Newspaper of the 1984 Campaign for Freedom of Information

No. 1

SECRETS

Political Leaders back call for freedom of information

'Our right to know'

The most substantial British campaign ever for freedom of information and a statutory "right to know" has been launched with such clear and categorical support from the leaders of all opposition parties that success at least in the longer term appears inevitable.

The Chairman of the 1984 Committee, Des Wilson, read to a press conference to launch the Campaign for Freedom of Information on January 5 supportive letters from Neil Kinnock, David Steel, and David Owen, and named over 150 Members of Parliament and 50 Members of the House of Lords who supported the broad objectives of the campaign.

Neil Kinnock stated that: "A thriving democracy depends on clear, full information, fairly presented, for all our citizens. Information is the lever of power and in a free society free people should have maximum access to and control over that lever.

"I want to emphasise both the importance of the issue itself and the commitment of the Labour Party to new freedom of information legislation which will strengthen Britain's democracy by requiring authorities to justify withholding information."

(The 1983 Labour Party Manifesto promised a Freedom of Information Act.)

David Steel, leader of the Liberal Party, wrote that "freedom of information is vital to the regeneration of our society. Resting on our laurels as the oldest modern democracy, we have become smug and complacent... our government is too centralised, too bureaucratic and too secretive, and is desperately in need of reform.

"It is ironic that the Freedom of Information Bill sponsored by my colleague Clement Freud MP should have fallen due to the intervention of the 1979 General Election. **I welcome this opportunity to renew our commitment to freedom of information.**

"The Campaign for Freedom of Information could be the vehicle for this reform and it has my best wishes for every success in its efforts."

(The Liberal Party-SDP Alliance promised Freedom of Information legislation in its 1983 programme.)

David Owen wrote: "The public has the right to know whether it is being governed lawfully and efficiently. Whoever needs information for any legitimate purpose within our society should be able to get it unless there is some clear, specific and valid reason why it should be withheld. **The SDP policy is to introduce a comprehensive Freedom of Information and Expression Act** which would include such measures as the establishment of the principle that all government information is freely available unless otherwise stated. The legislation would also include the right of individuals to have access to information on themselves, subject to a code of practice defining exceptions and limitations."

"I welcome and support the 1984 Campaign...I emphasise the importance of the issue itself and the commitment of the Labour Party to freedom of information legislation."

Rt. Hon. Neil Kinnock
Leader, The Labour Party

"I pledge the full support of my party...whoever needs information for any legitimate purpose should be able to get it unless there is some clear, specific and valid reason why not."

Rt. Hon. David Owen
Leader, Social Democrats

"Government is too centralised, bureaucratic, and secretive, and is desperately in need of reform...the campaign could be the vehicle for this and has my best wishes."

Rt. Hon. David Steel
Leader, The Liberal Party

Commenting on the considerable political support for the campaign, Des Wilson said that the organisers still hoped that the Thatcher Administration would respond to the widespread concern about excessive secrecy and would support freedom of information legislation rather than unconvincing voluntary changes.

"In any event, the opposition parties are surely committed to the point where a failure to act, if they come to power, would be seen as a fundamental betrayal of the electors. Not only have they stated in their 1983 manifestos (and will presumably repeat in subsequent manifestos) that they will legislate, but the three leaders most likely to be at the helm when the next election occurs have committed themselves clearly and categorically.

"At least we now know that just as it is inevitable that the present ruling party will one day, rightly or wrongly, be dismissed by the electorate, so it is inevitable that we will have freedom of information legislation."

He pointed to all-party support for the campaign, including support from Conservatives, and named organisations that would be fully involved in the campaign, contributing finance, research, and campaigning staff. In addition, other organisations had indicated their basic concern by becoming observer organisations.

Individual activists in the campaign included Bernard Donoughue, former No. 10 Downing Street advisor; Harold Evans, former editor of The Times and The Sunday Times; Peter Jay, former UK Ambassador to Washington, and Chairman of the National Council for Voluntary Organisations; Michael Shanks, Chairman of the National Consumer Council; Dame Elizabeth Ackroyd, former Director of the Consumers' Association, and now Chairman of the Patients' Association; and television campaigner Esther Rantzen.

The campaign's broad objectives are headed by a drive to secure a statutory right of access to all information held by government and other public sector bodies, other than that for which specific statutory protection is provided, and to place on these bodies an obligation to disclose such information.

Thus the campaign is concerned with both national and local government and also with other public organisations and utilities.

However, the campaign extends its objectives to organisations in the private sector, requiring a statutory obligation to give access to and disclose such information "as may be required by the public interest".

It seeks to promote a Freedom of Information Act and to repeal the Official Secrets Acts and replace them by one Act giving such protection to official information as may be necessary for national security.

In addition to pressing for this major legislation, the campaign hopes to monitor all Bills introduced into Parliament and to add provisions for public access and disclosure where relevant.

It hopes to identify and seeks to repeal all unnecessary secrecy provisions in existing legislation.

However, the campaign emphasises also what it will *not* seek — it acknowledges that an element of confidentiality remains necessary and will not seek the disclosure of information that would endanger national security, impair relations between governments and others, adversely affect sterling or the reserves, adversely affect law enforcement, breach genuine commercial confidentiality, or invade individual privacy.

A subject of considerable debate by the Council for Freedom of Information, the campaign's policy-making body, was whether advice, opinions, or recommendations intended by civil servants and others to assist with Ministerial policy-making should remain confidential. It was finally concluded that an element of confidentiality was necessary for free and frank policy-making discussion, and that the campaign would not seek legislative controls over confidentiality of such advice, provided it was broad advice, and not specific scientific and technical advice based on fact and expertise. This should be widely available.

Mrs. Thatcher 'to be convinced'

The political battlelines on freedom of information are likely to be drawn over whether or not it requires legislation. All the main opposition parties share the view of the 1984 Campaign that it does. The Prime Minister, however, is to be convinced.

In a lukewarm letter to the campaign the Rt. Hon. Margaret Thatcher "welcomes any move to help ensure that public demands for information are heard and as far as possible satisfied", but she adds "we already have a clear policy to make more information available and the necessary machinery to do so".

Mrs. Thatcher once introduced a Private Members Bill to open local authority meetings to the public but she has since been criticised as a defender of secrecy. *The Times* in a leading article in 1979 said: "Mrs. Thatcher has passionately criticised the closed shop in many areas of British life. She should not now countenance a closed shop for information." More recently — in 1983 — it warned her "government is public business — not a private firm — it should comport itself accordingly".

The Prime Minister, however, argues that Ministers are accountable to Parliament and "a statutory right of public access would remove this enormously important area of decision-making from Ministers and Parliament and transfer ultimate decisions to the courts. No matter how carefully the right were defined and circumscribed, that would be the essential constitutional result. The issues requiring interpretation would tend to be political rather than judicial, and the relationship between the judiciary and the legislature could be greatly damaged. But above all, Ministers' accountability to Parliament would be reduced and Parliament itself diminished."

Unique coalition will 'demonstrate wide public concern over excessive secrecy'

The 1984 Campaign for Freedom of Information is a coalition of 25 national organisations. It seeks to extend the public debate on secrecy beyond the traditional closed circle of politicians, academics, lawyers and journalists to the public as a whole, and to demonstrate the existence of widespread public concern about excessive secrecy and a substantial public appetite for much greater access to information.

Organisations in the coalition break into two groupings: first, there are full *supporting* organisations, who are committed to active involvement and financial support for the campaign. Second, there are *observer* organisations who have a record of support for the broad objectives and are sympathetic to the campaign, but who for constitutional reasons, or because of lack of available resources at this time, cannot be fully involved.

The campaign has two decision-making bodies: the first is the Council for Freedom of Information, chaired by James Cornford, Director of the Nuffield Foundation and former Director of the Outer Circle Policy Unit. The Council lays down the objectives and priorities for the campaign, and takes over-all policy decisions.

The 1984 Committee, chaired by Des Wilson, Chairman of Friends of the Earth, the organisation which initiated the coalition, will plan and manage the campaign on a day-to-day basis.

The campaign has the benefit of advice and experience from other countries provided by an international panel of advisers, and has an all-party House of Commons Advisory Committee. Even before its launch it has over 150 MP supporters and 50 in the House of Lords.

A unique feature of this campaign will be that the supporting organisations will each conduct their own mini-campaigns on freedom of information alongside the main one. During 1984 a series of special reports on secrecy will be jointly published by the 1984 Campaign and individual supporting organisations. The effect of this active coalition will be that the resources of the 1984 Campaign will be much greater than its own specific income and its own small campaigning team.

The campaign is to seek all-party support, and to try to avoid making this a party-political issue. At the launch press conference, the 1984 Committee Chairman, Des Wilson, emphasised that "our criticism is not so much of *the* government (i.e. today's ruling party) but the British *way of government*. Just as the opposition parties are committed to action, so many leading Conservatives have publicly admitted that the Official Secrets Act is an anachronism and that we need far greater freedom of information. What we will seek to do is to unite all the political parties and the wider public behind a reform that will strengthen our democracy, an objective we hopefully all share."

The Campaign's Objectives

The following are the objectives of the 1984 Campaign for Freedom of Information:—

1. Broad Objectives

(a) To secure a statutory right of access to all information held by government and other public sector bodies other than that for which specific statutory protection is provided, and to place on these bodies an obligation to disclose such information.

(b) To place upon organisations in the private sector a statutory obligation to give access to and to disclose such information as may be required by the public interest.

2. Legislative Aims

(a) To promote a freedom of information Act to establish a public right of access to official information, subject to those exemptions required to protect confidentiality genuinely necessary to the proper conduct of government, its relations with other governments and organisations and the privacy of individuals.

(b) To press for legislation to establish a similar public right of access to information held by local government.

(c) To seek the repeal of the Official Secrets Acts and their replacement by an Act to give such protection to official information as may be necessary for national security.

(d) To monitor all Bills introduced into Parliament and to add provisions for public access and disclosure where relevant.

(e) To identify and seek to repeal all unnecessary secrecy provisions in existing legislation.

(f) To press for legislation to establish a right of defence in law for those who disclose without authorisation information to which there is, as above, a public right of access, or which is justified in the public interest.

3. Other Aims

(a) To encourage public and private bodies to disclose such information on their own initiative.

(b) To alert the public to their existing rights to information and encourage them to make full use of those rights.

What we will not seek

The 1984 Campaign accepts that an element of confidentiality remains necessary, and in particular this campaign will not seek the disclosure of information that would:—

(a) endanger national security;
(b) impair relations between the government and other governments or organisations;
(c) adversely affect the value of sterling or the reserves;
(d) adversely affect law enforcement or criminal investigations;
(e) breach genuine commercial confidentiality;
(f) invade individual privacy;
(g) breach the confidentiality of advice, opinion or recommendation tendered for the purpose of policy-making. (This does not include expert scientific or technical advice or background factual information.)

Further support to be announced

Because it was necessary to print this material several weeks before the launch of its campaign on January 5, 1984, the list of supporting organisations, involved individuals, and supporters in the Houses of Commons and Lords, is a preliminary list and will be considerably enlarged.

The 1984 CAMPAIGN FOR FREEDOM OF INFORMATION

2 Northdown Street, London N1 9BG Tel: 01-278 9686

Supporting Organisations

National Council of Voluntary Organisations
Town and Country Planning Association
Advisory Centre for Education
The Patients' Association
The National Union of Journalists
Community Rights Project
Legal Action Group
Friends of the Earth
MIND
Transport 2000
Shelter
BUAV
CLEAR
Social Audit

Observer Organisations

National Consumer Council
Consumers' Association
The National Gas Consumers' Council
National Council for Civil Liberties
The Children's Legal Centre
Child Poverty Action Group
National Federation of Self-Employed and Small Businesses
Earth Resources Research
Scottish Consumer Council
Friends of the Earth (Scotland)
Union of Shop, Distributive & Allied Workers
Gingerbread

Council for Freedom of Information

(The policy-making forum for the campaign)

James Cornford *(Chair)*
Des Wilson
Lord Morris
Lord Avebury
Michael Shanks
Bernard Donoughue
Harold Evans
Christopher Price
Dame Elizabeth Ackroyd
Peter Jay
David Hall
Godfrey Bradman
Neil McIntosh
William Bingley
The Bishop of Birmingham
Leslie Chapman
Ronald Lacey
Kim Stallwood
Charles Medawar
John Wright
Geraldine Van Bueren
Esther Rantzen
Liz Davies
John Winward
Jo Roll
Ralph Jackson
David Baldock
James Michael
Patricia Hewitt
Martin Smith
Ron Bailey
Vincent Hanna

The 1984 Committee for Freedom of Information

(The campaign management committee)

Des Wilson *(Chair)*
James Cornford
James Michael
Ron Bailey
Charles Medawar
David Hall
Margaret Hyde
Ron Lacey
Neil McIntosh
Tony Smythe
Christopher Price
Martin Smith
Jacob Ecclestone
Martyn Hall

All-Party Parliamentary Advisory Committee

Sir Bernard Braine (Con)
Robin Squire (Con)
Charles Irving (Con)
Robert Maclennan (SDP)
Ian Wrigglesworth (SDP)
Jeff Rooker (Lab)
Robert Kilroy-Silk (Lab)
Allan Roberts (Lab)
Michael Meadowcroft (Lib)
Clement Freud (Lib)
Dafydd Wigley (Plaid Cymru)
Donald Stewart (SNP)

International Advisers

Ralph Nader (USA)
Lars Broch (Netherlands)
Sir Guy Powles (New Zealand)
Senator Alan Missen (Australia)

Scottish Advisory Panel

Peter Gibson
David Goldberg
Donald MacPhillimy

House of Lords

The following Peers have indicated they "broadly support the campaign for measures to secure for all citizens access to information that they have a right and need to know, and measures to encourage greater disclosure of such information":—

Earl Amherst
Lord Ardwick
Lord Ashby
Lord Avebury
Lord Banks
Lord Beaumont
Baroness Birk
Lord Briginshaw
Lord Brockway
Lord Chitnis
Lord Darling
Lord Darwen
Baroness David
Viscount Devonport
Lord Ennals
Lord Evans
Lady Ewart-Biggs
Lord Gardiner
Lord Gifford
Lord Hatch
Lord Hutchinson
Lord Hylton
Lord Jacobson
Lord Jenkins
Lord Kaldor
Lord Kirkhill
Earl Kitchener
Bishop of Lincoln
Baroness Lockwood
Lord Lovell-Davis
Lord McCluskey
Lord McIntosh
Lord McNair
Lord Melchett
Viscount Melville
Lord Molloy
Lord Morris
Lord Perry
Lord Pitt
Lord Plant
Lord Ritchie
Baroness Robson
Lord Scanlon
Earl of Shrewsbury
Baroness Stedman
Lord Stoddart
Lord Tordoff
Lord Willis
Lord Wilson
Lord Winstanley

Members of Parliament

The following Members of Parliament have stated that they "broadly support the campaign for measures to secure for all citizens access to information that they have a right and need to know, and measures to encourage greater disclosure of such information":—

