



Advisory Panel on Public Sector Information

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

29 February 2008

Dear Sirs

RESPONSE TO CONSULTATION ON THE 30-YEAR RULE

Further to an invitation by the Secretary of the *30-year Rule Review*, the Advisory Panel on Public Sector Information (APPSI) is pleased to respond in this letter to the current consultation exercise relating to the arrangements under which government records are made available.

We have organised our comments under the following headings:

- An overview of APPSI
- Public sector information policy
- Two problems with the 30-year rule
- The opportunity being missed
- Our proposal and related challenges

Our response is limited to issues that directly relate to APPSI's remit. Our position can be summarised simply – *the 30-year rule is anomalous in policy terms and it unnecessarily inhibits the re-use of public sector information*. However we acknowledge that there are

several practical hurdles to overcome in devising an alternative regime, nevertheless we consider that at the least the emphasis should be changed to one of openness. We have noted in other reviews the lack of a coherent data policy which spans the public sector and revision of the 30 year rule could be part of that overall policy revision.

An Overview of APPSI

Established by the Cabinet Office in 2003, APPSI is a Non-Departmental Public Body of the Ministry of Justice. Our members are drawn from a wide variety of backgrounds including information providers, re-users and consumers of public-sector information, experts from academia and industry, representatives of producer and consumer groups, and representatives of the devolved administrations. Our terms of reference are as follows:

- To advise Ministers on how to encourage and create opportunities in the information industry for greater re-use of public sector information;
- To advise the Director of the Office of Public Sector Information and Controller of Her Majesty's Stationery Office about changes and opportunities in the information industry, so that the licensing of Crown copyright and public sector information is aligned with current and emerging developments;
- To review and consider complaints under the Re-use of Public Sector Information Regulations 2005 and advise on the impact of the complaints procedures under those regulations.

Full details about our Panel can be found at www.appsi.gov.uk.

Our focus is the re-use of public sector information (PSI). In the UK, it is the Office of Public Sector Information (OPSI) that has responsibility for policy and regulation of the re-use of PSI. Much of OPSI's and APPSI's work in this context is governed by the Re-use of Public Sector Information Regulations 2005. A detailed account of the impact of these regulations and of progress that has been made in the UK since their implementation has been published by the Office of Public Sector Information.¹ The re-use of PSI should be distinguished from two related challenges – that of securing and preserving PSI (related policy and practice is largely the responsibility of The National Archives) and that of

¹ *The United Kingdom Implementation of the European Directive on the Re-use of Public Sector Information – the first two years* (July 2007).

providing ready access to PSI (under the freedom of information regime, policy responsibility for which belongs to the Ministry of Justice, while practice is regulated by the Information Commissioner). All three strands of public information management are now therefore gathered under the broad umbrella of the Ministry of Justice.

Public sector information policy

Before the 1990s, most government was relatively closed government, in the sense that official information was made available – largely - on a need-to-know basis. But this changed in the 1990s, mainly it seems, with the advent of the Internet. Suddenly, information could be shared widely and cheaply, and it could be put to work more effectively than ever before. And, in 1996 and 1997, the Conservative and Labour governments respectively stated their commitment to providing official information on the World Wide Web. Open government arrived.

APPSI believes that there are two types of open government. First, there is what we call *reactive open government*. A government of this type, when faced with a request for access to official information, will respond favourably. Freedom of Information legislation and the associated regime that is now in force, underpins the UK government's commitment to reactive open government.

In contrast, secondly, a *proactive open government* believes that an integral part of the job of government is to make as much information created in the process of governing available to the people as possible. Proactive open government is much more than meeting, more or less willingly, a request for access. Instead, it is regarding the provision, online, of official information as part of the very business of government. Withholding information would be looked upon by a proactive open government as exceptional and requiring justification.

