Newspaper of the Campaign for Freedom of Information Number 12 50p April 1987

SECRETS

Access to Personal Files — new short Bill gets government backing

MPs fight for access to medical records

A short revised version of the Access to Personal Files Bill now looks set to reach the statute books.

The Bill is likely to cover housing and social work records, and either include education records or be accompanied by a firm government undertaking to introduce regulations on access to school records within 12 months. The government already has powers to do this. And a major campaign has been launched to keep health records in the Bill.

An agreement that has been reached with ministers on the Bill would give a right of access to the parents of 8.7 million school pupils; to tenants in 5.5 million council dwellings; and to more than 1 million social services clients.

The Access to Personal Files Bill, drafted by the Campaign for Freedom of Information, was introduced by Liberal MP Archy Kirkwood with all-party support. It received an unopposed second reading in the Commons on 20 February and went into Committee on March 25. But Home Office Minister David Waddington said the government would not allow the Bill to proceed unless its original scope was restricted, probably just to education, housing and social work records.

Following long discussions with ministers, Archy Kirkwood and his main co-sponsors Steve Norris MP (Con) and Chris Smith MP (Lab) have now introduced an amended Bill covering these three areas. The new and much shorter Bill leaves details of exemptions and procedures to be spelled out in later regulations.

This approach was decided on after it became clear that an "enabling" bill of this kind was the only chance of getting legislation through before an early election.

***Mr Waddington has promised MPs that ministers would "undertake to make regulations in all the fields covered by the Bill within 12 months of the Bill receiving Royal Assent."* But he warned that if the consultation process threw up unexpected problems the regulations may take longer.**

A battle is being fought to keep medical records in the Bill. During the debate on February 20 and again in Committee many Conservative and Labour MPs called on the Government allow access to medical records. An amendment which would do this has now been tabled in Committee by Chris Smith MP and Robin Squire MP.

The Campaign for Freedom of Information is strongly backing the amendment. And leading health organisations have written to Mr Tony Newton the health minister calling on him to agree to access to medical records. They include the Royal College of Nursing, the Royal College of Midwives, the Health Visitors Association, the Association of Community Health Councils, RADAR, RNIB, MENCAP, MIND, the College of Health and the Patients Association.

Maurice Frankel, director of the Campaign for Freedom of Information says: "It has been difficult to persuade the government to respond to the enormous public support for the Bill. Archy Kirkwood and his main co-sponsors Steve Norris and Chris Smith have achieved much. It was vital to get the Bill into a form which stands a chance of becoming law before an early election, and we have done this. Though it is limited the new Bill will be of great value to very many people. It is a first step, and one we can build on.

"Obviously we are disappointed that other records — government benefit, employment, bank and building society records — have had to be dropped, for now. But we are determined to do everything possible to keep medical records in the Bill."

● *Report on the debate — page 2, the case for access to medical records pages 4 and 5.*

Archy Kirkwood MP

Local Govt. Act — one year on

There are substantial differences in the way that local authorities are implementing the Local Govt. (Access to Information) Act.

The differences occur in the way the rights of access to information are publicised, in charges made for the information, and in the determination (or otherwise) of local authorities to act in the spirit of the legislation.

This has been established by a special survey of local authorities carried out by the Campaign for Freedom of Information to mark the first 12 months of the Act, which was introduced as a Private Members Bill by Robin Squire MP with the support of the Campaign for FoI and the Community Rights Project, and which came into effect on April 1 of last year.

● *Full report — page 6.*

Robin Squire MP

Zircon controversy makes OSA Section Two an election issue

The publication by journalist Duncan Campbell in the *New Statesman* of details of the Zircon spy satellite, and the row over Campbell's banned BBC programme, coupled with raids by the Special Branch on the BBC, have once more put issues of freedom of information and unnecessary secrecy high on the political agenda.

It is now highly likely that the Conservatives will promise reform of Section 2 of the Official Secrets Act in their election manifesto.

The Labour Party and the Alliance have already promised to repeal Section 2.

The difference between the Conservatives' position and that of the other two parties is that the Conservative proposal would probably be to introduce measures to further protect information rather than to allow wider disclosure. Mrs Thatcher attempted this once before, with her Protection of Official Information Bill in 1979, but it was widely opposed, and finally dropped when it became clear that had it existed at the time, the uncovering of the spying activities of Anthony Blunt would probably have been impossible.

Section 2 of the Official Secrets Act is the catch-all section. It is 15 years since the Franks Committee stated *"We found Section 2 a mess. Its scope is enormously wide. Any law which impinges on the freedom of information in a democracy should be much more tightly drawn."*

It was under Section 2 that Jonathan Aitken MP, then a journalist, was prosecuted in 1971 and acquitted, that Sarah Tisdall was imprisoned for six months, and that Clive Ponting was charged and subsequently cleared by an Old Bailey jury.

Its many critics — they include politicians of all parties, senior civil servants, jurists, and all the serious newspapers — have condemned it on three main counts:

First, because of its catch-all quality, which makes no distinction between different kinds of information.

Second, because it subjects to criminal prosecutions people who at worst should be subject to internal disciplinary procedures.

Third, because of its oppressive effect on Whitehall and other public institutions generally, which reinforces a tradition of secrecy, and acts as a block to a more open and accountable approach.

● *Campaign Comment, page 3.*

Access to Personal Files debate

'Bill will redress the balance between state and individual'

No one opposed a Second Reading of the Access to Personal Files Bill when it was debated for five hours in the House of Commons on February 20, although the Home Office Minister, Mr David Waddington, made it clear that the Bill was unacceptable to him in its present form.

The Bill was duly given its Second Reading and sent to its committee stages.

Opening the debate, **Archy Kirkwood**, MP for Roxburgh and Berwickshire, said that the Bill "was based on the entirely reasonable proposition that people should be able to see the records held on them by public authorities and other institutions and check that they are accurate".

Constituents did not have the luxury of being able to be treated by a single individual when they wanted professional guidance and help from statutory bodies and public undertakings. They were inevitably involved, whether they knew it or not, with a collection of individuals, perhaps other members of staff, many of whom they had never met or seen but who nevertheless were involved in discussions or decisions about them. Many of the staff inevitably could not act on first hand personal knowledge. They were obliged to rely on the

Steve Norris MP

material available to them in personal files.

"The information held in those files will not always be recent or comprehensive. There may be old correspondence about a problem that may or may not still exist. There may be incomplete forms or illegible notes. There may also be memorandums listing tentative conclusions, reached some time ago but with nothing in the file to show whether those conclusions were later rejected or confirmed. There may be comments which meant something to whoever wrote them but which could give a different and perhaps misleading impression to someone who perhaps does not know the person to whom they relate or the context in which the notes were taken.

"Therefore, a decision suddenly has to be made but no one who knows him or her personally is available. Therefore, inevitably someone else reaches for the file and sits down to decide what to recommend, based on information which could quite easily be misleading in nature. We have the prospect of important decisions about peoples' job prospects, health, children's education, intervention that social workers may be seeking to make, or entitlement to some badly needed service or benefit being taken against that background".

Mr Kirkwood said it "was not surprising that mistakes were made. Or that entries could be misinterpreted. People would therefore be anxious about what their records showed. Obviously it is impossible to ban mistakes, but we can allow individuals to see what is recorded about them so that they can identify errors, omissions, or misleading or irrelevant information. If they disagree with an entry, they can ask that their point of view is acknowledged explicitly on the record."

Data Protection Act

He reminded the House that the principle of access was beyond dispute and non-controversial. "I say that because the principle forms part of the Government's computer legislation. From November, the Data Protection Act 1984, will allow people to see the personal information that is held on them provided that information is held on computer files. However, they will have no right to see information about themselves that is kept on ordinary paper files and records, and that is where most important information is still kept. The Bill seeks to extend the right of access to certain classes of those ordinary manual records".

He concluded that the legislation would do more to enhance the quality of democracy and redress the balance between the state and the individual than "almost any other Bill that could be introduced by a backbencher."

Steve Norris, MP for Oxford East, said the measure was widely supported across the political spectrum. Over 50 Conservative backbenchers had responded to an invitation from him to support the Campaign behind the Bill. A MORI poll had shown there was overwhelming support in the country for the principle.

"Let us consider the principle of the right to know what is said about one on a file. Why is that, in practice, so important? One of the principle reasons — in my view, the dominant reason — is that files, always by definition, develop a life of their own."

Mr Norris said that once an error has found its way onto a file it assumes the status of fact. "It then assumes the status of eternal truth, and from then on it forms the basis of subsequent judgements. There is no question but that the life which a file obtains is a major reason for needing to be able to control it and assure that at all times this live animal is what it says it will be.