Leo Abse MP
David Alton MP
Paddy Ashdown MP
Jack Ashley MP
Joe Ashton MP
Tony Banks MP
Guy Barnett MP
Margaret Beckett MP
Alan Beith MP
Andrew Bennett MP
Gerry Bermingham MP
Sydney Bidwell MP
Betty Boothroyd MP
Andrew Bowden MP
Roland Boyes MP
Sir Bernard Braine MP
Gordon Brown MP
Robert C. Brown MP
Ron Brown MP
Malcolm Bruce MP
Norman Buchan MP
Richard Caborn MP
James Callaghan MP
Dale Campbell-Savours MP
Dennis Canavan MP
Alex Carlisle MP
Lewis Carter-Jones MP
John Cartwright MP
Bob Clay MP
Harry Cohen MP
Robin Cook MP
Robin Corbett MP
Jeremy Corbyn MP
Tom Cox MP
Stan Crowther MP
Lawrence Cunliffe MP
Dr. John Cunningham MP
Ron Davies MP
Terry Davis MP
Eric Deakins MP
Jack Dormand MP
Alf Dubs MP
Alexander Eadie MP
Ken Eastham MP
Bob Edwards MP
Ioan Evans MP
John Evans MP
Andrew Faulds MP
Frank Field MP
Mark Fisher MP
Martin Flannery MP
Janet Fookes MP
Derek Foster MP
John Fraser MP
Clement Freud MP
William Garnett MP
Dr. John Gilbert MP
Dr. N. A. Godman MP
Bryan Gould MP
James Hamilton MP
Peter Hardy MP
Eric Heffer MP
Norman Hogg MP
Geraint Howells MP
Doug Hoyle MP
Peter Hubbard-Miles MP
Roy Hughes MP
Sean Hughes MP
Simon Hughes MP
Charles Irving MP
Greville Janner MP
Roy Jenkins MP
Russell Johnston MP
Barry Jones MP
Charles Kennedy MP
Robert Kilroy-Silk MP
Neil Kinnock MP
Archy Kirkwood MP
David Knox MP
David Lambie MP
James Lamond MP
Ron Leighton MP
Robert Litherland MP
Tony Lloyd MP
Hugh McCartney MP
Oonagh McDonald MP
Michael McGuire MP
Allen McKay MP
William McKelvey MP
Robert Maclennan MP
Kevin McNamara MP
Bob McTaggart MP
John D. McWilliam MP
Max Madden MP
Dr. John Marek MP
David Marshall MP
John Maxton MP
Joan Maynard MP
Michael Meacher MP
Michael Meadowcroft MP
Bill Michie MP
Ian Mikardo MP
Austin Mitchell MP
Alfred Morris MP
Dave Nellist MP
Dr. David Owen MP
George Park MP
Bob Parry MP
T. Patchett MP
Tom Pendry MP
David Penhaligon MP
Peter Pike MP
Ray Powell MP
John Prescott MP
Giles Radice MP
Martin Redmond MP
Allan Roberts MP
Ernie Roberts MP
George Robertson MP
John Home Robertson MP
Geoffrey Robinson MP
Allan Rogers MP
Jeff Rooker MP
Ernie Ross MP
Stephen Ross MP
Peter Rost MP
Robert Sheldon MP
Peter Shore MP
Cyril Smith MP
Peter Snape MP
Clive Soley MP
Robin Squire MP
David Steel MP
Donald Stewart MP
Gavin Strang MP
Jack Straw MP
Jack Thompson MP
Richard Wainwright MP
Jim Wallace MP
Robert Wareing MP
Ken Weetch MP
Dafydd Wigley MP
Alan Williams MP
Ian Wigglesworth MP
David Young MP

'In Freedom of Information this country lags further behind the rest of the world every year'

Freedom of Information around the world

James Michael looks at how other countries have moved far ahead of Britain in introducing freedom of information legislation and at what lessons Britain can learn from their experiences.

The United States

Before 1966 freedom of information in the USA was encouraged by the First Amendment to the Constitution, which prohibits laws restricting freedom of speech and the press. The 1966 Freedom of Information Act went further to establish a positive people's right of access to government records, and it could be enforced through the courts. The burden was shifted from the inquiring citizen, who before had to give reasons for wanting to see records, to the government, which now had to justify secrecy under one of nine general exemptions.

The Act had its loopholes, most of which were closed by amendments to strengthen the Act in 1974 and 1976. Under the Act, much government information is routinely published. If it is not, anyone has the right to demand a document, and can take the government agency to court if the request is refused.

If the government relies on the first exemption — for defence or foreign relations — the court must be satisfied that the document was properly classified to prevent damage to those interests.

The second exemption, for internal personnel rules, has been narrowly interpreted. For example, manuals of tax authorities can only be withheld if they would enable law violators to escape detection.

The third exemption, for records which must be kept secret under other laws, means, for instance, that individual tax returns are not generally available. It, too, is strictly interpreted.

The fourth exemption is for 'trade secrets', and is particularly important for consumer and environmental protection groups. One of the very first cases was brought by the Consumers' Union to get reports on comparative testing of hearing aids by the Veterans' Administration. Such information can only be kept secret if it would cause serious harm to the company that provided it, and is not protected just because a company calls it 'confidential'.

The fifth exemption protects internal government communications, but is not as broad as it sounds. It is limited to confidential advice, and does not support secrecy of factual information. Also it only protects such advice before a decision is taken; afterwards, even confidential advisory records must be made available.

The sixth exemption is for personal privacy. This means that individuals can usually get records about themselves, but others will be refused access.

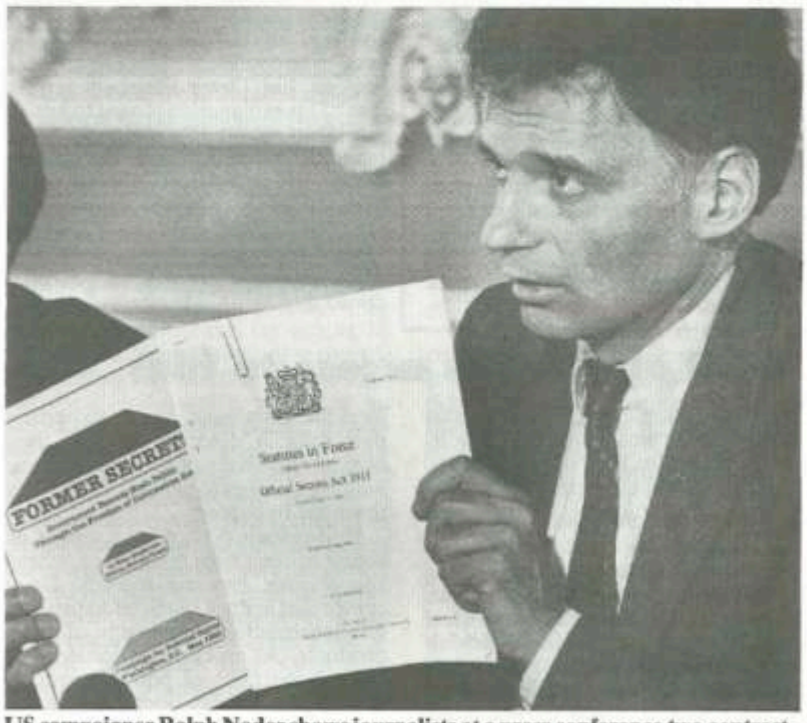
The seventh exemption protects law enforcement investigatory records. This was limited in 1974, largely because the Federal Bureau of Investigation was exploiting it. Now law enforcement files are protected only if disclosure would cause one of six fairly specific kinds of damage to enforcement of criminal law.

The eighth and ninth exemptions are for records about banks and petroleum, and have hardly been used.

The Freedom of Information Act is closely related to several other laws passed during the 1970's. The Privacy Act of 1974 gives individuals rights to see and correct records kept on them, largely overlapping similar provisions in the Freedom of Information Act. The Federal Advisory Committee Act of 1972 makes meetings between government agencies and industry open to the public. The 'Government in the Sunshine Act' of 1976 similarly requires government regulatory agencies to open their meetings to the public. The 1978 'Whistleblowers' (Civil Service Reform) Act protects civil servants who disclose wrongdoing or waste.

There have been many British trips to the U.S. to look at American law, some by journalists and researchers who were able to get British information that is not available here. One official report by the Civil Service Department (now dissolved) was published in 1979. Although cost is often used as an argument against the Act, the CSD reported that nobody actually knew the cost, despite several studies, and that agencies often exaggerated their estimates. Although it is difficult to tell who uses the Act most (one request may be for a single page, or for thousands), they divided the searchers for information into five groups: individuals, corporations, public interest groups, the media, and foreign governments.

Most criticism of the Act has come from Government agencies and from companies who want greater protection for commercial secrets. But the test of the law is in its results, which have been thousands of disclosures of records such as warnings of health violations by meat packing plants (including some British ones), reports on employment of minorities, and inspection reports on nursing homes.



US campaigner Ralph Nader shows journalists at a press conference two contrasting documents, one, Britain's *Official Secrets Act*, restricting the ability of citizens to discover facts that they should have the right to know, and the other, *Former Secrets*, a book produced in the US comprising details of information made available to citizens who have employed their Freedom of Information Act.

Europe

Sweden's open government system is the oldest in the world, first established in the 1766 Constitution, and more firmly so since 1809. Unlike the U.S. law, it does not rely entirely on general exemptions (there are seven of them), but also has hundreds of very specific exemptions in the Secrecy Act. Because it has been established for so long it is almost taken for granted, and government departments routinely make files of correspondence and reports available for the public (usually journalists) to sift through.

If a civil servant refuses to disclose a record, there are two possible appeals. One is to the Supreme Administrative Court. The other, less formal, is to the ombudsman.

James Michael was educated in the United States and admitted to the District of Columbia Bar. He worked as an editor with US Law Week, was staff counsel with the National Commission on Product Safety, and a member of Ralph Nader's Center for Study of Responsive Law. He moved to London in 1972 and has a LL.M. from the London School of Economics. He is now Senior Lecturer in Law at the Polytechnic of Central London. He is the author of "The Politics of Secrecy", published by Pelican Books in 1982, and an acknowledged authority on worldwide initiatives towards greater freedom of information.

Other Scandinavian countries have followed Sweden's example. **Norway** finally passed an act in 1970, replacing an earlier law which required citizens to show a 'need to know'. It is weaker than the U.S. or Swedish laws, and does not apply to records created before the law went into effect. Individuals who want to see records about themselves also have rights under the Data Protection Act 1978.

The **Danish** Act was also passed in 1970, and it is probably the weakest of the Scandinavian laws (next to the one in **Finland**). It is enforced almost entirely by the ombudsman. Rights of individuals to records kept on them are now largely enforced under two Data Protection Acts passed in 1979.

France, despite a reputation for secrecy and centralized authority, took a very large step towards open government in 1978. The Act established a general public right to documents, subject to 10 broadly-worded exemptions, with a commission to hear complaints from those who are refused access. The commission then makes recommendations about disclosure to the government departments. If the government still refuses to disclose the records, an appeal to the administrative court is possible. Although the law is still fairly new, it has led to disclosure of evacuation plans in case of accidents at nuclear power plants. (British authorities have refused to publish similar plans.) The government has released documents in most of the cases in which disclosure has been recommended by the commission. Also in 1978, France adopted one of the most thorough data protection laws in Europe, giving individuals broad rights to see records on themselves, with an independent authority to enforce the law.

The rather weak law in the **Netherlands** took effect in 1980. Its exemptions are very broad, and its effectiveness will depend on how they are interpreted by the independent review body. The **Austrian** federal law passed in 1973 is even weaker, but the Data Protection Act passed in 1978 is nearly as strong as the one in France.

The Commonwealth

Three countries with British-style constitutions, **Canada, Australia** and **New Zealand** have all passed freedom of information acts very recently. Of these, the Canadian act is probably the best. In all three countries there was considerable public pressure, and government resistance, during the 1970's. The Canadian and Australian acts apply to the federal governments, but were preceded by similar laws in some of the provinces and states.

The **Canadian** law has the strictest exemptions from the rule of disclosure (although probably not as strict as those in the U.S.). It has followed the Scandinavian example by establishing an Information Commissioner, similar to the ombudsman, to act as a sort of small claims court for appeals against refusals. But there is a further appeal to the courts if the government persists in refusing to disclose records.

The **Australian** act is weaker, with many federal agencies excluded from it altogether. It also has broadly-worded exemptions. Although there is a system of appeals, first to administrative tribunals and then to the courts, some exemptions are beyond appeal if a minister certifies that disclosure would damage certain interests. The **New Zealand** Act, which went into effect at about the same time, relies on the ombudsman for enforcement. Like the Australian act, but even broader, some exemptions from disclosure are final if a minister or the Prime Minister certifies that disclosure would harm certain interests.

"The tradition of administrative secrecy which we inherited as part of the Parliamentary system from Britain has certainly encouraged suspicion of Government.... Secrecy leads to distrust and fear on the part of the public.... As the size of the public service grows and as the element of secrecy persists, the citizen is asking quite correctly not only what decisions are being made but how they are being made."

From a report of the Canadian Commission on Freedom of Information 1980.

Lessons from Other Lands

Despite differences in history and culture, all of these countries have recognised three basic requirements for effective freedom of information legislation. The first is that there must be a right of access to government records, without any requirement that people must prove their 'need to know'. Second, the exemptions from this rule of disclosure must be drawn as specifically as possible, to prevent harm to identified interests such as national defence and personal privacy. Third, when access to records is refused, there must be a right of appeal to some authority — court, ombudsman, tribunal or some combination of these — which is independent of the government. If the government is its own judge in deciding that secrecy is justified by an exemption, the law becomes no more than a statement of good intentions.

While there are limitations in most legislation, all of these countries are moving in the right direction, and most of them have acted in the 1970's. Like the United States, many of them are likely to look again at their laws after a few years and act to improve them. All of them have acted to protect two closely related rights: the citizen's right to privacy, especially against government, through data protection laws; and the citizen's right to know more about how he or she is governed. The United Kingdom is reluctantly moving towards a data protection law, and that only to avoid being frozen out of international markets. In freedom of information this country lags further behind the rest of the world with every year.

'The principle of responsibility — to the electorate and parliament — is a vital one which must be maintained and strengthened because it is the basis of popular control over the direction of government and the destiny of the nation. To the extent that it is eroded, the people themselves are weakened. If the people cannot call to account the makers of government policy, they ultimately have no way of controlling public policy or the impact of that policy on their lives...but just as fundamental...people and parliament must have the knowledge required to pass judgement on the government...too much secrecy inhibits people's capacity to judge the government's performance.'

The Rt. Hon. Malcolm Fraser, speaking when Prime Minister of Australia, 1979

Friends of the Earth argue secrecy protects polluters

Friends of the Earth, the founder-organisation of the 1984 Freedom of Information Campaign coalition, is to publish a special report — the campaign's Secrets File No. 2 — to demonstrate that secrecy is a fundamental obstacle to "anyone trying to find out whether their health is at risk from environmental pollution".

