for example shortly before the Election, (or perhaps as a Manifesto pledge, though I think that would give us less political mileage). In any case, a Code would require a lot more work. If the idea finds favour at all, it is not too soon to be undertaking the work.

Whatever course is adopted, action or inaction, will affect all our colleagues. I would see considerable benefit in a "Second Reading" kind of discussion in Cabinet, to explore the options, consider whether any new initiative is called for and if so on what timescale. This would enable us to decide on what lines new work, if any, should proceed. If you agree that this would be helpful, I should be happy to put a paper round to our colleagues, with a view to a discussion perhaps some time in the next month.

Janet Young

BARONESS YOUNG

9 March 1982

ANNEX A

OFFICIAL INFORMATION: A CODE OF PRACTICE

AIM

1. This Code of Practice supports the Government's policy of making as much information as possible publicly available, and of responding to reasonable requests for information wherever possible.

SCOPE

2. The Code applies to the Ministers and officials of all Government departments and authorities to which the Parliamentary Commissioner Act 1967 applies.

COMPLAINTS OF NON-OBSERVANCE

3. Non-observance of the Code will prima facie be subject to investigation by the Parliamentary Commissioner for Administration. Complaints may be made to him in the normal manner provided for in the 1967 Act, and he may deal with them according to the procedures provided in the Act.

INFORMATION MADE AVAILABLE - GENERAL

4. Except in circumstances specified in this Code, there will be no presumption that documents, as distinct from information, will be made available.

5. So far as is reasonable and practicable, all requests for information and for documents will be met. But there will be no presumption that documents created before the coming into effect of this Code, or information derived from them, will be made available.

6. Requests will be responded to within a reasonable time; and if the information cannot be provided, or cannot be provided in the form requested, an explanation will be given.

SPECIFIC INFORMATION TO BE MADE AVAILABLE

7. Each department or authority will publish from time to time a statement of its aims, functions and organisation; and its powers and duties as they may affect private citizens or

organisations in the private sector. The statement will include guidance on where information may be obtained, and will set out the charges, if any, which may be made for providing information or documents.

8. As soon as is practicable after this Code comes into effect, each department will make publicly available its guidance to officials in their dealings with the public, including codes, interpretations, rules, procedures, and similar administrative manuals; subject to the exclusion of any material covered by the exemptions in paragraphs 12-13 below.

9. Departments will be particularly concerned to ensure that as much information as possible is made available, in response to individual requests and otherwise, about matters affecting public health and safety, the environment, planning proposals, and similar matters which may directly affect the private citizen.

10. Wherever possible documents setting out the factual and analytical background to important decisions about policies and programmes will be released. In so far as these documents may not provide a coherent explanation of the factors taken into consideration and the options examined, Ministers will provide the necessary additional information to assist public understanding of the reasons for the decisions, when they are announced to Parliament or otherwise publicised.

11. When new legislation is introduced in Parliament by the Government, the Department responsible will make available the 'notes on clauses' explaining the Bill's provisions.

12. This Code does not apply to release of the following:

1. communications by or to Her Majesty the Queen or any member of the Royal Households;

2. proceedings of the Privy Council;

3. proceedings of the Cabinet or of its Ministerial or official committees;

4. other processes of consultation within government between Ministers, their advisers and officials;

5. information whose disclosure is prohibited by Act of Parliament;

6. information whose disclosure would be liable to prejudice

a. the security, defence or international relations of the United Kingdom, or

b. the entrusting of information in confidence to the Government by other Governments or by foreign or international agencies;

7. information whose disclosure would represent contempt of court or of Parliament, or render any person liable to proceedings for defamation, or reveal matters which are subject to solicitor/client privilege;

8. personal information about individuals.

13. Release of all other kinds of information is covered by the Code; but restrictions may be necessary in the public interest where, for example, disclosure would be liable to

1. prejudice the economic interests of the United Kingdom;
2. prejudice the maintenance of law and order or the investigation of offences;
3. prejudice the commercial activities of the Government or of other public or private bodies, or the conduct of industrial relations;
4. result in material loss to individuals; or
5. represent a breach of confidence.

14. Other reasons for not responding to requests for information may be that

1. it will soon be generally available;
2. it is unobtainable, or could only be obtained by extensive research;
3. the request can reasonably be regarded as frivolous or vexatious.

15. [Provision declaring the relationship between disclosure in accordance with the Code and obligations under the Official Secrets Act 1911 - on which legal advice is needed].

Management and Personnel Office

March 1982

ANNEX B

GENERAL QUESTIONS ABOUT GOVERNMENT POLICY ON DISCLOSURE OF INFORMATION

1. The following notes deal with the general questions of the effects of our policy and our response to criticisms of it.

Assessment of the effect of the disclosure policy

2. We cannot make any quantitative assessment of the effect so far of our policy. We have told Parliament that it is not possible to distinguish material published under the Croham directive from material that would have been published in any case, and it is equally difficult to say with certainty (except perhaps in a few cases) that particular material has been disclosed as a direct result of our policy, and would not have been disclosed otherwise. Apparently departments no longer maintain the kinds of record suggested in paragraph 9 of the Croham directive because of these difficulties - a change endorsed by Paul Channon.

3. Nor is the number of formal publications a helpful indicator. Comparison of the number of HMSO and departmental publications issued in previous years, and the number issued since our policy was announced, would be misleading, because an increasing amount of material is not being "published" in the formal sense but is being made available by other means, for good cost-reduction reasons. For example, a number of consultative documents have recently been circulated only to those people and organisations with a direct interest, whereas they might previously have been published as Green Papers. They are available generally - copies are put in the Parliamentary Libraries, and members of the general public can see copies on request - but they do not, of course, show up in the statistics of formal publications. The new information technology will almost certainly further decrease the reliance placed upon formal publication.

4. This is not a bad thing; there is no virtue in publishing large quantities of information if a lot of it is not of general interest. What we have to do is to make it easy for those who want particular information to find it; and we have taken measures to improve our "information about information".

5. The most outstanding demonstration of our favourable disposition towards open government has been the setting up of the departmental Select Committees, and the response by Ministers and departments to their requests for memoranda and oral evidence. Committees are able to say what information they are interested in, over the whole area of Government policy, and departments can respond comprehensively and systematically. This is a good example of how increased availability of information need not depend upon access to specific documents.

6. There are also some notable instances of disclosure - in whatever form - of information of a kind that would probably not have been released by previous Administrations. Examples are Michael Heseltine's publication of his Department's MINIS; Patrick Jenkin's undertaking to publish the DHSS Supplementary Benefits Code; the Ministry of Defence's memorandum on the future of the UK strategic nuclear deterrent; the Rayner reports; the Government evidence to the Megaw Inquiry; and publication of a number of individual reports on sensitive issues.

Response to criticisms of the Government's policy

7. A lot of the criticism focuses upon our refusal to legislate, rather than upon alleged Government secrecy as such. This is based on a misconception: that "freedom of information" legislation would provide for the disclosure of Ministers' and officials' working papers. It would not, and we need to take a robust line in saying so. No British Government could do its job without privacy for Cabinet papers, exchanges between Ministers, and officials' advice to Ministers: all the current Commonwealth "freedom of information" Bills protect information of this kind. (In the United States the protection is inadequate, and the President is having to introduce remedial measures.) We should use every opportunity to secure acceptance that non-factual documents relating to decision-making processes must remain protected; to rebut the belief that legislation would confer to this kind of document; and to foster the idea that legislation is not necessary to ensure that the Government fulfils its undertaking to make available as much information - not necessarily in documentary form - as can properly be disclosed.

8. The activists will point out that three Commonwealth countries are introducing legislation. The reply to this is that we believe a statutory public right to information, which would give to the judiciary the final say as to what documents should be released, would strike a double blow at the principle that the primary duty of the Executive in accounting for its decisions is to Parliament; and hence would detract from the role and authority of Parliament. Secondly, none of the Commonwealth Bills has yet been enacted (in fact each of them has run into difficulties) and we are unimpressed by their example in the absence of experience as to how the new regimes will operate in practice.

9. Finally, much of the current criticism is directed at the Official Secrets Act and protection of the privacy of personal information. These, of course, are separate questions, and we should take care to prevent them - and the issue of breach of confidence - from being confused with our policy and record on 'open government'.

Management and Personnel Office
March 1982

MR RICKETT

OFFICIAL INFORMATION

You sought my views on this paper embracing the ideas of a Code of Practice on the release of information, making a breach of its provisions "maladministration", and a second Reading Discussion of the subject in Cabinet.

I should first declare my interest. I think Government could usefully be much less secretive and make more information available more helpfully. But, we shall not satisfy the 'open Government' critics until each and every bit of paper is publicly available by right and until they have a statutory entitlement to information on the advice being tendered to Ministers, and thus an opportunity to wreck a particular policy in its formulation.

This may be a sour and cynical view, but I am sure it is right.

Lady Young's minute rules out legislation to provide a public right of access. She therefore eliminates, rightly in my view, any prospect that we might go a long way towards meeting the lobby.

There is thus no prospect whatsoever of satisfying it. That recognition should inform our approach.

Lady Young admits doing nothing has its attractions; and that we do not have to take any action at present. We are not at present under pressure. My judgement is that the one thing calculated to put us under pressure is to do something - eg. to issue new guidance - given that we accept there is really no means of satisfying the critics.

Lady Young does however question whether the issue will remain dormant for long with the following on the horizon:

- promulgation of a recent Council of Europe Recommendation on access to information;
- publication of a White Paper on data protection, possibly followed by legislation;

- publication of the White Paper replying to the Wilson Report on Modern Public Records (which we think will stir up the lobby a bit); and
- the run up to an election which could set off a public auction on the availability of information.

Her solution is to be ready to come forward with a Code of Practice in our own time, but with teeth in the sense that a breach of it would be "maladministration". I have the following observations:

1. this would be an enormous encouragement to the open government lobby, especially in the auction environment of an election, and would inevitably over-excite expectations;
2. the draft Code of Practice attached to Lady Young's minute shows how difficult it is to be positive or precise in a field where, as I say, you simply cannot satisfy the critics; it is far easier to say what shall not be made available than to say what shall;
3. I am far from persuaded that the resource/manpower costs of a Code stating the Government's policy of making as much information as possible publicly available will be as manageable as Lady Young's paper suggests; the Government cannot on the one hand severely prune the Civil Service and then place on it responsibility for operating, under pain of public odium, within such an inadequate framework of guidance as set out in the draft Code;
4. it is crucial to good Government that we do not allow the public's need for data protection to become caught up with or confused by open Government arguments about the need for more information to be made publicly available; the issues are separate and distinct and must be so kept in the public mind;
5. finally, (and as an extension of 4 above), Lady Young's paper serves the most useful purpose of highlighting the fact that the Government is ill prepared for a new onset of open-governmentitis. I am not aware of any work in hand which looks in the round at the subject as it is perceived to be developing. How do data protection, The Council of Europe Recommendation, our response to the Wilson Report and the information technology explosion, for example, relate to our entirely laudable but exceedingly problematical objective of providing the public with more helpful information? Are we clear what we are talking about and how one

development could or does react upon another? What considerations should inform our overall approach? And what should we be doing to inform public opinion on what is necessary, desirable, possible and the reverse? I believe we are concentrating far too much in trying to satisfy a lobby which I believe to be insatiable instead of seeking to establish what is sensible, reasonable and defensible in the minds of reasonable men and women. Such a change of approach would give us an opportunity to emphasise the positive point - the very great amount of information that is already available from what is rather superficially called the most secretive Government in the Western World.

To summarise, I do not think it is any longer adequate to look at the open Government issue in the narrow sense of release of official information, Codes of Practice, etc. Developments are crowding in upon us which require a broader and deeper examination if the public and Government interests are to be served. Lady Young's paper might serve as a catalyst for discussion but it would in my view be dangerous to permit such a discussion without other papers drawing attention to the considerations set out above. Would it be sensible to invite CPRS* to prepare a commentary on these lines, initially for consideration by a small group composed, say, of the Prime Minister, Home Secretary, Lord Chancellor, Lord President, Lady Young and Secretary of State of Industry?

B. INGHAM
15 March 1982

* or a group of officials: this task may not be quite suitable for the CPRS. CM 15/3

PLBF on 12/3

Home Affairs

a WR

10 DOWNING STREET

Mr Ingham

CF have copied to you Lady Young's minute of 9 March to the Prime Minister on Official information, which suggests the Government should publish a Code of Practice on the release of information. She proposes that Cabinet should discuss this proposal.

Any comments before I put Lady Young's minute to the PM?

CDR 16/3

2c AH
cc B Ingham

10 DOWNING STREET

H Affairs

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

I have shown the Prime Minister your minute A07684 of 2 March 1982 about Dr Bernard Donoughue's article in The Times of 25 February on the subject of open government.

She is content for you to write to The Times in the terms of the draft attached to your minute.

AJW.

3 March 1982

AH

cc. B. Ingham 3/3

1.

Prime Minister.

Ref: A07684

Agree that Sir Robert Armstrong should write to the Times on the proposes on flag 'A'? HW 2/3

Yes - go ahead

MR. WHITMORE

An article by Dr. Bernard Donoughue in The Times of 25th February (copy attached) on the subject of 'open government', repeated an old canard that it was my predecessor who took The Sunday Times and the publishers of the Crossman Diaries to Court in 1975.

2. This is doubly untrue. The Secretary of the Cabinet does not take people to Court. The then Attorney General's decision was taken on his own judgment and if anything against that of the Secretary of the Cabinet.

3. I know that Lord Hunt of Tanworth is sensitive on this point, and Dr. Donoughue, who was in No. 10 at the time, really ought to know better. I am therefore minded to write a letter to The Times on the lines of the draft attached.

4. I have consulted the Legal Secretary to the Law Officers, who agrees that I should write and is content with the draft letter. But I would not wish to do so if the Prime Minister would prefer me not to, and I am therefore sending you this minute to seek her agreement.

RA

Robert Armstrong

2nd March 1982

Between you and me, secrecy is here to stay

by Bernard Donoughue

The debate on official secrecy and the campaign to open up British Government is a classic minority issue. Only a few liberal intellectuals (not intended, despite the current climate, as a smear description) care passionately about it. An even smaller group of Whitehall mandarins feel equally passionately that open government is bound to be bad government. They often give the impression that even publishing today's date is a risky venture that might have to be reviewed (presumably by an official committee whose existence and designation could not be revealed).

Actually each side exaggerates the importance of the question. Mandarins talk as if revelation of the contents of these oceans of classified documents sloshing around Whitehall departments would somehow destroy the security of the realm. Liberal campaigners, including James Michael, whosebook *The Politics of Secrecy* is published today,* swallow this view and hunger to expose this arsenal of secrets to the public. In fact they would be disappointed. During five years in Downing Street, I read at least 90 per cent of the papers seen by two Prime Ministers, as well as thousands of other documents which did not go that high. Half of them could harmlessly be published weekly in the *Whitehall Gazette*. Policy specialists and gourmets of bureaucracy would delight in the measured arguments and bland phrasing, but exposure would result in neither fearful cataclysm nor some exciting new world. Fed by a surfeit of Whitehall papers, the media might even lose its appetite for them.

One problem is that the civil service madly over-classifies documents. It is safer that way: nobody is punished if something very mundane is over-classified as highly secret, but if it is under-classified and leaks out then there could be trouble. Consequently the designation "confidential" is applied to many documents containing very ordinary information; routine policy discussions by ministers are often classified as "secret", while — in the delicious description of one now senior Treasury official — "top secret" is reserved for anything too sensitive to show to ministers. Yet behind these funny bureaucratic games lies the heavy blunderbuss of the Official Secrets Act, rarely used but by its mere existence intimidating those who might comtemplate communicating about government to the governed. It, together with the necessary courtesy of confidentiality between working colleagues, certainly silenced me.