"Files in this modern age are appallingly powerful weapons I use these words advisedly. Files are collected by a huge variety of organisations — governmental agencies, local authorities, public bodies of various types and even voluntary agencies. Those files can affect a person's health; they can determine where or how a person lives; they can determine for parents how their children are educated; whether people are promoted or demoted at work; whether they are offered credit to buy items that they may need to improve their standard of living; whether they are entitled benefit on which to live — all of these areas of a person's life can be vital in terms of their comfort and the general standard of living that they enjoy.

"While it may be perfectly justifiable and lawful to maintain such files, individuals must have the right to see, correct or dissent from judgements on the files and to be

Chris Smith MP

compensated where errors have caused them harm."

Mr Norris said there was evidence that where access was given to personal files, the quality of record-keeping was improved.

He quoted many cases of prejudiced remarks appearing in files under the present system.

Overseas experience

He said that many of the claims of excessive costs and increased bureaucracy had been proved in countries such as Australia to be wildly exaggerated in practice. In Australia it has been estimated that the number of requests for employment files would be between 100,000 and 200,000 but in practice the number of requests in 1983-4 was 166. The Australian electoral office estimated there would be 86,000 requests and in practice there were 19. Those responsible for immigration and ethnic affairs anticipated 103,700 requests for access and in practice there were 1,069.

Access to personal files did not mean everybody rushed to see their files — but they could see them when they really needed to.

Chris Smith, MP for Islington South and Finsbury, said that the Bill represented the front line on freedom of information and dealt with those areas which matter most to ordinary citizens.

Fees

He criticised Ministers for insisting that a fee should be charged for access to personal files. "The charging of a fee would probably remove the practical possibility of access from millions of people. About half of my constitutents will now be prevented from gaining access to their records because a fee is to be charged". He hoped that in committee Ministers would have second thoughts.

He was also unhappy that a number of categories of records listed in the schedule of the Bill would not be made available if Ministers had their way. These included medical records.

It was nonsense for the Government to be worried about cost. The experience not only in Australia, but in the United States and Canada had been that the predictions about the number of applications and the number of people that would need to be employed had been wildly exaggerated. The impact upon administration had proved to be minimal.

He listed the arguments for the Bill: that it would lead to more careful record keeping, that it would create the opportunity to correct inaccuracies, that it would put right the imbalance between access to records that are kept in computerised form and those that are kept on paper, that it would improve the relationship between the professional and his or her client, and that over and above the practical issues, and practical benefits of enshrining the principle of access to information in our legislation, there is an overriding moral reason.

"Individual citizens should be able to see what is written about them, supposedly on their behalf, by people who are entrusted by the community to serve them and to administer services. Surely this House of all places should support this basic principle".

Austin Mitchell, MP for Great Grimsby, said that the purpose of the Bill should be "to empower the people, strengthen the odds in their favour and give them control over their destinies, lives, work and housing, and over the whole circumstances of their lives. We cannot give them that control unless we give them access to information."

David Waddington, the Home Office Minister, said "I made clear at an early stage that the Bill was not acceptable in its present form. I said that it would be possible to amend it to produce a modest and workable measure acceptable to the Government, and that that at least would be a step down the road that the sponsors want to travel".

He said that it could not be denied that the precedent of access to personal information had been well and truly established, and the question to be addressed was whether it was appropriate now to extend that access to a particular range of manual records and whether that should be achieved by voluntary or statutory means.

He argued that if access were given to a range of records held in Whitehall, "the result in terms of increased bureaucracy would be considerable. New systems and procedures would need to be introduced."

Replying to Mr Smith's complaint about the fee that would be charged for access, Mr Waddington said that a power to charge existed in the Data Protection Act. "A charge will be levied from the time the right of access comes into force on November 11. It would have been anomalous if the Bill had been printed without the power to charge provision in view of the terms of the Data Protection Act."

He was also worried about making the courts responsible for enforcing the Bill. "We should examine the possibility of placing on local authorities a duty to devise schemes for access to records, and then rely upon the details to be set out in regulations. That may be a better way of getting round the problems involved in trying to bring into private legislation in the limited time available the sort of qualifications that would be necessary to enable a general right of access to be obtained."

Robin Squire, MP for Hornchurch, pointed out that similar reservations had been expressed

Secret facts

Not trusted to tell the truth

Only 1 in 4 people trust government ministers to tell the truth about the environmental risks of nuclear power and even less — only 1 in 5 — trust senior civil servants on the subject. These are the findings of a MORI opinion poll carried out in January 1987 and based on interviews with more than 1,700 people. The results show how secrecy damages government itself — people simply stop believing what it says.

Agricultural news management

A leaked Ministry of Agriculture document has revealed how news about environmentally sensitive agricultural projects is stage managed. Marked "Restricted" the Ministry's Register of Environmental Achievements was obtained by the Guardian. The introduction explains that the Registry is designed partly as an internal reference document and partly "as ammunition against those who criticise the Ministry's environmental record".

Some projects are earmarked for massive national publicity — but officials are urged to keep quiet about others.

A promotional programme designed to "demonstrate the extent of the Department's commitment" to countryside conservation, to "improve the image of the farming industry" and to help farmers take practical conservation steps is destined for "Before, during and after publicity . . . on a national and regional scale".

But although MAFF is funding a £300,000 project on exposure to radioactivity through food, publicity on this issue is "not desirable".

Publicity for MAFF's involvement in efforts to reduce radioactivity discharges from the Sellafield nuclear reprocessing plant are "likely to be counter-productive".

Results of investigations into pesticide poisoning of farm animals are "confidential". Although ministers have recently acquired new powers to protect the public from chemically contaminated food, publicity for these is "not desirable." Nor is publicity wanted for MAFF research on the implications for the countryside of changes in the Common Agricultural Policy, although a study on this was completed in 1986.

Publicity for MAFF work on fertiliser use and water pollution is not wanted "at this stage". And although MAFF wants more publicity for its efforts to encourage farmers to avoid polluting activities it does not want publicity for "consideration of environmental aspects in the context of water privatisation".

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Was the Zircon Affair a classic case of unnecessary secrecy?

At a time when so many public services, including education, health, and housing, are deprived of desperately needed funds, a decision to spend £500 million of public money on any project should be the subject of well-informed and open debate.

Instead, the decision to put a spy satellite above the Soviet Union was taken in extreme secrecy.

Can there be any justification for this?

Possibly there could, if disclosure would endanger our defences or national security. But no evidence has been produced that disclosure and debate would have done that. It was only a matter of time before the existence of the Zircon spy satellite would have become known.

The real reason that it was surrounded with secrecy was that the Cabinet knew it would never be able to convince the House of Commons or the public that the expenditure was justified . . . that Britain needed the satellite. This was just another case of secrecy being used to stifle proper debate.

It is not the role of the Campaign, or this newspaper, to delve into whether or not Britain needs this extraordinarily expensive bit of equipment, but rather to argue that those whose role it is to debate such matters should have the opportunity to do so. Undoubtedly this is the role of the House of Commons and the House of Lords and we hope they will now insist upon a full debate.

In the meantime, we are concerned by another question: how many people realise that the debate about Section 2 of the Official Secrets Act has moved on from whether it should be repealed to what should be put in its place? And that there is a colossal difference between what Mrs Thatcher would do, and what the vast majority of the Act's other critics would do?

Mrs Thatcher's position has not altered since 1979 when she first attempted to replace the Official Secrets Act. Not for her a positive measure, freedom of information, linked to the protection of essential secrets. What she attempted was a different kind of secrecy law, a Protection of Official Information Bill, that would have made little more information available, but would have been even more draconian in its protection of secrets or so-called secrets.

The other political parties (and, to be fair, many individual Conservatives) and almost every other respected critic of Section 2, would prefer to see Section Two replaced by a much more positive measure, making information more widely available, and restricting secrecy to the minimum. Paradoxically, one of the effects of this more creative approach would be to better protect secrets, as the Co-Chairman of the Campaign, Des Wilson, pointed out in his article in *The Times* reproduced below.

Nobody should be in any doubt about the difference between the two proposals to repeal.

So widespread was the opposition to the Protection of Official Information Bill in 1979, that Mrs Thatcher has not dared to attempt its re-introduction, even with a huge majority in the House. That is why Section 2 has remained unaltered despite the fact that it has, after the Ponting case, become virtually unenforceable.

But her obsession with secrecy, fed by Sir Robert Armstrong, and reflected in the Wright case in Australia, in the tirades about national security after the Zircon disclosures (unsubstantiated in detail), and by her government's refusal to even countenance a full Access to Personal Files Bill, is such, that the temptation to strike another blow for secrecy may become irresistible.