FoE says that the control of pesticides in the UK demonstrates environmental secrecy at its most extreme. "Manufacturers must test pesticides for safety before they can be sold and the results are sent to the Advisory Committee on Pesticides (ACP). But the results of the tests are never published, despite American findings that some studies, including some in the UK, have not been properly carried out, while a few have actually been falsified.

"The ACP, which publishes no annual report, says it has identified and dealt with such problems, but refuses to give details, or to say how thoroughly a particular pesticide has been tested. Since it publishes no report, even its general policies are unclear."

FoE says that pollution authorities may sometimes relax the standards that apply to industries without telling the local authority. Since 1977 local councils have had the power to obtain and publish information about air pollution from factory chimneys. But most councils prefer to obtain their information informally, and in confidence — so local people are unable to find out whether standards are enforced.

"A few water authorities publish information about industrial discharges into rivers — but only if the committees allow them to. A pollution inspector who releases this information without permission is committing an offence for which he could face a three-month jail sentence. The 1974 Control of Pollution Act was meant to end this secrecy by requiring all water authorities to publish information about pollution discharges in their areas — but the necessary regulations are now some nine years overdue and, though they are planned for 1985, the industry is still pressing for further delays."

FoE believes that the level of secrecy which surrounds environmental hazards is wholly unacceptable. "This is illustrated by the fact that while the rights of workers to be told about risks in the workplace are now quite properly recognised by law, people who live next door to factories have no rights to the same information. Indeed, a trade union safety representative who passes information about a danger on to people in the community may actually be committing an offence. Such secrecy prevents people from discovering what risks they face and deciding whether to press for better protection. It also conceals what may be real achievements in reducing hazards and inevitably leads to the suspicion — perhaps quite unjustified — that pollution authorities and industry are hiding behind secrecy to conceal the fact that hazards are not being properly controlled."

FoE's energy campaigners say that secrecy is such an established part of the nuclear industry's operations that it is hardly remarked upon, although it continually obstructs policy-making. The Atomic Energy Authority has intimidated and sacked employees who have uttered dissenting views on matters like the safety of pressurised water reactors, despite a considerable body of expert opinion in support of those views inside the authority itself.

"The Central Electricity Generating Board and British Nuclear Fuels Limited have both dismissed employees because of publicly-stated dissenting views about safety. The nuclear industry radioactive waste executive denied any public access to its siting policy for waste depositories. On the question of sea dumping, a DoE report had to be leaked before people became aware that international regulations would be broken by proposals to dump Ministry of Defence waste at sea."

Peter Jay says: "Boundaries of confidentiality need loosening"

The boundaries of confidentiality "need to be considerably loosened and liberalised", says Peter Jay, former UK Ambassador to the United States, and currently Chairman of the National Council for Voluntary Organisations, the major coordinator of and representative for voluntary activity in Britain.

Mr. Jay says that the NCVO is participating in the 1984 Campaign because voluntary organisations cannot help create and inform governmental action to tackle needs without "the fullest information and debate".

"Voluntary organisations also have an over-riding interest in speaking for the weaker and vulnerable members of society. In both these areas excessive secrecy about the facts, or the withholding of data, can impede the process of debate, slow down decision-making, and affect individual rights.

"While there will be some instances when national security and the requirements of privacy over-ride the interests of openness, we believe the boundaries need to be considerably loosened and liberalised."

NCCL's 'unequivocal' backing

"Freer access to official information is one of the citizen's most cherished civil liberties and is unequivocally supported by the National Council for Civil Liberties", its newly-appointed General Secretary, Larry Gostin, says in a letter of support to the 1984 Campaign for Freedom of Information.

"Secrecy is now entrenched in our society. The range and amount of highly personal and sensitive information kept secret from the person concerned is unprecedented. The question we must ask in 1984 is 'Whose file is it anyway?' The answer is that official information must not be out of the control of the person whose life it intimately affects."

Mr. Gostin says that "The NCCL warmly welcomes this fresh initiative and will use all its efforts to help ensure a freer, less secretive Britain in 1984".

Larry Gostin took over his post on January 1, replacing Patricia Hewitt, who is herself a member of the Council for the Campaign for Freedom of Information.

...and CLEAR supports the FoE argument

Des Wilson, Chairman of Friends of the Earth, is also Chairman of CLEAR, the Campaign for Lead-free Air, and he has publicly argued that excessive secrecy contributed to delays in obtaining a decision in principle to introduce lead-free petrol to Britain.

First, there was the expert advice of the Chief Medical Officer of Health, Sir Henry Yellowlees, circulated to Permanent Secretaries in Whitehall, to the effect that "hundreds of thousands of children" were being affected by the use of lead in petrol. Ministers announced their decision *not* to introduce lead-free petrol to the House of Commons in May 1981 despite having seen this advice, but Members of Parliament in the House, and the public, were unaware of it. When it was leaked some 18 months later it caused a public uproar. Des Wilson comments that "while the 1984 Campaign is not seeking publication of the political or strategic advice given by senior civil servants to Minsters, we do believe that expert advice, such as that of a Chief Medical Officer of Health, should be published. He should, after all, be the nation's acknowledged expert, and he is employed by the taxpayer. It is unacceptable that Ministers can take decisions for political reasons that over-ride expert advice, and are able to defend their positions because the opposition and the public generally have not had the benefit of that expert advice."

The CLEAR campaign also had exceptional difficulty in obtaining the correct facts about the costs of lead-free petrol and the technical difficulties. Indeed, the Royal Commission on Environmental Pollution made exactly the same points. Des Wilson says that "once more it is a question of balance; on the one hand we accept that commercial companies have to have an element of confidentiality if their rivals are not to achieve an unfair advantage. But there are many facts essential to crucial policy and political decisions, such as the one on lead-free petrol, that could be made available without affecting the balance between companies and their rivals. At present companies use the defence of commercial confidentiality whenever it suits them in order to avoid inconvenient action and this cannot be allowed to continue."

Des Wilson has also accused the DoE of misusing scientific research for propaganda purposes. "A case in point was where the DoE received a number of studies that contained facts helpful to both sides in the dispute. The DoE chose its own publication date, and issued them together with press releases emphasising only those facts that supported the DoE position. Thus, scientific research, carried out at the taxpayers' expense, was employed as a propaganda weapon. Had there not been an expert pressure group around to quickly react and offer the public the other side of the story, the effect of this research would have been completely distorted for political ends."

Shelter's Neil McIntosh says 'DoE the most secretive'

"Ministers concerned with housing policy in the Department of the Environment, have done more in the last five years to increase Government secrecy than anyone else", the Director of Shelter, Neil McIntosh said in welcoming the launch of the 1984 Campaign for Freedom of Information.

"There are a number of ways in which Ministers seek to stifle debate. Firstly, they regularly fail to publish information gathered at public expense. Secondly, substantial resources are devoted to changing the method of presentation of regular data so that trends are very difficult to perceive.

"The particular contribution of this Government, however, has been to prevent the collection of large amounts of standard figures and then to refuse to discuss the implications of Government policies on the grounds that no data is available. This has not only in the words of one housing journalist "strangled the flow of information" to the public, but it has rendered largely useless the work of the backbench Select Committee on the Environment.

"The needs of the homeless minority are being hidden from the majority by Government secrecy. Freedom of information is essential if their true needs are to be assessed and met."

As a result of its concern, SHELTER is to be a supporter of the 1984 Campaign and Neil McIntosh is to be its Treasurer.

TCPA 'met with silence'

Welcoming the launch of the 1984 Campaign for Freedom of Information, the director of the Town and Country Planning Association, David Hall, said "the TCPA believe that people must be able to influence the decisions that affect their environment. Effective participation in the decision-making process can only be achieved if people have access to all relevant information in the hands of central and local government and other relevant bodies".

Mr. Hall said the TCPA Planning Unit often finds local government unwilling to provide information concerning development proposals. The Association had experienced great difficulty in obtaining information from the CEGB relating to the Sizewell B PWR proposal. A request for information on accidents to PWRs in other countries met with the response, "we have not the effort *(sic)* to provide this information". Numerous requests for information about nuclear fuel cycle costs had been met with obscurantism or silence.

Access to files seen as vital

ACE wants school files available to parents

The Advisory Centre for Education says that there can be "no justification for a system of record-keeping which denies to parents the right to see information recorded on their children, and which gives parents no right to control the access other groups and individuals have to that information".

ACE believes that it can "never be in the interests of parents or children for information about the children to be systematically withheld or to be released, without their knowledge or consent, to third parties."

ACE says that Section 36 of the Education Act, 1944, places on parents the primary duty of ensuring that children of compulsory school age "receive education suited to their age, ability and aptitude". ACE says this is impossible without access by parents to school records.

"Given access to records, parents can ensure that the information is accurate and up-to-date. They can contribute additional information they feel it is necessary for teachers to know. Without parental involvement, the records are unlikely to be either accurate or complete."

In 1980 a Private Members Bill on school records was introduced into the House. It gave parents and students over 16 the right to see all records and reports kept about their children or themselves; to challenge, and, if necessary, correct them; and to control who else, outside the school, should be allowed to see them. The Bill failed to get a second reading. Subsequent attempts to introduce amendments to new legislation to give parents access to records have also failed. The closest defeat came in the House of Lords debate on the Education Bill 1981, relating to special education; an amendment giving parents the right of access to papers used in the assessment of their child was defeated by only 5 votes.

Patients' Assn. says refusal causes damage

The refusal to allow patients the right of access to their medical records can create distressing anxiety and can be "damaging to health", Dame Elizabeth Ackroyd, of the Patients' Association, says in a letter of support to the 1984 Campaign for Freedom of Information.

"Why shouldn't people see their medical records if they wish to? The Association has never received a convincing answer to this question."

Dame Elizabeth also draws attention to the secrecy surrounding the data on drug trials used to support the case for a licence to market a new product. The DHSS says that the proceedings of the licensing authority need to be confidential for commercial reasons, but Dame Elizabeth replies that "This explanation is used to justify refusal to reveal even the most basic facts about a clinical trial. We have to decide whose interests should come first, the patients' or the manufacturers'. The public should know what the clinical trials have shown, especially when subsequently a drug has produced damaging side effects."

MIND also seeks access to files

MIND says "secrecy is an unnecessary barrier to ordinary people sharing responsibility for their own health and welfare and to their participation in the planning and running of their services".

Information is crucial to the giving by the patient of an informed consent. "Nowhere is the gulf between the ideal and reality greater than in the field of mental health, and no other area of health has such major implications for the rights and liberties of the individual patient".

Lady Bingley, Chairperson of MIND, said, in welcoming the launch of the 1984 Campaign, that "at every level the individuals' ability to participate fully in determining their own care or effectively participate in planning the services to provide that care is thwarted by secrecy.

"Individuals do not have a right of access to their own medical or, where appropriate, housing records. Drug companies are not required to provide full information with each of their products. At an organisational level, there is no right of public access to planning and policy documents in the field of health and social services, nor are the results of enquiries into the failure of statutory agencies to carry out their duties publicly available as of right".

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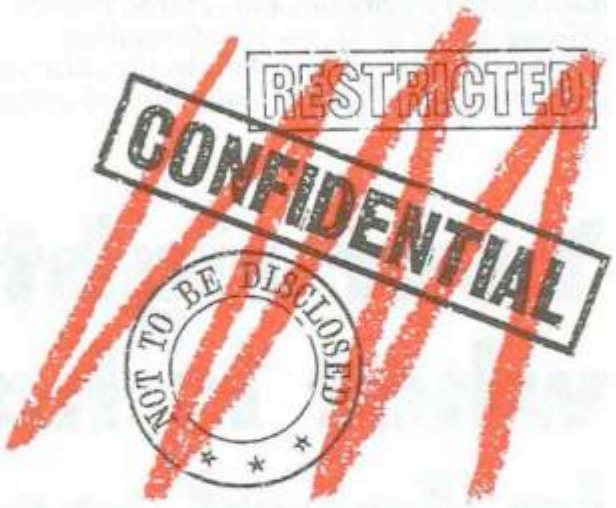
SECRETS FILE No.1



Secrecy in the Town Hall

A report for the 1984 Campaign for Freedom of Information by the Community Rights Project

THREE city councillors in Portsmouth recently discovered that they could be refused the information necessary to represent their constituents. The city council had prepared a report on conditions in council dwellings which revealed serious defects and a need for substantial repairs. The councillors felt it their duty to read the report in order that they could advise their constituents and take action on their behalf. Indeed, one of the councillors was also on the housing committee and thus needed to see the report to be able to carry out his duties. Perhaps because all three were members of the minority group on the council and would clearly be critical of the council for permitting such conditions in its own houses, they were told they could not see the report.

Members of the public, and their voluntary organisations, are also denied access to information they need in their own interests. In 1978 the GLC set up a working party on condensation and mould growth on the Council's Westbury Estate in South London. However, subsequent efforts by both the tenants' association and the local GLC councillor to discover the working party's findings met with denials that the investigation had ever got off the ground. In 1982 the GLC housing estates were transferred to the local Lambeth Borough Council and the transfer order contained a requirement that all relevant information be handed over. Lambeth Council's officers who were also concerned about condensation were also told that the working party had never produced a report. In fact, it had done and this report was eventually handed over to the Lambeth District Housing Office. The reason for the secrecy was that the report had contradicted GLC policy that condensation and dampness was the result of misuse of the property by tenants, rather than structural defects.

In 1982 the London Borough of Bromley produced a draft town centre plan. A major part of it consisted of a highly controversial new relief road that would cut across an existing residential area. The Council's case was that it would relieve their traffic congestion; the local residents believed less drastic measures, such as traffic management schemes, would suffice. Luckily there was a statutory consultation period for the residents to put their views and argue their case. Their ability to do so depended, of course, upon their access to reports and information about traffic flow, traffic density, peak hour use of existing roads, etc. All that information and all those reports were locked in the Council's filing cabinets and repeated requests, both verbal and in writing, to Council members and officers met with a consistent refusal to let them see the information.

In Cambridge local people met a wall of secrecy regarding the council's proposed development, in conjunction with Grosvenor Estates, of an area known as 'The Kite'. The scheme involved major demolition of a whole area and attracted widespread opposition and interest. Such was the interest that the residents attended the meetings of the council committee responsible for the scheme. Or rather they tried to attend! In fact for almost 18 months the residents would arrive for the meeting and find that the first item on the agenda was a resolution to exclude the press and public. Finally an agreement was signed with Grosvenor Estates but kept secret. Indeed even the leader of the opposition group in the council had difficulty in seeing a copy, and was only allowed to do so with his legal advisor after he had agreed not to discuss the terms of the agreement with his constituents or any other residents of Cambridge! Eventually it transpired that Grosvenor Estates were to acquire land and property, but there was a 'buy back' clause under which the Council could be required to purchase properties from Grosvenor in certain circumstances. This clearly involved a financial commitment by the council and thus the local ratepayers. The ratepayers, however, were not told the extent of their financial commitment, so they tried to inspect the accounts at the time of the statutory annual audit of accounts. But once again they were thwarted — the accounts were technically the accounts of Grosvenor Estates rather than the council and thus the ratepayers could not see them.