One benefit of the continuing campaign for open government — to which Mr Michael's well-argued and documented book contributes usefully — is that by forcing Whitehall to argue back it has helped us to distinguish the genuine from the false reasons for official secrecy. Certainly there are some areas of government where sensible reformers now recognize that the national interest requires confidentiality.

These include: sensitive aspects of defence technology and disposition; most intelligence questions genuinely concerning Britain's security; areas of police activity; economic and financial proposals which might, if prematurely revealed, disrupt markets or allow privileged individuals to make financial gain. There is also the advice recently given to ministers by identifiable civil servants; and personal files on individual members of the public.

However, the reason for secrecy most often operating had nothing in fact, to do with security or legitimate confidentiality: the wish to preserve the convenience, or especially to avoid the embarrassment, of civil servants ands ministers. The obsession with Cabinet leaks, which strikes even the best Prime Ministers (usually when their Administertions are running into political difficulties) usually reflects this fear of embarrassment.

Whichever party is in power, leaks continue, aided more by the omnipresent photocopier machine than by the pressure from campaigners for open government. Nobody seriously pretends that the national interest has been noticeably damaged, although tempers and older traditions of courtesy may have been.

Endless "leak inquiries" are instituted by the Cabinet Office. During one particularly paranoid period, when I was in government, we were launching leak inquiries nearly every week. All were fruitless — perhaps because they usually started from the assumption that special advisers were guilty and did not actually wish to identify regular civil servants or senior ministers.

In the case of the Crossman Diaries the Cabinet Secretary actually spent a great deal of taxpayers' money taking the publisher and the *Sunday Times* to the High Court on the grounds of the devastating threat they constituted to good government. He lost and they were published. A few of Crossman's former colleagues were justifiably irritated. Students of government were both enlightened and misled. Tony Benn was presumably encouraged to sit henceforward in Cabinet, openly taking notes for his own diaries.

The convincing case for more openness in British Government is based on three main arguments: that in a democracy the citizens should know the maximum about their government compatible with the genuine needs of national security; that those who govern should in principle be accountable, and accountability requires knowledge of what they are up to; and that an accountable government is in the long run likely to be more efficient (though sometimes more cautious, which is not incompatible).

But, however convincing the arguments for progress to more open government, I doubt if much will happen. Only deeply committed politicians could alter the culture of secrecy which permeates our bureaucracy. Most British politicians are in fact deeply ambivalent. In Opposition some of them court liberal ad media approval with broad promises of open government. In office they usually share their officials' view that close government is probably quicker and certainly less trouble. They also know better than any of the protagonists in this argument that the voting public does not actually care whether government is open or closed. While that remains regrettably so, the issue will continue to be fought between the liberal and the mandarin elites; and I know which one my money is on.

**James Michael:* The Politics of Secrecy. *(Penguin — £2.50).*

The author was Senior Policy Adviser to the Prime Minister in Downing Street 1974-9.

DRAFT LETTER FROM SIR ROBERT ARMSTRONG TO:

The Editor of The Times

Sir,

Could I correct one error of fact in Dr. Donoughue's article on 'open government' on 25thFebruary, since it gives renewed currency to an old misapprehension?

The Secretary of the Cabinet did not "take the publisher of the Crossman Diaries and The Sunday Times to the High Court". The Secretary of the Cabinet is not, I assure you, in the business of taking publishers, newspapers, or anyone else to court. The proceedings referred to were instituted in June 1975 by the then Attorney General. It was for him to decide whether or not to institute proceedings, and he took his decision on his view of the facts and considerations in the case.

cc Mrs Ingham
Home Affairs

From the Private Secretary

Management and Personnel Office
Whitehall London SW1A 2AZ
Telephone 01-273 } 4400
GTN 273 }

Chancellor of the Duchy of Lancaster

Note: I have spoken to Jim Buckley and told him X is quite OK.
WR 9/12

Willie Rickett
Private Secretary to the
Prime Minister
10 Downing Street
LONDON SW1

8 December 1981

Dear Willie,

OFFICIAL INFORMATION : GUIDANCE TO DEPARTMENTS ON DISCLOSURE

You wrote to me on 9 November about this after the Prime Minister had seen the Chancellor of the Duchy's minute of 30 October.

Lady Young has been considering how best to meet the Prime Minister's wishes and has asked for some more work to be done in the MPO. She would prefer, therefore, to delay a substantive reply to the Prime Minister for a few more weeks - perhaps until after Christmas. I hope this will be acceptable - if not the Chancellor of the Duchy could reply immediately explaining how far she has taken this.

Yours sincerely,
Jim Buckley.

J BUCKLEY

10 DOWNING STREET

From the Private Secretary

9 November, 1981.

Official Information on Guidance to Departments on Disclosure

The Prime Minister was grateful for Lady Young's minute of 30 October.

On tactical grounds, the Prime Minister wonders whether it is right to issue a new directive to Departments now. As the Chancellor of the Duchy says, nothing short of legislation will satisfy the activists. The issue of a new document would revive a topic that is, at the moment at least, dormant, and the Prime Minister considers that it would perhaps be better to let sleeping dogs lie until we face new moves by the activists. In any event, before any new directive is issued, she would like to see prepared an assessment of the effect of the disclosure policy so far, and a response to criticisms of that policy. She feels that it would only play into the hands of the activists if we did not prepare ourselves in this way.

In short, the Prime Minister takes the point about the need for the Government to keep the initiative, but she considers that it would be better not to issue a new directive until the need is more obvious, and at least not until an assessment of the effects of the disclosure policy has been prepared.

On another tactical point, the Prime Minister feels we should be careful of claiming that the new directive supersedes the Croham directive. Her initial reaction is that to do so would only raise expectations which the new directive would not meet, since it does not go very far beyond Croham. She suggests that it would perhaps be better to describe it as the next step in the process of guidance started by Lord Croham, and as a consolidation of all previous directives.

On the drafting of the directive itself, the Prime Minister has only two points:

(a) She feels the directive should include a paragraph requiring Departments to keep some record of the material released under its guidance. This point is implicit in paragraph 13 of the draft, but the Prime Minister hopes it can be made more obvious.

/ (b)

(b) The sentence at the end of paragraph 1 in square brackets giving her endorsement of the guidance should be included, and indeed strengthened to say that the Prime Minister attaches importance to the need to make information available wherever possible.

W. F. S. RICKETT

Jim Buckley, Esq.,
Office of the Chancellor of the Duchy of Lancaster.

PRIME MINISTER

Official Information: Guidance to Departments on Disclosure

At A is a minute from Lady Young. She proposes that we should issue a new directive (draft at B) to departments on the disclosure of information. She feels:-

(a) that the pressure for freedom of information legislation will continue, and that new guidance would keep the initiative with the Government;

(b) that this new guidance should supersede the Croham directive (at C) which has attracted criticism; and

(c) that the risks of raising expectations by issuing new guidance are less than those of trying to hold to the present position.

The new guidance does not in fact go very far beyond the Croham directive. It is slightly more positive in tone, especially in paragraphs 6 and 7.

I have spoken to Bernard Ingham about this, and we both feel:-

(a) as the Chancellor of the Duchy says, nothing short of legislation will satisfy the activists. The issue of a new document could revive a topic that is, at the moment at least, dormant. It would perhaps be better to let sleeping dogs lie until we face new moves by the activists. In short, we should perhaps keep this draft directive up our sleeve until it is needed.

(b) we should be careful of claiming that this new directive supersedes "Croham". That will only raise expectations which the directive cannot meet, since it does not go very far beyond Croham. It would perhaps be better to describe it as the next step in the process of guidance started by Croham, and as a consolidation of all previous guidance.

/(c)

(c) that before any new directive is issued, we should have available an assessment of the effect of the disclosure policy so far, and a response to criticisms of that policy. It would only play into the hands of the activists if we did not prepare ourselves in this way.

(1.) Do you agree that it would be better not to issue the directive until the need is more obvious, and at least not until we have prepared an assessment of the effects of the disclosure policy so far? Yes but please explain the reason to Lady Young

On the details of the draft directive itself, Bernard Ingham and I only had two points:-

(a) it should perhaps include a paragraph requiring departments to keep some record of the material released under this guidance. This is implicit in paragraph 13 but it should perhaps be made more obvious.

(b) the sentence at the end of paragraph 1 in square brackets giving your endorsement of the guidance should be included, and possibly strengthened to say that you attach importance to the need to make information available.

(2.) Agree these comments on the draft? Yes

WFSN

5 November, 1981

MR. RICKETT

Disclosure of Official Information - Building on Croham

I very much share your apprehension about this exercise (on which I return the papers).

The Chancellor of the Duchy, rightly in my view, says that nothing short of legislation will satisfy the "activists" in this area. Thus the issue of a new document could revive a topic that is, for the moment at least, dormant. We need, therefore, to consider timing very carefully indeed.

Given, however, that Croham exists, we would be in trouble if we ditched it. Thus, the argument turns on whether we should let sleeping dogs lie, in the hope that they will stay that way, or whether we could, with advantage, re-present our policy.

This brings me to content. And here I have not the slightest hesitation in saying that the new draft is much more coherent and comprehensive than Croham. But I would make the following points:

- I have grave doubts about getting rid of Croham by saying the new document supersedes it; that seems to me to raise the very expectations Lady Young wishes to avoid; I would much prefer to see a sentence which reads ".... made from time to time since the 1977 Croham Directive, thereby bringing up to date the practical guidance".

- Given the endorsement of the previous Prime Minister of the original Croham, the Prime Minister's failure to back this document would be counter-productive. The Government would be seen to be backtracking in its commitment to openness if she did not publicly endorse the terms of the memorandum.

/- I would,

- I would, as a matter of prudence, take out the word "all" in the last sentence of Para. 6.

- The charging provisions in Para. 10 need looking at carefully; we need to be assured that this paragraph will not be seen as two steps backwards - i.e. putting "difficulties" in the way of communication under cover of an advance.

- I cannot find, as in Croham, a passage which asks Departments to keep some sort of record or assessment of the effect, if any, of the guidance. I know all the difficulties of making these assessments, but this will be seen as a significant omission and one which will detract seriously from the intended effect of publishing the memorandum. It will encourage people to argue it does not really add up to much.

Finally, going back to timing, I am sure we must have available an assessment of the effect of the disclosure policy so far and a response to criticisms of that policy when we publish the memorandum. In a sense, that is an important element in the exercise.

B. INGHAM

4 November, 1981

10 DOWNING STREET

Mr Ingham

I would welcome your comments on the attached.

I see no arguments against stating our policy more clearly and some advantage to be gained from deploying Parliamentary pressure.

But I'm not sure words are enough in this case. Last time we announced our policy, Peter Hennessy rang up every Department demanding policy documents. Somewhat embarrassing.

If this is to be successful, I would have thought we would have to be ready with documents to be

released.

GWB Nichell
2/11/81

Chancellor of the Duchy of Lancaster

PRIME MINISTER

OFFICIAL INFORMATION: GUIDANCE TO DEPARTMENTS ON DISCLOSURE

I think it may be appropriate and timely to issue up-to-date guidance to departments on disclosure of official information to replace the 1977 "Croham directive".

A copy of this directive is attached. It was of course issued under the previous Administration. We have endorsed the policy it sets out, but it does not fully reflect our policy on official information as announced by Paul Channon on 20 June 1979, which we have since confirmed on a number of occasions. Yet it is widely believed (to judge from Parliamentary Questions and Press comments) that Croham is still the basic "open government" document of the present Administration. (I attach copies of several Questions on the subject).

This seems to me unsatisfactory. I am by no means certain that all departmental officials are as well informed as they should be about our policy. And we are not getting the full credit for making available "as much information as possible". I think the issue of fresh guidance is necessary to assist officials; and to ensure that our policy is properly understood and carried out.

The background is important. The pressure for "freedom of information" legislation will certainly continue and may well increase. This is more likely now that the Canadian, Australian and New Zealand Governments have all introduced their own Freedom of Information Bills. Frank Hooley's Bill earlier this year failed to obtain a Second Reading but received over a hundred votes. There is a strong probability of another Private Member's Bill, if not in the coming Session then at some other time during this Parliament.

The proposers of a statutory public right to information will be satisfied with nothing short of legislation. A demonstration of continued interest and action - even if limited - by the Government may help to detach moderate opinion particularly among our own supporters, from the "legislation lobby". And I believe it is vital that we should keep the initiative: that we should not appear to be giving in to pressure, but should act of our own accord. Before the next ballot for Private Members' Bills, therefore, I think it would be advantageous to have got rid of the Croham directive - which has attracted much criticism - and made our position clear.

There are, of course, some risks in issuing revised guidance. It might tend to be regarded as propounding a wholly new policy - which would not be the case - and raise expectations unwarranted by the modest step that we should, in fact, be taking. But in my view these risks are less than those involved in trying to hold the present somewhat unclear position, with no further initiative of any kind.

Draft of new guidance

A draft of new guidance is attached. It is in the form of a memorandum to officials, which might be circulated in the first instance under cover of a Ministerial letter. It might then be given maximum distribution as a CSD General Notice. Guidance of this kind should, of course, be published.

Nothing in it extends our declared policy. It represents no more than departments should already be doing, if they are implementing our policy of making available as much information as possible. It should not require any material addition to resources. What would be new, however, is the reflection in the standing guidance to departments of Ministerial policy statements, and the explanation of the implications. In particular, paragraphs 6-7 go beyond the narrow Croham principle of "deliberate presentations in the later stages of discussion and development of new policy", and invite departments to respond as positively as they can to any evidence that information on particular subjects is inadequate. It seems to me that this would do more than anything else to diminish the case for legislation.

I have not so far consulted our colleagues, though this would clearly be necessary before fresh guidance could be issued. I should, however, first be grateful for your views on the tactical considerations and on the general lines of the draft.

Daniel Young

BARONESS YOUNG

30 October 1981


2 NOV 1981

DRAFT (19 OCTOBER 1981)

DISCLOSURE OF OFFICIAL INFORMATION

1. This memorandum is intended to guide officials on the Government's policy on making official information publicly available. It brings together the main statements about that policy which have been made from time to time. It supersedes the 1977 "Croham directive", bringing up to date the practical guidance. The Prime Minister has approved the terms of the memorandum.

GOVERNMENT POLICY ON OFFICIAL INFORMATION

2. The Government's policy on disclosure of official information was announced in Parliament by the then Minister of State, Civil Service Department, on 20 June 1979:

> "...it will be the practice of this Government to make as much information as possible available".

In reply to a Parliamentary Question on 16 January 1981 the Prime Minister said:

> "...I have asked all Ministers in charge of Departments to give close personal attention to ensuring that as much information as possible is made available".

3. The departmental Select Committees set up on the Government's initiative are very relevant. As the "Memorandum of Guidance for Officials appearing before Select Committees" (General Notice GEN 80/38, issued with the approval of Ministers in May 1980) says:

> "...it is the duty of officials to be as helpful as possible to Committees...Ministers are ultimately responsible for deciding what information is to be given and for defending their decisions as necessary, and Ministers' views should always be sought if any question arises of withholding information which Committees are known to be seeking".

PRACTICAL GUIDANCE

Policy studies

4. The general principle is that as much as possible of the factual and analytical background material relating to policy studies and reports should be made available. The Prime Minister drew the attention of all Cabinet Ministers to the Government's policy in a Private Secretary letter of 20 June 1979:

> "The Prime Minister...has asked me to stress that Ministers should take the initiative in publishing information, especially on major issues of Parliamentary interest, to the greatest possible extent".