It is worth considering what her argument will be. It will be that recent disclosures are endangering national security. But is this so? The prosecution in both the Tisdall and Ponting cases admitted in court that national security was not endangered by their disclosures. There is no evidence so far that disclosure and debate on the Zircon project would have endangered national security. There is every reason to believe that if the Wright case leads to wider debate about the security services, it will be of positive benefit.

The Franks Committee said in 1972 that "the appropriate test, in relation to national security, is that unauthorised disclosure would cause serious injury to the nation". It stressed that criminal laws should not be used to "serve the political interests of a government, or to save Ministers or officials from embarrassment".

This is at the crux of the matter.

The debate over the replacement of Section 2 should be concentrated on how we identify the dividing line between information to protect national security and information to protect the political face of the government.

"The Official Secrets Act should not be used as a means of stopping embarrassment to Government departments and Ministers, but only in cases where the national interest is genuinely involved".
Lord Whitelaw (then William Whitelaw MP), speech to the Newspaper Society, 1971.

"I believe that our aims should be to prevent newspapers from revealing information which may put the security of the state at risk. I do not think anyone would dispute that. But it is also right that the Government should be prevented from keeping information secret and hidden when it is not necessary to do so . . . I should like to imagine that no one seriously defends the retention of Section 2, a measure passed in panic, without proper parliamentary consideration, and finally and conclusively discredited by the 1971 Sunday Telegraph case . . . I believe that newspaper editors are right in saying they should have the right to plead as their defence the public interest . . ."
The Rt Hon Norman Fowler MP, speaking in debate on the Franks report, 1973.

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about his Local Govt. (Access to Information) Act. "We were told that chaos would strike local authorities throughout the country, that it would be too expensive and that, in any case, nobody would want to look at or bother about the information. "Surprise, surprise, there has been no chaos, and, as far as I can ascertain, the cost has been minimal if indeed measurable. Some people have asked for access to information, but many have not. I am sure that members on both sides of the House would not support the contention that, because only a minority of people seek to take advantage of the law, it is unnecessary.

"The objections to the Bill were not weighty. Some people say that it would overload local authorities. In London alone, four authorities already provide full access to the files of housing tenants and they seem to have no major problems".

He objected to the exclusion of medical records and argued that the case for their inclusion was overwhelming.

Escaping from the secrecy farce

As the BBC controversy rages, Des Wilson argues for an information law that works

We really are close to farce when a campaigner for freedom of information has to advise ministers how to keep their secrets; but someone has to do it, for it is clear that the combined forces of the Civil Service and the Special Branch have failed lamentably.

That some secrecy is necessary I accept unreservedly. Of course we have to avoid disclosures that would endanger the security of the state, would impair proper law-enforcement, would adversely affect legitimate state and private financial transactions or would invade personal privacy.

However, to control disclosures it is necessary to maintain respect for the very word "secret" and to establish a consensus on what needs to be kept secret and what does not. Section 2 of the Official Secrets Act has become a menace to state and citizen alike because it has caused the opposite to happen. Because of its indiscriminate nature it has given secrecy a bad name. And while it exists there is no chance of a consensus on control and disclosure of information – a consensus that in my view is otherwise achievable.

All of this was foreseen by the Franks Committee as far back as 1972: "A government which operates in greater secrecy than the effective conduct of its proper function requires . . . will lose the trust of the people . . . Its critics will try to break down all barriers erected to preserve secrecy and they will disclose all that they can, by whatever means, discover. As a result, matters will be revealed when they ought to remain secret."

We have evidence that exactly this has happened in the United States, from a source as unlikely as a former director of the CIA, Admiral Stansfield Turner: "The increase of classified information . . . has diminished respect for it and encouraged carelessness in handling it . . . The open publication of all materials that can be declassified should be encouraged. This would reduce the disclosure of what really must be kept secret."

My case then is that one of the main obstacles to the protection of *real* secrets (an obstacle, also, to freedom of information) is Section 2 itself. It is now held in such universal contempt, not just by so-called radicals but by senior politicians of all parties, by many present and past civil servants, by respected jurists, and by the public, that it is with increasing justification being abandoned in practice.

The final nail in its coffin should have been the refusal by the jury in the Clive Ponting case to convict, despite a clear lead to do so by the judge.

As the extraordinary fishing expedition by the Special Branch at the BBC offices in Scotland underlines, the removal of Section 2 will have the additional advantage of enhancing civil liberties, for it contains powers to search and seize that would more than satisfy the KGB.

What then is the alternative? It is, first, to establish a consensus between the state and the citizen as to what in the public interest should be kept secret. It should not be sufficient that information has to do with defence or national security or law-enforcement, but rather that disclosure would *seriously endanger or impair* defence, national security or law-enforcement. Nor should it be a justification for secrecy that the release of information would embarrass the government of the day.

Nor should the decision as to whether secrecy is justified be that of government, any more than it should be that of, say, Duncan Campbell. If there are doubts, the decision should lie with an information commissioner (of a status similar to or even stronger than the ombudsman) and/or a tribunal, possibly made up of an all-party team of privy counsellors.

Once the consensus is achieved on what should remain secret, all other information should be readily available under freedom of information legislation.

We will then all know where we are. Yes, ministers can keep the few secrets that are really necessary. Yes, we then can have greater public accountability. And, yes, it does work. Freedom of information, with exemptions for genuinely necessary secrecy, exists in many countries, including those whose constitution is based on the Westminster model.

Whatever other reservations people may have about it, it has never been suggested in any of those countries that it has led to an increase in leaks of vital secrets. The opposite is the case. The irony is that we in Britain have the most draconian secret laws and also the most leaking of information. This speaks for itself.

Des Wilson is co-chairman of the Campaign for Freedom of Information.

Why we should have the right to see medical files

A recent MORI poll found overwhelming public support for a right of access to medical records. Interviews with 1909 people revealed that 73% wanted a right to see their own GP records. Support was uniformly high throughout the social class groups, and more people wanted access to their medical records than to any other type of personal record mentioned in the poll. Why is there such strong support?

Increasingly, people want to know as much as possible about their health and be fully involved in decisions that have to be taken.

We are encouraged to take much greater responsibility for our health, learning what contributes to good health and what leads to sickness. The limitations of medicine are much better appreciated: complete cures are often not available, and many treatments themselves have serious drawbacks.

This awareness means that rather than simply follow the doctor's advice, people want to understand for themselves what their symptoms indicate, why particular tests are being carried out, and what the risks or implications of particular forms of treatment are. They expect to be able to talk to their doctor on a more equal basis — if necessary seeing the reports or test results for themselves, and discussing what they point to. For many, the opportunity to see their own medical records could provide a chance to have greater control over their own lives.

Many people are dissatisfied with the level of information they receive when they are ill; access to their records may be a way of keeping themselves adequately informed.

Numerous studies have reported a high level of patient dissatisfaction with communications. The British Medical Association's Handbook of Medical Ethics (1984) recognises that "The commonest cause of problems between doctors and patients is failure of communication". This isn't necessarily the doctor's fault. The patient may be too anxious to remember what has been said, or forget to raise the questions he or she wanted to ask.

But sometimes the doctor may seem too busy to answer questions, or wrongly assume that the patient is incapable of understanding or only wants reassurance. A marked difference of opinion often exists between doctors and patients on how much information is appropriate. One American study found that while three quarters of patients felt they should be told all possible risks associated with the normal use of their medicine, only about 25% of doctors agreed.

Doctors sometimes underestimate their patients' ability to understand. Doctors caring for pregnant women from 'unskilled working class families' in Aberdeen were asked what proportion of women they thought would understand terms commonly used in their wards. The 18 doctors thought none of the women would understand the words 'membranes' or 'scanning' — in fact over 50% of them could explain the terms. They thought only 20% would know what "breech birth" meant — in fact 90% understood. *(Journal of Health and Social Behaviour, 1975, 16, 3-11).*

Another study of expectant mothers found that many started out "feeling that they and their attendants were in partnership and jointly responsible for the care of the pregnancy" but stopped contributing in light of the responses they received. One woman said she was put off asking questions after asking a midwife who had just taken her blood pressure, what it was: she said the midwife had asked her why she wanted to know, as if it was no business of hers, and told her she had nothing to worry about. *(Midwives Chronicle and Nursing Notes, November 1982, 387-394).*

A study of the way in which young doctors handled consultations found that "Though most gave simple information on diagnosis and treatment, few mentioned investigations, aetiology (the cause of the illness), or prognosis. Very few obtained and took any account of patients' views or expectations of these matters". *(British Medical Journal, 14.6.86, 1576-8).*

In normal circumstances, most people will prefer to get their information from their doctor in person. Where this doesn't happen, access to the records will help.