Council committees are legally open to the public and press — until a resolution to exclude them is passed, as mentioned above. Clearly there will be occasions when such a resolution is justified (e.g. to protect personal privacy, such as a discussion of a tenant's rent arrears). In such a case the council has a legal discretion to go into confidential session. In Rochdale, however, the Planning Committee does *not* use that discretion when dealing with applications for planning permission: they have a *blanket policy* of considering all planning applications (except those made by council members or staff) after the exclusion of the press and public.

Who does this confidentiality protect? Certainly not those people who make the applications for planning permission, for all such applications are by law (Town and Country Planning Act 1971, Section 34(3)) available for public inspection. So in Rochdale you can inspect the planning applications — but what you cannot do is know what your elected representative said about them on your behalf! Furthermore, the chances of local media coverage are reduced.

An even stranger legal anomaly exists in relation to minutes of council committee meetings, for although by law the public can attend the meetings of committees, at least until the exclusion resolution, the High Court has ruled that this right does not extend to publication of the minutes of the meetings.

Another unsatisfactory situation concerns council officers' reports being discussed in public at council meetings. Often councillors will refer extensively to such reports, and read out long sections of them. The public present in the public gallery, however, have no right to have copies of the reports. In such circumstances to actually make sense of what is being discussed is extremely difficult. Indeed a backbench MP who has since achieved a prominent public position, once put this very succinctly, when she stated that: **"It is clear that when the public as of right attend meetings of authorities they may well not understand what is going on unless they are supplied with documents which make clear the subject matter under discussion."** So said Mrs. Margaret Thatcher.

The public's legal rights as regards council sub-committees are non-existent. Such meetings can be held totally in private. However, a joint circular issued by the Department of the Environment and the Welsh Office on 16 April 1975 recommended "that meetings of sub-committees should be treated in the same way as other meetings" and asserted that "if decisions affecting the public are to be taken, the public ought to know what is decided and why." (DoE circular 45/75 paragraph 12).

Electors of Norwich, too, can attend council sub-committee meetings, but a few miles away in Great Yarmouth the public are not so fortunate. Similarly in Brighton the public can attend sub-committee meetings, but in nearby Hastings they cannot. Residents in Liverpool are allowed into sub-committee meetings, but if they move across the road to Bootle (which is part of Sefton) then they will find themselves excluded.

The usual arguments in favour of this total exclusion of the public are that it is necessary to enable local government to function and that some executive decisions have to be taken in private by small sub-committees. If this argument is valid, one cannot help wondering why local government has not ground to a halt in Colchester, Sunderland, Exeter, Carlisle, etc., where sub-committees do admit the public.

The choices people make are, obviously, influenced by the information available to them: and in education parents have a legal right to choose schools for their children. Indeed the Education Act 1980 gives parents a right of appeal if the local authority cannot meet their first choice. Thus parents have a need for information about schools and a very relevant matter will be a school's policy on corporal punishment. Many parents may wish to avoid choosing schools that regularly cane pupils. Others may actually prefer such schools. At Litherland School in Sefton the authorities were not at all keen to disclose the amount of caning that took place. One teacher felt this to be wrong and released the details: 2,000 canings on 400 boys in four terms. A row ensued and other confidential matters came to the fore — including a report by the council's own officers very critical of the school. All of these facts were manifestly matters that parents needed to know when making their choices, but a teacher had to lose his job before they could.

In addition to all this local authorities keep files on many people. Social Service files, education files and housing files. These files will contain council officers' comments, assessments, judgements, which will greatly affect the person concerned. A school file will accompany a child from school to school. Social service files will contain sensitive information about parents' dealings with their children and personal life, and on the basis of these files the council officers will form opinions about how to use their statutory powers. Housing files will contain details about how tenants and applicants for council housing look after their homes. Individuals have no right to see these files kept on themselves or their children. Yet, the files may be wrong, inaccurate or even judgemental or malicious. A 'poor homekeeper' label on a housing applicant can affect the kind of accommodation offered. The applicant, however, has no opportunity to comment on mistakes or malicious remarks. In a recent wardship case involving a child, a social worker reported that the child's mother "told me that she wanted to go to a commune to get some carnal knowledge". So, therefore, said the file! It subsequently transpired that what the mother actually said was that she "wanted to go to the commune to gain calm and knowledge".

The 1980 Housing Act gave housing applicants a limited right to see details of the recorded council particulars of information supplied by the applicant. An attempt by Allan Roberts MP to give people wider right to see the full files kept on them by the council was defeated during the Committee stage of the Bill. Again the reason given was all too familiar: "housing officers will be reluctant to comment; open files will make housing management impossible". If that is true, one can only wonder how housing management still exists in Lambeth, Haringey and Chester where people do have access to their own files.

Some local authorities can at least claim to be consistent; they keep all files and registers confidential. This accolade goes to Ashford (Kent), Sefton, Bath, Northampton and Solihull, who told us that the register of councillors' interests was not publicly available.

And so the story goes on: files, registers, reports, information. All paid for by the electorate and collected in its name, but locked away from it in town hall cupboards and desks. It is time for change. In this four-page report we advise on your rights and outline plans for a campaign to increase them.

Ron Bailey

SECRETS FILE N°1

While the main objective of both the 1984 Campaign for Freedom of Information and the Community Rights Project is to achieve freedom of information legislation and reform, it is also their objective to publicise existing rights of access to information.

There are many ways whereby the citizen can become better informed and obtain considerable quantities of information about the affairs of their local authorities.

On these pages we explain some of the rights provided by law on access to information and meetings at your local town hall and make suggestions as to how you can best use the existing laws to obtain maximum information. We also draw attention to some anomalies or peculiarities in the existing legal circumstances that it is our aim to change.

Your right to know what is happening in local government

1. LOCAL AUTHORITY MEETINGS

A. Your basic rights

(i) Section 1 (1) of the 1960 Act made it the law that all meetings of local authorities (that is meetings of the council) "shall be open to the public".

(ii) In addition Section 100 (1) of the 1972 Act extends the 1960 Act to apply to local authority committee meetings.

(iii) There are also rights of attendance at joint Committees appointed by two or more local authorities.

B. Limitations of your rights and Limits to the Limitations

(i) A Council or Council Committee may, however, quite legally "exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings" (1960 Act Section 1(2)). And by Section 1 (3) of the 1960 Act it is specifically stated that "the need to receive or consider recommendations or advice from sources other than members" (e.g. Council officers) is a "special reason" for excluding press and public. However such *a decision to exclude the public and press must be "by resolution"* (1960 Act Section 1 (2)) which means that *the Mayor or Chairperson of the meeting cannot just ask the public to leave because of some prior decision taken behind the scenes.* Also, even if the public and press are to be excluded from the whole of the meeting (an unusual but not unknown practice), once again this must not be pre-empted and the resolution must be passed at the beginning of the meeting. In other words the press and public must be allowed in — if only to witness the resolution being passed.

(ii) Section 1 (8) of the 1980 Act enacts that the public's right of access to meetings "shall be without prejudice to any power of exclusion to suppress or prevent disorderly conduct or other misbehaviour at a meeting."

(iii) The legal right to attend meetings does *not* extend to sub committees. Such meetings can be held totally in private. However this raises three points:

(a) Can a sub committee consist of all the members of a parent committee? Or put another way can the parent committee simply, by forming itself into a sub committee thereby exclude the press and public? An editorial in *Local Government Chronicle* argues not, saying "how can a whole ever be a lesser part of itself," (January 3rd 1975), and continues with the dictionary definition of a sub committee as "an under committee, a division of a committee" and concludes "we do not think that something becomes another thing by giving it a different title."

(b) What is a committee and sub committee anyway? This is not a meaningless academic question because some Councils have sub committees reporting to full council. Are they really sub committees or in fact committees purporting to be (i.e. masquerading as) sub committees? The answer is important not just because of the public's right of attendance but also because of other incidental rights (see Section C below). Also some Councils use terms like 'panel' or 'board' rather than committee and sub committee. So what is their legal status and thus the public's rights? The answer lies in section 102 of the 1972 Act. Sections 102 (1) (a) and (b) give local authorities the right to appoint committees and joint committees, whereas 102 (1) (c) says that "any such *committee* may appoint one or more sub committees." And Section 102 (2) says that a Council decides the number of members of a Committee, their term of office and the area within which they can act, and then, this sub-section goes on, "in the case of a sub committee (these things are decided) by the appointing *committee...*" *So whatever a body is called look and see when, how and by which body it was set up and which body decided the various things relating to it mentioned above. The answer to these questions will then show whether in law* the body is a Committee or sub committee, whatever it is called in practice. For instance a while ago a so-called sub-committee of Southwark London Borough Council was ruled to be an actual committee, by the High Court, because it had been set up by the full council. (*London Borough of Southwark v Peters* (1972) LGR 41).

(c) Furthermore in D.O.E. Circular 45/75 (Welsh Office Circular 77/75) local authorities are strongly urged by the Secretaries of State to permit the public to attend sub-committee meetings. (*paragraph 12*).

C. Other Rights/Duties

Where a meeting of a Council or Committee (or other body) is required to be open to the public as detailed above, certain other legal requirements follow:—

(i) "Notice of the time and place of the meeting shall be given by posting it at the offices of the body (or if the body has no offices, then in some central and conspicuous place in the area with which it is concerned)" (1960 Act Section 1 (4) (a)).

(ii) This notice must be posted "three clear days at least before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened." (1960 Act Section 1 (4) (a)). This, of course, applies to all meetings to which the public have a right of access — i.e. Council and Committee meetings.

(iii) In addition Schedule 12 paragraph 4(2) of the 1972 Act requires that in the case of full Council meetings which are called by members of the Council (i.e. *not* the regular Council meetings but only those called by groups of members under their special powers so to do) the public notice "shall specify the business proposed to be transacted".

(iv) Further, in paragraph 4(5) of Schedule 12 it is stated that the summons sent to Councillors to attend the meeting *must* specify the business to be transacted and "no business shall be transacted at a meeting" unless it is specified. The only two exceptions to this both relate to the annual meeting of the Council and concern (a) business required by statute to be conducted at that meeting and (b) business brought before the annual meeting as a matter of urgency. Otherwise the rule is absolute, and business conducted which is not included in the summons to Councillors is void (see *Longfield Parish Council v Wright* (1918) 16 LGR 865). An item "any other business" should thus never appear on Council agendas.

(v) The press (but not the general public) have a statutory right to be supplied with "the agenda... (and) further statements or particulars, if any, as are necessary to indicate the nature of the items included". (1960 Act Section 1 (4) (b)). And when the Council are considering an auditor's report the agenda "shall be accompanied by that report and that report shall not be excluded" from documents supplied to newspapers (1972 Act Section 160 (2)). The authority may charge postage or other costs for transmission of the documents. This implies therefore that they must be supplied *prior* to the meeting taking place.

Although this statutory right only extends to the press, local authorities have been advised that "the Minister suggests that it is desirable to hand them to other members of the public who attend a meeting in person so that they may follow the proceedings". (Ministry of Housing & Local Government circular 21/61, appendix 1 para 7 and more recently D. of E. circular 45/75).

Background

On these pages various Acts of Parliament are referred to extensively. These are:—

***The Public Bodies (Admissions to meetings) Act 1960.* This will be referred to as "The 1960 Act".**

***The Local Government Act 1972.* This will be called "The 1972 Act".**

***The Town and Country Planning Act 1971.* This will be called "The 1971 Act".**

The references after various legal cases are abbreviations for details of the official law reports where attachments can be found. Your local reference library will probably have copies of Halsbury's Laws of England, or Halsbury's Statutes. At the beginning of these books there are lists of legal abbreviations and what they stand for. Alternatively, contact the Community Rights Project if you require copies of the law reports, or details of the cases referred to on these pages.

2. LOCAL AUTHORITY DOCUMENTS

A. Minutes

Section 228 (1) of the 1972 Act gives any local government elector for an area the right to inspect the minutes of Council meetings "and any such local government elector may make a copy of or extract from the minutes". Under Section 228 (6) the minutes "shall" be open to inspection "at all reasonable hours", and under s228 (7) if a person having custody of the minutes "obstructs any person" entitled to inspect or make a copy of the document or "refuses to give copies or extracts" to any person entitled to them, then s/he "shall be liable on summary conviction" (i.e. in a Magistrate's court) to a fine of up to £20. In other words it is a criminal offence for a Council officer not to give an elector his/her rights. It is also worth noting that the minutes that must be available for public inspection are the "minutes of the proceedings" — i.e. the *whole* meeting, *not* just the public part of the meeting. And note also that where the person having custody of the minute book goes away, it has been stated in the High Court that s/he should leave somebody else with the relevant authority to produce the minute book. This was stated by Mr. Justice Riley in the case of *R v Andover Rural District Council* 77 JP 296). So don't let them get away with telling you that the relevant officer is on holiday, etc.!

(ii) (a) Generally speaking this right of access to minutes does *not* apply to Council committees and it certainly does not apply to sub committees.

(b) However in the case of Committees that have only *recommendatory* powers and whose decisions need to be approved by full Council before any action can be taken, the High Court has ruled that as "one could not understand the approval without seeing the recommendations", in order to understand the Council minutes, then the minutes of such a Committee are open to public inspection (*Williams v Manchester Corporation* (1897) 45 WR 412).

B. Financial Documents

(i) **General**

There is a general right under Section 228 (2) of the 1972 Act for local government electors "for the area of the local authority" to "inspect and make a copy of or extract from an order for payment of money made by the local authority". As with Council minutes (described in paragraph A above) Section 228 (6) says this right can be exercised "at all reasonable hours" and the same penalties are provided for in cases of obstruction or refusal by "a person having the custody" of an order for payment (Section 228 (7)).

(ii) **At the time of the audit of the Council's accounts**

(a) Wider rights of access to financial documents are given at the time of the audit of the Council's accounts (i.e. the time when the books are checked by outside accountants). Under Section 159 (1) of the 1972 Act "at each audit...any persons interested may inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating thereto and make copies of all or any part of the accounts and those other documents". Thus, clearly the documents available are far wider than simply orders for payment, and the rights of inspection are given to "any person interested", not simply local government electors. The term 'any person interested' cannot be exclusively defined, but it would, it is suggested, certainly include ratepayers who for one reason or another may not be electors, persons who had had financial dealings with the Council, residents who were neither ratepayers nor electors and possibly even Council officers.

(b) In a recent test case it was ruled on appeal at the Crown Court that Section 159 (1) included an accepted building tender as part of the contract; the building contract plans, drawings and blue prints, building contract specifications, as well as the contracts themselves and deeds etc. (See London *Borough of Hillingdon v Paulssen* — reported in Journal of Planning Law page 518, 1977). In the same case it was also decided that building contracts must be available for inspection even if there were provisions in them which required them to be kept confidential.