5. To assist Ministers to decide whether particular material should be released, and in the interests of economy, departments should aim to produce papers that can be released without re-writing. At the outset, therefore, of any policy study, factual survey or other assignment of this kind, consideration should be given to the likelihood of the results, or the background material, or both, being disclosed when it has been completed. Care should then be taken to ensure that disclosure is not impeded by the unnecessary inclusion of, or reference to, material that is properly classified or that Ministers are likely to consider unsuitable for release (for example because it has been given to the department in confidence, or it represents advice to Ministers). As the then Chancellor of the Duchy of Lancaster said in the debate on Select Committees on 16 January 1981:

> "...a lot depends on the character of the document. If it is essentially a factual or analytical study, it should normally be possible to exclude any discussion of policy, so that it can be released as it stands. But if it is essentially officials' advice to Ministers, it may be impossible to separate the advice from the background material. This is the more likely if time is short".

But the aim should normally be to produce a document that can be released as it stands.

Other kinds of information

6. Disclosure should not be confined to material associated with policy studies. Any information that can properly be disclosed should be made available, if it appears to be of general public interest or it has been specifically asked for. Ministers should, however, be consulted where there is any doubt whether or not they would wish particular material to be disclosed. It may also sometimes be necessary to refuse particular requests because of the staff resources that would be required to meet them. Nevertheless, the aim of departments should be to respond to all requests for official information as helpfully as they can.

7. Departments should also be alert for criticisms, in Parliament, the Press or anywhere else, about any apparent inadequacy of information on subjects within their areas of policy or administration. If more information can be provided, this should be done. The Government's policy is to respond positively to public concern about the availability of information, and to requests for specific information.

Form in which material is released

8. A great deal of material is printed and formally published, whether by HMSO or otherwise. Nothing in this memorandum is intended to affect departments' practice in this respect.

9. It is also entirely in keeping with the Government's policy to make information available in other forms. If, for example, printing is not warranted by the likely level of demand, it may be possible to place a typescript in the departmental Library where it can be inspected on request, or photo-copies can be made if they are asked for. And information need not take the form exclusively of written material. Some requests can best be dealt with by telephone or personal interview.

Charging for the provision of information

10. In reply to a Parliamentary Question on 25 March 1981, on "whether it is ever the policy of Government Departments to charge for information requested by members of the public", the Minister of State, Civil Service Department said:

"Yes. A very substantial amount of information is provided to members of the public without any charge at all. But charges are frequently made for copying of documents, extraction of statistics, searches and the like".

In principle, no charge should be made for information as such; but charges may be made to recover all or part of the staff and material costs of providing information in certain circumstances. Guidance about charging for government services generally is given by the Treasury in Section L of "Government Accounting", published by HMSO. But this is only a general framework. Departments carry out a wide variety of functions, and their policies on charging for the provision of information will necessarily reflect that variety. Each department should, however, ensure that Ministers are content with their existing practice, and should invite Ministers to approve specifically any alterations that are proposed.

Making information available

11. Both the Departmental Press Office and the Library are natural places for people to direct their requests for information. So both should be kept fully informed of work in progress. Again, practice in departments may vary. But in all departments it should be the normal procedure for copies of every Press Notice to be sent to the Library. Indeed copies of all material suitable for release should be sent to the Library. Particular care should be taken to ensure that copies are available of discussion documents, in any form, which have been issued for comment.

12. A procedure which some departments have found useful is for one official to be given specific responsibility for examining all Press Notices and asking the originating Division whether there is any associated material that can be released. This helps to ensure that no material suitable for release is overlooked through inadvertence.

Publicising the available material

13. An essential part of the Government's policy is to ensure that the public can find out what material has been released, in whatever form. The exact arrangements for providing this "information about information" may of course vary from one department to another. As the Minister of State, Civil Service Department wrote to Mr Christopher Price MP on 31 March 1981:

> "...Departments generally will be able to provide enquirers with information about their own publications, either by means of a list or in some other form. Because of the quite exceptional range and technical nature of the publications it produces, the Ministry of Defence does not keep such a list; but the MOD's library and information services will, of course, be able to help in identifying information about defence publications relating to specific areas of enquiry".

However, Departments should ensure that material available is adequately publicised, notwithstanding special exceptions.

14. In addition, HMSO bring out lists of the material which they have published on behalf of Departments and the firm of Chadwyck-Healey issue a "Catalogue of British Official Publications Not Published by HMSO". Enquirers should be referred to these publications where appropriate.

Crown copyright

15. If any question arises about the application of Crown copyright, including the requirement to provide copies of publications to the "privileged libraries" in Great Britain and the United States, the Librarian or another experienced official should be consulted.

GENERAL

16. Nothing in this memorandum affects either policy or practice on the protection of material that is properly classified or is likely to be considered by Ministers unsuitable for release.

17. Copies of this memorandum have been placed in the Libraries of both Houses of Parliament.

CIVIL SERVICE DEPARTMENT
WHITEHALL LONDON SW1A 2AZ
TELEPHONE 01-839 7733 EXT
Sir Douglas Allen GCB
Head of the Home Civil Service

6 July 1977

Dear Head of Department

DISCLOSURE OF OFFICIAL INFORMATION

During the Debate on the Address on 24 November last, the Prime Minister announced that it would be the Government's policy in future to publish as much as possible of the factual and analytical material used as the background to major policy studies. A copy of the relevant part of the Prime Minister's speech is attached. I am writing in terms which the Prime Minister has specifically approved to let you know how his statement affects present practice and to ask you to ensure that your Department gives effect to it. You may wish to let your Minister see this guidance drawing particular attention to paragraph 10.

2. The change may seem simply to be one of degree and of timing. But it is intended to mark a real change of policy, even if the initial step is modest. In the past it has normally been assumed that background material relating to policy studies and reports would not be published unless the responsible Minister or Ministers decided otherwise. Henceforth the working assumption should be that such material will be published unless they decide that should not be. There is of course no intention to publish material which correctly bears a current security classification or privacy marking: at the same time, care should be taken to ensure that the publication of unclassified material is not frustrated by including it in documents that also contain classified material.

3. In effect, what is proposed is an increase in the already considerable amount of material put out by Departments. The additional material will mainly consist of deliberate presentations in the later stages of discussion and development of new policy. Some of these will probably, as now, take the form of Green Papers. Some may have kindred form, like the recent Orange Paper on Transport. While most material will be released on the initiative of the Department, probably through HMSO, some of lesser importance, or of interest to a limited audience, may well be put out through other means such as publication in magazines or in response to specific requests in the same way that a good deal of unpublished material is already made available to bona fide researchers. In some cases it may be preferable simply to publicise the existence of certain material which would be made available to anyone who asked. Consideration should also be given to the issue of bibliographies or digests so that interested parties are advised what material is available.

.../4.

4. In adopting the working assumption described in paragraph 2 above for policy studies, including PARs, the normal aim will be to publicise as much as possible of the background material subject to Ministerial decision once they have seen the study and reached their conclusions on it. When Ministers decide what announcement they wish to make, therefore, they will also wish to consider whether and in what form the factual and analytical material may be published, since there may, as the Prime Minister made clear in his statement, be circumstances in which Ministers will not wish to disclose such material.

5. It is not the intention to depart from the present practice of not disclosing PARs nor identifying them publicly; any question of releasing PAR material in circumstances not covered by a Ministerial decision should be referred to the Treasury.

6. In his November statement the Prime Minister said that it was the Government's wish to keep to a minimum the cost to public funds of the new initiative on disclosure. One inhibition to the publication of background material in the past has been that it has often been incorporated in submissions to Ministers which could not be published in their entirety. Re-writing material specially for publication is wasteful and expensive in staff time. Therefore when policy studies are being undertaken in future, the background material should as far as possible be written in a form which would permit it to be published separately, with the minimum of alteration, once a Ministerial decision to do so has been taken. It will generally assist Ministers to reach their decisions on publications if they can see an identifiable separate part of the report appropriately written for this purpose.

7. The form and way in which material is released will have to be considered on each occasion. The cost of any extra printing, or publishing, falls under present arrangements on the HMSO Vote, and HMSO is of course affected by the current restrictions on public expenditure in the same way as other Departments. HMSO is also responsible for deciding what prices should be charged for published material. You should ensure that discussions with HMSO are initiated at the earliest possible opportunity on any proposal which will add to expenditure. The following particular considerations should also be borne in mind:

i. Great care should be taken to keep costs to a minimum. If copies are to be run off in advance of demand, the quantity should be carefully and prudently assessed, to avoid waste rather than to offer instant response. But of course, there is a countervailing need to aim where appropriate for the economics of longer reproduction runs. The right balance here may be difficult and decisions should not be left to too low a level).

ii. In general, double printing should be avoided, eg the published form of the material should be the same as that used internally (and the same print).

iii. There should be a charge for all material, at a price set by HMSO for each item, to include all aspects of reproduction and handling, but not of course any of the costs of the primary study itself.

.../iv.

iv. As regards Crown Copyright, attention is drawn to CSD General Notice GEN 75/76 dated 12 August 1975 (and corrigendum of 8 October 1976).

8. The Government's decision on this question is in a form which should not involve substantial additional work but which could all too easily be lost to view. There are many who would have wanted the Government to go much further (on the lines of the formidably burdensome Freedom of Information Act in the USA). Our prospects of being able to avoid such an expensive development here could well depend on whether we can show that the Prime Minister's statement had reality and results. So I ask all of you to keep this question of publicising material well on your check-list of action in any significant areas of policy formulation, even at Divisional level; and to encourage your Ministers to take an interest in the question.

9. Since the Prime Minister may well be asked what effect his announcement has had on the amount of information made available, I should be grateful if you could arrange to have some kind of record kept of the relevant items made available by your Department. Where the material is of an unusual kind, or of a variety not usually made available in the past, it would be useful if a copy could be sent to CSD. In cases where it has been decided not to publish material which might be expected to be of considerable public interest, I suggest that the reasons should be briefly recorded.

10. The greater publicising of material can hardly fail to add to one cost - that of responding to the additional direct correspondence to which it may well give rise. In a Service operating under tight resource constraints, it may not always be possible to afford to give to such additional correspondence the kind of full and studied replies to which we have long been accustomed within the sort of timescale that has hitherto been cutomary. Nevertheless, Departments must do their best in these matters, and should inform a correspondent if the timescale for a reply is likely to be longer than normal.

11. I am copying this to Heads of Departments as on the attached list.

Yours sincerely

Dougl. Allen

28.1.81

997

COL 922-923

Croham Directive

55. **Mr. Christopher Price** asked the Minister for the Civil Service when he intends to update the Croham directive on openness in Government.

Mr. Hayhoe: I refer the hon. Gentleman to the reply given by my right hon. Friend the Prime Minister to my hon. Friend the Member for Aldridge-Brownhills (Mr. Shepherd) on 16 January. [attached.]

Mr. Price: That is rather inconvenient as I do not have the text of that question in front of me. When the hon. Gentleman takes responsibility in Committee for the Freedom of Information Bill, which is coming up, what attitude will he take to a properly established code of conduct governing the release of documents, to which his Conservative colleagues committed themselves while in Opposition?

Mr. Hayhoe: My predecessor made clear to the hon. Gentleman on 20 June 1979 that a code of practice was not appropriate. I am not quite sure to which Committee the hon. Gentleman is referring. In my experience in the House, which extends back only 10 years or so, it has always been the custom that Bills should obtain a Second Reading before they are considered in Committee. Hurdles have to be jumped one at a time.

Mr. Stokes: Is my hon. Friend, whom I congratulate on his appointment, aware that a lot of nonsense is talked about openness in Government? Quite apart from the essential secrecy in Cabinet, surely advice from civil servants to Ministers, many defence matters and all foreign diplomacy must be handled in secrecy.

Mr. Hayhoe: My hon. Friend is absolutely right. However, putting that in the balance, it was also necessary—my right hon. Friend the Prime Minister stressed this in her directive to Ministers—that Ministers should give close personal attention to ensuring that as much information as possible is made available, especially to the House. The Government's record on making information available to Select Committees is better than that of any other Government this century.

Mr. Straw: As the Government are so committed to the Croham directive and to openness of Government, will the Minister confirm that the Scott report on index-linked pensions in the public sector will be published in full and without delay, notwithstanding that leaks from the Government suggest that it is highly embarrassing to the Prime Minister's prejudices?

Mr. Hayhoe: I understand that it has been made clear that the report will be published soon. As far as I am aware, it will be published without any change being made in it.

Mr. Budgen: Does my hon. Friend agree that there is a vital distinction between information on matters of fact and information about the opinions of various people?

Mr. Hayhoe: As so often happens, my hon. Friend has elaborated an important distinction. It would be wrong if the confidential advice made available to Ministers were to get into the public domain. That would upset an important relationship to which all previous Governments have rightly attached considerable secrecy.

Mr. Alan Williams: Would not more open Government be helpful to the Prime Minister? Would it not enable her to avoid the embarrassment of having to sack fellow Ministers for the sin of leaking information when she is the worst culprit in the Government? Will the Hon. Gentleman explain why the Government have refused to publish the findings of the Pay Research Unit and why we are still waiting for the Scott report on pensions, although it was promised to the House before Christmas by the Prime Minister? Is that because, as rumoured, both items fail to confirm the preconceived conclusions that are sought by the Prime Minister?

Mr. Hayhoe: My right hon. and noble Friend the Lord President made it clear to the Civil Service unions towards the end of last year that pay research could not play any part in the determination of Civil Service pay increases in 1981. It is not the case, contrary to the hon. Gentleman's suggestion, that the reports of the unit are available to the Government but not to the unions. They are available neither to the Government nor to the unions. They are being retained by the Pay Research Unit. As I indicated, the publication of the Scott report will take place as soon as possible. The part of the right hon. Gentleman's supplementary question that referred to leaks has nothing to do with me. The Government have a good record—

Mr. William Hamilton: Of leaking.

Mr. Hayhoe: —on openess and the presentation of information to Select Committees.

EXTRACT FROM HANSARD.
DATE 16 JUNE 1981
COL 305
VOL 6.

Croham Directive

Q38. Mr. George asked the Prime Minister if she is satisfied with the working of the Croham directive.

The Prime Minister: We are commited to making available as much information as possible and are doing so. Our policy therefore incorporates and goes rather wider than the Croham directive.

16.1.81

996

COL 665

Croham Directive

Mr. Richard Shepherd asked the Prime Minister what is the Government's policy towards the Croham directive; and what instructions she has given for its implementation.

The Prime Minister: The Government have endorsed the policy set out in the Croham directive. I have asked all Ministers in charge of Departments to give close personal attention to ensuring that as much information as possible is made available.

Reference .....

EXTRACT FROM HANSARD
24.3.80
393 WA

OFFICIAL INFORMATION ("CROHAM DIRECTIVE")

Mrs. Renée Short asked the Prime Minister how many documents and reports her Department has published under the 'Croham Directive" since May 1979; and if she will list them.

The Prime Minister: As my hon. Friend the Minister of State, Civil Service Department, indicated on 20 June 1979, it is not possible to distinguish between material published under the Croham directive and material that would have been published in any case. Since May 1979 the Cabinet Office has published, in addition to material produced regularly, the following five items:

Technological Change—Threats and Opportunities for the United Kingdom—(Advisory Council for Applied Research and Development, December 1979).

Computer Aided Design and Manufacture—(Advisory Council for Applied Research and Development, January 1980).

Joining and Assembly—The Impact of Robots and Automation—(Advisory Council for Applied Research and Development, October 1979).

R & D for Public Purchasing—(Advisory Council for Applied Research and Development, February 1980).

Climatic Change—its Potential Effects on the United Kingdom and the Implications for Research—(Report of an Interdepartmental Group, January 1980).