APPSI believes that the UK government is currently moving from being reactively to proactively open. One sign of this is the drive to provide more useful and better stocked web sites. Another is that, under the Freedom of Information legislation, all public authorities must maintain publication schemes which indicate what information will be made available proactively.

However, full proactivity will require a positive effort on the part of public authorities actually to maximise the value of their information. An important first step in this direction was the implementation, on 1st July 2005, of the EU Directive on the Re-use of Public Sector Information.

Another such step would be the substantial revision of the 30-year rule

Two problems with the 30-year rule

In his speech on “Liberty”, presented at the University of Westminster on 25th October 2007, The Prime Minister, Gordon Brown, said that, “It is an irony that the information that can be made available on request on current events and current decisions is still withheld as a matter of course for similar events and similar decisions that happened 20 or 25 years ago.”

APPSI welcomes the Prime Minister’s interest in this subject and agrees wholeheartedly with the sentiment of this extract. But we go further than Mr Brown and suggest that it is not so much ironic but, on our view of public information policy, anomalous that public information is released in an inconsistent way. However, if the Government seeks to move beyond being reactively open and, as we have noted above, there is evidence that it does, then it is indeed anomalous and even incoherent, to maintain the current 30-year rule. If the Government wishes to be proactively open which means, according to APPSI, that public bodies make as much information created in the process of governing available to the people as possible, then the 30-year rule should be replaced. This is the first problem APPSI finds with the 30-year rule: it is not simply confusing when sitting alongside the access provisions of the Freedom of Information regime; it is inconsistent with any serious commitment to genuine transparency in public affairs. Genuine transparency requires reactive and proactive open government. Otherwise, what information is made public depends on the relatively arbitrary needs of the relatively limited community of people who make freedom of information requests.

Turning now to the second problem we have identified, in that same speech, the Prime Minister went on to say that, “It is time to look again at whether historical records can be made available for public inspection much more swiftly than under the current arrangements”. Once again, APPSI agrees; but once again we go further. We submit that the rationale behind the relaxation, reform, or abolition of the 30-year rule should not just be

that of regularising inconsistencies in freedom of information practice. Much more, we suggest that *records should be made available earlier to encourage greater re-use of public sector information*. We submit that withholding information under the 30-year rule constitutes a major opportunity missed for our society.

The opportunity being missed

In the course of their everyday work, about 100,000 public sector bodies create and capture huge quantities of information. This includes correspondence, advice, analysis, research and data, as held in letters, reports, documents, filing cabinets and databases. To much of this material, the 30-year rule applies.

There has been growing recognition in recent years that much public sector information constitutes a resource of great potential value; that public information is an asset, an intellectual asset, that should not be seen as usable for one purpose only. Instead, it is argued, this information can and should be made available for re-use (a recycling of sorts).

Although these are not examples of public record re-use, to give a flavour of re-use, Public sector information can be re-used by:

- **Other public bodies** – e.g. Ordnance Survey uses post code information from the Royal Mail.
- **Citizens** – e.g. information gathered by the Environment Agency as part of its public task is reorganised, online, to enable users to find out about flood risks, landfill sites, and the suitability of water for bathing in their neighbourhoods.
- **Businesses** - e.g. the satellite navigation industry is built on the back of mapping data licensed from Ordnance Survey.
- **Not-for-profit organisations** - e.g. BAILII is a charitable body that has re-used large bodies of legislation and case law, combining them and providing the largest, free-of-charge collection of online primary legal sources.

In ways we can scarcely imagine today, the early release of public records into the public domain would, APPSI believes, provide an information resource of enormous value; a resource that could be re-purposed, by public bodies, citizens, businesses and not-for-profit organisations. Information is the lifeblood of modern economies. The Government can play a pivotal and direct role in fuelling the information economy - by making public information more easily accessible for re-use. Not to do so would be to risk losing considerable social and commercial opportunities as discussed more generally on our website (see earlier).

