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James Strachan
30-year Rule Review
c/o National Archives
Kew
TW9 4DU

Dear James

FDA Submission: Review of the '30 year rule'.

Thank you for inviting the FDA to submit our views to the Review, commissioned by the Prime minister, as to whether or not thirty years remains, in the context of Freedom of Information legislation, the point by which government records should normally be made available to the public. Thank you also for allowing us a short extension to the date for submission.

The FDA believes that there should remain a time period before which government records are in general made publicly available. This is for reasons of both principle and practicality. We do not however see the precise timing in itself being a matter of principle. However, we do believe that the continued impartiality, and perceived impartiality, of the civil service should remain an issue of principle. In that context, whilst the FDA supported the introduction of Freedom of Information legislation, we have continued to argue that detailed policy advice to Ministers should remain confidential for a predetermined period of time. This is in order to protect civil servants from any perception of political partiality (political with a large P or a small p), and to ensure an effective process for the free and frank development and implementation of policy.

In addition, if Ministers conclude that formal policy advice is likely to be made public within a relatively short time frame, they may also be less inclined to engage in a rigorous and documented process of decision-making which may in turn lead to a revival of so-called 'sofa government' and poorer decision-making.

We recognise that there are arguments to introduce a time period of less than thirty years, and are aware both that there are initiatives from government to release some papers of significant public interest at an earlier date, and that the Information Commissioner has sought the early publication of some information where he perceives there to be an overriding public interest. Ministers have always been accountable for policy decisions and the FDA would not wish to stand in the way of measures which are thought to make that accountability more effective.

It has been a convention that papers of an earlier administration of a different political 'colour' are not shown to Ministers in a new administration. That can in some cases

create inefficiencies, and a relaxation of this convention may be no bad thing. The Review will wish to consider this practice when looking at the arrangements for the release of 'papers', and at any special safeguards in relations to records of another administration. We have become used to administrations of one or another political party lasting ten years or more, but the arrangements should be capable of addressing more frequent political changes, and potentially changing coalitions.

One justification for the existing period of thirty years has been to ensure that advice to Ministers, offered by identified civil servants, usually at an earlier stage in their careers, does not have the effect of undermining the confidence of subsequent Ministers, or of the wider public, in the advice of the civil servant concerned, or in the individual civil servant personally. This applies where Ministers belong to different political parties but may also apply in relation to high profile controversial projects even if there is no change in the party of Government.

The FDA believes strongly in an impartial civil service which owes its loyalty to the Government of the day, and through them to the public. We would be concerned at any measure which could prejudice the position of civil servants as a consequence of any early release of advice or generating an attitude of 'one of us' or 'not one of us'. There are also circumstances where the public identification of individual civil servants with particular advice could potentially jeopardise their health and safety, even some years after the event, for example civil servants giving advice on animal welfare issues, sensitive infrastructure projects or family policy; there are issues on which it would be important to allow sufficient time for any emotions to settle before advice was released.

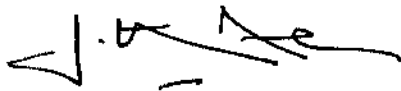
We would argue therefore that the Review should take full account of the importance of protecting the identity of individual civil servants in providing advice to Ministers. This applies the more so if it were decided by any Government to release key advice or other documents very shortly after the events to which they relate. We invite the Review to ensure that, where for sound political reasons very recent material is to be released, steps are taken to protect the position of the individual civil servants concerned. The FDA has recently been involved in a case where the release of papers to a Parliamentary Select Committee led to an individual civil servant being named on websites as, erroneously, being a supporter of torture in the Middle East.

We also believe that there has been some underestimate of the work involved in departments in assessing Freedom of Information requests. Significant staff resources are already expended in the need to assess whether information should be released on request. If a decision were taken to allow the release of a greater amount of material at an earlier stage, we believe that would be practical implications for resourcing within departments that the Review should consider. The Review would also want to satisfy itself that any remaining problems about the electronic filing of records, and where appropriate their long term retention, have been resolved in departments.

In summary therefore, the FDA does not object in principle to any change in the current '30 year rule', would urge the Review to consider the implications of any change upon the perceived role of individual civil servants, and to consider also whether the value in releasing records at an earlier stage is commensurate with the resources that will be involved in implementing such a decision.

I hope that this is helpful and the FDA would welcome the opportunity to consider any interim recommendations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Baume', with a stylized flourish at the end.

Jonathan Baume