Colman informed CS pa

10 DOWNING STREET

Clive ✓ OK. 28/7

Please see your letter at flap dated 20.6.79 to Home Office.

Jeremy Colman would like to circulate parts of the letter more widely & wonders if you would agree to declassify it.

Content?

Charlotte

28 July 1981

Civil Service Department
Whitehall London SW1A 2AZ
Telephone 01-273 3000

Minister of State

The Rt Hon Humphrey Atkins MP
Secretary of State
Northern Ireland Office
Gt George Street
LONDON SW1P 3AJ

18 December 1980

Dear Humphrey.

OPEN GOVERNMENT: NEW PRESSURES FOR LEGISLATION

Thank you for your letter of 17 October to Christopher Soames in which you suggested that we should ask Departments to provide an estimate of the number of extra staff they would need if open government legislation were introduced. In his letter of 24 November however, Michael Heseltine expressed strong reservations about this idea.

I entirely agree with you that our arguments will be the more convincing, and exert much greater influence particularly with our own back-benchers, if we can give a clear indication of how horrific the manpower and financial implications of the legislation would be. Equally, however, I share Michael Heseltine's doubts about the desirability and practicability of mounting a comprehensive costing exercise. In any event, it would be bound to be an expensive and lengthy bit of work. Time is not on our side if, as seems likely, Frank Hooley decides to take up the Bill. I therefore propose to produce about 10 dramatic examples of the implications of the Bill for Departments. We should be able to do this quickly by updating and supplementing the work which was done on Clement Freud's Bill. My officials are already in touch, therefore, with their colleagues in DHSS, Inland Revenue, the Ministry of Defence, the PSA and several other Departments about the production of these examples. We would give wide publicity at the appropriate time to the material they produce.

I am sending copies of this letter to the Prime Minister, to members of Cabinet and the Minister of Transport and to Sir Robert Armstrong.

Yours

Paul

PAUL CHANNON

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB

Home Affairs

My ref:

Your ref:

24 November 1980

Dear Christopher

OPEN GOVERNMENT: NEW PRESSURES FOR LEGISLATION

I have seen a copy of the letter of 3 November from Humphrey Atkins.

It would, I think, be extremely difficult if not impossible to make any worthwhile estimates without knowing how legislation would be interpreted or operated. Nor do I see how we could purport to do this for local government without consulting the local authorities themselves - and I can see no justification for that. You did yourself make the point in your letter of 17 October that such legislation would be likely effectively to frustrate our objectives for reductions in civil service and local government manpower, and I would have thought that that was sufficient for our purpose.

I am copying this letter to the recipients of your letter of 17 October.

Yours ever

MICHAEL HESELTINE

The Rt Hon Lord Soames GCMG GCVO CBE

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Lord Soames GCMG GCVO CBE
Lord President of the Council
Civil Service Department
Whitehall
London SW1A 2AL

3 November 1980

Dear Christopher,

OPEN GOVERNMENT: NEW PRESSURES FOR LEGISLATION

Thank you for sending me a copy of your letter of 17 October to Willie Whitelaw about Michael Shersby's proposed Bill.

I agree that our most convincing argument must be the rise in the number of public servants to administer any new legislation on the lines proposed. But it would be even more convincing if we could give some idea of the increases involved. I imagine that it would be well into the hundreds - if not thousands - if we were to include local authority staff and it might therefore be helpful if Departments were asked to give an estimate of the number of extra staff they would need if open government legislation were introduced.

Copies of this letter to the recipients of yours.

Yours ever

Humphrey

Home Affairs

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Lord Soames CH PC GCMG GCVO CBE
The Lord President of the Council
Civil Service Department
Whitehall
London SW1A 2AZ

30 October 1980

Dear Christopher,

OPEN GOVERNMENT: NEW PRESSURES FOR LEGISLATION

Thank you for sending me a copy of your letter of 17 October to the Home Secretary.

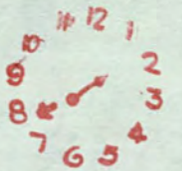
I fully support your view that we should refuse Michael Shersby's request on the grounds you propose. As you say, it would be wise not to make too much of the role of Select Committees: we should increase the difficulties of handling sensibly the supply of information to them if we appeared to be stressing their role as extractors of information or implying that they were set up as a move towards greater disclosure of information.

I am copying this letter to the recipients of yours.

Yours

John Biffen

JOHN BIFFEN



HOUSE OF LORDS,
S.W.1

With the
Lord Chancellor's Compliments

NBPM MAD

HOUSE OF LORDS,
SW1A 0PW

24th October 1980

Open Government

My dear Willie:

I have seen the Lord President's letter to you of 17th October about the new pressures which may soon develop to create a statutory right of access to information. I strongly agree with him that we should resist these pressures, and for the reasons he gives.

I would only add two points. The first is that I wonder if it would be as easy as the Lord President implies to 'drop the provisions for judicial review, relying instead on an "Information Commission" reporting to Parliament, rather like our PCA'. That means dropping what I thought was a cardinal feature of the scheme, namely an enforceable right to access. I mention this because, like the Lord President, I would be vehemently opposed to bringing the courts into this controversial and, as I think, inappropriate, field.

The other point is that, while I fully agree that the practical objections are overwhelming, I do not think we should urge them so strongly as to give the impression that we accept the scheme in principle. To my mind it unacceptably breaches the basic precepts that Government Departments serve Ministers and that Ministers are responsible to Parliament, and not directly to the public. It is difficult enough to serve one master, but impossible to serve two. I am not much impressed by the Canadian example: I suspect that the fact it is confined to a federal Government is significant, and in any case they have little experience of their new regime as yet.

For this reason, I would myself be less diffident than the Lord President suggests about the new Select Committees. They

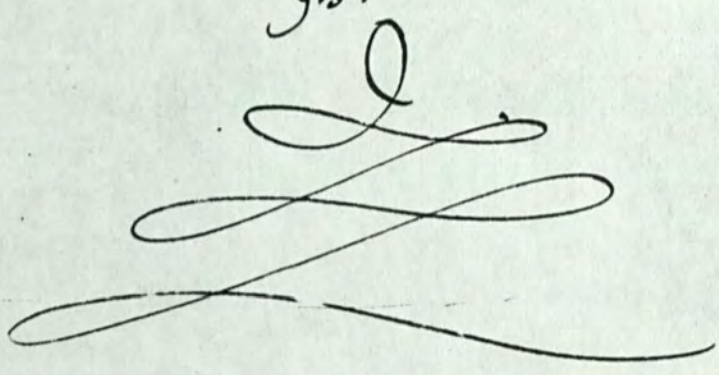
The Right Honourable
The Home Secretary

have greatly increased the volume of information actually and potentially available. They are a major innovation, of which this Government can claim the full credit. And, although they are costly in terms of Ministerial and official time and energy, they are at least institutionally appropriate to our constitution - which, to my mind, the proposal for right of public access is not. We ought not to let these important points go by default.

In short, I consider that a robust attack on this ill-considered scheme is likely to be the best defence against it.

I am sending copies of this letter to the recipients of the Lord President's.

yrs:



From: THE RT. HON. LORD HAILSHAM
OF ST. MARYLEBONE, CH, FRS, DCL.

PRIME MINISTER

Lord Soames reports on the freedom of information campaign's proposal to press for open government legislation on the basis recently initiated in Canada.

He proposes that Ministers should stress that this approach could not be adopted without major costs in bureaucracy, and would offer little in the way of new access to information. But he sees little likelihood of the freedom of information lobby being satisfied with this kind of response.

MP

MS.

20 October 1980

Civil Service Department,
Whitehall,
London, SW1A 2AZ

With the Compliments

of the

Lord President of the Council

Civil Service Department
Whitehall London SW1A 2AZ
01-273 4400

17 October 1980

The Rt Hon William Whitelaw, CH, MC, MP
Secretary of State for the Home Department
50 Queen Anne's Gate
LONDON SW1H 9AT

Dear Home Secretary,

OPEN GOVERNMENT: NEW PRESSURES FOR LEGISLATION

I am writing to you as Chairman of H Committee about a new challenge to our position on open government.

2. In June 1979, we took our stand on the policy laid down in the Croham directive and resisted moves to create a statutory right of access to official information (H(79)2nd meeting). I have no reason to suppose we would wish to change that position. I should welcome views, however, on how we might best sustain it in the light of the latest developments.

3. Michael Shersby, who is currently Chairman of the Freedom of Information Campaign, came to see Paul Channon recently. He wanted to sound out how we would respond to the idea of open government legislation based on a Bill recently tabled in the Canadian Parliament. Later, he wrote to Paul Channon to say that he hoped the Government would agree not to oppose a Private Member's Bill on these lines. He warned that there was likely to be sizeable backing for such a Bill, both on our own back benches and among our supporters in the country. He noted that 38 Conservative Members had supported Clement Freud's Bill in the last Parliament. I suspect that quite a few of the new Conservative Members would also support such legislation. The TUC have also written to draw attention to the Canadian Bill. There can be no doubt that most of the Opposition would back open government legislation.

4. The Canadian Bill is superficially innocuous. A note on its main provisions is attached. Key points are:

a. it applies to departments of the federal government and federal fringe bodies;

b. it does not necessitate prior amendment of the Canadian Official Secrets Act;

c. the Government is required to publish a "description" of all classes of records held by each government body;

d. there are exemptions not only for records containing information about defence, diplomatic exchanges, security, law enforcement, confidential commercial matters, personal information etc but also for Ministers' papers and records of officials' consultations;

e. complaints against non disclosure will be investigated by an Information Commissioner, who will report to Parliament;

f. the Courts will have power to order the disclosure of documents.

5. Michael Shersby places particular emphasis on rights of access to the records of local government, which is not covered in the Canadian Bill. We must proceed on the assumption that the proponents of a UK Bill will expect it to extend to local as well as central government.

6. Because the Canadian Bill appears so moderate it will be difficult for us to present arguments of principle against it that are likely to sway public opinion. The provisions enabling the Courts to overrule decisions by Ministers are, of course, a constitutional nonsense. I would expect this view to command a good deal of support in Parliament. But the advocates of a UK Bill might be willing to drop the provisions for judicial review, relying instead on an "Information Commissioner" reporting to Parliament, rather like our PCA. I am sure we could not oppose a UK Bill simply on grounds of the differences between the Canadian constitution and our own. More importantly, I do not believe we could count on all the Canadian exemptions (summarised in 4 d. above) surviving in Committee - especially if it was a Private Member's Bill.

7. I need not rehearse the general arguments against a statutory right of access to Government records in this country. To my mind, the main factor that we have to put over to those who propose such legislation is the monstrous bureaucratic apparatus that even a Bill on the Canadian lines would entail. It would mean, for a start, making indexes of millions of Government documents. Contrary to popular belief, no such indexes exist at the moment. It would be necessary to identify, locate and retrieve papers, distinguish exempt from non-exempt material, and where necessary sever the former from the latter (a major problem, it is said, in the United States). There would doubtless have to be public offices where documents could be examined. The consequences for Whitehall alone would be intolerable: they would be quite as bad for local authorities. The work entailed would, in my view, effectively frustrate both the objectives we have announced for reducing the size of the Civil Service, and the staff reductions which we are expecting local authorities to achieve. Michael Shersby's contention is that any increase in manpower and costs would be outweighed by public scrutiny of central and local government activities, leading to major savings. I believe this to be quite unrealistic.

8. There are I believe three messages that we must get across to Michael Shersby and our supporters. The first of these is that the Bill he has in mind would create a new and massive bureaucracy. The second is that all that the country would get in return would be a statutory right to information of a kind which we are already pledged to make available, under the terms of the Croham Directive, as confirmed in Paul Channon's statement in the Commons on 20 June 1979. The third (although I doubt if it would be wise to make too much of it) is that the new Select Committees we have created have greatly increased the volume of information made available by the Government.

9. But I do not believe it will be easy to get these points across convincingly in public. We are likely to get the response that the Croham Directive is not working effectively, which could well create demands for its revision and strengthening. If we were unable to get our message across persuasively, I think we would be bound to come under sustained and damaging pressure to introduce our own legislation or to give a fair wind to a Private Member's Bill based on the Canadian model.

10. I thought it right, therefore, that I should inform colleagues of the position. Unless I hear to the contrary within the next two weeks, I will assume that my colleagues agree that we should turn Michael Shersby's request down.

11. I am sending copies of this to the Prime Minister, the other members of H Committee and the Chief Whips (Commons and Lords) and to Sir Robert Armstrong.

Yours sincerely,

(Private Secretary)

for SOAMES

SUMMARY OF THE CANADIAN BILL

(Notes: (a) this is not a comprehensive summary but an outline of what appear to be the essential features of the "access to information" provisions;

(b) because these appear in Schedule I, references are to paragraphs and not to clauses;

(c) underlinings are CSD's.)

General

1. The Bill applies to departments of the Federal Government and to the other "government institutions" listed in a schedule (federal quango and public companies) but not to provincial or municipal government. (Two of the provinces have their own legislation.)

2. The Bill provides for access to records and not just to information

3. No-one may be prosecuted for disclosing records in good faith pursuant to the Act, notwithstanding any other Act of Parliament (para 71) (this is understood to override general prohibitions on disclosure in the Canadian Official Secrets Act).

4. Nevertheless, existing particular statutory prohibitions on the disclosure of information continue to apply where these leave no room for discretion (para 25(1)).

5. The administration of the Act is to be kept under permanent review by a Parliamentary committee (para 72). One of its duties will be to review the need for the existing statutory prohibitions on disclosure and to report to Parliament within three years (para 25(2)).

6. Retrospection is to be subject to limitations: disclosure may be refused during the first 2 years after the Act comes into force of records that existed more than 2 years before it came into force, and similarly during the first 5 years of 5 year old records (para 28).

7. The "head of the government institution" means the Minister or, in the case of a non-departmental body, the person so designated by order (para 3).

Duties of the Government

8. A "designated Minister" (designated by the Governor in Council) must publish and keep up to date (para 5):

a. a description of the organisation, responsibilities, "programs and functions" of each division or branch of each government institution,

b. a "description of all classes of records" held by each,

c. a description of all administrative manuals,

d. the address of the officer to whom requests for access to records should be sent.

9. The designated Minister must "cause to be kept under review the

nner in which records....are maintained and managed to ensure compliance with the provisions of this Act", and issue directives and guidelines (para 68).

10. The Governor in Council may make regulations about procedures for the examination of records, fees etc (para 74).

11. The head of every government institution must present an annual report to Parliament on the administration of the Act (para 69).

Compliance with requests for access

12. Requests, which must be in writing (para 6), should normally be complied with in 30 days (para 7), though the time may be extended on certain grounds (para 9). A copy of the record is to be provided where practicable; otherwise the applicant is to be given an opportunity to examine it (para 12). Fees will normally be charged, subject to statutory maxima (para 11). Where part of a record contains material exempted from disclosure, the head of the institution must disclose any part that can reasonably be severed from the part containing such material (para 26).

Exemptions

13. The Bill provides for exemption (either mandatory or discretionary) of records containing information:

a. obtained in confidence from foreign governments, international organisations, and provincial, municipal or regional governments or their institutions (para 13),

b. the disclosure of which "could reasonably be expected to be injurious" to the conduct of federal-provincial affairs (para 14)

c. the disclosure of which "could reasonable be expected to be injurious" to the conduct of international affairs or defence (para 15),

d. obtained for the purposes of law enforcement or the suppression of crime, including "any other information the disclosure of which would be injurious" (para 16),

e. the disclosure of which "could reasonable be expected to threaten the safety of individuals" (para 17),

f. relating to financial, commercial, scientific or technical matters, if the information "has substantial value...", and information of which the disclosure "could reasonable be expected to be materially injurious to the financial interests of the Government of Canada" (eg proposed changes in bank rate, taxes, property dealings etc) (para 18),

g. relating to persons, in accordance with the definition of "personal information" in the Privacy Act (para 19).

