

IMPLICATIONS OF THE REVIEW OF THE 30-YEAR RULE FOR ACPO FORCES

Briefing Paper

Background

In October 2007 the Prime Minister announced a review of the 30-Year Rule relating to historical records. He referred specifically to records held at The National Archives that become available after 30 years and highlighted the apparent inconsistency of keeping such records out of the public domain whilst more recent similar information may be made available under the Freedom of Information Act.

The review is being undertaken by Paul Dacre (Editor in Chief of Associated Newspapers), chair, Professor David Cannadine and Sir Joseph Pilling (former Permanent Secretary at the Northern Ireland Office), who are expected to report their recommendations in the latter part of 2008.

Any change to the current arrangements will probably require an amendment to Primary Legislation.

Legislative Background

The Public Records Act, 1958, defines the current processes for the selection and preservation of historical records. Section 3(4) of the act states that public records must be transferred to the PRO (now The National Archives) not later than 30 years after their creation. The review processes undertaken by Departments that are subject to this legislation normally takes place when the records are 25 years old to allow for transfer before this 30-year point.

It is important to bear in mind that this legislation relates only to central government departments and those departments and agencies listed in Schedule 1 to the 1958 Act. This includes the records created and received by the Metropolitan Police Service from 1958 to 2000. Additionally, Section 5(1) of this Act originally specified that release of historical records to the public should take place after a period of fifty years. This was subsequently reduced to 30 years under the Public Records Act 1967 and later repealed by the Freedom of Information Act 2000.

The Public Records Act does not impact on regional constabularies though local arrangements are in place to transfer files to County Archives. These vary significantly across the UK with some Forces providing significant volumes to the Archives and others very little. PSNI fall within the Public Records Act of 1923 but provide only very limited information to the Public Records Office Northern Ireland (PRONI). There remains sensitivity on increased release of open records especially from the Crime Operations Department who hold significant volumes of sensitive files from the 'troubles' of the past 40 years. Having consulted with their Force Records Manager it is clear that any reduction in the 30 year rule would be unlikely to affect the policy of non release of operational files. The vast majority are under review

by the Historical Enquiry Team (HET) reviewing deaths since the 1960's and therefore are live investigations.

Records Management Implications

There is no way of predicting what the Review team will recommend but any decision to reduce this period will automatically create a backlog of records that will need to be selected and transferred to The National Archives. A reduction in the period from, for example, 30 years to 20 years, would result in an immediate backlog of 10 years worth of records that would need to be reviewed and a decision made about their disposal. This is likely to have significant resource implications for departments undertaking records review. However, most of the resource would be required for the sensitivity appraisal of those records selected for transfer, rather than the selection process.

It is also likely that requests for access to such records between 20 and 30 years old would have to be dealt with by the originating department rather than The National Archives. This would increase pressure on departmental FOI units.

Release of Information from Historical Records

A reduction to the 30-Year Rule would be unlikely to have a significant effect on Police Forces generally and only in those cases where the historical records of government departments/agencies covered by the Act contain documents originating from the police. Records to which no FOIA exemptions apply would be released for public inspection at the earlier date

FOI Implications

The review proposals are a little unclear as to how any changes will impact on FOI exemptions, especially those that are engaged for a thirty year lifetime. For the police service this is most likely to impact on Section 30 Police Investigations. This very strong and frequently used exemption is only valid for thirty years, following which for sensitive information forces are likely to consider a Section 31 Law Enforcement approach which has a 100 year 'lifetime'. However, both of these exemptions are subject to a public interest test and the factors favouring disclosure are likely to be enhanced if similar information were to be made more publicly available.

Police investigations are covered by section 30 (subject to a public interest test) for thirty years from the adding of the last information to the investigation file. So though a historic unsolved murder may have been committed in 1978 it does not mean it will be opened to scrutiny in 2008 if the file underwent a review in recent years. If the file was reviewed in 2005 and remained open pending potential developments in DNA technology, the file (if untouched in the intervening period) would not lose the option of a section 30 exemption until 2035. Though any reduction in the thirty year period would require improved records and review management, I do not believe it will significantly undermine this frequently used and powerful exemption.

As supported in the Jeremy Thorpe Information Tribunal, the IT supported the use of this exemption to the full length of the thirty year period and reinforced

the fact that the exemption does not become weaker as it approaches the time limit. The “back up” exemption of section 31 law enforcement could be used if necessary without a section 30 to protect any sensitive policing information.

Interestingly the Hargrave Information Tribunal decision supported the use of Section 31 for a historic unsolved murder file held by the National Archives (hence the inability to engage section 30) and refused the release of case investigation papers.

Though a reduction in the thirty year rule would impact on the processes police FOI practitioners engage for historic police files, especially unsolved cases, I cannot see that it would cause a wholesale release of sensitive and damaging police information.

At this stage we are unaware to what extent the time reduction would be. For the Section 30 I feel that an appropriate period would be necessary to protect investigative evidence that may be required for miscarriages of Justice of re-trials. I should never be the case that matters are released into the public domain, which undermines any judicial process. A drop to 20 years I feel would provide adequate safeguards.

Conclusion

The review of the 30-Year Rule will primarily have an effect only on those departments or agencies covered by the Public Records Act, 1958. This will affect the Metropolitan Police Service, but not other police forces, as there is no legal requirement for them to select and preserve historical records.

There is a potential short term effect on other forces in that their demand profiles are likely to rise as applicants maximise the opportunity to request information which they have been waiting for the current 30 years to expire on. This is evidenced by the requests received when the act was first introduced, and the fact that we know that some journalists have a ‘shopping list’ of high profile cases.

As such for both records management release to TNA under the PRA and release of information under FOI, I cannot see a significant risk to policing data per se from a reduction in the thirty year rule, only on the already stretched FOI resources with a flood of requests. This though will obviously be dependant on how far back the timescales are extended. Any drop in the timescale will require resources to review the backlog of documents and will need an improved assessment under section 30, but this would not generate any business critical problems. As such I would be content for the review to continue with little strong representation from ACPO on resisting any change, only to highlight the background concerns expressed in this report.

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