In some cases people are denied information about a serious condition because the doctor wrongly assumes they do not wish to know the truth — or finds it difficult to break the news.

Interviews with 167 people with multiple sclerosis revealed that the great majority (83%) felt they should be given the diagnosis by their doctor as soon as it was known. Yet many had found out only by accident: from the clinic receptionist for example or, in one case, from a home help. A large group had diagnosed themselves, comparing their symptoms to those of people they knew to have the disease. Thirty patients in the sample still didn't know that they had multiple sclerosis — although 22 of these were amongst those who felt they should be told the truth if the doctor knew it. The consultants responsible for these patients only allowed the interviews to take place on condition that "under no circumstances must the patients find out that they have MS". *(Lancet, 6.7.85, 27-8).*

Although doctors often claim that the decision on whether to reveal the diagnosis of an incurable or terminal illness is one that is made case by case depending on the individual circumstances "in practice the vast majority (of doctors) opt either for a policy of telling nearly all their patients or one of usually not telling anyone". *Lancet, 7.8.76, 300-303).*

Dr Robert Buckman has suggested that some of the reasons why doctors may try to avoid breaking bad news to patients may include fear of being blamed, particularly if the doctor has previously implied that a cure or improvement is likely; fear of provoking an emotional scene in the middle of a busy ward or clinic; difficulty in acknowledging that the doctor is powerless to help; and the doctor's own denial of illness or death. *(British Medical Journal, 26.5.84, 1597-9).*

Special Report by Maurice Frankel

Some of the multiple sclerosis patients described above who *had* learnt their diagnosis, had to put up a fight to get it. One said: "I felt the doctor should not get away with not telling me; I forced it out of him".

There must be an alternative to this — and the simple answer is to entitle patients to ask for and read their own medical notes. This is far from an ideal way for a person to learn of a serious diagnosis: but it will be welcomed by patients who want the truth and feel they aren't otherwise able to get it.

Records may contain serious errors which only the person concerned is likely to be able to detect.

Errors, or incomplete information, could lead to the wrong diagnosis and to delays in providing urgently needed treatment.

A study of more than 1,300 GP records in the Leicester area found that 1.4% omitted, or wrongly recorded, the sex of the patient. The patient's date of birth was wrong or omitted in 5.8% of records. Mistakes in the date of birth could lead to information about one patient being recorded on the file of someone else with a similar name. *(Journal of the Royal College of General Practitioners, 1981, 31, 410-419).*

Twelve percent of patients who saw their records in a London general practice found errors. These ranged from wrong addresses to information about one child recorded on the file of a brother or sister; in one case a woman was described as having had an abortion when in fact she had refused it. *(British Medical Journal, 1.3.86, 595-8.)*

Eighteen per cent of patients in the Oxford area who were sent a summary of their medical history required additions, corrections or deletions. *(Journal of the Royal College of General Practitioners, 1982, 32, 80-86).*

A study of records at a London practice reported: "The doctors were ignorant of much of the information considered to be important for the clinical care of patients . . . 50% of the complications of pregnancy (miscarriages, terminations and stillbirths) were not known to the doctor . . . It was disturbing to find that none of the ten instances of drug allergies were apparently known or recorded". *(Occasional paper 5, Royal College of General Practitioners, July 1978).*

A doctor who examined the accuracy which which he summarised patients' notes found he made errors in 27% of entries about diagnoses. He described 58% of these errors as "serious". A similar error rate was found when the same task was performed by a nurse. He reported: "Examples of serious errors were: omission of hysterectomy; omission of intrauterine device; omission of reactive depression; coding a barium meal as a barium enema; tonsils — misreading 'removal' as 'reassurance'; omission of a past history of steroids and omission of tuberculosis". *(Journal of the Royal College of General Practitioners, Februrary 1986, 67-8).*

A right of access would provide a safeguard against the hostile or condescending comments sometimes made about patients on their records.

Comments found on medical records include:

"doll-like woman"
"totally self-indulgent albeit within a very soft, sugary package"
"on the way to becoming a rich young fool"
"her husband seems surprisingly sensible"
"a stupid and affected woman"
"thinks more of his cat than of (his wife)"

If comments like these were seen only by the doctor who recorded them, they would be of little consequence. But the file is not the doctor's private diary. In a hospital, the file is circulated from department to department, where it may seen by a great number of different staff. If a GP retires, the notes are inherited by his or her successor, and if the patient moves the file is transferred to the new practice. An unpleasant remark stays with the patient for life, prejudicing the way in which he or she is treated by anyone who sees the file. Some patients are so devastated by the unfriendly reception they meet from doctors who have never met them, but who have seen their file, that they seek treatment privately purely to escape their NHS file.

If doctors knew that patients could see their notes, unprofessional pejorative comments would be much less likely to occur — and patients would be less suspicious of what their records contained.

Allowing patients to have a copy of their records may make it more likely that the record is available when they see a new doctor.

Patients would be able to take a copy of the record with them on holiday; have it at home in case an emergency visit by an unfamiliar doctor was necessary; or take a copy to their new doctor if they move (it can sometimes take several months for records to be forwarded from the old practice).

A study at St Thomas' hospital in London found that that hospital lost or mislaid the notes of expectant mothers attending an antenatal clinic in 26% of cases. By contrast, not one of a group of women who carried their own notes, as a group of them did, ever lost them.

"Helen Mann, a 26-year-old chef, simply laughed when her new GP accused her of being a heroin addict. But when she saw he was serious, she became anxious about what other errors had been passed on to him in her medical notes.

"It took Helen Mann months to discover that an addict had been impersonating her at her former GP's practice . . . Included on the notes were four references to drug addiction and another giving details of a hepatitis episode at Charing Cross hospital. Luckily Miss Mann was able to use her passport to prove she was abroad at the time those entries were made in her notes.

"Not surprisingly, she is one of a growing number of patients demanding the right to see her medical records. Her new GP . . . allowed her to examine the notes, and her former GP has since agreed to erase the sections which referred to the addict.

" 'What angers me is that it took 10 months and 17 letters to get that far' she said. 'And it is also worrying that I only found out about these entries because I happened to see my GP. Supposing I had been trying to emigrate or to get a mortgage, and my doctor had been asked for a medical report?' "
BMA News Review, November 1985.

Experience shows that access is beneficial

There is now a substantial body of experience of the results of access from doctors and other health professionals who allow, or in many cases encourage, patients to look at their own records. They report that access is not only feasible but positively beneficial leading to better informed patients who have a greater confidence in medical staff treating them. This has been found true also of psychiatric patients, and psychiatrists have found that access policies provide valuable therapeutic opportunities.

● Staff at a south-east London general practice whose patients have had access to their records since 1983 report that "Patients confirmed over and over that having access to their records broke down barriers between doctors and patients, enhanced their confidence in doctors, and was reassuring, interesting and informative ... We expected many difficulties at the outset. The contrary has been the case: patients have been very appreciative and, surprisingly, it has not affected our clinical work greatly". **(1)**

● GPs at an inner-city Birmingham practice whose patients have had access to records since 1977 report that it has led to "appreciable patient satisfaction"; that it implies that "the patient is trustworthy and a prime agent with the practitioner in the search for health"; and that access can provide "a natural and useful tool for the patient to understand his or her own health". It was found necessary to withhold information from only 12 out of 4000 patients (0.3%) in a year, and the GPs have found that "recording of consultations is not materially affected by the knowledge that patients subsequently read what has been written about them." **(2)**

● The consultant and registrar at a London hospital rheumatology clinic who showed patients copies of the letters sent to their GPs about them reported: "patients are pleased to read copies of our letters to their general practitioners. They derived considerable benefit from doing so ... Fears that the letters may be confusing were not confirmed ... Open access to notes may not be the spectre that physicians fear but may have the positive advantages of improved communication and understanding. The debate whether patients should have open access to their medical notes should concentrate more on the potential advantages which may result and give less attention to the possible drawbacks." **(3)**

● Ninety seven per cent of patients who saw their records at a Vermont clinic in the US reported that they felt less anxious about their health after seeing them, probably because access allayed fears about what may have been 'hidden' by the physician. Doctors reported that nearly 80% of patients "indicated that they were much more careful about following specific recommendations for medication" and most reported changes in their patterns of living, eating or drinking after reading their notes and discussing their implications. The authors reported "When physicians at the centre began sharing records, they expected that they would choose not to share records with a substantial number of patients because of the sensitive issues often involved (eg cancer, chronic infirmity). However, physicians have elected to restrict information for less than 1% of their patients and for the most part important and previously unapproached issues have been discussed openly". **(4)**