The interests of "third parties" are safeguarded (para 20 and passim).

14. The Bill also provides (para 21) that the head of a government institution "shall refuse to disclose":

a. Privy Council and Cabinet documents,

b. "records used for or reflecting consultations among Ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy", or

c. draft legislation,

unless disclosure is authorised by the Prime Minister or the record is more than 20 years old.

15. The Bill also provides (para 22) that the head of a government institution "may refuse to disclose any record...that contains

(a) advice or recommendations developed by or for a government institution or a Minister of the Crown,

(b) an account of consultations or deliberations involving officials or employees of a government institution, a Minister of the Crown or the staff of a Minister of the Crown...",

subject to the 20-year rule. (These exemptions do not, however, apply to

"an account of, or a statement of the reasons for, a decision made in the exercise of a discretionary power or in the exercise of an adjudicative function affecting the rights of a person".)

Complaints to the Information Commissioner

16. Where access is refused the head of the institution must cite the specific provision in the Act on which the refusal is based. Failure to provide access within the time limits in the Act is deemed to be refusal (para 10).

17. Complaints will be investigated by the Information Commissioner. He is to be appointed by the Governor with the approval of the Senate and the House of Commons. His powers and duties will be broadly similar, mutatis mutandis, to those of the UK Parliamentary Commissioner for Administration; but he will not be precluded (as the PCA normally is) from questioning the merits of decisions taken by Ministers and other heads of government institutions. "No... record may be withheld from the Commissioner on any grounds" (para 37(2)).

18. The Commissioner will have no powers of enforcement. If he upholds the complaint he will report his findings and any recommendations to the head of the institution with a request, where appropriate, for compliance within a specified time or else for reasons why the recommended action will not be taken (para 38(1). Where access is still refused the Commissioner must inform the complainant that he has the right to apply to the Court (para 38 (5)). He will report to Parliament annually and may also make special reports (paras 39 and 40).

view by the Federal Court

19. Either the complainant (provided that his complaint has first been investigated by the Commissioner), or the Commissioner himself, or a "third party" within the meaning of the Act, may apply to the Court for a review of the matter (paras 42-45). "No...record may be withheld from the Court on any grounds" (para 47). There will be no exceptions, though the Court must take every reasonable precaution to avoid the disclosure of protected material (para 48).

20. The burden of proof will be on the government institution (para 49).

21. Where the Court finds that there was no entitlement to refuse access, or that there were no "reasonable grounds" in terms of expectation of injury (see paragraph 13 above), "the Court shall...order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate" (paras 50 and 51).

22. The Act will be binding on the Crown (para 73.)

Home Affairs
– Open Government
May 1979

Home Affairs

1. MR. WHITMORE
2. PRIME MINISTER

cc. Paymaster General
Mr Jackson

Open Government and Manpower Options

You should be aware of a difficult situation which has arisen as a result of unilateral action by the CSD over the Departmental manpower options exercise.

Peter Hennessy, of the Times, approached the CSD last week asking for background papers on the exercise. He quoted in support of his request the Parliamentary Answer by Mr. Channon of June 20 (Doc. 1) and Clive's letter to Private Secretaries of the same day, which I have refused to give to Mr. Hennessy (see article - Doc. 2).

CSD Ministers have agreed to make available to Mr. Hennessy the CSD's own list of 10, 15 and 20 per cent options as attached (Doc. 3). Mr. Hennessy then telephoned each Department and even organisations like the Forestry Commission, asking for similar information and quoting CSD's willingness to provide theirs as a reason for a general response.

So far as we know, all our Departments and bodies have declined, at least for the time being, to release the information. The Paymaster General raised the whole issue at his meeting of Chief Information Officers last evening. There is a general reluctance to release the information which is of varying sensitivity; and a serious concern that one Department, in acting unilaterally, has potentially embarrassed all others.

The Paymaster General is advising all Ministers, through Chief Information Officers, not to respond to Mr. Hennessy's request and, if they wish to do so, certainly not before others have discussed it with him and given me an opportunity to comment

/on

on your behalf.

The Paymaster General and I agree that there is no way in which the Government can win from a disclosure of the options - and most certainly not in the wholly raw and unexplained CSD format.

This, I fear, is a bad example of a breakdown in co-ordination. We have, however, kicked up such a fuss about it that I hope that such a lapse will not recur again for a long time.

B. INGHAM

12 December, 1979

DOC. 1

Official Information

61. **Mr. Christopher Price** asked the Minister for the Civil Service what proposals he now intends to bring forward to give the public the right of access to official information.

62. **Mr. Rooker** asked the Minister for the Civil Service if he will make a statement on his policy for open government.

Mr. Channon: The Government are committed to legislation to reform section 2 of the Official Secrets Act 1911. In addition, it will be the practice of this Government to make as much information as possible available, including background papers and analytical studies, relevant to major policy decisions. Moreover, the House will shortly be debating the recommendations of the Procedure Committee, which will enable the House to maintain and improve the scrutiny of the work of Government Departments. The Government share the view of their predecessors that legislation to provide a public right of access would not be appropriate. A code of practice would be open to many of the same objections.

Mr. Price: I thank the Minister for that comprehensive reply. Is he aware that an all-party consensus developed in the last Session about the Official Information Bill, which supported not only the reform of the Official Secrets Act but a statutory right of access for the public? Does the Minister accept that it does not make sense to reform the Act without providing a right for the public to be given non-sensitive information? Is the Minister at least monitoring the flow of information? What are the arrangements for monitoring which were begun by the last Government?

Mr. Channon: I understand the hon. Member's feelings. We are determined to make as much information as possible available. I am sure that the House will insist upon that. We are engaged in a number of major initiatives, such as the reform of the Official Secrets Act and consideration of the recommendations of the Procedure Committee, which I have already mentioned. It is meaningless to publish lists of information when it is no longer possible to tell whether they would be published in the normal course of events or are published because of previous initiatives.

Mr. Rooker: Is the Minister's philosophy on this subject such that he believes that more than three people in each constituency are genuinely interested in open

government? Will he institute a review of the 110 subjects on which hon. Members are not allowed to table questions?

Mr. Channon: I should be surprised if that were a matter for me. If it is, I shall examine it. There is considerable interest in the question of open government. I hope that what I have said today will show that we are doing more in this sphere than has been done before.

Mr. Forman: When taking the desirable preliminary steps towards more open Government, will my hon. Friend consider issuing guidelines to Whitehall Departments for the purpose of declassifying documents, as classifying them is one of the greatest barriers to full information being made available to Parliament and people elsewhere?

Mr. Channon: That is an important matter. I shall consider the suggestion and write to my hon. Friend.

Mr. Kaufman: The Minister says that he is determined to make as much information as possible available. Will he arrange for the immediate publication of the Treasury forecast on unemployment?

Mr. Channon: My responsibilities do not extend to forecasts from the Treasury or any other Department.

DOC 2

Mr Prentice cannot 'intervene' to help boy

t Healy
Services Correspondent
Reg Prentice, Minister for Security, has declined to ene in an appeal against l of mobility allowance oy aged 14 suffering from s syndrome.

letter to the Child Pov- Action Group yesterday e could not influence an dual claim. His statement escribed as "nonsense" r Nicholas Warren, the s legal officer.

e last government prom- ese children would get y allowance", Mr War- id. "When the regula- were published we were they would cover syndrome."

ast one medical appeal has found it impossible ide a case under the ons, introduced last after a test case estab- that Down's syndrome with walking difficul- e covered.

Martha Street, of Car- ently won an appeal on f a boy aged 14 who fused the allowance he old regulations and April when a medical viewed the ca nder rules.

Whitehall brief: How public right of access to official information is curtailed

Secrecy shrouds No 10 directive on open government

By Peter Hennessy

Now that the Prime Minister has been obliged by events to withdraw the Government's Protection of Official Information Bill, which if passed would have maintained Britain's position as the Monte Cassino of secrecy in the Western world, it is timely to inquire about the positive side of the secrecy business and pin down the Cabinet's precise position on open government.

Waiting for Mrs Margaret Thatcher in No 10 on May 4 was a paper on possible expenditure savings prepared by the Civil Service Department (CSD), of which she is ministerial overlord. It suggested she might wish to curtail the dispersal programme for moving civil servants into the regions. She did, and so, incidentally, did the CSD. She might want to avoid further costly steps towards more open government. She did, and so did the CSD.

The CSD managed to claw back even more. The department had never forgiven its former chief, Lord Croham, for saddling the Civil Service in July, 1977, with an open government commitment in what became known as the Croham Directive. Officials particularly resented having to keep lists of material released under that policy to send to a handful of "faddists" on the Labour back benches and in the quality press who kept ringing up and asking for them.

Mr Whitmore: Classified letter on openness as "confidential".

Ministers were persuaded that that was a waste of public money. Departments no longer keep lists and, according to insiders, the increasing flow of paper emerging in Mr Callaghan's last 18 months in office has dwindled to a trickle.

On top of that, Mrs Thatcher did not replace GEN 146, the Cabinet Committee of civil servants appointed by Mr Callaghan to prepare a variety of open government schemes designed to "buy off" Mr Clement Freud's Official Information Bill if it came anywhere near becoming law. Miss Caroline Morrison and Mrs Barbara Sloman of the CSD were redeployed on other work and Mr George Moseley, chairman of GEN 146, could again devote all his time to worrying about personnel matters of the Civil Service.

This slightly jaundiced analysis has been privately challenged in Whitehall. True, GEN 146 has gone and the Croham Directive has been amended, but look at Mr Paul Channon's statement in the Commons on June 20 that "it will be the practice of this Government to make as much information as possible available, including background papers and analytical studies, relevant to major policy decisions".

What is more, the informant continued, the Prime Minister has made it crystal clear to ministers that they must personally ensure that their departments push out as much material as they can. Given the hold she has over her colleagues, "this Cabinet could be more effective in their open government policy than the last one, which never really believed in it".

Mrs Thatcher's personal injunction to openness takes the form, it transpires, of a letter dated June 20, signed by Mr Clive Whitmore, her principal private secretary, and sent to his equivalents in the private offices of Cabinet ministers. For some reason Mr Whitmore classified it "confidential", thereby ensuring that the latest Whitehall directive on open government must remain a secret.

A telephone call about the Whitmore letter to Mr Bernard Ingham, the Prime Minister's press secretary, elicited the following "on-the-record" reply which a Downing Street spokesman insisted must be quoted in full or not at all:

It is not the Government's practice to release the texts of correspondence between ministers or their private offices, so I am afraid I cannot release a copy of the letter you mentioned. I can, however, confirm your understanding that the letter conveyed the Prime Minister's wish that ministers should give close personal attention to and take the initiative in publishing information, especially on major issues of parliamentary interest, to the greatest possible extent.

The spokesman omitted to mention that the Whitmore letter goes on to say the Prime Minister has no intention of introducing legislation to establish a public right of access to official information and that no further formal steps will be taken to that end.

To supplement the No 10 statement and Mr Channon's answer, Mr Francis Pym, Secretary of State for Defence, has agreed to release the minute he circulated in his department on June 21 in response to the Whitmore letter. Headed "Release of information to Parliament and the public", it reads:

The House of Commons was informed yesterday . . . that it will be the practice of this Government to make as much information as possible available, including background papers and analytical studies relevant to major policy decisions. We must ensure that these arrangements are effective in defence, and publish information, especially on major issues of parliamentary interest, to the greatest possible extent consistent with the requirements of security. It will be for ministers to decide what material can be released in each specific case, and I should be grateful if you would bear this consideration in mind.

Until Mr Whitmore's letter is declassified and released at the Public Record Office on January 1, 2010 (by which time Mrs Thatcher may be in the House of Lords or its equivalent), the Downing Street statement and Mr Pym's minute will be all Whitehall watchers have to go on, unless, of course, Parliament manages to pass a freedom of information Bill in the meantime amending the 30-year rule.

elsh nationalists shown road to socialism

Choreographer

Guernsey tax

ACTION TO REDUCE DEPARTMENTAL STAFF COSTS

1. Ministers have called for a range of options up to the levels of 10%, 15% and 20% from which they can select a set of reductions in Civil Service staff expenditure. The attached tabulations show the functions and activities which comprise the options for CSD. Figures for CCA are shown separately.

2. The content of these options has been approved by CSD Ministers, and the material will now go forward for Ministers to consider collectively. CSD Ministers recognise that cuts of this magnitude cannot be undertaken without due regard for all the consequences, including the effects on the staff of the Department and on the Service as a whole.

3. It is important to note that at present this material has the status only of options. No decision has yet been taken on the level of cuts, if any, to be required of any particular Department. Several items in the tabulations are at present under review and their ultimate contribution to any agreed level of cuts may need to be adjusted in the light of circumstances.

4. It should be noted also that the options aim to pick out particular functions and the posts attached to them, rather than simply to reduce the number of staff available to carry out an undiminished range of activities. This means in consequence that there cannot be any significant future reinstatement of activities unless resources are available: and since the Government intend to bring about a permanent reduction in the scale of government activity, it is likely that resources for future new work can only be made available if they are released from other current tasks.

[redacted] OPTION

			Cash Saving	% of CSD
Dr Allen	1.	improved staff efficiency	15,000	0.07
	2.	reduced staff and advertising costs resulting from overall reductions in Departmental recruitment	340,000 280,000	1.51 1.24
Mr Burrett	3.	savings from the absence of incomes policy	56,000	0.25
	4.	computerise pensions awarding	40,000	0.18
	5.	reduce pensions policy work	18,000	0.08
	6.	give up some control of superannuation in fringe bodies	70,000	0.31
Mr Moseley	7.	reduction in PRISM service	150,000	0.67
	8.	savings in personnel management and training divisions, eg drop assignment on micro processing, less work on training liaison and bursaries, and reduce MAS regional offices	155,000	0.69
	9.	reduction in work on structure, including unified grading, and at the College	197,000	0.88
	10.	10% saving in CISCO net PES expenditure	114,000	0.51
Mr Wilding				
	11.	reductions in SIEB	45,000	0.2
	12.	reductions in external consultancy in MS	77,000	0.34
	13.	reduce MS(SA) management review capacity	75,000	0.3
Mr Lawrance				
	14.	change from weekly to monthly pay	324,000	1.44
	15.	reductions in scale of PS, OS and Chessington resulting from general 10% reductions;	294,000	1.31
			2,250,000	9.98 (1)

Footnote (1) Since the cash savings figure equals 10% of the rounded CSD baseline, the discrepancy in the percentage column is due to rounding errors.

15% OPTION

		Cash Saving	% of CSD
Dr Allen	10% option	635,000	2.82
plus 1.	drop recruitment for fringe bodies and Crown appointments	34,000	0.15
2.	drop EO and CO Limited Competitions	295,000	1.31
Mr Burrett	10% option	184,000	0.82
Mr Moseley	10% option	616,000	2.74
plus 3.	further cuts at College	219,000	0.97
4.	savings in personnel management area, eg drop Imitax contract, less work on interchange, less statistical support	174,000	0.77
5.	additional 5% saving in CISCO	58,000	0.26
Mr Wilding	10% option	197,000	0.88
Mr Lawrance	10% option	618,000	2.74
plus 6.	reductions in scale of PS, OS and Chessington resulting from general 15% reductions; reductions in Library, information work, career development; closure of some doors	345,000	1.53
		3,375,000	14.99 (1)

Footnote (1) Since the cash savings figure equals 15% of the rounded CSD baseline, the discrepancy in the percentage column is due to rounding errors.