(c) The time for inspection as laid down in paragraph 8 of Statutory Instrument 1974 No. 1169 — Accounts & Audit Regulations 1974 (subsequently referred to as 'the 1974 Regulations') is 7 clear days before such date as the auditor officially opens the audit. And paragraph 9 of these regulations requires the Council to advertise the 7 day period for at least 14 days before it commences.

(d) Any local government elector has a right to inspect the auditor's report (1972 Act Section 228 (4)) and the Council is required to advertise the auditor's report (1974 Regulations paragraph 14). Further, the auditor's report *must* be sent to the press (see paragraph 2.C (v) above). In addition after the conclusion of the audit the Local Authority must prepare an abstract (i.e. summary and explanation) of their accounts (1974 Regulations paragraph 15 (1)) and this abstract is also available for inspection (1972 Act Section 228 (4)) and its existence and the public rights of inspection must be advertised 'forthwith' 1974 Regulation paragraph 15(10)).

(e) It is an offence for a Council officer to fail to permit inspection of or copies of documents to which the public have been given access at time of audit under Sec-

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tion 159(1) of the 1972 Act (see the 1974 Regulations paragraph 18) and a fine of £20 is provided for — (1972 Act Section 166 (2)).

(f) As with other documents available to the public an agent has the right of inspection of audit documents on behalf of a person interested (see *R v Bedwellty UDC ex parte Price*, 1934 1 KB 333, 31 LGR 430).

(iii) **Information to be published with Rate Demands**

(a) A Code of Practice with legal backing relating to rate demands has been issued by the Secretary of State for the Environment under Section 2 of the Local Government Planning and Land Act 1980. It is contained in D.O.E. Circular 14/80 (Welsh Officer circular 34/80) entitled "Publication of Rate Demands and Supporting Information by Local Authorities" and the actual code is entitled "Explaining the Local Authority Rate Bill". Much of the information that this requires local authorities to include in the Rate Demand Note is included in the General Rate Act 1967 and is purely procedural, requiring local authorities to state the rateable value of the premises, the rate in the pound being levied and details of rebates and payments by instalments etc. However Part III of the Code of Practice states that certain supporting information should be published including: amounts spent on each service being provided; total income of the Council, broken down to show broadly how much comes from Government grants, payments by users of services (e.g. tenants) and from different classes of ratepayers (domestic, industrial, commercial); a comparison with the previous years rate including changes arising from inflation, Government grant changes, alteration in the provision of services and in quality of service or changes in income from charges levied for services provided; the amount that would be raised by a 'penny rate' (i.e. a charge of one penny in the pound for every rated property in the Borough); an explanation of major policy objectives; planned capital expenditure; maximum and minimum levels of manpower for the previous year and a comparison of rate increases or gross income and expenditure levels with inflation over the previous 5 years.

(b) These requirements in the Code of Practice are *in addition* to the statutory requirements of Section 5, General Rate Act 1967. The most useful provisions of this section are that 'information with respect to the following matters shall be included' in the local authority rate demand: the amount in each pound to be paid that will go to the rating authority (i.e. local borough or district Council) and the amount in each pound to be paid that will go to other authorities that are also funded out of the rates (e.g. County Councils, Metropolitan Police) (Section 5 (1) (e)); the amount in each pound to be paid that will go to the principal services provided by the rating authority and by other authorities funded out of the rates (5 (1) (g)).

C. Other Documents

(i) A large number of Acts of Parliament give councils duties to

(a) have documents on deposit at their offices and/or

(b) allow public inspection of those documents and/or

(c) permit the public to make copies of these documents either with or without charge and/or

(d) publish certain information.

(ii) **Sections 225 and 228 (5) Local Government Act 1972**

Some Acts refer to documents to be deposited with the "proper officer" of the council. This person is simply the person appointed by the council (the Chief Executive or Council Solicitor usually) to receive such documents. Documents may be required to be deposited with the proper officer either by an Act of Parliament or a Statutory Instrument (that is a law made by the relevant Secretary of State using powers given to him/her by Parliament) or by a resolution of the Houses of Commons and Lords (Section 225 1972 Act). Under Section 228 (5) of the 1972 Act a person interested (not just a local government elector) may inspect and make copies of all documents deposited with the council's proper officer (at a cost of 10p per document plus 10p per hour or part hour after the first hour). Obstruction or denial of this right is an offence under Section 228 (7) punishable by a fine of up to £20.

(iii) **Byelaws**

These are local laws made by the council itself. All byelaws must be deposited at the offices of the local authority that made them "and shall at all reasonable hours be open to public inspection without payment" and any person may purchase a copy of any byelaws for a maximum of 20p (1972 Act Section 236 (8)).

(iv) **Housing Matters**

(a) Section 41(1) of the Housing Act 1980 gives local authorities a duty to publish information about their council tenancies, detailing the terms of these tenancies; the tenants' right to buy the dwelling and also his/her right to a mortgage from the local authority, the repairing obligations of the local authority under Part II of the Housing Act 1980; and the repairing obligations under Sections 32 and 33 of the Housing Act 1961. Section 41 (2) requires that this information is kept up to date "so far as is reasonably practicable".

(b) Section 43 of the Housing Act 1980 gives local authorities a duty to make arrangements to consult with its (secure) tenants on matters of housing management, and Section 43 (3) states that the authority "shall publish details of the arrangements which it makes". A copy of the published arrangements must be made available "for inspection... by members of the public" (Section 43 (3) (a)) at the local authority's principal office at all reasonable hours and "any member of the public who asks" must be supplied with a copy of the arrangements "on payment of a reasonable fee". (Section 43 (3) (b)).

(c) Section 44 of the Housing Act 1980 gives local authorities a duty to publish "a summary of its rules" governing allocation priority, exchanges and transfers (Section 44 (1)). There is also, under Section 44 (2) (a) a duty to keep a set of the actual rules governing allocation priority, exchanges and transfers (i.e. not just the summary referred to above) *and* a set of rules governing procedure on application. Section 44 (2) (b) requires the Council to make these rules (i.e. not just the summary) available for inspection by "members of the public" at all reasonable hours at its principal office. And Section 44 (5) gives the local authority a duty to provide "any member of the public" who asks both with a copy of the summary (free of charge), and with a copy of the rules "on payment of a reasonable fee". Applicants for local authority housing accommodation are given a specific right under Section 44 (6) to be given "at all reasonable times and without charge" details of the particulars that *they have given* to the Council in their application and which the Council has recorded as being relevant. This is clearly a very limited right and it does not apply to other particulars that the Council may have recorded. So regrettably there is no right for applicants to know what is on their files.

(d) Local authorities, under Section 22 Housing Act 1961, have made schemes for the registration of houses in multi-occupation, and Section 22 (8) requires that such a register must be open to public inspection free of charge at all reasonable hours at the council's offices. Additionally any person must be given a copy of the register at a maximum charge of 5p.

(e) Under the Social Security and Housing Benefit Act 1982, local authorities have been required to make schemes for rate and rent rebates to be available. Under Section 31 (1) (b) of that Act they must "make copies of the scheme available for public inspection at their principal office at all reasonable hours without payment", and under subsection 1(c) where the scheme is a local scheme (that is one that they have agreed to operate rather than the statutory one laid down by the Act) they must give "a copy to any person on payment of such reasonable sum as the authority may determine".

(f) Under Section 63 of the Rent Act 1977 local authorities must appoint a Rent Officer to register all fair rents in their area, and under Section 66 (1) this register must be available for inspection by the public and a copy made available on payment of a reasonable charge.

(v) **Planning Matters**

(a) Regulations 36-39 of the Town and Country Planning (Structure and Local Plans) Regulations 1982 (S.I. 1982/555) make certain documents *prepared by local authorities outside London* in connection with structure and local plans available for public inspection:

- draft plans and supporting documents must be available for inspection at all reasonable hours (regulation 36)
- local plans and structure plans themselves must also be available for public inspection at all reasonable hours at the main office of the council that prepared them (that is the district or borough for local plans and the county for structure plans) (regulation 37)
- counties and district borough councils must also compile a register of all structure and local plans in force in their areas and this must be available for public inspection free of charge at all reasonable hours (regulation 39).

(b) *In London* similar rules apply, laid down by the Town and Country Planning (Local Plans for Greater London) Regulations 1974 (S.I. 1974/1481). The relevant regulations are numbers 25-28:

- regulation 25 makes draft plans and supporting documents available
- regulation 26 makes all adopted local plans available both at the offices of the London borough council itself and at the GLC offices at County Hall
- regulation 27 gives each London borough the duty to compile a register of local plans with brief particulars of them, and this must be available for public inspection. In addition each borough's register must contain details of the Greater London Development Plan so far as it relates to the area of the borough.

(c) Under Section 34 (1) of the Town and Country Planning Act 1971 "every local authority shall keep... a register ...with respect to applications for planning permission made to that authority, including information as to the manner in which such applications have been dealt with" (in other words, whether the application has been approved, rejected, deferred, approved with amendments or conditions or whatever). And under Section 34(3) "every register kept under this section shall be available for inspection by the public at all reasonable hours".

(d) Under Section 92A of the Town and Country Planning Act 1971 (that is a new section to that Act added by the Local Government and Planning (Amendment) Act 1981) every planning authority must keep a register of all enforcement notices and stop notices (these are notices made against people who carry out development without planning permission), and this register "shall be available for inspection by the public at all reasonable hours".

(vi) **Tree Preservation**

Under the Town and Country Planning Act 1971, Section 61 (a) (8) (that is an additional section added to that Act by the Town and Country Planning (Amenities) Act 1972), local authorities are required to make available for public inspection free of charge "at a convenient place" their register of tree preservation orders.

(vii) **Listed Buildings**

Under the Town and Country Planning Act 1971 Section 54, local authorities are required to make the register of listed buildings in their area available for public inspection. In addition the Secretary of State for the Environment, (who compiles the list — or rather his civil servants do) must also keep copies available for public inspection.

This material is extracted from a useful booklet published by the Community Rights Project. The full booklet can be obtained, price £1.00, from the Community Rights Project, 157 Waterloo Road, London SE1 8UU (Tel: 01-928 0080). The booklet is written by Ron Bailey, to whom the 1984 Campaign is grateful both for the opportunity to draw upon it, and for his help generally.

(viii) **Land Charges**

The Land Charges Act 1972 gave local authorities a duty to establish a register of local land charges on all land/property in their area. This register must be available for public inspection. The register will show such things as whether the building is in a conservation area, a smoke control zone, whether the road is adopted by the local council, any footpath rights, tree preservation orders on the land, or whether a building is listed, etc. However, it will *not* show the owner of the building. Inquiries can only be made about individual properties and not groups or whole areas.

(ix) **Noise, pollution and waste**

(a) On certain buildings near to highways built after 10 October 1972, or where an additional carriageway to an existing road has been constructed after that date, the highway authority has a duty to carry out insulation work or make a grant for such work. Under the Noise Insulation Regulations 1975 (Statutory Instrument 1975/1763) the authority must prepare a map of eligible buildings and make this map available for public inspection.

(b) Under the Control of Pollution Act 1974, all county councils (in England) and district councils (in Wales) must issue licences for waste disposal, and they must also maintain a register of such licences and keep it available for public inspection at all reasonable hours at their main office, and permit members of the public to make a copy at a reasonable fee. (1974 Act Section 6(4)).

(c) Under Section 79 of the Control of Pollution Act 1974 local authorities may collect information regarding air pollution and under Section 82 (3) (d) of that Act they must keep registers of such information. These registers must, according to Section 82 (5) be available for public inspection at the council's main offices free of charge at all reasonable hours. The public may obtain copies of the register on payment of a reasonable fee. However an unholy alliance between some local authorities and some private firms has meant that councils often agree to collect the information 'informally' rather than under Section 79 — and thus there is no duty to keep it on a register for public inspection.

(d) Smoke control orders are land charges and so can be seen on local land charge registers as explained in (viii) above.

(x) **Local Authority Direct Labour Operations**

Part III of the Local Government Planning & Land Act 1980 relates to Direct Labour operations by local authorities, and Section 18 of the Act gives local authorities duties to publish information. Section 18(1) requires the authority to publish an annual report "on the construction and maintenance" work undertaken by them and Section 18(2) requires that this should be published "not later than 30th September" in the financial year following the year to which it relates (i.e. financial years run from 1st April to 31st March: so the report for each such year must be published by the following 30th September). Section 18(3) allows "any person" to "inspect a report of the local authority — under this section", and also enacts that any person "shall be supplied with a copy of the report" on payment of a reasonable charge. Further, Section 18(4) gives the council a duty to "publish in at least one newspaper circulating in the area" the place where the report may be inspected, the fact that people can obtain a copy and the charge per copy.

(xi) **Vacant or Unused Land**

Part X of the Local Government Planning and Land Act 1980 relates to unused or underused land held by public bodies. Under Section 95 the Secretary of State may compile a register of such land for any public body and in any area that s/he decides. Where the Secretary of State compiles such a register s/he "shall send" it to the local council (Section 96) plus any amendments "as he may from time to time consider appropriate" (Section 96 (1) (b)), and under Section 96(3) "a copy of a register sent to a Council — *shall* be available at the Council's principal office for inspection by any member of the public at all reasonable hours", and "any member of the public" must on request be supplied with "any information" in the register "on payment of such reasonable charge... as the Council may determine" (Section 96 (4)). Most areas now have these registers.

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Community Rights Project to 'open Town Halls'

The Community Rights Project was planned separately from the 1984 Campaign for Freedom of Information and its emergence at the same time is a coincidence. However, the Community Rights Project immediately offered to be a supporting organisation of the 1984 Campaign, and in turn the 1984 Campaign suggested that detailed activity in support of greater access to information held by local authorities should be carried out by the Community Rights Project.

The project's first initiative is the publication of a draft Bill to give:

- **public access to local authority sub-committees;**
- **public rights to see council officers' reports and research;**
- **public rights to see local authority committee and sub-committee minutes;**
- **councillors' rights to see documents to enable them to do their duty;**
- **councils a duty to publish a summary of electors' rights.**

The bill was launched at a press conference in December by Ron Bailey in partnership with Conservative MP, Robin Squire, Labour MP, Allan Roberts, and Liberal MP Simon Hughes.

It is hoped that an opportunity may arise to either introduce the Bill as a Private Members Bill or via the House of Lords.

In addition, the Community Rights Project hopes to encourage local authorities to introduce private Bills. All local authorities have power to promote such Bills under Section 253 Local Government Act 1972. The Greater London Council, a likely initiator of such a Bill, has a special power under the London Government Act to amend the functions of local London Boroughs in such a Bill. This calls in the first case for consultation with local boroughs.

Inconsistency in council practices

The law says nothing either way about the admission of the public and press to meetings of sub-committees. The Secretaries of State recommend that meetings of sub-committees should be treated in the same way as other meetings, particularly where they have delegated powers. If decisions affecting the public are to be taken, the public ought to know what is decided and why; the status of the body taking the decisions is irrelevant.

