

**Summary of meeting between Richard Thomas (RT, the Information Commissioner), Graham Smith (GS, Deputy Information Commissioner) and the 30-Year Rule Review Committee, 20 February 2008 at Admiralty Arch.**

Committee members present:

Paul Dacre (PD, the Chair)  
Professor David Cannadine (DC)  
Sir Joseph Pilling (JP)

**The Chair began by asking Richard Thomas (RT) whether the Freedom of Information (Fol) Act had made the 30-year rule out of date.**

RT said that the Fol Act sat increasingly uncomfortably with a rigid 30-year rule, as public bodies and government departments were starting to release documents after 20, 15, 10, 5 or even fewer years. However, a time-based rule did have a value in that it provided a stimulus to departments to release by a particular point in time.

After focusing for the first three years of Fol implementation on processing individual requests, The Information Commissioner's Office (ICO) was starting to focus on disseminating guidance, at the core of which was the encouragement of 'proactive disclosure'. There was unfinished business left over from the passage of the Fol Act, which was to align the release of public records more closely to the new regime.

**David Cannadine asked whether this meant that RT would recommend reducing the 30-year rule to 20 years.**

RT said that it was not the ICO's place to make this judgment, but that it must be right to harmonise the regimes as far as possible. As more information became public there was a stronger case for a shorter rule. His priority was to encourage public bodies to be as open as possible while protecting their most sensitive documents. Government spent a lot of time and energy protecting apparently innocuous documents on the basis that they might set precedents, when the law was based on case-by-case assessment. He thought it was understandable that Ministers and officials would be nervous of 'automatic' release, but observed that a lot of the heat goes out of issues after quite short periods of time. Speaking personally, he felt that 30 years was too long, but that 10 years would be too short a period.

GS said that as people could request information at any time, the relevance of the 30-year rule had reduced.

**PD asked whether Fol had resulted in 'sofa government', and whether there was evidence that decisions and arguments were going unrecorded.**

RT said that the so-called 'chilling effect' was a powerful argument in principle, but that there was little evidence either way. The ICO would not normally recommend that departments disclose 'blue-sky' policy thinking, but that as a policy developed and approached its final form, disclosure would be a more likely outcome. This culture could help civil servants to be more sure to take a rigorous and objective approach, and there would be a move away from a culture of casual or unrigorous advice. If there was a 'chilling effect' on civil servants making unguarded remarks or giving less than professional advice, this would be a good thing. The need for 'safe space' to provide robust advice was often cited by civil servants as a mantra, but there was a need to be more discriminating.

He said that the ICO accepted that there was a need to allow space for 'oiling the wheels of government' – for example informal reflections that might later lead to formal policy development. There was little or no public interest in disclosing background information created at the initial stages of policy development.

**The Committee asked about whether FoI increased trust in government, whether there was a danger of loading FoI with high moral expectations, and whether instead the argument was that there was a practical tidying-up job to be done in aligning the 30-year rule more closely with FoI.**

RT said the arguments were both moral and practical. Robert Hazell of the University College London's Constitution Unit had done some research indicating that FoI had increased accountability, although (by initially unearthing unfavourable stories) had not yet built trust. The evidence from New Zealand, which had had an FoI Act for 25 years, was that all the concerns that were being raised in the UK had subsided after about five years and that FoI was now widely seen as a positive thing. Advice to Ministers was sometimes even published before the Minister had made a decision, meaning that in New Zealand there was no monopoly on advice.

GS said that there was evidence from the ICO's own research that in abstract terms access to information increases trust. It is as much perception as reality; when it is perceived that information has to be dragged out, this decreases trust.

**PD asked whether a substantial reduction in the 30-year rule would be proof positive of an FoI culture, and whether it would reduce the ICO's workload.**

RT said it would be a further challenge to a culture of secrecy, but should not be done at any cost. As the information in most of the cases they dealt with was 3-5 years old, the workload would not change much; however, it would boost their programme of guidance to public bodies.

GS said that greater demand for instant information meant that a reduction to 20 years would not be noticeable to most people. RT added that it had been known for some to ask why it was not possible to 'google government'.

**JP expressed the concern that reducing the 30-year rule might not achieve anything if the public interest test resulted in more decisions not to disclose.**

RT confirmed that the public interest does change over time, mainly shifting away from non-disclosure. However, there was a risk that complete alignment with FOIA could mean that its exemptions and public interest test (designed for a test of “immediate” disclosure) could result in less information being proactively disclosed.

In conclusion RT observed that standards of records management vary widely across government, and that a reduction in the 30-year rule would be a powerful incentive for government to raise standards.

The Chair thanked RT and GS and the meeting closed.