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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.

L. E. R. BUTLER

12 November, 1982

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He pre.



Dine

10 DOWNING STREET

~~It is~~

~~RDP~~

Tim

I agree. Pl. pass the suggestion to Mr. Hatfield.

To note

Meantime, presumably you are telling Mr. Buckley not to circulate?

Feb 11.10

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 business meeting.

VJ

11/10

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No action
for the
moment

From the Private Secretary

Management and Personnel Office

Whitehall London SW1A 2AZ

Telephone 01-273 4400
GTN 273 4400

Handwritten notes:
Don't...
any way
it will be...
not...
ready...
BT

8 October 1982

Prime Minister:

Tim Flesher Esq
10 Downing Street
LONDON SW1

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 hady
Young can complete this paper with a
new 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.

TJ
8/10

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.

X |

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

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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

- 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

*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.

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 : OREN COV.

1988 OCT 19 1982

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