Dear James

Review of 30 Year Rule

I am now in a position to respond to your letter of 31 December in which you request the views of the Association of Chief Archivists in Local Government (ACALG) with regard to the Review of the 30 Year Rule. As you will be aware ACALG represents the heads of Local Authority Record Offices in England and Wales, virtually all of which are appointed Places of Deposit (PoDs) for locally created public records, and this has been an important consideration for us as an organisation in framing our comments to the review body. I have consulted with the other members of the ACALG executive in framing the following comments, which I have structured around the three bullet points in your letter

Whether, in the Freedom of Information era, 30 years remains the point at which government records should normally be made available to the public?

Not surprisingly there are a large numbers of avenues of enquiry to be followed in this single point! From an ACALG perspective, rooted in Local Government where the Local Government (Access to Information) Act 1985 has for a long time placed us in a situation where the presumption is for openness rather than closure - a principle which we also try to encourage among the many private depositors placing records in our archives, wherever appropriate – then 30 years does seem an excessively lengthy period of assumed closure for many records. Using this presumption has put us in good stead with service users who respect and value our openness. This can help build public trust and confidence in our host authorities.

While FOI does offer a means for members of the public to gain access to information (not records necessarily) then it does seem appropriate to suggest that a more general presumption of openness would reduce the burden on both public and government departments, rather than requiring use of the FOI process. It would probably improve the public perception of openness in government too. It would certainly make things simpler for the public to understand – records are open unless there is a DPA implication and/or very good FOI reason for some form of time defined closure.

There are many safeguards built into the list of FOI exemptions which would allow groups of records which should be excluded from the presumption of openness, and this is more about a reversal of attitude rather than necessarily a legislative change. Indeed there are some of the FOI exemptions, such as (Section 32) court records, which do not seem appropriate in a society where the detail of reporting of court cases while in progress renders the closure of the court record afterwards rather redundant.

There is a subsidiary question which is of significance to those of us who operate Places of Deposit which is whether a reduction, or indeed abolition, in the 30 year rule would also imply the reduction or abolition of the 30 year delay in transferring public records to the National Archives. As about 20% of these records go to places of deposit operated in many cases by local authorities to which no contribution made by central government towards the costs involved, this is a major issue for ACALG members. This is particularly the case given that we are responsible for many bulky classes of records, including those created by hospitals and magistrate's courts, which are created locally, but are also those for which the National Archives has increasingly looked to us to provide accommodation such as records created and used by central government departments e.g. the Board of Trade shoreline plans. Local authority archive offices face major difficulties finding sufficient suitable accommodation for the records they are currently receiving, and few, if any could accommodate a sudden surge of records, which they were not planning to receive until 30 years time. However, it is not only providing suitable accommodation which is problematic, but also the cost of funding the necessary additional work, which would be beyond the means of virtually any of the local PoDs in the present difficult financial situation for local authority services

Benefits and Risks of any change

As mentioned above, a reduction or abolition of the 30 year rule would potentially reduce the burden on the public and the record creating departments, but could create major difficulties for both the National Archives and the local Places of Deposit. There is also the general benefit of encouraging a simpler approach to access which the public can easily understand and would give a much greater sense of openness and potential for more trust and confidence in government per se.

If properly managed such a reduction/abolition should present no great risk of material being inappropriately opened up to public access, and I am not aware of any such difficulties arising from the Local Government Access to Information Act 1985, or indeed from the FOI Act itself, where from the public perception, the problem is rather one of insufficient openness rather than too much.

It is difficult to believe that there is a risk of the National Archives being swamped by public seeking access to records which would otherwise have been closed for 30 years, as the FOI route already exists for those who feel strongly that they wish access. Interest may well be limited to public and media interest in material relating to celebrity individual s and incidents, and other responding to the review will be in a better position to assess how great this is likely to be.

From a local place of deposit point of view, it is unlikely that a great deal of the material we already receive would be affected by a lowering/abolition of the rule, as many of these records are either subject to an FOI exemption (e.g. court

records) or subject to Data Protection regulation (such as patient records from Hospitals) The records of local authorities themselves are of course not public records covered by the 1958 Act and so are not subject to the 30 year rule.
As mentioned above, the main difficulties would arise if any change resulted in the transfer of records at the time when they became open, rather than at the end of 30 Years.

In the world of digital records there are very strong arguments, both in terms of preservation and cost of transferring such records at the earliest opportunity so that the necessary, expensive steps can be put in place to ensure their survival in accessible form. This seems a pretty sound justification with regard to the transfer of central government records to the National Archives, but does raise many question in relation to local Places of Deposit. ACALG has already flagged up its view to the National Archives that the continuation of the existing concept of local PODS is not necessarily appropriate for the preservation of digital records of central government's local operations. If access is provided (by necessity) on-line then the arguments for local preservation are diminished. We would argue that central preservation will be more cost effective and a cost central government should bear anyway. Local authority archive services are facing a crisis with regard to provision for the preservation of and access to digital records created locally. To increase this burden unnecessarily by expecting to duplicate facilities which could be provided at a single central point for public records would seem both short-sighted and wasteful

Options for Planning and implementing a transition.

ACALG is firmly of the view that the legislative framework created by the Public Records Act 1958 and its subsequent amendments has now altered radically, particularly with the advent of digital records, Freedom of Information and Data Protection. Consequently, it would now be appropriate to enact new legislation, rather than continue with the piecemeal alterations which have been implemented and which serve to confuse and complicate understanding. There is a great opportunity for streamlining and simplification.

The advent of digital records, and the increasing blurring of the boundaries between the public and private sectors suggest that legislation now must address the far more complex nature of information and records preservation and access, if the long term rights of the citizen is to be protected and respected and the fuller knowledge management benefits of treating information as a valuable corporate and community resource are to be realised. Even radical revision of the 30 year rule could be implemented without such legislation, and seen as an administrative change, but we believe this could well result in the existing fragile structure becoming even more vulnerable and risky.

I hope that this expression of our views will be of assistance to the Review body in its work. If it is thought helpful, it might be possible for either myself or a

member of the ACALG Executive to attend in person to develop these points and comment on others the Review body might wish to raise

Yours sincerely

Bruce Jackson
Chairman ACALG
12 Feb 2008