20% OPTION

		Cash Saving	% of CSD
Dr Allen	15% option	964,000	4.28
plus 1.	less efficient recruitment	118,000	0.52
2.	close regional offices	103,000	0.46
Mr Burrett	15% option	184,000	0.82
plus 3.	give up control of pay of various public bodies	15,000	0.07
4.	give up control over Armed Forces pay	16,000	0.07
5.	give up involvement in pay and conditions of fringe bodies	53,000	0.24
Mr Moseley	15% option	1,067,000	4.74
plus 6.	give up or reduce work on development of personnel management policy, and cut training support work	180,000	0.8
7.	further 5% saving in CISCO	62,000	0.28
Mr Wilding	15% option	197,000	0.88
plus 8.	cuts in Manpower staff	27,000	0.1
9.	cuts in MS/MG staff	174,000	0.77
Mr Lawrance	15% option	963,000	4.28
plus 10.	reductions in scale of PS, OS and Chessington resulting from general 20% reductions and reductions in central secretariat functions, training, welfare, audit, messengerial, clerical and other support staff, and closure of CISCO support work within Central Group.	377,000	1.68
		4,500,000	19.99 (1)

Footnote (1) Since the cash savings figure equals 20% of the rounded CSD baseline, the discrepancy in the percentage column is due to rounding errors.

CENTRAL COMPUTER AGENCY

	10% OPTION	Cash Saving	% of CCA
1.	savings from amalgamation of work and delegations to departments	125,000	4.55
2.	abolish Economy Programme branch	50,000	1.81
3.	reduction in studies of technical problems and systems design	100,000	3.64
	15% OPTION		
	10% option	275,000	
plus 4.	delegations of authority to purchase computer equipment	138,000	5.0
	20% OPTION		
	15% option	413,000	
plus 5.	further reduction in studies of technical problems and systems design	113,000	4.11
6.	further delegations of authority to purchase computer equipment	25,000	0.89
		551,000	20.0

CIVIL SERVICE DEPARTMENT
WHITEHALL LONDON SW1A 2AZ
Telephone Direct line 01 273 4324
Switchboard 01 273 3000

7 December 1979

Dear Head of Information

CIVIL SERVICE MANPOWER CUTS: OPEN GOVERNMENT

This is to let you know that in answer to a request from Peter Hennessy of the Times for background information about the manpower cuts, CSD Ministers have decided to make available to him the CSD's own list of 10%, 15% and 20% options for cuts in this Department. Hennessy has also asked us for a complete set of departmental options papers, but on this we are taking the line that it is for each departmental Minister to decide what background information on the cuts in his own Department can be released under the Government's freedom of information policy.

You may therefore wish to be considering what your own departmental response should be if you are asked this question. As you know, the Government's policy is to make as much information as possible available, including background papers and analytical studies, relevant to major policy decisions.

Yours sincerely

John Beastall

J S Beastall
Information Division

M. Ingham
Spoke to M. Beastall. Advised him to speak to PMG's Office - along view is that CIOs should not issue options ad hoc - there should be a central directive which is that options' papers are not made available to Hennessey. Told him he should telephone CIOs today saying they should not respond to Hennessey. Will raise at 0910 tomorrow.
John Coles
10/12/79

with compliments

MINISTER OF STATE

Please link up with our Ministers letter of to-day's date. Apologies for omission

CIVIL SERVICE DEPARTMENT
Whitehall London SW1A 2AZ

Telephone 01-273 5563/4086

J Murray
13/12

MANAGEMENT-in-CONFIDENCE

CIVIL SERVICE DEPARTMENT
WHITEHALL LONDON SW1A 2AZ
Telephone Direct line 01 273 3715
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W R B Robinson Esq
Department of Employment
8 St James's Square
London SW1

20 November 1979

Dear Rhys

CIVIL SERVICE REDUCTIONS - RELEASE OF INFORMATION TO THE STAFF SIDE

You will no doubt have seen the letter which our Minister of State sent to the Home Secretary on 19 November, saying (among other things) that we shall need to know centrally what information is being released to departmental staff sides; and John Herbecq's letter to Ken Barnes of 20 November filled in some of the background as far as the Staff Side's complaint to the CAC is concerned. The purpose of this letter is to fill out one or two details.

2. We may be pressed, either by the National Staff Side (or JCC) or by the Press, to disclose information, not only about the decisions that have been taken but also about the options that have been, or are still being, considered. We take it that the response to such enquiries will have to vary as between departments. Some (including for obvious reasons CSD) will already have exposed their full range of options to their staff sides, and will presumably be willing to disclose them more widely if asked to do so under the Government's open government policy. Others, for whom the exercise is now complete in that a definite decision has now been taken either to adopt or to reject each of their options, may now be willing to disclose all of them, or (for whatever reason) only those they have adopted. Others again, for whom the exercise is not yet complete because some of their options are still being studied or considered, may be prepared to say with some precision what they have in train (the scope of the MOD studies, for example, is already known) and may or may not also be prepared to disclose the remaining options they have rejected. And yet another category, who are not yet ready to say what they are still considering, will probably also by the same token not yet be ready to say what they have rejected. All this adds up to a pretty confused picture, which will be apt to irritate the Press and MPs and will certainly make relationships with the Staff Side even more difficult.

3. Clearly, the CSD can only maintain the line that the decisions about how much to say, and when, are for the Ministers in charge of the departments concerned to take. But we shall be in considerable danger of being wrong-footed by the Staff Side, or for that matter by the Press, if we do not know what information departments have released; we have not in fact anything like a full picture of what has been said to departmental staff sides so far about the

options, and this will become more difficult still if we fall behind the game over what has been said about the decisions. At the same time, it will clearly be advantageous if, when we go to the informal CAC hearing, we then give a copious account of the information that has been released by then.

4. Ministers will no doubt be replying to Mr Channon's letter as soon as they have seen their staff sides following the announcement. We shall be very grateful for anything you can do to ensure that these replies are prompt. In addition, it would be very helpful if you and the other recipients of this letter could send to Clifford Bamfield an up-to-date account of what you have disclosed about your options, and make arrangements to ensure that Clifford automatically gets a copy of any other document or record of further information given to your staff side, whether about decisions or about options, after your Minister has made the communication which he will be reporting to Mr Channon. In your case, this should include, please, communications to the staff sides of the DE Agencies.

Copies of this letter go to those on the enclosed list.

Yours ever.

Richard Wilding

R W L Wilding

D H Andrews
MAFF

E Broadbent
MOD

N H Calvert
DOE/Tpt

J F Boyd
IR

A M Fraser
C&E

N F Cairncross
Home Office

M D Hobkirk
Lord Chancellor's Dept

C W France
Treasury

R M Russell
FCO

R S Matthews
DHSS

R C M Cooper
DI/Trade

F A Harper
DES

J R Cross
DEnergy

P D Davies
PSA

P L Towers
CSD

D L Pearson
ODA

J E King
Welsh Office

J F Mayne
NIO

J S Robertson
Scottish Office

CONFIDENTIAL

Home Affairs

10 DOWNING STREET

From the Principal Private Secretary

20 June 1979

Dear John,

Following discussion on Open Government in the Home and Social Affairs Committee, the Prime Minister has now agreed that the Government's view should be announced today when the Minister of State in the Civil Service Department will be answering oral questions.

Mr. Channon will reaffirm that the Government is committed to legislation to reform section 2 of the Official Secrets Act 1911, and he will add that it will be the practice of this Government to make as much information as possible available including background papers and analytical studies relevant to major policy decisions. He will also draw attention to the forthcoming discussion in the House of the recommendations of the Procedure Committee, which should enable the House to maintain and improve the scrutiny of the work of Government Departments. He will add that, against this background, the Government shares the view of its predecessor that legislation to provide a public right of access would not be appropriate, and that the Government feels that a Code of Practice would be open to many of the same objections.

The Prime Minister firmly believes that this approach offers the right balance. She wishes to ensure that these arrangements are effective, and she has therefore asked me to stress that Ministers should take the initiative in publishing information, especially on major issues of Parliamentary interest, to the greatest possible extent. It will be for Ministers individually to decide what particular material can be released in each specific case. The Prime Minister would like her colleagues to give close personal attention to this question. The release of appropriate material will not only provide evidence of the intention to make Government more open but will also help in explaining and justifying policies.

I am sending copies of this letter to the Private Secretaries to the members of the Cabinet, including the Minister of Transport, to the Private Secretaries to the Chief Whip and the Attorney General and to Sir John Hunt.

Yours ever,

Mark Whitmore.

J.A. Chilcot, Esq.,
Home Office.

CONFIDENTIAL

Mr. Channon: The Government are committed to a radical review of Civil Service activities. It is not yet possible for me to make a statement, but I hope to make one in the autumn.

Mr. Charles R. Morris: I welcome the Minister to his new responsibilities. Will he confirm that there are over 10,000 Civil Service clerical vacancies in London? Is he aware that those vacancies have existed for a long time? Against that background, is it not meaningless to talk about a freeze on Civil Service recruitment? Is not the whole concept a political public relations sham, which hits hardest school-leavers in areas of high unemployment such as Liverpool, Newcastle, Manchester and South Wales, where recruitment is essential to the community?

Mr. Channon: I thank the right hon. Member for his opening remarks. More than anybody else he knows the terrible state in which he and his right hon. Friends left us by granting a massive pay increase to the Civil Service a few days before polling day, having made no allowance, or inadequate allowance, for it in the cash limits. That is what led us to take the emergency action of imposing a recruitment ban.

Mr. Michael McNair-Wilson: Will the freeze affect the scientific Civil Service? Is my hon. Friend aware that at the Atomic Weapons Research Establishment at Aldermaston in my constituency there are severe staffing problems? Is he aware of the deep sense of grievance felt by scientific civil servants about the way in which their pay negotiations are being handled by his Department?

Mr. Channon: I am grateful to my hon. Friend for having mentioned that. I have offered the scientific grades everything that they want. I have given them the temporary link with the administrative grades for which they asked. I see no reason why they should want to strike, as I am afraid some will. I shall examine my hon. Friend's specific constituency point and write to him.

Official Information

61. **Mr. Christopher Price** asked the Minister for the Civil Service what proposals he now intends to bring forward to give the public the right of access to official information.

62. **Mr. Rooker** asked the Minister for the Civil Service if he will make a statement on his policy for open government.

Mr. Channon: The Government are committed to legislation to reform section 2 of the Official Secrets Act 1911. In addition, it will be the practice of this Government to make as much information as possible available, including background papers and analytical studies, relevant to major policy decisions. Moreover, the House will shortly be debating the recommendations of the Procedure Committee, which will enable the House to maintain and improve the scrutiny of the work of Government Departments. The Government share the view of their predecessors that legislation to provide a public right of access would not be appropriate. A code of practice would be open to many of the same objections.

Mr. Price: I thank the Minister for that comprehensive reply. Is he aware that an all-party consensus developed in the last Session about the Official Information Bill, which supported not only the reform of the Official Secrets Act but a statutory right of access for the public? Does the Minister accept that it does not make sense to reform the Act without providing a right for the public to be given non-sensitive information? Is the Minister at least monitoring the flow of information? What are the arrangements for monitoring which were begun by the last Government?

Mr. Channon: I understand the hon. Member's feelings. We are determined to make as much information as possible available. I am sure that the House will insist upon that. We are engaged in a number of major initiatives, such as the reform of the Official Secrets Act and consideration of the recommendations of the Procedure Committee, which I have already mentioned. It is meaningless to publish lists of information when it is no longer possible to tell whether they would be published in the normal course of events or are published because of previous initiatives.

Mr. Rooker: Is the Minister's philosophy on this subject such that he believes that more than three people in each constituency are genuinely interested in open

government? Will he institute a review of the 110 subjects on which hon. Members are not allowed to table questions?

Mr. Channon: I should be surprised if that were a matter for me. If it is, I shall examine it. There is considerable interest in the question of open government. I hope that what I have said today will show that we are doing more in this sphere than has been done before.

Mr. Forman: When taking the desirable preliminary steps towards more open Government, will my hon. Friend consider issuing guidelines to Whitehall Departments for the purpose of declassifying documents, as classifying them is one of the greatest barriers to full information being made available to Parliament and people elsewhere?

Mr. Channon: That is an important matter. I shall consider the suggestion and write to my hon. Friend.

Mr. Kaufman: The Minister says that he is determined to make as much information as possible available. Will he arrange for the immediate publication of the Treasury forecast on unemployment?

Mr. Channon: My responsibilities do not extend to forecasts from the Treasury or any other Department.

Jobs Dispersal (Scotland)

63. **Mr. William Hamilton** asked the Minister for the Civil Service what plans he has for the dispersal of Civil Service jobs to Scotland.

64. **Mr. Cyril D. Townsend** asked the Minister for the Civil Service if he will make a statement on the Government's attitude to the Hardman report.

Mr. Channon: I refer the hon. Gentleman and my hon. Friend to the answer that I gave my hon. Friend the Member for Bath (Mr. Patten) on 11 June.

Mr. Hamilton: Does the Minister recognise that unemployment in Scotland will reach enormous proportions, the like of which we have not seen since 1945, as a direct result of the policies announced by the Government in the last few weeks? Will the Minister give a firm assurance that the plans to move Civil Service jobs to Glasgow and Scotland will not be cut back by the Government?

Mr. Channon: I shall not comment on the hon. Member's first question. We are reviewing the whole dispersal programme. No decisions have been taken. We hope to announce our findings by the end of July. I shall take fully into account everything which the hon. Member has said.

Mr. Townsend: Is my hon. Friend aware that many of us who welcomed the initial use of getting Whitehall out of Whitehall now have reservations because of the growing unemployment in London which we inherited? Will the Minister ensure that the Government are flexible when they review this matter?

Mr. Channon: I shall take into account what my hon. Friend has said and all representations made by hon. Members.

Mr. Gregor MacKenzie: Is the Minister aware that during the general election campaign the official Conservative spokesman on the Civil Service indicated that the Labour Government's plans for the dispersal of jobs to Scotland would be continued and indeed, might be speeded up? Is the Minister further aware that on 23 May the Secretary of State for Scotland indicated idea of getting Whitehall out of plans to change the arrangements made by the Labour Government?

Mr. Channon: I shall study what the right hon. Member has said. He has been active in making representations about this matter. They will be fully considered.

Mr. Henderson: Does my hon. Friend accept that there are several hon. Members on the Government side who are anxious that he should press forward urgently on this matter? Will he particularly bear in mind that a large proportion of people at the front end in the Armed Services are based in Scotland and that there is good reason why their back-up should be there as well? Will he also bear in mind the point made by the Opposition spokesman, which reveals that there are vacancies in the Civil Service in London, and these jobs would be welcome in Glasgow?

Mr. Channon: I shall certainly consider what my hon. Friend says. I know that his point of view is shared by a large number of hon. Members throughout the House.

Mr. Charles R. Morris: Will the Minister give an assurance that before he takes

MR WHITMORE

The Prime Minister has approved Lord Soames' proposals on Open Government, which he reported to her after discussion in H Committee. These conclusions will be included in a Parliamentary answer to be given by Mr. Paul Channon tomorrow, 20 June.

Lord Soames had suggested that the Prime Minister might underline the importance of Ministers taking the initiative in publishing information - to help hold the line and avoid pressure for further concessions - by sending a minute to colleagues.

I am not convinced that this is a sufficiently important subject for a Prime Ministerial minute, and the Prime Minister, whilst noting the importance of Ministers' taking the initiative, does not rise to the suggestion. A Private Secretary letter seems to me to be about right and I attach a draft.