● Doctors at a Melbourne hospital who gave patients access to their medical notes reported "numerous individual instances ... where the availability of the record facilitated communication between patient and physician". They found that two patients with chronic disease whose causation was poorly understood privately (and wrongly) believed they had cancer. "The existence of their fears was in both instances not suspected by the physician ... nor were they expressed ... until the record was reviewed by the patient. Review of the record provided both a focus for discussion and evidence to clarify the diagnosis for the patients". **(5)**

● Patients who saw their records at a medical rehabilitation centre in the US "often expressed a sense of relief at having the secrecy removed from their records and were pleasantly surprised to be treated as adults". Staff reported that their initial fears "were soon dispelled by the realisation that most patients were ready to handle the information and were waiting for this degree of openness. Patients who were in a stage of denial simply sorted out for themselves what they could deal with at that time and gave the staff adequate guidelines as to where they should stop ... the effect on patient-team relationships was strong, tending away from paternalistic and caretaking relationships towards more collaborative and educational ones ... The patients used their records to explain themselves to their families ... We could identify no instance in which a patient was harmed by being offered his record". **(6)**

● Psychiatrists at a Pittsburgh clinic whose patients saw their records reported that "the great majority of patients viewed the experience as a positive one ... Our tentative conclusion is that psychiatric patients are not likely to be harmed by this experience, and are often benefitted. Patients — even those whose requests to see their records are based on a variety of fears — value accurate and descriptive accounts of their behaviour and are not harmed by reading most such descriptions. In fact, most are quite relieved to find that the records are more innocuous than they had imagined." **(7)**

● The great majority (86%) of psychiatric inpatients shown their records at a Washington general hospital said it "helped them to better understand their problems and take a more active role in their treatment". Seventy-one per cent felt more self-confident as a result, despite the fact that about half had been upset by something they read and a third had felt more pessimistic. Nearly half thought staff became more respectful towards them because of their access to the records. Seventy per cent of the staff thought access helped the treatment of most patients. Although one or two patients were thought to have been harmed none of the staff thought access was generally harmful. The authors reported that: "The record provides documentation of progress which might otherwise not be clearly perceived by the patient. Movement towards the patient's therapeutic goals can be reinforced, or his regression can be noted and possibly discouraged ... Information which may have been given verbally at a moment of stress can be repeated in the record, and thus be 'stored' until the patient is better able to utilise it". **(8), (9)**

● Psychiatric inpatients give access to their records in a Canadian mental hospital "were more likely to have correct information about their condition and treatment" than those who did not see their records. Staff reported that in a number of cases "viewing the record was helpful to the patient in allaying suspicions, developing trust and even in achieving consent for a specific treatment". Most of the staff felt they had made some changes in their recording practices, but most of these were considered improvements. The most frequently mentioned changes were describing behaviour more specifically (mentioned by 11/24 staff), paying more attention to accuracy (8/24), providing greater detail (6/24), and rephrasing certain information (6/24). Two staff said they included additional material in the record; only two said less information was recorded. Twenty-three of the 24 staff said they were comfortable with the open records, and the majority felt access to the records could be used as a therapeutic tool. **(10)**

● Psychiatrists at a Vermont hospital have used requests for access from patients as the basis for therapeutic work. They recommend that "records requests should provide an opportunity for education and treatment" and suggest that the response to such requests should be "a positive and encouraging one". Before access is actually given they spend time with the patient trying to clarify the factors that prompted the request: "we develop hypotheses to help explain the request and then explore these hypotheses with the patient ... The questions focus on possible sources of conflict both currently and in the past. If patient and therapist work through the dynamic issues in this fashion before turning to the record the actual chart review can be accomplished in a less emotionally charged, more collaborative way ... Reading the record is the last step and is often anticlimatic. We know we have been successful in translating one kind of request when a patient who has been consistently demanding the record finally gets it, casually flips through a couple of pages, and thanks us for our time ... For the patient who wants to read each entry, we make ourselves available to decipher words, give definitions, and provide brief nondefensive answers to questions about diagnosis and treatment. Finally, there are patients for whom a chart review session becomes the vehicle for significant reaffirmation of the therapeutic alliance and a time for meaningful psychotherapeutic work". **(11)**

"With a few honourable exceptions medical records (hospital or general practice) are a disgrace, and to share them with the patients would be to expose the extent to which the science based technology of medicine depends on an information system that has neither been rethought nor even taught in a disciplined way for several practice lifetimes. Perhaps sharing records would inculcate much needed discipline in the profession's record keeping."
David Metcalfe, Professor of General Practice, Manchester University.

"(the Access to Personal Files Bill) is a development that should be welcomed rather than resisted by doctors"
Lancet editorial, 19.10.85.

"One of the fears some doctors have is that people will read their notes and jump out of the window and kill themselves because they're so terrified. Its absolutely the opposite of what happens. In reality its tremendously reassuring to the vast majority of people. Even if they have bad news, of a serious diagnosis, they still find it reassuring to know that they will have nothing kept from them. And if they don't want to know they don't have to look in the notes. Its up to them."
Dr Brian Fisher, a London GP whose patients have access to their own notes.

Answers to the fears about access to files

Won't people be upset or harmed by things they might read on their records?
People who want to be shielded from potentially distressing information will not be affected by the Bill. They will simply not ask for their files. But people who want full information, and are prepared to face any distress that the knowledge may bring, would be able to obtain their records.

In fact, the evidence from doctors who allow patients to see their notes is that most people are *helped*, not harmed, by seeing them.

If the doctor or social worker thought the person might suffer actual harm through seeing the record, the Bill would allow them to defer access for a period of up to six months. This would allow access to be given after, rather than in the midst of, an acute emotional crisis. It would allow time for treatment or counselling to be provided or for the information to be provided step by step rather than all at once. But the information would not be withheld altogether.

One concern expressed by doctors is that patients may come across unconfirmed possible diagnoses which may later be found to be groundless. Wouldn't it be better to spare patients the anxiety of discovering what is suspected until a firm diagnosis is reached?

Like the Data Protection Act, the Access to Personal Files Bill would allow up to 40 days before a request for access has to be granted. This period will often be sufficient for tests to be carried out, and the results used to confirm or reject the hypothesis.

But if the patient does not want to wait, and would rather know what the possibilities are than be left in complete ignorance, the patient should be able to insist on knowing.

Couldn't the release of a record affect other people's rights?
No, because the Bill contains specific exemptions to protect private information about someone else, or information which if released would expose someone to risk of attack or harm. Relatives would continue to be able to talk to a doctor in confidence about the problems of a mentally ill family member: anything which identified them as the source of any particular information would not be disclosed.

What about parents who want to see their children's records?
The Bill would allow the patients of a person under 16 to see their records, but the doctor would not be allowed to reveal information provided by the young person in confidence or information which if released to the parent would damage the confidential basis of the doctor-patient relationship. Information which might expose the child to risk — for example from a violent parent, could also not be disclosed.

Would records compiled before the Bill came into force be covered?
No, the Bill does not apply retrospectively. But doctors would be free to show patients their earlier records if they wanted to.

Could a doctor be sued for libel by a patient who found something uncomplimentary written on the notes?
No, doctors and medical staff are protected from libel actions by 'qualified privilege' provided the comment was made in good faith.

Won't doctors be overwhelmed by an unmanageable flood of access requests?
In most cases people will not need to use a formal right of access to get the information they need. A change in the law will merely signal to doctors and patients that people who want to see a report that comes in about them from a specialist, or the results of tests, should be able to do so. Usually this won't need a formal written application: the patient who expresses an interest in seeing a letter that has arrived will simply be shown it.

Often the only reason this doesn't normally happen at present is because of professional etiquette. The convention is that doctors write to each other about the patient in confidence. The GP's only reason for not showing a consultant's letter to the patient may be the belief that this would first require the consultant's permission. If a right of access exists, letters will be written in the knowledge that the patient can see them, and the unnecessary complications raised by professional etiquette will no longer apply.

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Freedom of Information in the Town Hall — a special report

The Local Govt. (Access to Information) Act has now been in operation for a full year and a survey of a substantial cross-section of local authorities — more than 200 in all — by the Campaign for Freedom of Information reveals substantial variations in the way the legislation is being implemented.

- **Some local authorities have done a lot to publicise the new opportunities for access to information. Others have done little.**
- **Some local authorities make no charge, or only a small charge for access to information; others charge prohibitively.**
- **Some local authorities have kept exemptions from access to committees and information to a minimum; others still devote considerable ingenuity to the preservation of secrecy.**

The broad conclusion to be reached from the survey is that some local authorities are trying hard to reflect not only the stated intention but the spirit of the law and others are ducking their responsibilities with all of the determination and guile usually associated with tax avoidance.

As a result of its survey, the Campaign for Freedom of Information has decided to launch a campaign to promote more positive implementation of the Act.

