

Summary of evidence presented to the 30-Year Rule Review Committee, 5 February 2008 at Church House, Westminster

Committee members present:

Paul Dacre (chair)

Professor David Cannadine

Sir Joseph Pilling

Evidence from Steve Wood (Assistant Information Commissioner)

Asked by the Chair if the Freedom of Information (Fol) Act had made the 30-year rule out of date, Mr Wood said that it would be difficult to draw any firm conclusions after three years since the Act had come into force. The Act had given the public a right to know and that it had opened up and widened access to information. The Act had changed the “landscape” in the way that people accessed information. He said his office would want to encourage cultural changes in Whitehall in terms of proactive release and how exemptions to release were sought.

2008 would be an important year as Fol requests on the Falklands War, the miners’ strike and other “key events” in the last 30 years were due to be considered by the Information Commissioner. He did not want to pre-empt decisions the Commissioner might take, but indicated that these decisions might be made before the 30-Year Rule Review Committee published its report.

Both the Information Commissioner’s Office (ICO) and the Information Tribunal had closely looked at the age of the information as a factor when balancing public interest test under the various exemptions. The majority of complaints were about current issues, whereas those cases where the age of the information was an issue were a relatively small proportion of complaints.

He was then asked if there was any evidence that record-keeping had suffered as a consequence of Fol. Mr Wood referred to one of the first hearings by the Information Tribunal regarding the then Department for Education and Skills, in which it had found no evidence of what had been described as a “chilling effect” on record keeping. He added that there was an expectation that the civil service would continue to provide accurate records. In one case – a planning decision for Vauxhall Tower – there had been some concern about how planning advice was going to be recorded, but once procedures were in place there was an “improvement in the quality of the advice given and the way it was recorded”.

He was then asked by Sir Joseph Pilling about the effect Fol had had on e-mails, given that people were not always circumspect, for example the “bury bad news” e-mail. Mr Wood said: “We sometimes do occasionally come across scenarios where these type of emails are caught by a request, and then we have to consider, often on the balance of public interest, as to

whether these emails are disclosed.” Such decisions are on a case-by-case basis.

Professor David Cannadine asked Mr Wood to expand on his belief that FoI brought with it an opportunity for gaining trust. Mr Wood said the ICO was on an “early stepping stone” – that in addition to its responsibilities to making decisions under the Act, it also had a role promoting best practice, which would focus on proactive release and promoting publication schemes. The ICO encouraged proactive disclosure as being “the win-win scenario”. He said where information became public, and the perception was that it had been “dragged out”, this had not helped the development of trust and may have affected media coverage of the issue. As information was released over time there was an incremental process of people learning more how the Government makes decisions and spends money and try to improve accountability.

Asked by the Chair what lessons we could learn from the experiences of other countries, Mr Wood said, it largely depended on the powers of the commissioner. He thought that New Zealand had “gone the furthest in terms of a change of culture”, and that “there would be a correlation between standards of trust in countries like New Zealand and looking at the nature of freedom of information.”

He was then asked to expand on comments made in a written submission by the Commissioner that he would welcome any reduction in the 30-year rule and whether the 30-year rule should be done away with. Mr Wood said that the Commissioner only dealt with the freedom of information legislation and did not have a “particular view on the 30-year rule”. He said the Commissioner would welcome measures which would put more information in the public domain because, given that public authorities are allowed to rely on exemptions up to 30 years, “from our perspective if there was any reduction of that, that might actually bring more information into the public domain.... and it may allow us to concentrate on the key cases.”

He was then asked about the attitudes of civil servants to FOI, and whether they had changed since its introduction three years ago. He acknowledged there had been some “resistance” at the beginning and that while the culture was “changing” there were some “pockets of resistance or some lack of understanding”.

When asked if he had encountered instances where officials had not recorded discussions for fear of disclosure, Mr Wood said that he had not. He was then asked if there was a “connection” between “sofa government” and the availability of government records. He said that the Information Tribunal had said this was not a key factor. Mr Wood added that the Civil Service Code makes it clear that decisions and actions should be properly recorded.

Mr Wood said that FoI had proved to be popular – 300,000 requests, which was at the “high end” of expectations. He said that the Commissioner thought that the way that people were using their rights was “broadly positive”,

and that public perception and awareness was changing. Public attitudes towards the benefits of public participation had shown “a dramatic improvement over the last three years” with a shift from around 50 per cent who recognised the benefits of access to more information up to 70 per cent by 2006.

Sir Joseph Pilling turned to the attitudes of the politicians, starting with the two main Opposition parties. Mr Wood said that the Commissioner was not monitoring their specific comments but they were clearly using the Act. He said that “we have observed that all the main parties now obviously support the proposition of freedom of information”.

He was then asked by Professor David Cannadine if Opposition parties tend to be more interested in Fol when in opposition and less so when in Government. Mr Wood said that had been the experience overseas but highlighted the Prime Minister’s October 2007 speech which “did welcome the concept of freedom of information”. There had also been the recent announcement of a review of section 5 of the Act (looking at extending the Act to cover additional public bodies) plus the work of the 30-Year Rule Review Committee.

Returning to the theme of trust Professor David Carradine asked whether we have now reached the stage where ministers see Fol as an opportunity to promote trust rather than “at best an inconvenience, at worst an intrusive irritant”? Mr Wood referred back to the Prime Minister’s speech, which the Information Commissioner had highlighted as an “important development in terms of the history of Fol in this country” and that we were at a “positive stage”. The Commissioner had welcomed the fact that the Government had decided not to go ahead with its proposals to amend the fees regime – “we welcomed as a positive in terms of keeping the Fol regime at relatively low cost”.

In answer to a question from Professor Cannadine as to whether a reduction in the 30-year rule would reduce the Commissioner’s case-load and allow it to concentrate on key cases, Mr Wood confirmed that it would. “We are not saying we just want to reduce the number of complaints we receive but there is a benefit for the public in us focusing on complaints that matter (to current issues)...obviously we deal within our duties fairly and carefully with every complaint which is in front of us, but if more information is proactively released and we no longer have to adjudicate on those complaints, that is obviously something which we would welcome.” He added that the Commission also has a secondary role of promoting open government by promoting best practice.

Sir Joseph Pilling then asked if there was an “inherent conflict between making a judgement about the balance between open government and effective government and promoting one of these but not the other”? Mr Wood stressed that the Commission would always apply the public interest test (section 2 of the Act) on a case-by-case basis.

He went on to say: “As a regulator, we do want to sit on the fence a little bit in terms of pointing out the benefits, how we have seen the regime operate to date, without wanting to be too prescriptive in the recommendations that we make. I think anything which can highlight the importance of information and can encourage the release of information which is of public interest and furthers interest in terms of understanding how government operates this is something we would welcome.”

Finally, the Chair asked if the Commissioner had experienced a lot of suspicion when the Act came in, and whether that was now abating. Mr Wood said, “there is quite a long way to go; there are still some pockets of resistance, and cultural change in something like a new freedom of information regime will not have happened in three years. A key stepping-off point will be five years and then most probably in 10 years’ time to see whether cultural change has really taken root in government.”

In conclusion, he added that, “we are broadly quite positive as to how the last three years have gone.”