19 June 1979

CONFIDENTIAL

Home Affairs

10 DOWNING STREET

From the Private Secretary

18 June 1979

B/F 21-6-79
don't Hansard

The Prime Minister has seen the Lord President's minute of 15 June about Open Government.

She has noted the conclusions of the Home Affairs Committee, and she is content with the terms of the suggested Reply to a Parliamentary Question tabled for 20 June.

I am sending copies of this letter to John Chilcot (Home Office), John Stevens (Chancellor of the Duchy of Lancaster's Office) and Martin Vile (Cabinet Office).

M. A. PATTISON

Jim Buckley, Esq.,
Lord President's Office.

CONFIDENTIAL

1.

10 DOWNING STREET

PRIME MINISTER

Lord Soames' minute below reports the conclusions of discussion in H. Committee on Open Government. He has followed the line you approved earlier (see Flag A).

Are you content with the proposed oral Answer, which Mr. Channon would give on Wednesday next, setting out the Government's approach?

MRP

16 June 1979

CONFIDENTIAL

PRIME MINISTER

OPEN GOVERNMENT

Following my minute to you of 30 May on this subject, you invited me to put a paper to the Home and Social Affairs Committee, with the intention that the Government's view should be announced on 20 June when Paul Channon has to answer oral questions.

2. This I did, proposing that we should not concede a right of access to papers whether by legislation or through a Code of Practice, but should stand on the policy implied in the July 1977 letter to Permanent Secretaries issued by the then Sir Douglas Allen as Head of the Civil Service. This would commit us to the release, wherever possible, of background papers and analytical studies relevant to major policy decisions.

3. The Home Affairs Committee endorsed my proposal and invited me to report this conclusion to you with the terms of a suggested reply to a Parliamentary Question which I enclose.

4. If we are to succeed in holding the line and not be driven to make unwelcome concessions, it will be important that Ministers should take the initiative in publishing information, especially on major issues of Parliamentary interest, to the greatest possible extent. It will be for Ministers individually to decide whether particular material can be released in each specific case, but in my view it would be most valuable if you sent a minute to our colleagues telling them of the importance you attach to this aspect.

5. I am sending copies of this minute to the Home Secretary and the Chancellor of the Duchy, and to Sir John Hunt.

S.

SOAMES
15 June 1979
Enc

FOR ORAL ANSWER ON
WEDNESDAY 20 JUNE

Mr C Price (Labour, Lewisham West): To ask the Minister for the Civil Service, what proposals he now intends to bring forward to give the public the right of access to official information.

Mr J W Rooker (Birmingham, Perry Barr): To ask the Minister for the Civil Service, if he will make a statement on his policy for open government.

DRAFT ANSWER

MR PAUL CHANNON: With permission, I will answer Questions numbers and together.

The Government is committed to legislation to reform section 2 of the Official Secrets Act 1911, and in addition it will be the practice of this Government to make as much information as possible available, including background papers and analytical studies relevant to major policy decisions. Moreover, the House will shortly be debating the recommendations of the Procedure Committee which will enable the House to maintain and improve the scrutiny of the work of Government Departments. The Government shares the view of its predecessor that legislation to provide a public right of access would not be appropriate. A Code of Practice would be open to many of the same objections.

CONFIDENTIAL

Security

NBPM - she has already instructed that the Lab Pres should proceed as proposed. MAP 4/VI

PRIME MINISTER

OPEN GOVERNMENT

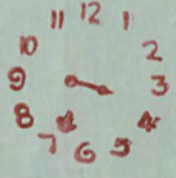
I should welcome a discussion of our position on open government in the Home and Social Affairs Committee as proposed by the Lord President in his minute of 30 May. My present disposition is to agree strongly with what he says in paragraph 5.

I am sending copies of this minute to the Lord President, the Chancellor of the Duchy of Lancaster and the Attorney General, as well as to Sir John Hunt.

4 June 1979

CONFIDENTIAL

- 4 JUN 1979



CONFIDENTIAL

5

Home Affairs

10 DOWNING STREET

From the Private Secretary

4 June 1979

The Prime Minister has considered the Lord President's minute of 30 May about open government, and the Attorney General's minute of 23 May on the same subject.

She wholeheartedly agrees with Lord Soames' approach to the subject. She would like him to put a paper to Home and Social Affairs Committee, with the intention that the Government's view should be announced in response to Questions on 20 June.

I am sending copies of this letter to Bill Beckett (Law Officers' Department), John Stevens (Chancellor of the Duchy of Lancaster's office) and to Martin Vile (Cabinet Office).

M. A. PATTISON

Jim Buckley, Esq.,
Lord President's Office.

CB

CONFIDENTIAL

PRIME MINISTER

I have put to you this weekend proposals from the Attorney General and the Home Secretary on reform of the Official Secrets Act. The subject relates closely to the wider issue of open government, on which Lord Soames 30.5.79 has now submitted separate proposals to you (an additional copy of the Attorney General's minute 23.5.79 is also attached here at Flag A).

Are you content that Lord Soames should put a paper to H, with the intention that the Government's views should be announced through Questions on 20 June?

Yes. I agree wholeheartedly with Lord Soames approach.

1 June 1979

PRIME MINISTER

OPEN GOVERNMENT

I have now had a look at the issues which now face us on open government, and this is to let you know my thinking. You have already seen a brief prepared by my Department as background to possible Parliamentary Questions.

2. The Government is bound to be pressed for an early indication of its approach given the continuing pressure from interest groups, the media, and within Parliament itself for a right of access to information held by public authorities. Indeed, there are Oral Questions (which will almost certainly be reached) on this subject for answer by Paul Channon on 20 June. In a Green Paper issued shortly before the dissolution (Cmnd 7520), the previous Government proposed a Code of Practice under which Ministers would accept an obligation to provide access to official documents and information other than in specifically exempt fields. They proposed that a Select Committee should be appointed to consider the contents of the Code and related matters. Published simultaneously with the Green Paper was a factual report by officials on practice in other countries, principally those which have considered or are considering a statutory right of access. We can expect to be asked whether we propose to follow the approach in the Green Paper.

3. The present practice on the release of information is that set out in the letter which the then Sir Douglas Allen, Head of the Home Civil Service, sent to Permanent Secretaries on 7 July 1977, a copy of which is attached. The idea behind this was to secure the publication of background and analytical material relating to major policy decisions wherever possible, while leaving to Ministers the final decision on what information should be released and when.

4. Those who seek a right of access want to secure a basic change so that the Government would no longer control the timing and extent of the release of information. In future the Press and other people could, subject to certain exceptions, demand as of right to see official papers in a wide range of topics. This would be the inevitable consequence of a Code of Practice.

5. I agree strongly with Michael Havers' view that we should proceed with caution and that it would be most unwise to commit ourselves to public rights of access to official information as extensive as provided for in the United States model. Furthermore, I would be nervous about any significant development which

involved a basic change in the initiative, and believe that a Code of Practice could create more difficulties than it would cure. It would be costly and there would be a lot of controversy about the Code itself.

6. Under the circumstances, I believe that we should stand on the policy implied in the Douglas Allen letter, though we ought to keep its operation under closer review. This will disappoint some of our own supporters, but we can reasonably point to the reform of section 2 of the Official Secrets Act and the law on contempt, as steps forward in related areas. If there were to be changes in Parliamentary procedure in the light of the Procedure Committee's report, then that would be another positive step.

7. In view of the inevitable Parliamentary pressure I would welcome the views of colleagues on the approach I have suggested. You may accordingly wish me to put a paper to Home and Social Affairs Committee, in the hope that colleagues would be able to come to a collective view to which Paul Channon could refer on 20 June.

8. I am sending copies of this minute to the Home Secretary, the Chancellor of the Duchy and the Attorney General, as well as to Sir John Hunt.

S.

SOAMES
30 May 1979

CIVIL SERVICE DEPARTMENT
WHITEHALL LONDON SW1A 2AZ
TELEPHONE 01-839 7733 EXT
Sir Douglas Allen GCB
Head of the Home Civil Service

6 July 1977

Dear Head of Department

DISCLOSURE OF OFFICIAL INFORMATION

During the Debate on the Address on 24 November last, the Prime Minister announced that it would be the Government's policy in future to publish as much as possible of the factual and analytical material used as the background to major policy studies. A copy of the relevant part of the Prime Minister's speech is attached. I am writing in terms which the Prime Minister has specifically approved to let you know how his statement affects present practice and to ask you to ensure that your Department gives effect to it. You may wish to let your Minister see this guidance drawing particular attention to paragraph 10.

2. The change may seem simply to be one of degree and of timing. But it is intended to mark a real change of policy, even if the initial step is modest. In the past it has normally been assumed that background material relating to policy studies and reports would not be published unless the responsible Minister or Ministers decided otherwise. Henceforth the working assumption should be that such material will be published unless they decide that should not be. There is of course no intention to publish material which correctly bears a current security classification or privacy marking; at the same time, care should be taken to ensure that the publication of unclassified material is not frustrated by including it in documents that also contain classified material.

3. In effect, what is proposed is an increase in the already considerable amount of material put out by Departments. The additional material will mainly consist of deliberate presentations in the later stages of discussion and development of new policy. Some of these will probably, as now, take the form of Green Papers. Some may have kindred form, like the recent Orange Paper on Transport. While most material will be released on the initiative of the Department, probably through HMSO, some of lesser importance, or of interest to a limited audience, may well be put out through other means such as publication in magazines or in response to specific requests in the same way that a good deal of unpublished material is already made available to bona fide researchers. In some cases it may be preferable simply to publicise the existence of certain material which would be made available to anyone who asked. Consideration should also be given to the issue of bibliographies or digests so that interested parties are advised what material is available.

.../4.

4. In adopting the working assumption described in paragraph 2 above for policy studies, including PARs, the normal aim will be to publicise as much as possible of the background material subject to Ministerial decision once they have seen the study and reached their conclusions on it. When Ministers decide what announcement they wish to make, therefore, they will also wish to consider whether and in what form the factual and analytical material may be published, since there may, as the Prime Minister made clear in his statement, be circumstances in which Ministers will not wish to disclose such material.

5. It is not the intention to depart from the present practice of not disclosing PARs nor identifying them publicly; any question of releasing PAR material in circumstances not covered by a Ministerial decision should be referred to the Treasury.

6. In his November statement the Prime Minister said that it was the Government's wish to keep to a minimum the cost to public funds of the new initiative on disclosure. One inhibition to the publication of background material in the past has been that it has often been incorporated in submissions to Ministers which could not be published in their entirety. Re-writing material specially for publication is wasteful and expensive in staff time. Therefore when policy studies are being undertaken in future, the background material should as far as possible be written in a form which would permit it to be published separately, with the minimum of alteration, once a Ministerial decision to do so has been taken. It will generally assist Ministers to reach their decisions on publications if they can see an identifiable separate part of the report appropriately written for this purpose.

7. The form and way in which material is released will have to be considered on each occasion. The cost of any extra printing, or publishing, falls under present arrangements on the HMSO Vote, and HMSO is of course affected by the current restrictions on public expenditure in the same way as other Departments. HMSO is also responsible for deciding what prices should be charged for published material. You should ensure that discussions with HMSO are initiated at the earliest possible opportunity on any proposal which will add to expenditure. The following particular considerations should also be borne in mind:

i. Great care should be taken to keep costs to a minimum. If copies are to be run off in advance of demand, the quantity should be carefully and prudently assessed, to avoid waste rather than to offer instant response. (But of course, there is a countervailing need to aim where appropriate for the economics of longer reproduction runs. The right balance here may be difficult and decisions should not be left to too low a level).

ii. In general, double printing should be avoided, eg the published form of the material should be the same as that used internally (and the same print).

iii. There should be a charge for all material, at a price set by HMSO for each item, to include all aspects of reproduction and handling, but not of course any of the costs of the primary study itself.

.../iv.

iv. As regards Crown Copyright, attention is drawn to CSD General Notice GEN 75/76 dated 12 August 1975 (and corrigendum of 8 October 1976).

8. The Government's decision on this question is in a form which should not involve substantial additional work but which could all too easily be lost to view. There are many who would have wanted the Government to go much further (on the lines of the formidably burdensome Freedom of Information Act in the USA). Our prospects of being able to avoid such an expensive development here could well depend on whether we can show that the Prime Minister's statement had reality and results. So I ask all of you to keep this question of publicising material well on your check-list of action in any significant areas of policy formulation, even at Divisional level; and to encourage your Ministers to take an interest in the question.

9. Since the Prime Minister may well be asked what effect his announcement has had on the amount of information made available, I should be grateful if you could arrange to have some kind of record kept of the relevant items made available by your Department. Where the material is of an unusual kind, or of a variety not usually made available in the past, it would be useful if a copy could be sent to CSD. In cases where it has been decided not to publish material which might be expected to be of considerable public interest, I suggest that the reasons should be briefly recorded.

10. The greater publicising of material can hardly fail to add to one cost - that of responding to the additional direct correspondence to which it may well give rise. In a Service operating under tight resource constraints, it may not always be possible to afford to give to such additional correspondence the kind of full and studied replies to which we have long been accustomed within the sort of timescale that has hitherto been cutomary. Nevertheless, Departments must do their best in these matters, and should inform a correspondent if the timescale for a reply is likely to be longer than normal.

11. I am copying this to Heads of Departments as on the attached list.

Yours sincerely

Douglas Allen


30 MAY 1979

Top Copy on: Security, May 79,
Reform of the Official Secrets Act

THE PRIME MINISTER

You have asked for my personal views on how the Government might approach the issues of the future of the Official Secrets Acts and Open Government. I have now had the opportunity to consult the Director of Public Prosecutions and officials not available to me when in Opposition, and also to discuss the matter with the Home Secretary. My views on both these matters are set out below.

The reform of the Official Secrets Act

I continue to be of the view that our legislation for the reform of Section 2 of the Official Secrets Act 1911 should follow in general the proposals in the Franks' Report. Whilst in Opposition I put forward certain views as to the detailed implementation of these proposals and recommended some changes in them. My present views on these points, in the light of my discussions since assuming office, are set out in the annex to this minute.

Open Government

We did not study this matter in depth whilst we were in Opposition. I have, however, read the Report on Overseas Practice produced by the Civil Service Department. In view of the general

considerations in Section X of that Report, I think that we should proceed with caution and that it would be most unwise to commit ourselves to public rights of access to official information as extensive as provided for in the United States model. Our present approach, I consider, should be to institute a code of practice. In the longer term this might have to be on a legislative basis.

I am sending a copy of this minute to the Home Secretary, the Lord President, the Minister of State, Civil Service Department, and to Sir John Hunt.

M.H.

23 May, 1979

Law Officers' Department,
Attorney-General's Chambers,
Royal Courts of Justice.

May '79

BACKGROUND NOTE - OPEN GOVERNMENT

General Issues

"Open Government", in the form most often urged by its supporters, means a right of access to information held by public authorities, preferably to individual files and documents. This right of access entails a basic shift of power, from the executive's discretion to withhold such information to the applicant's right to obtain it, at the initiative of the applicant, and at the time he chooses. It is most generally embodied in legislation.

2 Supporters are drawn from a wide range of interests - the media; academics; consumer protection organisations; environmental and other pressure groups; civil liberties lobbies; and increasingly back-benchers both in Parliament and local government. The demand is fuelled by the knowledge that a number of other Western democracies - Sweden, Norway, Denmark, USA, the Netherlands and France - have established freedom of information regimes, and others - Australia and Canada - are contemplating legislation.

3 The demand for "open government" and "freedom of information" has become a convenient symbol of reform in quite varied areas. Consumer information about, for example, car safety, is regarded as inadequate and Government is blamed for suppressing data it may, or may not, have on such questions. Access to documents will not give such information without radical rethinking of the role of Government in the consumer protection field. Similarly, concern for the privacy of the individual, and especially the use made of computerised data held about him by both the public and private sector, ranks high among supporters of freedom of information, but this subject can be delineated and dealt with separately.