- **The Campaign will be writing to all local authorities with details of the survey.**
- **It will also be requesting local authorities who are thwarting the intentions of the Act to reconsider their policies.**
- **It intends, however, to apply pressure on the delinquent authorities via local supporting organisations, rather than from a national platform. believing that local pressure will be more effective and that nationally applied pressure can be counter-productive and sometimes insensitive to particular local circumstances.**

The Campaign received 204 fully-completed questionnaires from a broad cross-section of local authorities. Where the breakdown of answers does not equal this total it is because of qualifications in answers, or lack of clarity.

Asked whether they had sent publicity material on the Act to householders, 29 replied 'yes' and 165 'no'.

Common ways of reaching households were:

- Publication of a feature on the Act in a council newspaper distributed to all households.
- Sending of a summary of the Act with rate demands to all rate-payers.

Some local authorities have been outstandingly determined to publicise the Act for instance. Bradford has sent a summary of the 'open access provisions' with rates information to all householders. It has paid for a two-page ad. in the local business telephone directory. Leaflets on the policy are available at all public libraries. A five-minute video film has been commissioned and will soon be available for public showing. An annual budget of £10,000 has been set aside to publicise the new rights.

Hertsmere have produced and widely publicised full details of the public's rights to obtain information, see documents and attend meetings, in the form of a council guide, "Access to Information". Copies have been made available free of charge by post and from various council offices throughout the Borough. Posters and handbills giving the same information have also been widely distributed.

Since April 1 1986 Hertsmere have dealt with between 500 and 600 requests for their information desk:

We asked: have you, in addition or instead of contacting households taken any of the following measures:

Advertised in local papers:
Replies: Yes 22, No 171.

Arranged editorial publicity in local papers:
Replies: Yes 54, No 141.

Put up notices in suitable public places:
Replies: Yes 92, No 92.

Asked how many days' notice they gave the public of forthcoming meetings (under the Act they are required to give three clear days) local authorities responded as follows: 79 gave a minimum of three clear days notice, 64 gave more than three clear days notice. 50 gave three days notice but not necessarily three clear days.

Under the Act local authorities are required to give '3 clear days' advance notice of meetings, this includes making available not only the time and place of the meeting but the agenda, any reports likely to be considered in public and copies of background papers relied on in preparing such reports. '3 clear days' here means 3 days excluding weekends or bank holidays when council offices are closed and not counting either the day of the meeting or the day the notice is posted.

Most of those authorities which gave more than 3 'clear days notice, in fact give 7 days notice. One notable example of good practice is provided by Rochford where Agenda are put on deposit 'two Fridays in advance of the week of the meetings'.

The intention here is clear — maximum posisble advance notice of meetings is provided to encourage people to exercise their rights in accordance with the spirit of the new law. This contrasts dramatically with the attitude of those authorities which in attempting to comply with the minimum requirement for advance notice of meetings etc, fail even to distinguish between days when the council offices are open, and therefore accessible, compared to weekends and bank holidays.

Asked whether they made a charge for photocopying, 178 local authorities said 'yes' and 17 said 'no'.

98 report that they charged 10p per A4 sheet.

37 charge more than 10p per sheet.

39 charge less than 10p per sheet.

The discrepancy between those authorities which either make no charge or charge what could genuinely be described as 'a reasonable fee' and those which overcharge is often compounded by the authority's policy on minimum charge. Given that,when only a few sheets are required (as is often the case for agenda for meetings, for example), the cost of processing the charge is likely to be more than the sum recovered, there are two options: either to impose a minimum charge or to issue a limited number of copies free of charge. There are, as usual, notable examples of good and bad practice which give some idea of the overall discrepancy here.

Basingstoke & Deane, Luton and Winchester all charge £2 for the first sheet copied and 10p per sheet for subsequent copies; Mid-Bedfordshire charge £1 for the first sheet and 50p per sheet for further copies; compare this with the charges levied by Dyffed and Forest of Dean of 2p per sheet, or Devon of 3p per sheet. Some authorities have seen fit to revise their original policies on charging since the Act was introduced: in January 1987 Oxford City Council issued a press release announcing the introduction of a trial scheme to make committee agendas and reports available to the public at no cost (previously 5p per sheet). The Chair of their Public Affairs Committee said: "We hope that by making committee agendas more easily available, Oxford people will be encouraged to play a fuller part in the affairs of their City Council. Voluntary organisations and local groups, in particular, often need detailed information about the work of the Council and we want to make that information about the Council's activities as easily available as possible."

Asked "Do you make a charge for inspecting background documents", 49 answered 'yes', and 145 answered 'no'.

Amongst those authorities which levy a charge, sums range from 25p to £10.00 + VAT per set of background papers. Some authorities charge an hourly rate depending on how much officer time is taken up — the examples we have are in the range of £4-£5 per hour.

The general impression here is that most of the figures quoted in response to this question are theoretical amounts which could be levied if the occasion arose. A minority of councils are attempting to cover themselves by making a provision to charge substantial sums and then justifying this by saying they have not actually felt it necessary to impose these fees because of the small number of requests they have had to deal with in practice. The problem with this rationale is that it ignores the considerable disincentive offered to the public by the existence of such a system of charges. The attempt to pre-empt the possibility of having to deal with time-consuming requests for information goes totally against the spirit of the new legislation.

The last two questions deal with the exclusion of the public from meetings of council bodies other than committees or sub-committees (and therefore outside the scope of the Act) or from committee and sub-committee meetings (when 'exempt' information is to be discussed).

Asked "Which official Council bodies do you believe are not covered by the Act and therefore closed to the public'.

125 authorities gave examples of working parties or other bodies which are closed to the public.

66 authorities replied that none of their Council bodies is closed to the public.

The range of replies to this question again reveal fundamental differences in attitude to the new rights enjoyed by the public under the Act. Under the Public Bodies (Admission to Meetings) Act 1960 and the Local Govt. Act 1972 full Council and committee meetings had to take place in public — but sub-committee meetings did not. Thus a committee could delegate items to a sub-committee so that they could be discussed in private, regardless of the public's interest in the issue. Public discussion is similarly avoidable by relegating a particular item to discussion during a meeting of a working party or specialist panel.

To be fair, many authorities are at pains to point out that any working parties etc which are closed to the public pre-date the Act and are emphatically not a device to escape from the obligations it imposes. Some of the examples of working parties etc meeting in private did appear faintly ridiculous: Aberdeen's 'International Football Festival Trust, for example, or Hertsmere's 'Indoor Tennis Centre Working Party."

But perhaps more worrying than such idiosyncracies is the failure of many authorities even to specify in which particular area any working parties held in closed session were operating. 'Working Party' can be used as a blanket technicality in the same way as 'Sub-Committees' once could. In contrast with this attitude other authorities made it clear that it was their policy to apply the Act to all meetings even though they may not technically fall under its provisions. Stafford was one of these: "Certain working parties, consultative bodies and site visits are not covered by the Act. The Council has decided however that all these quasi Committees should be open to the press and public as if they were covered by the Act. At the moment there is no meeting of a Committee, Sub-Commitee or Quasi-Committee of the Council which is not open to the public and press and which is not subject to the requirements of the Act."

Asked "Can you list some of the matters for which committees or bodies which normally allow the public to attend feel it necessary to go into 'exempt' session' all but 3 authorities gave examples of occasions when they felt this to be necessary.

However, a large number of authorities pointed out that exclusion of the public is rare and happens less often than would be technically possible if all the categories of exempt information were fully exploited. The Act requires that Councils may, *but do not have to* exclude the public from any part of a meeting when it is likely that 'exempt' information would otherwise be disclosed. There are obvious reasons why information which comes under the general headings listed above may need to be considered in private session. But it is equally obvious that this will not always be the case. Automatic exclusion is likely to be unnecessarily restrictive. Some authorities recognise this:

"There is no automatic exclusion of the public but those matters for which the public will usually be excluded include: negotiations between trade unions and councils . . . consideration of tenders (report of decisions is in public); staff matters concerning individuals (but not where a general policy is under discussion — unless it is the subject of negotiations etc)." [North East Derbyshire]

Variations in implementation, here as elsewhere, are the result of the Act's flexibility — decisions made at the discretion of individual authorities confirm or confound the Act's intentions.

Report by Laura Thomas

The Loopholes in the Act

The Local Govt. (Access to Information) Act required all local authorities to admit the public to not just council and committee meetings but also sub-committee meetings.

It created new rights of access to the agenda, minutes, background papers and reports for meetings.

The variations in implementation have occured because of the Act's flexibility on a number of issues.

For instance, it was left up to local authorities how they would publicise the Act. The only specific requirement is to have details of rights to information available for inspection at the town hall.

