

SSLH EVIDENCE FOR THE REVIEW OF THE “30-YEAR TRANSFER RULE” FOR PUBLIC RECORDS

The Society for the Study of Labour History and Public Records Administration

1. The Society for the Study of Labour History is a learned society, formed in 1960 and registered as an educational charity since 1983. One of its charitable objects is to promote the preservation of records relating to labour. It formed an archives committee at its inaugural meeting and immediately took a keen interest in matters of records preservation and administration.
2. The Society became particularly active on matters of public records administration and the campaign developed in the pages of its *Bulletin* was a factor leading to the disclosure in Parliament of the criteria for withholding records in government departments under section 5(1) of the Public Records Act for periods in excess of thirty years. Its activity may also have helped bring about the appointment, by the Lord Chancellor, of Sir Duncan Wilson’s committee on Modern Public Records.
3. The Society provided evidence to Sir Duncan Wilson’s committee and this appears to have been influential in producing the recommendation for changing one of the criteria for withholding documents beyond 30 years. The criterion restricting access to documents ‘which would cause distress or embarrassment to living persons or their immediate descendants’ was changed by Wilson to that of causing ‘distress or danger’: *Modern Public Records: Selection and Access*, Cmnd. 8204, 1981, paragraph 178 and R26, p. 162

The New Situation post 1981

The Impact of Open Government and Freedom of Information

3. But the situation is now different from that of 1960 to 1981. The Freedom of Information movement, which was being conducted in parallel with our own campaign on public records administration, and to which we were sympathetic, has had its effect. Its first impact was the Major government’s introduction of the 1994 Code on Access to Government Information,¹ which presaged the passage of the Freedom of Information Act 2000. These developments, and most particularly the Act, qualified the 30-year rule of section 5 the Public Records Act 1969, since what had been the general effective bar for historians’ access to records now became merely a criterion for the transfer of preserved records from departments to the National Archive. Many historians had felt uneasy about making ‘privileged access’ applications to consult records held within departments before 2000, for what constituted ‘privilege’ and was it the basis of an unjustifiable favouritism? Under the new Act, however, applications could be made by all without any fear of favour, since the Act provided a mechanism for appeal against any departmental refusal of access. These circumstances removed any reason for not applying to see any useful record known to be still held in departments, so applications are likely to become increasingly common.

Reduction in Administrative Costs Argument for changing the transfer rule

4. It follows that the major argument for a change in the law on transfer of records from department to the National Archive is that earlier movement will reduce the administrative burden both on applicants for records and the departments receiving their requests.

Removal of Anomalies Argument for changing the transfer rule

5. There are other arguments for earlier transfer of records. It seems rather ridiculous, for example, that while many records relating to the mining industry dispute of 1984-85 have been transferred to the National Archive, despite the fact that the 30-year period is not completed until 2014, many other files are still retained in departments. What possible argument can there be for *any* retention within departments? The FOIA separates the question of *retention* of records from that of *disclosure*. The

latter cannot be a reason for retention in departments as it may have been prior to 2000. Disclosure is now regulated by the new legislation, including the Data Protection Act 1998, and what we may refer to as 'case practice' is being developed in the FOIA Commissioner's Annual Reports.

6. The security argument was once used in an attempt to justify failure to transfer files from the security services to the National Archive. It was claimed that records would *never* be transferred. The purpose in avoiding transfer was to prevent any disclosure.² The government rejected this view and MI5 records have been appearing in the National Archive for some time now, so we do not see any special considerations relating to the disclosure of information in such files as a bar to any relaxation of a general rule on the transfer of records.

A Possible Argument for not changing the transfer rule

7. It was sometimes argued against the move from a 50-Year to 30-Year transfer rule that the change would lead public servants to suppress any record of their advice. This argument was also used against the introduction of a Freedom of Information Act. But technological developments, such as the invention of the telephone, had already produced a decline in letter writing and, arguably, the commitment of thoughts to paper. There is, in the last analysis, no guarantee of the integrity of the public record other than in high standards of conduct among public servants, their political masters and other person whose transactions enter into public life. It does not seem to us, therefore, that there is any valid distortion-of-the-record argument against changing the transfer rule. We see no magic attached to any particular year-formula for the retention of records within government departments.