In the light of the above advice from the DoE and the Welsh Office, the Community Rights Project asked a number of local authorities in November last what their practices were on public access to sub-committees. The inconsistency is demonstrated by this table:

Authority	*Public Access to Sub-committees*	*Authority*	*Public Access to Sub-committees*	*Authority*	*Public Access to Sub-committees*
Birmingham	No	Wigan	No	Cornwall	Yes
Tamworth	Yes	Bury	No	West Midlands	No
Nth Warwickshire	Some	Trafford	Usually No	Lincolnshire	Yes
Solihull	No	Stockport	No (except Youth Sub-committee)	Gwent	Not in general
Bromsgrove	No			Derby	Yes
Dudley	No	Rochdale	Some	Exeter	Yes
Walsall	Most closed.	Oldham	No (except Housing Sub-committee)	Norwich	Yes
Cannock	No			Brighton	Yes
Bolton	Some (not Land or Policy)			Sunderland	Yes
		Tameside	Yes	Hastings	No
Grtr Manchester	No	Bristol	Some	East Yorkshire	No
Salford	No	Kingswood	Yes — 'unless confidential'	Gillingham	No
Chorley	No			Reading	Yes
St. Helens	Some	Bath	No	Northampton	Yes

Access to Town Halls...from centre pages

(xii) **Local Authority Staffing Levels**

A Code of Practice has been issued under Section 2 of the Local Government Planning and Land Act 1980 requiring local councils to publish details relating to their staffing levels.

(xiii) **Annual Reports**

Another Code of Practice issued under Section 2 of the Local Government Planning and Land Act 1980 has been issued in D.O.E. Circular 3/81 (Welsh Office Circular 5/81) entitled "Publication of Annual Reports and Financial Statements by Local Authorities". The actual code is called "Local Authority Annual Reports". This code states that Annual Reports should be prepared "as soon as possible after the annual accounts for the financial year have been closed" (D.O.E. Circular 3/81 paragraph 8), and the Report should include details of revenue expenditure for all items, both for the year in question and the previous year (revenue income means that money raised by the Council itself and not obtained from central Government or other bodies; revenue expenditure means spending on day to day and operating expenses, as distinct from capital expenditure on long term matters like buildings and land); summary of capital expenditure for all services; general statistics and a comparison with the previous year for major services showing cost, those benefiting from the service and degree of use; details of manpower by each staff category and a comparison with the previous year, details of how people can follow up matters arising from the Annual Report; a basic profile of the authority including population and environmental statistics; comparison of the Council's budget with other authorities; statistical and financial trends over the previous five years and planned future direction of major policies; details of methods used by the council to review its policies; and an explanation of local authority terminology, accounting practices and other information for nonspecialists.

(xiv) **Local Government Commissioner (Ombudsman) Reports**

Under Section 30 of the Local Government Act 1974 reports of investigations made by the Local Government Commissioner (Ombudsman) must be made available for inspection.

(xv) **Highways, Byeways, Footpaths etc.**

(a) Under Section 15(4) of the Highways Act 1980 (this will be referred to as 'the 1980 Act' in this section) the Greater London Council and all London Borough Councils must have a list and map of all metropolitan roads available for public inspection at all reasonable hours.

(b) All county councils and London Borough Councils must prepare a list of streets in their area which are maintainable at public expense (1980 Act Section 36(6)) and this list must be available for public inspection at all reasonable hours at all county, district and London Borough Council offices.

(c) Private highways can be 'dedicated' to a local council and, if accepted, they too can become maintainable at public expense. In such a case the council must certify this (1980 Act Section 37(3)) and all such certificates must be deposited with the 'proper officer' of the council (see subsection (ii) above for an explanation of this term) and be available for inspection at all reasonable hours (Section 37(5)).

(d) Highways (and this term includes roads, footpaths and bridleways) can be "stopped up" or diverted or "extinguished" (that is, no longer usable by the public as highways) after certain procedures have been complied with. Only the Secretary of State can stop up a road, and where he does so he must make the stopping up order available for inspection (Town and Country Planning Act 1971 (Section 215(7)). A local authority can stop up a footpath or bridleway and must make the order available for inspection at all reasonable hours (1971 Act Schedule 20 paragraph 6).

(e) All county councils and other London Borough Councils (and inner London Boroughs if they so choose) must prepare a definitive map of footpaths in their area, and this must be open for public inspection free of charge (Wildlife and Countryside Act 1981 Section 57(5)).

The Draft Bill

Proposed Local Government (Access to Information) Act '84

Part One

Admissions to Meetings

1. The Public Bodies (Admissions to Meetings) Act 1960 shall apply to meetings of local authority sub-committees as well as to meetings of local authority committees and meetings of the local authority itself.	**This gives the public the right to attend local authority sub-committee meetings. The right of the sub-committee to pass a resolution excluding the public and press is retained.**

Part Two

Access to Information

2. The minutes of the proceedings of a local authority committee and a local authority sub-committee shall be open to the inspection of any local government elector for the area of the authority at all reasonable hours and any such local government elector may make a copy of these minutes.	**This gets rid of the existing anomaly in the law whereby the public can attend Committee meetings of a local authority, but cannot go along later and inspect the minutes of those meetings. It also makes sub-committee minutes open to the public as those meetings would be so open pursuant to Section 1.**
3. (1) Copies of any reports being discussed at local authority meetings, local authority committee meetings, or local authority sub-committee meetings, and which are considered during any part of such meetings to which the public are admitted shall be made available to the public present. (2) Any such reports covered by sub-section (1) above shall be open to the inspection of any local government elector for the area of the local authority at all reasonable hours and any such local government electors may make a copy of any such reports.	**This gives the public the right of access to reports being discussed during the non-confidential part of the agenda of meetings open to the public.**
4. (1) Any member of a local authority or a local authority committee or sub-committee may inspect and make a copy of any interim reports, memoranda, letters or other documents relating to any matter on the agenda of the local authority or the local authority committee or sub-committee, as the case may be. (2) Any such document covered by sub-section (1) above concerning any item discussed in any part of the agenda of the local authority or local authority committee or sub-committee from which the public have been excluded, shall be subject to the same confidentiality as that part of the agenda. (3) Without prejudice to sub-sections (1) and (2) above any member of a local authority may inspect and make a copy of or extract from any local authority reports, memoranda, letters or other documents which the member may require in the course of his duties as a member of the authority.	**This clarifies the right of Councillors to local authority documents, subject to certain confidentiality provisions.**
5. Any local government elector for the area of a local authority may inspect and make a copy of any interim report, memoranda, letters or other documents relating to any item that appears on the public part of the agenda of any local authority committee or sub-committee meeting unless the local authority or the relevant committee or sub-committee has ordered that any such interim report, memoranda, letters or other documents shall not be available for public inspection.	**This Section and Section 6 give the public a right of access to internal reports, memoranda, etc., regarding matters that are on the public part of the agenda of local authority meetings, committee meetings and sub-committee meetings. However, the authority or relevant committee or sub-committee can pass a resolution in cases of confidentiality being required restricting this right of the public.**
6. Any such order as referred to in Section 5 above shall only be made on the grounds that public access to the documents referred to in that Section would be an invasion of personal privacy or detrimental to the public interest, but not because such public access would be politically or administratively embarrassing to the local authority or any member or officer of the local authority.	
7. It shall be the duty of a local authority to publish a list of the names and addresses of all members of the authority and all members of any committee or sub-committee of the authority and any local government elector for the area of the local authority may at all reasonable hours inspect and make a copy of any such list.	**This requires a local authority to publish the names and addresses of Councillors (they are already published in the Municipal Year Book for those who know the system) and enables electors to have a copy of this list.**
8. It shall be the duty of a local authority to publish a summary of the rights of local government electors to attend meetings and inspect documents of local authorities given by this Act or by the Public Bodies (Admissions to Meetings) Act 1960 or by the Local Government Act 1972 and any local government elector for the area of the local authority may at all reasonable hours inspect and make a copy of any such summary.	**This requires local authorities to publish a summary of the public's rights of access to meetings and documents and enables electors to have a copy of this summary.**

James Cornford

Consent to decisions 'must be informed'

We live in a complicated and highly organised society in which most important decisions are taken by small groups of people, sometimes elected, more often appointed, out of sight of the public. If the public is to accept those decisions, and trust the people who make them, we need to know on what basis the decisions have been taken, what were the opinions of the experts consulted, and what the reasons were for making one choice rather than another. For consent to be meaningful it must be *informed* consent: there must be the possibility for those affected by decisions to find out how, why and when those decisions are made.

Now that is an ideal which is far from being achieved anywhere, but in Britain it is further from being achieved than in many other liberal democracies. British government, national and local, is too secretive, and that view is shared by many members of parliament, civil servants, journalists, and others who are close observers of government, as well as by many ordinary citizens. It is a view held by the main opposition parties — and it is even a view supported by many ex-ministers and retired senior officials.

Unfortunately they may think so before they retire, but they do not say so, and that is the nub of the problem: the present rules are too convenient in the short term, because for government, information is power: governments will inevitably try to control and manipulate information for their own benefit, as far as the rules allow. In Britain the rules give government absolute discretion and the citizen very few rights to information: no official information is supposed to be released without authorisation by government.

There are of course laws governing information but the fact is that these are thoroughly discredited. Over the last decade there have been a number of official inquiries — the Franks Committee on S.2 of the Official Secrets Act, the Younger Report of Privacy, the Lindop Report on Data Protection, the Wilson Report on Public Records — and all have said the relevant law was unsatisfactory and needed reform. Government has responded by trying unsuccessfully to tighten up the protection of official secrets, without giving any right of access, and then by making the minimum concessions on data protection compatible with our international obligations, and that only under pressure from the data processing industry and the major professional bodies concerned. Successive governments have failed to react in a positive, imaginative or constructive way to these reports.

We need a fundamental change in the assumptions on which official information is handled. We need to change from a system in which the government releases whatever information it chooses as and when it chooses, to a system in which official information is available unless the government can give a good reason for withholding it. Those good reasons should not be whatever the government finds convenient, but based on conditions laid down by Parliament and policed by an independent arbitrator.

Freedom of Information does not mean a free for all, but a set of rules which sets limits to the discretion of government and provides definite rights for citizens. We recognise that there must be important limits on public access to information on grounds of national security, for purposes of law enforcement, to protect the privacy of individuals. We also recognise that government cannot be conducted in a goldfish bowl: governments need some degree of privacy in which to formulate policy and our constitutional conventions require that the advice of civil servants to ministers should not be exposed. The Freedom of Information Bill which we will try to have introduced in parliament as the first priority of the Campaign will include detailed provisions on these questions, but its main purpose will be to establish a statutory public right of access to official information.

James Cornford (above) is Chairman of the Council for Freedom of Information. A former Professor of Politics at Edinburgh University, then Director of the Outer Circle Policy Unit, he is now Director of the Nuffield Foundation.

We shall of course be told that the time is not ripe — previous attempts have been made in more favourable parliamentary circumstances and have failed. Furthermore, the present Government is wholly unsympathetic and has a large majority. Our first answer is that this question *must* be kept on the public and parliamentary agenda. The attitude of the Government and the size of its majority must not be allowed to stifle debate. This is an issue on which parliament and the public need to be educated and proposals need to be worked out in detail and thoroughly canvassed. There is no better way of doing this than by getting to grips with a Bill in Parliament. Our second answer is that legislation is the *ultimate* aim of the Campaign, but not the only one. Unlike previous efforts, which have concentrated on Parliament and on central government, this Campaign will be concerned with greater freedom of information in local government and in other public and private sector bodies. It will be concerned to promote more voluntary disclosure and to alert the public to such rights as they already have and to encourage them to make use of them.

The whole point of this campaign is to take the issue of freedom of information out to the people where it belongs and to create that steady and unrelenting pressure of well-informed opinion which neither Westminster nor Whitehall can long resist.

Des Wilson

FoI has to be backed by law

I believe that one day, after freedom of information legislation has been implemented, people will marvel at the way we had, by the 1980's, allowed information in Britain to be so restricted. They will marvel that parents could not see their children's school files, that patients could not see their own medical records, that council tenants or those on council waiting lists could not check the accuracy of their own files. They will marvel at the number of local issues discussed behind closed doors. They will not know whether to laugh or cry at the obsession with secrecy in Whitehall and the classification of the most harmless information as "RESTRICTED" or "SECRET". They will see how it allowed incompetence and abuse of power to remain unchecked. They will see how secrecy was employed to load the dice in support of the status quo, to preserve power and position and to protect from embarrassment, and they will chuckle at the weakness of the defence for it and be astonished at how all attempts to crack the safe of official secrecy always failed.

The reason for this failure is obvious enough — few people ever relinquish power voluntarily, and information is power.

As my colleague James Cornford makes the positive case for action on freedom of information, I will concentrate on the arguments of those who defend it:

Des Wilson (above) is Chairman of the 1984 Committee for Freedom of Information. He is also Chairman of Friends of the Earth and CLEAR, The Campaign for Lead-free Air.

Their first point is that freedom of information legislation is inconsistent with our Westminster system of government. In fact, such legislation has been introduced recently in Australia, Canada, and New Zealand without undermining the "Westminster system" operating there. In Australia, the Senate Standing Committee on Constitutional and Legal Affairs considered this question in depth and concluded that it had been used "as a smoke-screen behind which to hide, and with which to cover up existing practices of unnecessary secrecy". It continued:

"...FoI legislation does not relate to any specific system. It is rather a question of attitudes, a view about the nature of government, how it works, and what its relationship is to the people it is supposed to be serving. Any political system which holds that the people are entitled to a maximum degree of information about how *their* government operates, so that it can be made more responsive and accountable to them, will welcome an effective FoI Bill. In this respect a Westminster system of government should be no different from any other."

It is said that the "Westminster system" is already "open" because of the accountability of Ministers to Parliament. It is significant, therefore, that, as you can see from the list on page 2, there is wide, all-party support on the back-benches for freedom of information. These MPs know how frustrated they become by the refusal of Ministers to relinquish information of value to their constituents — they know this reform is necessary if Parliament too is to be effective.

Civil servants argue that they cannot proffer frank advice to Ministers if it is to be publicised. We accept that political, tactical, or strategic advice offered by civil servants to Ministers, should remain private, but there is no reason

(continued on next page)

The story so far...

The Official Secrets Act 1911
It was introduced as an urgent anti-spying measure at a time of national crisis when war with Germany seemed imminent. Section 2 of the Act considerably tightened controls over unauthorised disclosure of official information and created a new offence — receipt of improperly disclosed information. (When a roughly equivalent measure was tried 3 years earlier it provoked an outcry, and the proposal was dropped.) In 1911 the new and far-reaching restrictions went literally unnoticed. The Act passed the Commons in half an hour, and Section 2 was not mentioned in the Parliamentary debates. (The Act was amended in 1920 and 1939).