Second, councils were permitted to charge "a reasonable fee" to cover administrative costs of photocopying and inspection of documents, but there was no definition of "reasonable". Furthermore, it was entirely up to the council whether it would charge a fee or not.

Third, the Act left local authorities with considerable powers to exempt information from its provisions, or discuss some matters in secret session.

Four Campaign Aims

The Campaign for Freedom of Information urges local organisations, and councillors, to carry out their own review of how their local authority is implementing the Act.

It proposes that, in particular, they press for the following:

(1) Imaginative publicity of the rights created by the Act, preferably direct to every home.

(2) Minimum possible charges for photocopying, and in the cases of a few pages, no charge at all.

(3) Elimination of the charge for inspection of papers and reports where photocopying is not involved.

(4) Review of information still discussed in secret, and extension of implementation of the Act to cover all groups within the council's control — i.e. panels, working parties, as well as formal committees.

Secret Facts

• continued from page 2

Sellafield worker sacked for disclosing safety defects

A fitter at the Sellafield nuclear plant who was contaminated with radioactive material has been sacked for revealing details of the incident to a newspaper. Mr Philip Cundy was exposed to radiation while working at the Calder Hall military reactor at Sellafield. The incident occurred in February 1986 around the time of several other well publicised leaks, but was not announced by British Nuclear Fuels. Mr Cundy claimed that because showers at the reactor were not working he was forced to take off his protective clothing while they were still covered with radioactive dust, which as a result stuck to his hair, chest, face and hands. After showering at another reactor tests showed he was still contaminated and a second shower was needed. He claimed he was refused a test to see if he had ingested contaminated dust. He gave details to a newspaper reporter who approached him — and was dismissed after the article was published. Although the company initially were determined to fight his claim for unfair dismissal it agreed to pay him £6000 compensation after he applied for 15 witnesses to appear before the tribunal to describe the plant's safety procedures.

Parole secrecy breaches European Convention

Britain has been found to be in breach of the European Convention on Human Rights because of the secrecy in which decisions to recall released life-sentence prisoners are taken. The European Court ruling was made on a case brought by a life sentence prisoner who was released after serving 10 years but subsequently recalled to prison by the Home Secretary.

Article 5(4) of the European Convention entitles anyone who has been arrested or detained to challenge the decision in front of a court or independent body fulfilling a judicial function. The scope for judicial review by the High Court is too narrow to help in such cases, but the British Government argued that the Parole Board provided a proper forum. This argument has been rejected by the European Court. The Court ruled that because prisoners have no right to see the evidence against them which the Parole Board relies upon, the Board cannot be regarded as judicial in character. Britain was found to be in violation of article 5(4) of the Convention. The ruling means either that the Parole Board will have to allow disclosure in such cases, or that a right of appeal to a different body will have to be provided.

Land Registry to remain closed to public inspection

The campaign to end the traditional secrecy which veils land ownership in England and Wales has been stalled by opposition from The Law Society and the Country Landowners Association, the Observer reported in January. It said: ". . . objections have prompted Lord Hailsham, the Lord Chancellor, to shelve plans to open the Land Registry to public inspection, despite the Law Commission's strong recommendation in favour of such a move. Groups calling for an open register include the Consumers' Association and the housing charity Shelter. Michael Gregory, legal adviser to the land owner's association, said an open register would lead to 'nosey parkerism' and invade privacy."

The ownership of land affects the lives of millions of people. Titles of land ownership are for the most part registered and at present the register on which the title are kept is closed to public inspection. Almost all other countries in the world that have registration systems have entirely open and unrestricted access. Ownership of land in Scotland, whether registered or not, has always been a public matter. Advantages of an open Register to consumers would include simpler and cheaper conveyancing, and for tenants, the right to know the identity of absentee landlords, should they wish to complain about poor maintenance of property etc.

In 1985 the Law Commission's report of land registration concluded: "We are persuaded not only that there is no sound reason for retaining the secrecy rule, but that significant benefits . . . and no substantial disadvantages would flow from a wholly open Register of Title. We were especially influenced by the experience of other countries with open registers . . . as well as by the acceptance in England and Wales of other public registers . . . Accordingly, opening the Register of Title would appear to us, as to the great majority of those who gave us their views, to represent a welcome modernisation of the law. It would also be consistent with the principle that 'In an open society there should be freedom of information and publication' ".

Justice behind closed doors

The *Independent* is currently heading a substantial campaign against growing trends in secrecy among those with authority in the courtrooms.

Various areas of High Court secrecy, including the indiscriminate use of the Contempt of Court Act throughout trials either to delay publication of certain details, or to put a complete ban on publication of proceedings, have been subject to a barrage of criticism in recent editions.

A January report described the Royal Courts of Justice, home of England's supreme civil and appeal courts, as the 'biggest forum for secret justice'.

It gave as an example the 99 per cent of cases in the Family Division which are held behind closed doors despite the fact that the argument for opening the family courts can be supported by past cases showing an interest which stretches into the public domain.

Attempts to contest secrecy rulings have frequently been thwarted because of Section 29 of the Supreme Court Act 1981 which directs that judges' orders, even if made improperly and unlawfully, cannot be questioned. Although decisions made in lower courts are subject to judicial review, Crown Court judges cannot be contested over matters relating to trial on indictment.

Earlier this year journalists and civil rights campaigners made a major breakthrough in their challenge to judicial secrecy when the European Commission on Human Rights decided that Section 29 of the Supreme Court Act could be in breach of Article 13 of the European Convention on Human Rights which requires the provision of an effective domestic remedy for those whose rights are violated.

The action in question was brought by Channel 4, the National Union of Journalists and the NCCL who contested a restriction of reporting of the official secrets trial of Clive Ponting in February, 1985. Having decided that there may be an argument for judicial review, the Commission will now go on to study the merits of the case and mediate in any attempts between the journalists and the government to settle, without having to go before a full hearing of the Court of Human Rights. Initial meetings have already taken place.

Campaign for Freedom of Information

Chairman of Council: James Cornford
Co-Chairmen of Committee:
Christopher Price and Des Wilson
Treasurer: Neil McIntosh
Chairman of Parliamentary Advisory Committee: Jonathan Aitken MP

Director: Maurice Frankel

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London WC1H ODD
Telephone: 01-278 9686

How to be a supporter

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The Campaign for Freedom of Information

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Supporting Organisations

ACTT
Action for the Victims of Medical Accidents
Association of Metropolitan Authorities
Association of Community Health Councils
British Humanist Association
British Safety Council
BUAV
Campaign for People with Mental Handicaps
Campaign for Press & Broadcasting Freedom
Civil & Public Services Association
CLEAR
Fire Brigades Union
Friends of the Earth
Institution of Professional Civil Servants
Legal Action Group
Library Association
London Food Commission
MIND
NALGO
National Council for Civil Liberties
National Council for Voluntary Organisations
National Graphical Association
National Union of Journalists
National Union of Public Employees
National Union of Students
SHAC
SHELTER
Social Audit
Society of Civil & Public Servants
SOGAT '82
The Patients Association
Town & Country Planning Association
TRANSPORT 2000
World Development Movement
Writers' Guild of Great Britain

Observer Organisations

Association of First Division Civil Servants
British Youth Council
Broadcasting & Entertainment Trades Alliance
Cancer Prevention Society
Child Poverty Action Group
Childrens Legal Centre
Church of England Board for Social Responsibility
Consumers' Association
Earth Resources Research
Friends of the Earth (Scotland)
Gingerbread
GMBATU
Guild of British Newspaper Editors
Institute of Information Scientists
London Regional Passenger Committee
National Consumer Council
National Council for the Welfare of Prisoners Abroad
National Federation of Womens' Institutes
National Federation of Self-Employed & Small Businesses
National Gas Consumers Council
National Peace Council
Prison Reform Trust
Royal Town Planning Institute
Scottish Consumer Council
Union of Shop, Distributive & Allied Workers
Workers Educational Association

Council for Freedom of Information

(The Policy-making forum for the campaign)

Dame Elizabeth Ackroyd
Lord Avebury
Ron Baird
David Baldock
Alastair Beaton
Tom Berney
William Bingley
Godfrey Bradman
Leslie Chapman
James Cornford *(Chairman)*
George Cunningham
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Jake Ecclestone
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Kim Stallwood
Nancy Tait
James Tye
John Ward
Sandra Ward
W H P Watley
Ben Whittaker
Des Wilson
John Winward

The Committee for Freedom of Information

(The Campaign management committee)

Des Wilson (*Co-Chairman*)
Christopher Price (*Co-Chairman*)
James Cornford
James Michael
Charles Medawar
David Hall
Richard Gutch
Ron Lacey
Neil McIntosh
Tony Smythe
Martin Smith
Jacob Ecclestone

All-Party Parliamentary Advisory Committee

Jonathan Aitken (Con) (*Chairman*)
Sir Bernard Braine (Con)
Robin Squire (Con)
Chris Smith (Lab)
Steve Norris (Con)
Charles Irving (Con)
Robert Maclennan (SDP)
Ian Wrigglesworth (SDP)
Jeff Rooker (Lab)
Michael Meadowcroft (Lib)
Clement Freud (Lib)
Dafydd Wigley (Plaid Cymru)
Donald Stewart (SNP)
Allan Roberts (Lab)

Panel of former Civil Servants advising the Campaign

Sir Douglas Wass (*Chair*)
Lord Croham
Sir Kenneth Clucas
Sir Patrick Nairne
Michael Power

International Advisers

Ralph Nader (USA)
Harold Relyea (USA)
Lars Broch (Netherlands)
Spencer Zifcak (Australia)
Sir Guy Powles (New Zealand)

Scottish Advisory Panel

Peter Gibson
David Goldberg
Donald MacPhillamy

Local affiliate organisations

The Campaign has 366 local affiliate organistions.

