

**Summary of evidence presented to the 30-Year Rule Review Committee,  
26 February 2008 at Church House, Westminster.**

Committee members present:

Paul Dacre (chair)

Professor David Cannadine

Sir Joseph Pilling

**Evidence from Lord Falconer**

Asked if FoI had made the 30-year rule out of date, Lord Falconer said that it had. The rule was from a time when the assumption was you did not disclose government documents unless there was a good reason to do so. There had been cultural changes, of which FoI was part. There was a different approach now “which says you should disclose information unless it damages the process of government.” Once that had occurred, “a 30-year rule becomes redundant.”

Lord Falconer said the rule should go – the more difficult question was what do you replace it with. From a politician’s perspective there were some difficulties, for instance if you had acted against advice, where there had been disagreement with colleagues, and when named individuals (including civil servants) had given advice. “I would feel incredibly uneasy, from my own experience, in all of that coming out tomorrow because I cannot believe it would not affect my relationships.” It would also lead to an accommodation whereby neither politician nor adviser would be embarrassed by disclosure, whereas it would be more useful to have frank advice.

“My approach would be get rid of the 30-year rule, start from the proposition you disclose what you can, but one should try to think of a way whereby confidence can be given sufficient for people to give the right advice to ministers.” He was also concerned that disclosure soon after the event would undermine collective responsibility. Asked about a reduction to 15 years, Lord Falconer said that for some issues that was too long a period.

“There needs to be some different arrangement which is not based simply on a crude time limit. The crude time limit, although it has developed this utility, namely it means that departments have got to think about what they give to the National Archive, once you get rid of the time limit then you need to think of some other method.” There was a need for individual agreements between The National Archives and the departments.

A good example was the Millennium Dome. “The Dome is over in every single sense, why should there not be an obligation on DCMS or the DCLG, whichever is the relevant department, to hand over the relevant documents within a specified period of time and in a particular method to the National Archives. What on earth is the justification for saying, if 15 years is the period you take as the right period, we do not need to think about that for 15 years?”

He said that electronic records posed new problems. "We all assume that electronic archives make it easier rather than harder to preserve material...you can identify what you really want and keep it electronically. [Natalie Ceeney] was always saying to me that is wrong... You try and recover electronically stuff from your office ten years ago, you will find it harder rather than easier to recover than paper archives." If we have to change how we keep records anyway because of problems with electronic records then this was the time to develop "a new relationship between The National Archives and the departments and different protocols by which they preserve historic material."

Asked again by the Chair if he favoured a reduction to 15 or 20 years, Lord Falconer said he was making a distinction about the type of information being released. Information that did not impact on collective responsibility or did not contain civil servants' advice could be released earlier. Everything should be released as soon as possible but in some cases special rules would need to be applied. If a time limit had to be adopted then it should be in the region of 5 to 10 years but he favoured consideration on a case-by-case basis. Prompted by the example of wars that last more than five years, he said: "Does that not tend to illustrate a cut-off period does not work?"

The committee observed that such a change in culture could bring enormous practical difficulties. Lord Falconer said if the time limit was simply cut to 15 years it would be adopting the same approach as the 1958 and 1967 Public Record Acts. "If you accept that the culture has changed completely to "release unless", which is the present culture, instead of "keep confidential unless", which is the 30-year culture, to say 15 years seems to me to be adopting precisely the same culture as previously."

Sir Joseph Pilling asked if release after five years could distract governments. Lord Falconer asked: "[with] issues like who supported and who opposed the Dome in 1997...to what extent does that have the power to hurt five years later?" He said that whenever countries had introduced Fol there was a reduction in trust because people had picked up on attempts by governments to resist disclosure and people had pursued information that put the government in a bad light. But, "[on] how many big issues five years on are we not aware of the broad standing of forces in relation to a political issue?"

Asked if we went down the case by case-by-case approach who would make the judgments, he said that as a minister he would have dealt with five or six Fol submissions a week on that basis, so "it is not as if it is not happening already." The Chair then asked him if this would lead to more "sofa government", with debate on contentious issues not being recorded. Lord Falconer said he has served in government before and after the introduction of Fol and had detected no real change: "if the government wanted to keep something confidential it was very good at doing so". He said that the style of government post-1997 was a reflection of the powerful position Tony Blair enjoyed rather than as a consequence of Fol. He said that it had been bilateral and not casual government.

Professor Cannadine said one aspect of sofa government was the proliferation of special advisers. Lord Falconer said that the importance of special advisers had been over-stated. He said some were very powerful but that came from their closeness to the Prime Minister. "I do not think in principle it is wrong that big politicians like the Prime Minister and the Chancellor choose people to surround themselves with as long as they are of good calibre... I have seen so many documents, when I was in government, with Alastair Campbell's or Jonathan Powell's signature on them which I am quite sure we stored in some way but I may be wrong about that."

He was then asked for his views about redacting the names of officials if the rule were reduced. Lord Falconer said that he it would be lawful and sensible to do so but agreed that it could still be possible to identify individual civil servants. He knew of cases where this had had a "very, very significant effect" and careers had been damaged.

Asked if he would make changes to the rule retrospective, Lord Falconer said this should be forward looking and not backward: "this is about how proactively government should go forward."

To conclude, he said: "I wonder how many of these big issues there are...most of what government does is not that interesting...I am keen to advocate the idea you have to have a space in which good governance can take place." Government should not "drag the rest of the material into secrecy because of this space."