1968 Report of the Fulton Committee on the Civil Service
The report concluded that 'the administrative process is surrounded by too much secrecy' and that 'the public interest would be better served if there was a greater amount of openness'. It called for 'an enquiry to make recommendations for getting rid of unnecessary secrecy in this country'.

1969 White Paper 'Information and the Public Interest'
A very limited response to the Fulton recommendations which argued that the government was publishing more information, and that the Official Secrets Act did not create unnecessary secrecy.

1971 Sunday Telegraph Official Secrets Trial
Four defendants were acquitted of charges under Section 2 of the OSA after the Sunday Telegraph had published a leaked report about British Aid to the Nigerian federal government during the civil war in that country. Summing up, the Judge suggested Section 2 be 'pensioned off'.

1972 Report of the Franks Committee on Section 2 of the Official Secrets Act 1911
The Franks Committee recommended that Section 2 be repealed and replaced by an Official Information Act making it an offence to disclose without authorisation a more narrowly defined range of information. (Civil servants who leaked other information could not be prosecuted — but could still face disciplinary charges.) The mere receipt of improperly disclosed information would no longer be an offence.

1973 Government accepts Franks approach
In the Commons, the Home Secretary (Conservative) says that the government accepts the essential recommendations of the Franks Committee but suggests that the categories of protected information may have to be widened.

1974 Labour elected with f.o.i. pledge
Labour are elected on a manifesto containing a promise to go considerably further than Franks and to 'replace the Official Secrets Act by a measure to put the burden on public authorities to justify withholding information'.

1976 Government proposes Section 2 reform
The Home Secretary (Labour) says he will introduce legislation based on the Franks Report to replace Section 2 of the OSA. Disclosure legislation of the kind promised in Labour's election manifesto is no longer mentioned.

1977 Journalists arrested under the Official Secrets Act
Two journalists and their informant — a former soldier — are arrested after discussing the government's intelligence monitoring of international radio communications. All were charged under Section 1 of the OSA for offences related to spying: these charges were later shown to be groundless and dropped during the trial. The former soldier is charged under Section 2 for unauthorised disclosure, and the two journalists with receipt of information improperly disclosed — even though the government is committed to abolishing this offence. The three convicted under Section 2 charges in 1978 though the main effect of 'the ABC trial' has been to further discredit Section 2, no fines being imposed.

1977 The Croham Directive
The Head of the Civil Service sends a memo to Departmental Heads advising them that in accordance with the Prime Minister's instructions background material relating to policy studies should normally be published. The memo (itself confidential), which is leaked to the newspapers, acknowledges that one purpose of the exercise is to head off pressure for Freedom of Information legislation.

1978 Government White Paper on Section 2 reform
Confirms that Franks-type legislation is proposed ...but no more. Referring to the Croham Directive, the White Paper says that more official information is now being published.

1978 The Freud Bill
A major attempt to introduce Freedom of Information legislation by Liberal MP Clement Freud. This is the first such bill to have obtained the necessary parliamentary time. Drawn up by the Outer Circle Policy Unit, the Official Information Bill proposes to repeal Section 2 and 'establish a general right of access to official documents for members of the public'.

1979 Government Green Paper 'Open Government'
As the Freud Bill gathers momentum and widespread parliamentary support, the Government continues to urge a non-statutory alternative. It now concedes that 'administration is still conducted in an atmosphere of secrecy which cannot always be justified' and proposes to adopt a voluntary Code of Practice. But it insists that disclosure would still ultimately depend on Ministers' discretion — a concept that supporters of the legislative approach fundamentally reject.

1979 Freud Bill falls with Election
The Freud Bill, which had made substantial Parliamentary progress and survived major government amendments, dies when Parliament is dissolved.

1979 Conservative Government introduces Protection of Information Bill
Following the Franks model, Section 2 of the OSA is to be replaced by measures to protect specified classes of information, but there is to be no public right of access. The classes of protected information suggested by Franks are modified. Some are dropped but new ones, covering the nationalised industries, telephone tapping and mail interception, are created. Unprecedented powers to prevent public discussion of security measures are proposed. The Bill was subjected to sharp criticism, particularly at the time of the Blunt affair, ultimately forcing the government to withdraw it.

1981 The Hooley Bill
Frank Hooley MP reintroduces the Outer Circle Policy Unit proposal which had formed the basis of Clement Freud's 1979 Bill. Opposed by the government, the bill is defeated at 2nd reading.

1983 General Election
At the 1983 General Election, Labour and the Alliance promise f.o.i. action; the Conservatives do not.

Senior civil servants admit 'UK is excessively secretive'

Hopes that senior civil servants may respond positively to many of the objectives of the 1984 campaign have been raised by a discussion paper circulated by the Association of First Division Civil Servants. It examines the problem of "leaks" and concludes that a key reason for them is "the high degree of secrecy conducted here relative to most other democracies".

It suggests that "a reduction in secrecy would make it easier for government to keep confidential those matters which it considers most important to safeguard" and it proposes a number of measures, short of a freedom of information Act, to create a more open approach to the publication of documents.

The discussion paper begins with an examination of increased "leaking" of information, and concludes that the FDA "could not and should not condone the unauthorised disclosure of information by its members".
It then says that it "seems pertinent to ask whether breaches of government confidences could be prevented by more positive means than 'plumbing'.

"To some extent leaks have been prompted by a belief that government in the UK is excessively secretive by comparison with other democracies. This belief has some justification."

The report continues: "The government might like to consider whether some liberalisation of information might not be in its own interests. This might include some or all of the following:

(i) Timing and content
Where it was only the lack of authorisation which has caused concern it is worth asking the question whether the document need have carried a security classification at all or whether it could not have been made freely available in the first place.

Where timing, rather than content, is the main reason why disclosure is unwelcome, it may be asked whether embarrassment would not have been avoided if the government had itself decided on earlier publication.

As regards the content of documents, it can be argued that overclassification is a common fault, and that if Whitehall were not seeking to restrict far too many of its papers it would be possible to take more effective steps to protect the confidentiality of those whose disclosure would be genuinely damaging.

(ii) Consultation process
Leaks are more likely to occur if interested parties affected by policy proposals do not consider that they have been properly consulted before decisions are taken. There are problems about this: often the consulted parties only deem the consultation genuine if their views have been accepted; and there may be occasions where it is legitimate for government to announce a decision and then use the period before the decision takes effect, while the parliamentary process is being gone through, as a time for consultation (in this case it will be more a case of consulting over the details of implementation rather than over the decision itself).

If consultation is confined to the better known or more established organisations, however, or if it becomes apparent that the process of consultation is a facade merely designed to disguise firm policy decisions which have already been adopted, consultation will become a sham, the process of government be demeaned and the incidence of leaks is likely to increase.

(iii) Croham directive
Since the Croham directive six years ago, in theory the factual and analytical material on which policy decisions are based should be published more systematically. Opinions differ as to how widely in practice the directive has been observed. Quite a lot of the sort of information which the Croham directive had in mind is published in the course of giving evidence to the new departmental select committees as well as other information which the directive's rather narrow definitions did not cover. One problem is that the public cannot easily find out precisely what is available since departments tend to release information in a somewhat haphazard manner. It would be helpful if as a matter of course they were to produce at regular intervals, say quarterly, a list of documents which had been put out.

Perhaps this should be considered in the context of a voluntary code of conduct which could be drawn up for all governments to observe concerning the publication of the reasons and statistical information which lie behind decisions: complaints about non-observance of the code might be investigated by a specially appointed ombudsman.

(iv) Experiments in disclosure
Finally, in addition to or instead of a code of practice the government could perhaps go further and consider a system under which official documents could be disclosed unless specifically protected. It would not be necessary for all departments to adopt the same protected categories (although ministers adopting a particularly cautious line would doubtless need to defend themselves in parliament).

Nor is it suggested that the scheme should be anything other than experimental and non-statutory so the extent to which it genuinely contributed to more open government would depend entirely on how it was operated in practice. The reversal of the existing practice however whereby official documents are regarded as non-disclosable unless their release is specifically authorised would represent a fairly major change in the philosophy of government in this country and the long-term effects could be significant."

What the Times said

The Times, in a leading article, warned the Prime Minister and the Cabinet Secretary that they would be advised to "ponder carefully the FDA's prescription".

The Times warned them that "the fox-hole they currently occupy is defensive in intent, but offers no genuine protection. It offers the worst of all worlds. Whitehall's battery of confidentiality codes, conventions, and statutes accumulated since 1250 amount to a leakers' charter. Through their ludicrous overextension, which brings them into disrepute, they do not assist the maintenance of confidentiality even in those areas where it is justified. They put the government continually on the defensive, making it furtive where it should be forthcoming. It is fearful of the people who elected it with a thumping majority. If Mrs. Thatcher fails to consider moving from her dangerous fox-hole on to the safer, higher ground, everyone will be the loser."

The Times reminded the Prime Minister that "government is public business, not a private firm. It should comport itself accordingly."

The 1984 Campaign Comment

The 1984 Campaign differs fom the First Division Civil Servants on two key points: first, we believe that only legislation will ensure adequate disclosure of information and that voluntary initiatives, no matter how admirable, will not solve the problem; second, while we would much prefer a situation whereby "leaks" were unnecessary, we believe that there should be the opportunity for a "public interest" defence in law for those who have disclosed information without authorisation.

That said, we welcome the spirit of the FDA discussion document and its frankness about unnecessary secrecy. It demonstrates that there is much common ground between the campaign and many senior civil servants, and we will do all in our power to maintain a constructive dialogue with the FDA, and other civil servants' unions, and to build on the areas of consensus.

Former No. 10 adviser calls for open government

"Open government is not a fashionable option but a precondition for any serious attempt to solve Britain's underlying problems", Sir John Hoskyns, former Head of the Prime Minister's No. 10 Downing Street Policy Unit, stated in his recent Institute of Directors Annual Lecture.

His main message was that Ministers should share problems more openly with the public and not necessarily try to "keep it simple".

He stated: "Let the uncertainties and complexities speak for themselves. People know the world is a complicated place. If the thinking is good enough, the words and the understanding will follow".

He condemned excessive secrecy: "With confidence and competence so much lower than they should be, it is not surprising that Whitehall fiercely defends its tradition of secrecy. The Official Secrets Act and the 30 Year Rule, by hiding peace-time fiascos as if they were military disasters, protect Ministers and officials from embarrassment. They also ensure there is no learning curve.

He argued that "the cure for the British disease must start with the government itself" and that widespread reforms were necessary in the Whitehall approach, most noticeably in terms of a more open style and wider explanation of real, long-term problems.

Sir John Hoskyns

Reith lecturer says the facts 'should be published'

Unexpected and outspoken support for the cause of freedom of information has come from one of Britain's most respected former civil servants, Sir Douglas Wass, Permanent Secretary to the Treasury in 1974-1983, and Joint Head of the Home Civil Service from 1981-1983, during his series of Reith Lectures on BBC Radio 4.

He said that the challenge facing any democratic society was to secure a more informed public. "There is a need for governments on a systematic basis to publish the information they possess which will contribute to public understanding of policy issues".

He said: "Having lived with (the) dilemmas for a very long time, I have become profoundly sceptical about the arguments for secrecy. Step by step over the years we have published more and more material which previous generations of officials had thought to be dangerous. In the event publication has caused very little, if indeed any damage. The onus, I now believe, ought to lie heavily on those who oppose publication to justify their opposition".

Sir Douglas made clear his opposition to unauthorised leaks, and also defended the need for some privacy in governmental decision-taking. He then went on: "It is in the field of factual and analytical material that governments could and should play a more constructive part, for it is here that they possess a wealth of data, much of which is not released to the private citizen or to parliament. Government departments commission research, carry out surveys, study what is happening in other countries and generally establish a good and thorough informational base upon which to make policy. They also, of course, have a substantial body of incidental evidence from on-going administration... most of this information would not be readily available to the public unless the government supplied it. Much of it is of some public interest and it is difficult to see why in a democracy it should not be published".

Claiming that there has been some action to increase freedom of information, Sir Douglas said that "nevertheless a suspicion exists that departments do not go out of their way to disclose information — certainly information which sits uneasily with the chosen policy. It is unsatisfactory for parliament to have to rely on its own alertness and astuteness in eliciting material from the government. This state of affairs has aroused interest in some statutory obligation on the government to publish its privileged information or to provide access to its own records".

Sir Douglas provided support for those who say that in the absence of some controls a system of voluntary release of information would "allow back-sliding". He said "this concern is entirely justified". He stated that the reasons for deciding against publication have often been "nothing more weighty than political embarrassment".

Even on defence issues, government ought to strike a reasonable balance between openness and security. It was, however, outside the area of national security "that I see little cause to be restrictive about publication".

Looking at ways of improving the flow of information, he said that an information audit merited serious study. He considered the possibility of legislation and stated that in other countries legislation had "allayed the anxieties of those who fear the damaging effects of too much exposure. And it seems not to have led to any significant impairment of the efficiency of governments".

'FoI has to be backed by law'

(continued from previous page)

why the factual background, and expert and technical advice should not be made public. It should not be beyond the wit of the drafters of the legislation to distinguish between these categories.

Campaign exemptions

Then they say that freedom of information can lead to disclosure of facts counter to the public interest. The list of exemptions to our objectives on page 2 demonstrates that we accept that there is a case for confidentiality, and it is possible to legislate in such a way that those matters that should remain confidential do. In the meantime, excessive and indiscriminate classifying of information has undermined the credibility of confidentiality — too much secrecy has given secrecy a bad name.

The price we pay

Then they say that it creates a substantial administrative burden and that it is expensive. Inevitably FoI laws will add to the administrative workload and will cost money, but this is the price we have to pay for democracy. The experience of most countries with freedom of information is that the cost has not been prohibitive. Furthermore, it can be balanced by the extra efficiency, reduction of waste, and safeguards from corruption that it creates.

Finally, they argue that it can be achieved by greater voluntary disclosure — there is no need for legislation. The advocates of this approach tend to be those who in their ideal world would like to take no action. Their proposals are merely an attempt at a plausible alternative to legislation. Legislation is necessary in order to remove the onus on the citizen to argue the case for access and instead place upon the public servant the responsibility to defend secrecy. Freedom of information deserves the support of the law.

Other campaigns

Over the past few years I have been involved in a number of campaigns that I believe have been entirely constructive in nature — the Shelter campaign, to rehabilitate old housing and help our homeless families; the work of the Child Poverty Action Group to relieve the needs of the deprived in an affluent society; the work of the National Council for Civil Liberties to protect our individual freedoms; the work of CLEAR to protect our children from the environmental hazard caused by lead in petrol; the work of Friends of the Earth to boost conservation and protect our countryside — all of these campaigns have been concerned only to protect the vulnerable in our society and benefit the community, and all of them have offered the opportunity to individuals to participate in public affairs. All of them have been frustrated by, and appalled at, official secrecy, however, and the abuse and manipulation of facts and expert analysis paid for by us, the taxpayers. I believe this campaign has to be won for many reasons, not least that those organisations, and many more, can fulfil their potential as contributors to a healthy and vibrant democracy.

