



5. There is also something of a grey area about the need to seek the agreement of a former Prime Minister before access to documents of his Administration is given to somebody other than a member of that Administration - a committee of inquiry or a bona fide historian, for instance. There is a convention that such agreement should be sought before the Government of the day gives access to papers of a former Administration of a different political party; it could hardly be otherwise, given that the Government of the day does not itself see such papers. It is clear that that agreement can be sought from and given by the current leader of the party concerned, if the former Prime Minister concerned is not available. Moreover, it appears (though the precedents are not very clear on this) that when the question arises in the course of a matter on which there are discussions on a Privy Counsellor basis between the Prime Minister of the day and the Leader of the Opposition, the Leader of the Opposition (rather than the Prime Minister of the day) may be the person who seeks the consent of the former Prime Minister concerned, if that former Prime Minister is of the same political party as himself.

6. The precedents also suggest that it has not been regarded as obligatory for the Prime Minister of the day to seek the agreement of a former Prime Minister of the same party to the grant of access to documents of the Administration for which he was responsible, though it has on occasion been done as a matter of courtesy.

7. Developments of the last few days expose the difficulties of these grey areas. When I wrote my minute of 21st June, it seemed to me that the Prime Minister might well wish to leave it to Mr. Foot to consult Sir Harold Wilson and Mr. Callaghan about access for the Franks Committee to documents of the Wilson and Callaghan Administrations; but Mr. Foot showed no disposition to do so, and the Prime Minister did not press him. Mr. Heath, in his intervention in the House of Commons a week ago, seemed to suggest that he was expecting to be consulted as a matter of constitutional right rather than of courtesy about access to documents of his Administration. In the event the Prime Minister has written to all five former Prime Ministers.

8. This will constitute a precedent, and I believe that we should now regard it as established that, if there is a proposal to grant access to documents of a former Administration to anyone not entitled to see them, whether that former

Administration is of the same political party as or of a different political party from the Government of the day, the convention now requires the Prime Minister of the day (or the Secretary of the Cabinet acting on his or her authority) to seek the agreement of the former Prime Minister concerned or, if he is not available, of the current leader of the political party concerned.

9. I hope that we can retain the existing element of discretion about showing a Minister of a current Administration documents of a former Administration of the same political party which he did not see as a member of that Administration (or because he was not a member of that Administration). If it was a requirement that the former Prime Minister concerned had invariably to be consulted in such cases, there would have to be frequent consultations, and it would be in my judgment unnecessarily cumbersome. It would indeed mean that the Prime Minister would have to seek Mr. Heath's agreement before she could see papers of the 1970-74 Administration which she did not see at the time. I suggest that the convention here should be that it is not normally necessary to seek the agreement of a former Prime Minister to show to a Minister currently in office a document of a former Administration of the same political party which he did not see at the time; but that there may be exceptional cases when it appears that it would be desirable or prudent to do so, in which event the Secretary of the Cabinet and if necessary the Prime Minister of the day should be consulted.

10. To sum up the conventions in this matter, as I think they now stand:

1. Documents of a former Administration are the property of the Crown. The grant of access to them for any person not entitled in an official capacity to see them requires the agreement of the Government of the day until they are released as public records.
2. Ministers of a former Administration, whether currently in office or not, may see but may not retain official documents which they saw as members of that Administration.
3. Ministers of a current Administration may not see documents of a former Administration of a different political party.
4. Ministers of a current Administration may normally see documents of a former Administration of the same political party, whether or not they saw those documents as members of that Administration, provided that

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the requirement to see them arises in the course of their Ministerial duties. There may, however, be exceptional circumstances in which the Secretary of the Cabinet and if necessary the Prime Minister of the day should be consulted about the desirability of seeking the agreement of the former Prime Minister who was in charge of the Administration in question.

5. Before giving access to documents of a former Administration (whether of the same political party as or of a different political party from the Government of the day) to anybody not entitled to see them either in an official capacity or in accordance with these conventions (e. g. a committee of inquiry or a bona fide historian), the Prime Minister of the day (or the Secretary of the Cabinet acting on his or her authority) should seek the agreement of the Prime Minister concerned or, if he is not available, of the current leader of the political party concerned.

REA

ROBERT ARMSTRONG

7th July, 1982

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