House of Lords

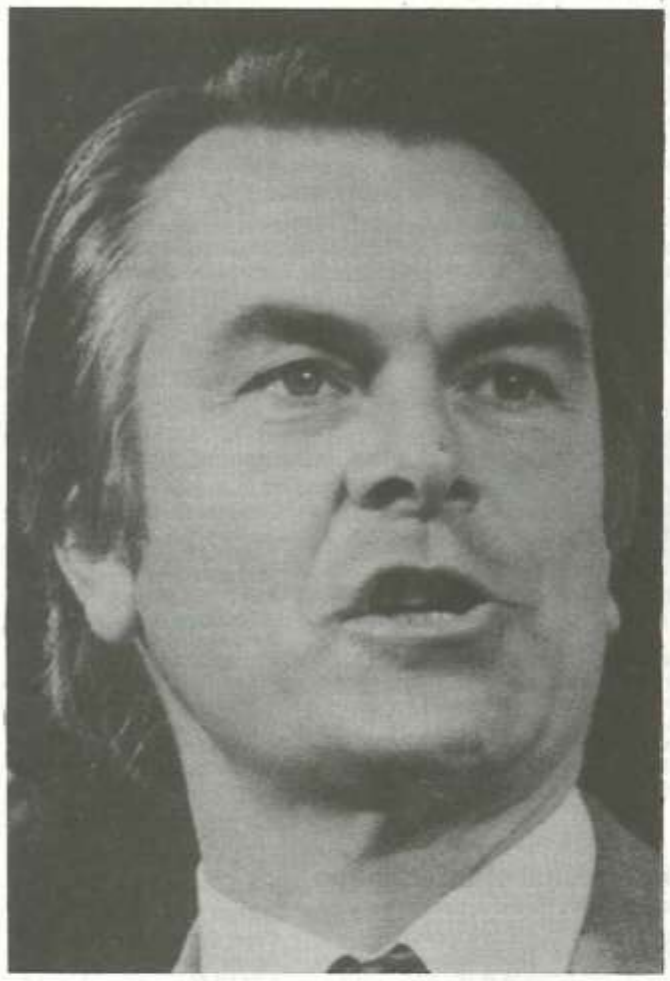
The Campaign has 57 supporters in the House of Lords

House of Commons

The Campaign has 200 supporters in the House of Commons

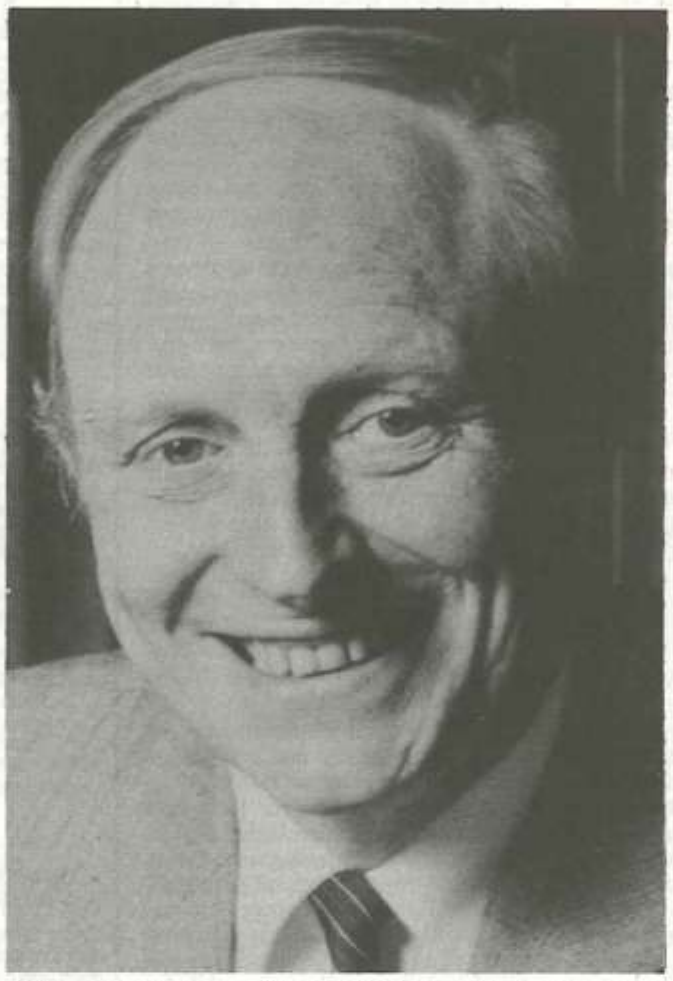
ELECTION '87

Time to keep the promises



"A Freedom of Information Act and the repeal of Section 2 of the Official Secrets Act . . . I'm glad to say will feature in the SDP/Liberal Alliance manifesto."

The Rt Hon Dr David Owen,
Leader of the SDP,
FoI Awards Speech 1987



"I repeat here . . . the next Labour Government will, as a matter of priority, repeal Section 2 of the Official Secrets Act and replace it with a Freedom of Information Act."

The Rt Hon Neil Kinnock,
Leader of the Labour Party,
FOI Awards speech, 1986.

"The case is now overwhelming . . . we must replace the discredited Official Secrets Act with positive freedom of information, with tightly drawn exemptions."

The Rt Hon David Steel,
Leader of the Liberal Party,
FoI Awards speech, 1985.

What they say about f.o.i.

Conservative

The Prime Minister has made it clear that a freedom of information act is in her view "both inappropriate and unnecessary".

Both she and her Ministers have replied "no" to a variety of requests in the House of Commons either to repeal Section 2 of the Official Secrets Act or to introduce freedom of information legislation.

Labour

The Labour leader Neil Kinnock and other frontbench spokesmen have indicated the party will introduce freedom of information legislation.

FoI has featured in resolutions endorsed by successive party conferences over the years, and a specific pledge appeared in the Labour Manifesto at the October 1974 election to "replace the Official Secrets Act with a measure to put the burden on the public authorities to justify withholding information".

Neil Kinnock wrote in the Secrets Newspaper in 1984 "I regret that the last Labour government succumbed to the temptation, left the Official Secrets Act unreformed, a Freedom of Information Act unlegislated." He went on to say that the party had re-committed itself by conference resolutions and in its 1983 manifesto and concluded "I have already made plain my own commitment and that of the Labour Party to the introduction of a Freedom of Information Act. It is a commitment which will be honoured as a priority."

Alliance

Both leaders of the Alliance, David Steel and David Owen, have strongly supported the introduction of freedom of information legislation. David Steel introduced a Freedom of Information Bill under the Ten Minute Rule procedure in the House of Commons.

Both Alliance parties have recently passed conference resolutions reaffirming their support for freedom of information and repeal of Section 2.

What we would like to see in the manifestos

OFFICIAL INFORMATION (PUBLIC ACCESS)

Mrs. Renée Short asked the Prime Minister whether she intends to bring forward legislation to establish a public right of access to official information.

The Prime Minister: No.

Mrs. Renée Short asked the Prime Minister if she is satisfied with the current public right of access to official information.

The Prime Minister: Yes.

The following is what the Campaign would like to see in all the party manifestos at the next General Election:

"We will act decisively and as a matter of priority to repeal the Official Secrets Act, and replace it with a Freedom of Information Act, providing for a public right of access to all official information, subject to limited and specific exemptions to protect national security and proper law enforcement, and to uphold rights of privacy.

"The objective of the legislation will be to establish a position where those in authority have to defend secrecy, rather that the public having to prove its right to know".