Record Distortion

8. While we recognize that the matter is strictly out of your terms of reference we would encourage members of the review panel to interpret these broadly. What concerns many historians is the destruction of records, within departments and before transfer, on the grounds that they are either of little or no historical interest, or that it would be too expensive to preserve them in the National Archive.

9. The destruction of records within the procedures laid down in the Public Records Acts is one thing, but we encounter from time to time loss of records by accident or inefficiency. This is also of concern. Many historians have found it apparently affecting records of particular interest and value, which would have touched on sensitive matters and have been particularly valuable for research. Whatever the proper explanation, and whether the destruction of records takes place within or outside of the procedure laid down in the Public Records Act, both types of loss distort the historical record.

Record Destruction

10. A particular category of paper often destroyed is known as 'particular instance' material. These papers are usually unregistered or registered differently from a department's 'subject' or 'policy' files. It might be thought therefore that these are either of little historical interest or it would be too costly to preserve them. One example is that of the passport control orders issued by the Passports Office for use by immigration officers. Some of these orders have survived in the files of individuals under scrutiny by the security services, which have been passed to the National Archive, but complete sets of such orders are not preserved. A complete set would be of considerable historical interest, whether for large-scale movement studies or for information about particular individuals. The justification for the failure to retain complete sets of orders would therefore appear to be cost. We recognize that this must be an issue, but do not think destruction is the only way of dealing with the problem. It is possible that other repositories than the National Archive at Kew may be interested in holding the records under appropriate loan conditions. We recommend the setting up of a suitable mechanism which could lead to the preservation of some of these papers for historical research, though any process would have to be time-limited and destruction might follow its exhaustion in many instances.

11. The particular instance papers often contain material of use to family historians. The ability to search such records could generate revenue, though we recognise that this would be realised only in the longer term. Presumably many such 'particular instance' files today are electronic: their preservation presents particular challenges, as has been shown in the Paradigm Project (Personal Archives Accessible in Digital Media - a joint initiative of the Bodleian Library, University of Oxford, and the

John Rylands Library, University of Manchester). However, it also offers the longer-term potential of low-cost retention.

Conclusion

12. We are receptive to the notion of reducing the 30-year transfer rule and believe this can lead to a reduction in costs under current conditions for record keepers and record users. We have no particular view on the cost benefits associated with any specific rule change, but would suggest a 15-year rule.

13. We see no good reason for restricting any rule change to certain categories of information or for the prioritisation of certain categories. There would not appear to be any economic or cost benefit from such restriction or prioritisation and it is difficult to see any other purpose of the action under current open government, freedom of information and data protection legislation.

14. The primary concern for historians must be measures to preserve records, as in the example of the particular instance papers discussed in 10 and 11 above; and we see a need to revisit the Wilson committee report in the light of subsequent developments and legislation. Wilson recommended, for example, that in 1996 consideration might be given to the date when access might be given to the Notebooks of the Secretary of the Cabinet [paragraph 237], a question which is particularly apposite in the light of the Information Commissioner's ruling on access to Cabinet Minutes on the decision to invade Iraq.

For and on behalf of the Society for the Study of Labour History:

Dr Malcolm Chase, Chair (University of Leeds)
Dr Alan Campbell, Vice-Chair (University of Liverpool)
John Halstead, Secretary

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¹ Benjamin Worthy, 'John Major's Information Revolution? The Code of Access ten years on', *Open Government: a Journal on Freedom of Information*, 3, 1, 2007

² F.H. Hinsley, *British Intelligence in the Second World War* (1979), reflected the guidance provided to reviewers of security and intelligence-related records [paragraph 198] but which has now effectively been rescinded in discussions between Sir Duncan Wilson and the Cabinet Secretary [paragraphs 199 and 234(a)], *Modern Public Records: Selection and Access*, Cmnd. 8204, 1981