How the water authorities turned off the taps

Last year you could have shown up at any meeting of a regional water authority, watched the proceedings, listened to the arguments, and taken the scientific or policy papers home with you. If you go along in 1984, the chances are you will be turned away.

Since they were set up ten years ago the water authorities have been subject to the Public Bodies (Admission to Meetings) Act 1960 which guaranteed that their meetings would be open to the press and public. This fundamental right was taken away when the Water Act 1983 came into force in October last year.

The new Act was designed to 'reduce bureaucracy' in the water authorities by cutting the size of their boards — and in particular by eliminating the large numbers of local authority representatives that made up their majorities. The new boards will be slimmer — and composed entirely of government appointees.

Giles Shaw, then junior Environment Minister, suggested that the change would 'move the character of the authorities away from the local authority, open forum type meeting to an executive style'. While local authorities could function with the press watching, this was not the style of the nationalised industries on whom the new water authority boards would be modelled. As Lord Skelmersdale, the government's spokesman in the Lords, put it: 'there is no press access to any executive board, either public or private. So why should there be now?'

Peer tries to explain

In the Lords, the Local Government Minister, Lord Bellwin, tried to explain why it was 'reasonable and proper' for the press to be present at meetings of the old, but not the new, authorities. 'The new small executive boards of the water authorities will be totally different in character.... It is impossible to function effectively as a member of such a board if at every stage one is concerned that the odd word here, the odd outspoken comment there, will hit the headlines next day'.

The presence of outsiders at meetings of this kind has a profoundly inhibiting effect on discussion', he later added. 'People will not speak up as freely as they would in private. To deny that is simply to turn one's back on reality'. But this, of course, also applied to the old water authorities — and they dealt with the problem by going into *private session* whenever they needed to. Section 1(2) of the Public Bodies (Admission to Meetings) Act allows authorities to 'exclude the public from a meeting (whether during the whole of part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons'.

Why should water authorities be open to the public? Firstly, because of the vast sums of public money they spend. It was to ensure such openness that the Public Bodies (Admission to Meetings) Act was introduced in 1960 — by no lesser person than Margaret Thatcher MP.

Report by Maurice Frankel

Maurice Frankel is the full-time campaigner for the 1984 Campaign for Freedom of Information. He worked for a number of years for Social Audit, specialising in information issues, and has recently contributed to Friends of the Earth as an adviser on pollution and pesticides.

Secondly, unlike the nationalised industries, the water authorities have what are essentially powers of taxation, through the water rates. During the Commons debate Alan Beith MP said that the local authority councillors of different political persuasions had expressed to him 'their strong objection to the removal of the press from meetings of a body which will be able to levy rates through the rates machinery on their ratepayers'.

Thirdly, the day-to-day business of the authorities has considerable importance for local communities. This is partly because they can undertake major developments, such as new reservoirs or sewage works, but also because many of their responsibilities relate to public health, safety and amenity. Water authorities must ensure that the water is safe to drink and wholesome, that sewage is properly treated and sewers not collapsing, that the beaches are not polluted and industrial discharges to rivers are controlled, that there are plans to cope with drought and protect against flooding, that fishers are maintained and that people can fish, sail on, picnic near and otherwise enjoy watercourses.

Once open — now secret

In many water authorities these matters — once openly discussed — will now be dealt with in secret. The government nevertheless maintains that the new arrangements will give the public 'substantially more access to the water authority' that in the past. This is done by setting up separate committees to represent both consumer and recreation-conservation interests.

The consumer committees will be set up in each division within a water authority, with members representing domestic, industrial, agricultural and other consumer interests. In Parliament the government promised that these committees would be 'totally independent' — the reality is something less than that. Although outside bodies will nominate committee members, all appointments are made by the water authorities who also control the budget and supply the secretariat. The Department of the Environment has actually suggested that committees might find it useful to appoint an authority member as chairman — and that if it doesn't a member may be imposed on them as deputy chairman.

Such consultative bodies have long been familiar in the nationalised industries. In October 1983, as the new Water Act came into force, the London Electricity Consultative Council published a report which may well serve as a warning of the problems the new water consumer bodies may face. It noted that numerous studies and reports on the nationalised industries had found that: 'Relations between governments, boards, and their consumers have been characterised for 35 years by sloppiness, by ambiguity and confusion, and (on the part of the industries) by repeated resistance to independent monitoring and greater public scrutiny...(they) have in some instances been reluctant (or refused) to provide Ministers and Parliament with information, to say nothing of withholding it from mere consultative councils'.

Consumer move is welcome

The government is insisting that the consumer committees' meetings, minutes and documents be thrown open to the public — a welcome move. Yet it is a peculiar kind of logic that subjects these humble consumer bodies, who after all will do nothing more than advise, to so much greater public scrutiny than the powerful water authorities themselves.

How have the water authorities responded to the new changes in practice? Although they can now exclude the press and public from their meetings they are not *required* to. The nine English authorities have, without exception, decided to close their board meetings to the public — but there are variations in their attitudes to specialist committees. Some, like the Northumbrian, Severn Trent, Southern and Wessex water authorities will keep all committee meetings private — but Anglian, North West, South West, Thames and Yorkshire water authorities are keeping at least some of their committee meetings open to the public.

Welsh show the way

But it is the Welsh Water Authority that has provided the real lesson in openness: it has decided to keep not only its committees but also its main board open to press and public. The Authority's Public Information Officer argued, in a paper circulated to members, that it would be the authority itself that would benefit from a well-informed press with full access to official papers. 'The conscientious journalist or news editor will have worked through the papers in search of usable items in a process which inevitably imparts to him a great deal of knowledge which he could not come by in any other way. It is this process which has led, over the years, to an increasingly well-informed Press and a perceptible improvement in its understanding and, therefore, its treatment of the Authority and its functions. It is fair to assert that any stemming of this flow of knowledge can only result in an ill-informed, suspicious and therefore critical news coverage of all aspects of the Authority's work'.

Silliest Secret of the Month

The Campaign for Freedom of Information is to launch a "Silliest Secret of the Month" award.

Journalists, voluntary organisations, civil servants, politicians, and members of the public, are invited to submit to the Campaign any particularly absurd or mindless cases of official secrecy.

If you have evidence of a particularly silly secret, send it to the Campaign at 2 Northdown Street, London N1 9BG.

Secret Facts

Reports covering 50 hospitals for the mentally handicapped, and 30 homes, revealing widespread instances of over-crowding, understaffing, custodial attitudes to patients, fire risks, and the denial of basic human dignity, were kept confidential until recently published in *The Guardian*.

It emerged that the Development Team for the Mentally Handicapped, authors of the reports, had been made to sign the Official Secrets Act before they could even visit the hospitals and were not allowed to divulge the contents of the reports without risking prosecution.

Brian Rix, Secretary General of MENCAP, told *The Guardian* that the DHSS Minister, Kenneth Clarke, "has been spending his life suppressing reports on these hospitals, yet claiming that the mentally handicapped are a priority".

(Mr. Clarke had earlier been criticised by CLEAR for misrepresenting information on the health effects of lead in petrol.)

Questioned in the House of Commons, Mr. Clarke subsequently announced a review of the use of the Official Secrets Act to cover visits of advisory teams to hospitals for the mentally handicapped.

The Royal College of Psychiatrists later called on the government to abolish provisions of the Officials Secrets Act which prevent open discussion of problems in England's four top security mental hospitals.

The Lancet, the highly respected medical journal, has criticised Whitehall for delaying publication of a report linking the food we eat with Western diseases.

The Sunday Times had disclosed details of the report which showed that diet is one of the main causes of many diseases and set objectives for the government and food industry to pursue over the next five years to improve food.

The Lancet says the food industry "apparently did not like much of what it read and seems to have got the Department of Health to suppress or at any rate delay the report. If so, the Department should think again, quickly."

Sir Keith Joseph, the Education Secretary, has refused to publish a departmental analysis of research which claimed that a combination of grammar schools and secondary moderns performed better than comprehensives in examinations. *The Guardian* reports.

In a reply to Labour's schools spokesman, Frank Dobson, MP, who had asked for the report to be published, Sir Keith said that advice to Ministers from officials was confidential.

Professor Donald Acheson, who has been appointed Chief Medical Officer at the DHSS, accused the government of covering up a report on asbestos dangers (*The Times* reports).

The Times states: "He and a colleague, Dr. Martin Gardner, claim that Ministers suppressed findings for political readings. In a report, the doctors call for a ban on the importing of blue and brown asbestos because it could cause cancer...they also ask for tighter controls on white asbestos."

An Emergency Planning Officer, asked to give details of plans in the event of nuclear attack, refused to do so because he failed to see how his reply would serve the public interest, *The Guardian* reports.

Out of the 63 local authorities, only 15 replied to the question put to them by the Editor of the Civil Defence Information Guide, who said that several county councils had already said that they would not allow their civil defence plans to be inspected. He added: "The public have a right to know what protection they get in each county, although a lot of people don't want to know and say they will take their chances."

The Transport Ministry has refused a Friends of the Earth researcher a copy of a report entitled "Safety of Cyclists: An analysis of the Problem and Inventory of Measures to Make Cycling Safer". The DoT said 'Unfortunately we are unable to provide you with a copy of this report because it is a document restricted to representatives of the member nations. We should be pleased to help you on other cycling matters...'

Friends of the Earth was able to obtain a copy from another source.

Mrs. Thatcher has personally blocked the publication of an official history of British counter-intelligence operations during the second World War although earlier volumes of history, commissioned by the Cabinet Office, have already been published.

'Our right to know'

The case for greater freedom of information in Britain has been made frequently and at the highest level.

The Committee on the Civil Service, chaired by Lord Fulton, reported in 1968 that *"the administrative process is surrounded by too much secrecy. The public interest would be better served if there were a greater amount of openness."*

The Committee of Inquiry into the Official Secrets Act, 1911, chaired by Lord Franks, reported in 1972 that *"its scope is enormously wide. Any law which impinges on the freedom of information in a democracy should be much more tightly drawn."*

In March 1979 a government Green Paper admitted that both official reports were correct. On secrecy generally, it stated that *"administration is still conducted in an atmosphere of secrecy which cannot always be justified".*

Of the Official Secrets Act, it said that *"the catch-all effect of Section 2 is no longer right and we intend that it should be replaced".*

Thus, the two main objectives of the 1984 Campaign for Freedom of Information — right of access to information and reform of the Official Secrets Act — have already been well-argued.

The broad aim of the Campaign for Freedom of Information is to strengthen democracy and the position of the individual in Britain. Essential to democracy is the correct balance between the ability and freedom to govern of those appointed and elected to do so, and the ability and freedom of the citizens to maintain surveillance over, and influence the policy and practice of their servants. That balance can only be achieved if there is near-to-equal availability of information for both the public and its servants (equal except in specifically-defined and generally-accepted circumstances).

The imbalance of access to information between governors and governed in Britain is now of such size and scope that it seriously undermines the health of our democracy. The sources of power and influence are obscured. Public servants are not properly accountable. Public participation is seriously hampered. Justice is often not seen to be done. Inefficiency and error are made more likely.

Furthermore, we do not have the necessary exchange of information that is essential if governors and governed are to share a common understanding of the complexities of contemporary life and to forge a more positive partnership to achieve solutions to our problems. As a former Head of the Number 10 Downing Street Policy Unit recently said: *"Open government, in this sense, is not a fashionable option, but a precondition for any serious attempt to solve Britain's underlying problems".*

However, freedom of information is not just an issue about national policy. This is an issue that is relevant to the lives of ordinary people. It is unacceptable that parents cannot see the school files of their own children, that patients cannot see their own medical records, that tenants of housing authorities cannot see their own files or applicants on waiting lists are denied access to their records. Far too much information in the possession of local councils, and far too many decision-making meetings, are secret for no sound reason. Meetings of such bodies as water authorities take place behind closed doors when there is no justification for such secrecy. Nationalised industry will not share information with consumers.

It is appropriate that in 1984 the people of Britain demand what is theirs by right — the information collected at their expense and necessary for the health and survival of their democracy.

We would stress these points:

- Our democracy will be strengthened, not weakened, by greater freedom of information.
- Almost all that we seek is already available in many other countries, including Commonwealth countries whose democratic traditions come from Britain, and it has not affected them adversely.
- It is possible to introduce freedom of information legislation that would fundamentally change the balance of power between non-accountable bureaucracies and the people and their representatives without in any way endangering those areas where confidentiality is still necessary.

This is not an academic issue. We need greater freedom of information for practical and urgent reasons. The time has come to reverse the trend towards oppressive secrecy. It will lead not to more inefficiency, but to less; it will save more money than it costs; it will create greater understanding between people and their administrators and not less; it will improve the quality of public participation and reduce not just the concentration of power, but the strain of responsibility on governing institutions; it will create a greater sense of security and improve public health and safety; it will create greater faith in the justice of our law and institutions.

It will reinforce the qualities of honesty and integrity in public life, for as Milton wrote, "Whoever saw truth put to flight in free and open encounter?"

How you can help

There are many different ways in which you can help the 1984 Campaign for Freedom of Information.

The first (and most predictable) is with money. This is a voluntary organisation and because it will be campaigning it cannot register as a charity. We are therefore dependent on those who share our concerns to be as generous as possible.

2. You can subscribe to our publications and thus become well-informed on the issue and share the facts with others. A publication subscription of £7.50 per annum will obtain for you the 40-page campaign handbook, further copies of this newspaper, plus the Secrets Files that we will be publishing regularly throughout the year.

3. You can write to your Member of Parliament and let him or her know that you would like to see parliamentary action on this issue.

4. You can raise the matter with any organisation you belong to — e.g. local political party, trade union, local branch of a national organisation — and try to have a resolution passed on to headquarters, and publicised in your local media.

5. If you live in London, you could offer some voluntary help in our office — all the usual chores but they have to be done.

Above all, we need more knowledge of secrecy. If you know of information being unnecessarily withheld, or can tell us of excessive secrecy, or can even slip us a secret or two, please be in touch.

In the meantime, why not fill in the attached coupon while it is on your mind and post it today.

Thank you.

To: **The 1984 Campaign for Freedom of Information**
2 Northdown Street, London N1 9BG
Telephone: 01-278 9686

I, _____

of (address) _____

_____

_____

☐ 1. Enclose a cheque for £_____ for the **1984 Campaign for Freedom of Information.**

☐ 2. Would like to be a subscriber to your publications and enclose a cheque for £7.50 to cover this

☐ *or* have added £7.50 to my donation to cover this (tick box as appropriate).

☐ 3. Can help locally (tick box if appropriate).

☐ 4. Will help at your London Office (tick box if appropriate).

☐ 5. Have special expertise or knowledge to offer — please get in touch (tick box if appropriate).

All cheques should be made payable to: **The 1984 Campaign for Freedom of Information.**

Thank you

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