4 But some of the most vocal and committed supporters of access to government documents wish to be able to participate in the decision-making process. They wish to be able to assess the available options for themselves, to be satisfied a Minister has received adequate advice and has examined the issues thoroughly, and of course they wish to influence the final decision. The media, pressure groups, and back-benchers are largely supporters of freedom of information for these reasons. Only a right of access would satisfy their demands since they wish to have the initiative in requesting documents and information.

5 There is still some confusion over the relationship between reform of Section 2 of the Official Secrets Act 1911, and freedom of information. The various groups mentioned above would not deny the reform of Section 2, indeed most would actively support it. But any reform which would more clearly restrict and define categories of information subject to criminal sanction if given unauthorised release, would not go far enough towards making available on demand other categories of documents which at present are released on the discretion of Ministers. Hence a wider Bill is sought alongside any move to reform Section 2.

Exempt Matter

6 Most supporters do not deny that certain areas of government activity need to remain "secret" - exempt from the provisions of freedom of information legislation. There is dispute over the degree of exemption desirable, but there are several areas common to most proposals. Defence and the security of the state; dealings with other countries, though not necessarily where EEC business is concerned; information privileged in a court; information disclosure of which would be prejudicial to law and order, including prosecution of crime; and where individual privacy would be invaded. An important area in dispute is information given in confidence to the Government, by persons or organisations outside government.

7 Another disputed area is advice given by officials to Ministers, and working papers containing internal argument and analyses of policy before a decision on each issue has been taken. Some proponents, such as the Outer Circle Policy Unit, wish to see such material made available before a decision is taken, and others argue for access after a major policy decision.

Ministerial Accountability and Open Government

8 Clearly, advice given to Ministers, and Cabinet papers submitted for inter-Departmental and inter-Ministerial, form a nucleus of documents central to the working of the Executive. If made available, the mutual trust and confidence between Ministers and their advisers, and the collective responsibility of Ministers, would be severely eroded. Supporters of the release of such documents argue vigorously that they need these documents for a sufficient understanding of policy so that additional "watchdogs" may criticise the Executive.

9 But Ministers are accountable to Parliament, and it is Parliament who should be in the best position to examine policy and debate it. The recent

report of the Select Committee on Procedure makes a number of proposals for reforming the Select Committee system, and it may be that some back-bench supporters of access to official documents may be satisfied by whatever proposals are agreed in due course on the position of Select Committees, if they strengthen the powers of the Legislature to effectively monitor the activities of the Executive.

The Present Position on Release of Official Information

10 Departments release a vast quantity of information in the form of consultative documents, press releases, publications and in reply to specific requests, either from MPs or members of the public.

11 In July 1977, the then Head of the Civil Service, Sir Douglas Allen, issued a Directive to Departments requesting them to make background and analytical information available on major policy decisions. The presumption would in future be that such material would be released unless there were overwhelming reasons to the contrary. (A copy of this Directive, usually referred to subsequently as the "Information Directive", is annexed to this Note.)

12 Since then, Departments have complied, and increasingly such papers are released or published where before a Department might have given no thought to such public availability. It is, however, less than two years since the Directive was issued, and results have been modest rather than dramatic. This is as much a result of the nature of the exercise - some policy studies take a long time to complete - as it is of the timescale and evolutionary character of the whole operation. There are clearly papers for release 'in the pipeline', but it is difficult to assess how many more will be forthcoming, or even should be forthcoming, over each Department's work.

13 The previous Government, in its White Paper "Reform of Section 2 of the Official Secrets Act 1911" (Cmnd 7285), promised to consider possible ways forward on open government, in the light of a more detailed study of overseas practice. On 30 March 1979 the report on Overseas Practice was published, written by CSD officials, and simultaneously a Green Paper on Open Government (Cmnd 7520) was issued. In the Green Paper the previous Government concluded that a possibly way forward would be a draft Code of Practice (modelled on the 'Justice' proposals) to be studied by a Select Committee. The Green Paper did not commit itself to whether this would be embodied in legislation or not.

14 In January 1979 Mr Freud, having won first place in the Private Members' Ballot, introduced an Official Information Bill, which was drafted by the Outer Circle Policy Unit. It created, in Part I, a right of access to official documents subject to certain exemptions, and was retrospective in application. It repealed Section 2 of the Officials Secrets Act and replaced it, in Part 2 of the Bill, with measures based on the Franks Commission findings. This Bill had considerable cross-bench support; it emerged largely unscathed from Standing Committee and was due for Report Stage on 6 April, but fell with the dissolution.

15 A non-legislative Code of Practice to be monitored by the Parliamentary Commission was proposed in July 1978 by 'Justice', a group comprising amongst its members two retired Permanent Secretaries and an ex-Parliamentary Commissioner for Administration. While the administrative nature of such a Code has the attraction of flexibility, the provisions almost inevitably mirror those in draft legislation, and carry the same difficulties of the initiative being with the inquirer and not with the Government. Supporters of full-blooded freedom of information legislation view such Codes as inadequate, however, since the right of access for them needs clear statutory backing, with the minimum of Ministerial discretion remaining, and that able to be challenged either by the Courts or some independent body such as the Parliamentary Commissioner. The question of who monitors Ministerial decisions under any scheme of access is a complex and difficult one, with important constitutional implications.

Resources

16 Any system of access to documents is potentially expensive and bureaucratic because of the need for (a) indexing, cataloguing and other administrative arrangements to enable applicants to identify the document they wish to see and to provide facilities to enable them to do so; (b) machinery and arrangements to distinguish between exempt material and disclosable material, and to ensure that only the latter is released. The administrative consequences would become particularly severe if a system of access was to have retrospective application.

Current Action

17 The Lord President is at present considering the question of open government, and will be putting forward proposals shortly on how best to proceed.

CIVIL SERVICE DEPARTMENT
WHITEHALL LONDON SW1A 2AZ
TELEPHONE 01-839 7733 EXT

Sir Douglas Allen GCB
Head of the Home Civil Service

6 July 1977

Dear Head of Department

DISCLOSURE OF OFFICIAL INFORMATION

During the Debate on the Address on 24 November last, the Prime Minister announced that it would be the Government's policy in future to publish as much as possible of the factual and analytical material used as the background to major policy studies. A copy of the relevant part of the Prime Minister's speech is attached. I am writing in terms which the Prime Minister has specifically approved to let you know how his statement affects present practice and to ask you to ensure that your Department gives effect to it. You may wish to let your Minister see this guidance drawing particular attention to paragraph 10.

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5. It is not the intention to depart from the present practice of not disclosing PARs nor identifying them publicly; any question of releasing PAR material in circumstances not covered by a Ministerial decision should be referred to the Treasury.

6. In his November statement the Prime Minister said that it was the Government's wish to keep to a minimum the cost to public funds of the new initiative on disclosure. One inhibition to the publication of background material in the past has been that it has often been incorporated in submissions to Ministers which could not be published in their entirety. Re-writing material specially for publication is wasteful and expensive in staff time. Therefore when policy studies are being undertaken in future, the background material should as far as possible be written in a form which would permit it to be published separately, with the minimum of alteration, once a Ministerial decision to do so has been taken. It will generally assist Ministers to reach their decisions on publications if they can see an identifiable separate part of the report appropriately written for this purpose.

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.../iv.

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8. The Government's decision on this question is in a form which should not involve substantial additional work but which could all too easily be lost to view. There are many who would have wanted the Government to go much further (on the lines of the formidably burdensome Freedom of Information Act in the USA). Our prospects of being able to avoid such an expensive development here could well depend on whether we can show that the Prime Minister's statement had reality and results. So I ask all of you to keep this question of publicising material well on your check-list of action in any significant areas of policy formulation, even at Divisional level; and to encourage your Ministers to take an interest in the question.

9. Since the Prime Minister may well be asked what effect his announcement has had on the amount of information made available, I should be grateful if you could arrange to have some kind of record kept of the relevant items made available by your Department. Where the material is of an unusual kind, or of a variety not usually made available in the past, it would be useful if a copy could be sent to CSD. In cases where it has been decided not to publish material which might be expected to be of considerable public interest, I suggest that the reasons should be briefly recorded.

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11. I am copying this to Heads of Departments as on the attached list.

Yours sincerely

Douglas Allen

NJS to see 'x' MJS
PA MAP 15/v

Top Copy on: Security, May 79, Reform of Official Secrets Act

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

14 May 1979

M A Pattison Esq
10 Downing Street

Dear Mike,

OPEN GOVERNMENT/OFFICIAL SECRETS

The Lord President has seen a copy of your letter of 8 May to Bill Beckett.

2. The subject of open government is one which the Civil Service Department takes the lead, and the Lord President has asked me to say that he is considering the issues and intends to report to the Prime Minister further as soon as possible.

3. In the meantime if the subject is referred to during the Debate on the Address, the Lord President consider s that any response can be to the effect that the government is examining the subject and that their views will be made known in due course.

4. I am copying this letter to Bill Beckett and to the other recipients of yours.

Yours sincerely,

Jim Buckley.

J BUCKLEY
Private Secretary

From: THE PRIVATE SECRETARY

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE LONDON SWiH 9AT

9 May 1979

Dear Mike

OPEN GOVERNMENT/OFFICIAL SECRETS

The Home Secretary has seen a copy of your letter to Bill Beckett of 8 May.

The reform of section 2 of the Official Secrets Act will, of course, be a matter for the Home Secretary, and he will wish to consult closely with the Attorney General on that aspect of these questions: he has it in mind to minute the Prime Minister shortly with his views.

I am sending copies of this letter to the recipients of yours.

Yours ever

John

J. A. CHILCOT

Mike Pattison, Esq.

CONFIDENTIAL

Top Copy on: Security, May '79,
Official Secrets Act Reform: Security

CONFIDENTIAL

cc COD
HO
CSD
CO

10 DOWNING STREET

From the Private Secretary

8 May 1979

B.F. 17/5

Dear Bill,

OPEN GOVERNMENT/OFFICIAL SECRETS

The Prime Minister is aware that early action will be expected on open government questions and on the future of the Official Secrets Act. The Attorney General had these subjects under study before the Government took Office and the Prime Minister would be grateful for early advice on how the Government might approach these issues.

I am sending copies of this letter to John Stevens (Chancellor of the Duchy of Lancaster's Office), John Chilcot (Home Office), David Laughrin (CSD) and Martin Vile (Cabinet Office).

Yours ever

Mike Pattison

W.C. Beckett, Esq., CB,
Law Officers' Department.

Tot Copy on: Security, May 79,
Reform of the official
Secrets act.

CONFIDENTIAL

Ref. A09459

PRIME MINISTER

House of Commons Procedure: Open Government: Official Secrets

The Government are likely to be asked early in the new Parliament whether they support the immediate reorganisation of the Select Committees to monitor the work of Departments, as proposed in the Report of the Procedure Committee. Or alternatively whether, at least for the time being, they favour the appointment of select committees on the existing basis.

2. In the Manifesto you undertook to give the House the early chance of coming to a decision on the Report. You may like to seek the Lord President's advice on the handling of its various recommendations and on the extent to which the Government should commend them to the House. The Cabinet Office are preparing a fuller note for him.

3. The Procedure Committee's proposals have some links with Open Government and Official Secrets; in particular there is the recommendation that select committees should have wider powers to order the attendance of Ministers and the production of papers and records. The Government will wish to consider this carefully. With its reference to the release of documents, it ties in with Open Government and raises some of the questions discussed in the previous Administration's Green Paper. The counterpart of open government are official secrets and the acknowledged need to amend Section 2 of the Official Secrets Act. The two subjects were, of course, taken together in Mr. Freud's Freedom of Information Bill.

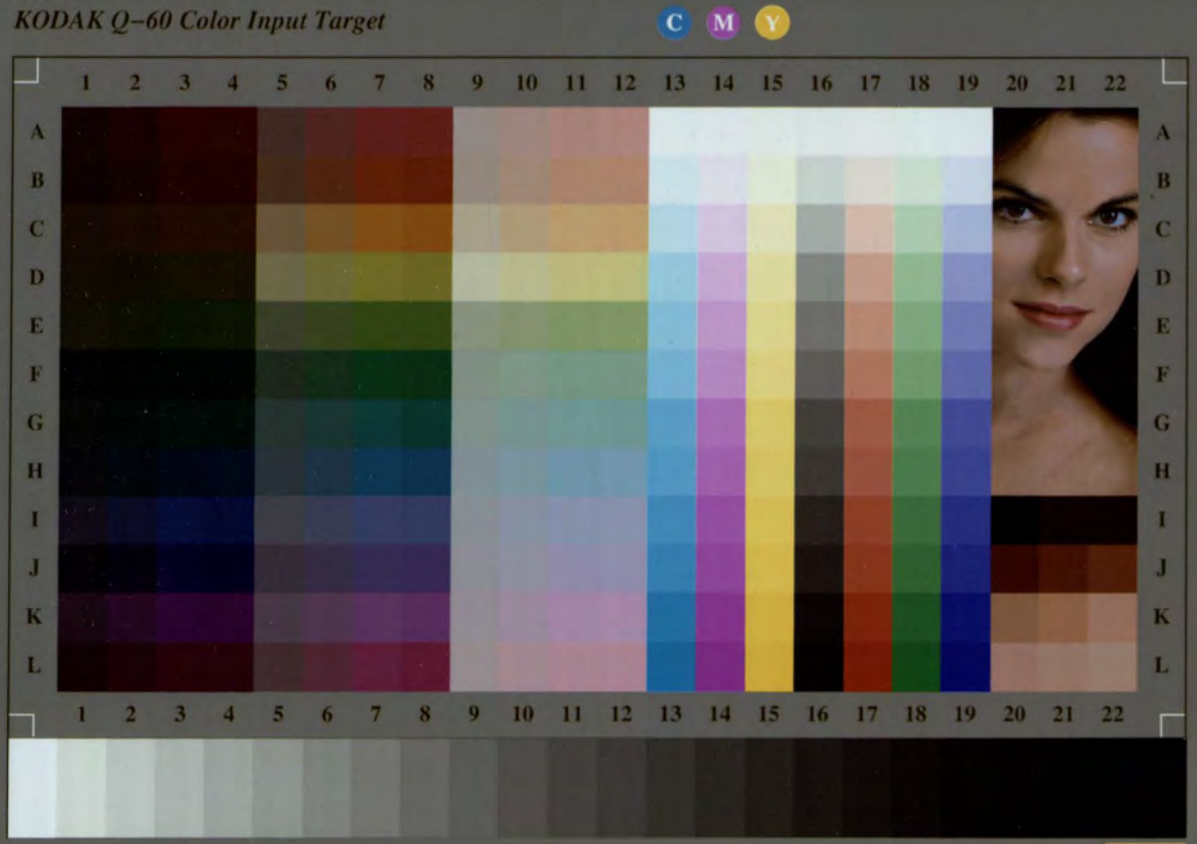
4. You may think that it would be worth having the three issues examined together by a group of Ministers under the chairmanship of the Lord President: if so, I could let you have advice on composition. Alternatively, you could invite the Lord President to advise urgently on the

Procedure of the House, the Lord Privy Seal to work up proposals on open government and the Home Secretary to bring forward a Bill to amend the Official Secrets Act.

5. Assuming that there will in due course be much more systematic openness in Government, there is a case for correspondingly tighter control over the unauthorised disclosure of material which continues to be restricted. The last Government had an increasingly bad record for leaks, and you may want to set a different tone from the outset.

John Hunt

Richard Hewer has already started. the process will edit. See no reason for any amendments.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