Our proposal and related challenges

In summary, we have identified two grounds for revision of the 30 year rule. First, it is inconsistent with what APPSI recognises as an emerging commitment to proactive open government, as defined earlier. Second, the much earlier release of public records would, we believe, provide an invaluable information resource for the purposes of re-use (as envisaged by the current work and future aims of the Office of Public Sector Information). However we also identified several factors which may need to be taken into account in devising a workable and cost effective alternative regime. These are not an exhaustive list and the issues will clearly require further consideration.

1 We are not suggesting that the relevant public information should no longer be held at The National Archives. On the contrary, we believe that body's role to be as important as ever. However, we anticipate that The National Archives will receive materials much earlier than in the past and that, simultaneously, unless exemptions apply (akin to the Freedom of Information provisions), this information will be put into the public domain. The issue is when should they be passed over and how should they be prepared for archival?

2. One possible benefit of the 30-year rule was that it allowed disposals to be made with the benefit of some hindsight wisdom. FOI (and EIR) apply to all information - including notebooks, scraps of paper, etc. Information selected for archives excludes ephemera and has allowed the benefit of hindsight when reviewing. FOIA and EIR recognises non-disclosure exclusions (e g advice to ministers, Section 35 FOIA) which can change with time and which may be of enormous importance to the historical record. This type of information could therefore continue to be unavailable to the public historical record unless some later review takes place. Currently, the application of non-disclosure rules is decided by the organisations holding the data. They are usually best placed to decide on the relevance of

rules, particularly in the short-term (e.g. commercial sensitivity). If information has been passed to The National Archives (TNA), they often would not know the context or sensitivity of the information. If all information has to be labelled when passed to The National Archives then there would be a very significant cost - and the sensitivity can change with time; hence either labels have to allow for this or regular reviews have to take place - again adding significantly to the costs. For some departments there can be Giga Bytes of data used every day - most of which are kept for only short periods. Again archive selection allows a reduction. If data are passed too early to TNA, public bodies may well keep copies for operational reasons - exacerbating the information management problem. In practice differential times might be appropriate for different departments. The presumption should be earlier release with a department arguing for later release on specific grounds.

3. We recognise a concern that any announcement about materials being released much earlier may reduce what is recorded and kept. If information (including decisions) is to be available very quickly, then some public sector workers may be reluctant to be open or detailed in their documents. In the long run, this would reduce information availability. However, APPSI believes that the Freedom of Information regime has already given rise to such a trend, but policymakers should be careful that changes do not exacerbate the situation.

4. The one advantage that the present system has is that each year at the time of release the media and the public are reminded by the attendant publicity of the enormous interest and value of material held in our national archives, leading to increased awareness and usage. Some media event each year should be retained in relation to archives, records, Fol and, PSI re-use that had a similar effect on general public awareness.

5. We suggest that any change should be in phases because we can see there would be enormous cultural and logistical challenges involved; and so it would take some time (five to ten years perhaps) to complete any reforms. APPSI's research in the past has suggested that most public bodies do not have advanced document and information management systems in place and any reform should be accompanied by a review of relevant records management, retention and disposal policies. The earlier or immediate release of public information would require new and more powerful systems. The

management of large amounts of data is not trivial. Costs would be a significant consideration.

6. In turn, this leads to the question of the overall costs of reform - costs incurred by both The National Archives and by public bodies themselves as well as places of Deposit... We believe the costs would be very considerable, even if spread over a five to ten year period. However, APPSI's hypothesis is that these costs would be offset by the gains that would result from the far more widespread re-use and exploitation of public information, as anticipated and advocated here. One solution may be to test this hypothesis by running a pilot in a department. The costs and practicalities could then be assessed further.

We would be very pleased to meet and discuss this letter and related issues. Please contact the Secretariat, Hilary Newiss, or myself.

We wish you well with your review.

Yours faithfully

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A handwritten signature in black ink, appearing to read 'ag Eeles', written in a cursive style.

Professor Richard Susskind OBE
Chairman