

**Review of the '30-year rule': consultation**  
**Response by**  
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The terms of reference of the review are limited to the question of *when* public records are released, centring on the 30-year rule. From the point of view of historians the generation and permanent preservation of accurate records is more important than the date of release. The emphasis on dates of release derives, one suspects, from the once nearly universal (even if not entirely deserved) confidence in the record-creation and preservation powers and inclinations of the British civil service. Today, concerns about the creation of proper records, their preservation, and their transferability between electronic formats are pressing concerns.

The relation between public access and quality is more complex than is often allowed. Although it is suggested that the prospect of early public access to records is an important factor in reducing the quality of records this is highly unlikely to be the primary cause. Lord Butler's inquiry, which looked at the uses of intelligence, suggested a worrying lack of proper records in any area which would not be available for public scrutiny for longer than 30 years, if at all. The effect of public release of documents, especially in a relatively short period, may well have the effect of increasing quality, if not necessarily the frankness of records. But whatever the relation between openness and quality the key point is that the quality of records is a question which need to be addressed directly and independently of the issue of access.

The formalisation and effective liberalisation of access to records over 30 years old, as well as the release of younger records, was a very welcome feature of the Freedom of Information Act. There seems to be a strong case that most public records should be opened before the 30 year limit which applies to many of them. However, to ensure that such a change has the overall effect of increasing openness, the whole system of release and retention needs looking at.. For example, one could envisage a situation where a reduction of the 30-year period could lead to the perverse outcome of less access to records. It could lead to the extension of retention by departments, and the application for longer restrictions to some classes of documents. While (with exceptions) a 30-year rule might be said to apply reasonable generally, a shorter period of general retention could lead in effect to the abolition of a standard period, and its replacement by a more complex case-by-case release. In a worse-case scenario this might lead to less availability even at the 30 year point.

If there is to be a reduction in the standard period, it may be necessary to make explicit a general expectation that records in all categories

are, say, to be released earlier than they have heretofore, and within that, that records currently released at 30 years would *all* be expected to be released earlier.

There is also strong case for strengthening the independent element in determining the release of documents. For example, the Lord Chancellor's Advisory Council, does not contain a single academic contemporary historian or political scientist, which is telling given that you are consulting very widely in these two communities.

There are two other issues worth mentioning, which are formally outside the scope of the review, but which are related, at least in relation to the work of historians. Both concern historical records of government not directly covered by the Public Records Acts or the Freedom of Information Act, such as artefacts and the memories and papers of participants.

A reduction in the average release date of government documents makes it much more likely that the key players in a decision will be available to be interviewed, may indeed wish to write about events themselves, and/or make relevant personal papers available. They are more likely to remain in government employment. It would be regrettable if they could not speak freely (if they wished) and on the record on matters where all the available documents were released. There is also a risk that inappropriate barriers could be placed in the way of access to staff. For example requests for interviewing serving NHS staff about past events, even when not concerning patients, still have to go through NHS ethics boards.

A reduction in the general period of retention would also have an impact on the official history programme, though some cover areas which are exempt under Fol. There is no reason why official histories should not cover, as some currently do, areas where records are open, but it would be important to ensure that the writing of an official history would not in itself lead to the retention of documents by a department, or the cabinet office, which would otherwise be released.

There are many examples of former ministers and in some cases officials writing about events about which the records are still closed. When there was a blanket ban on release of documents such works gave a helpful insight into what would otherwise be secret. But when there is no such blanket ban, the publication of a work may in itself be a public interest justification for the release of documents. Indeed it might be made a precondition for publication of a political memoir that the records covering the material dealt with in the memoir are opened to the public. Of course, some areas could not be dealt with

on national security or other grounds, but the restriction should apply to the memoir as well as to the records.

Finally there are also questions to be raised about access to (and preservation of) non-documentary materials, especially those which fall outside the obvious 'heritage' categories like historic buildings. Certain kinds of research, historical and otherwise, may require access to machines, codes, objects, samples etc, which may still be in the care of government, but which come under different or no standardised regime for care and access.

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