Newspaper of the Campaign for Freedom of Information 50p Number 9

SECRETS

Local freedom of information law takes effect from April 1

The Town Hall Is Open!

The Campaign for Freedom of Information's first legislative success, achieved with the help of Robin Squire MP, whose Private Members Bill it was, and the Community Rights Project, comes into force on April 1 of this year.

It is the Local Government (Access to Information) Act and it extends our rights of access to meetings held by local authorities, and to information from our local town, city, or county hall.

We will now be able to attend any meeting of a council, or its committees or sub-committees.

We will now be able to obtain at least three clear days before the meeting the agenda and any background reports and papers.

After meetings, we will be entitled to inspect the agenda, reports considered in public, background papers, minutes of the meeting and a summary of any proceedings which take place while the meeting is closed for business exempted by the Act.

The Council will now have to publish a register of the names and addresses of Councillors and the membership of committees and sub-committees, a list of powers delegated to officers; and a summary of our right of access to meetings and documents.

Councillors, too, are given new rights to inspect documents relating to forthcoming business.

The Rt Hon Neil Kinnock, leader of the Labour Party, meets American campaigner Ralph Nader, to whom he made a special presentation at the 1986 Freedom of Information Awards. Full details page 5.

The Act is one of a number of pieces of legislation the Campaign for Freedom of Information has promoted in its first two years, subsequent to a drive to introduce a full Freedom of Information Act for Britain.

Detailed work on the Act was done by the Community Rights Project.

The opportunity to introduce it to the House of Commons arose when Conservative MP Robin Squire came third in the Private Members Ballot in 1984. He introduced the Bill early in 1985 and piloted it past the House of Commons and the House of Lords with considerable skill. He received the Campaign for Freedom of Information's Award for the outstanding individual contribution to freedom of information over the past year.

Des Wilson, Chairman of the Campaign for Freedom of Information, describes this month as "one of much promise and satisfaction to the Campaign.

"However, the only people who can enforce this legislation are members of the public themselves. It is up to us to take the opportunities to attend meetings on matters that concern us, and it is up to us to take the opportunity to obtain the documents now available.

"If we do not respond to those opportunities, the legislation will exist in name but not in reality."

Section Two under siege

Section Two of the Official Secrets Act, now in its 75th year, is under siege.

Not only have all the opposition parties said they will repeal it, but the Prime Minister, Mrs Thatcher, questioned in the House of Commons, indicated some unease about it herself, but claimed there was no accord on how it could be replaced.

Ministers continue to be afraid to make use of it since the jury in the Ponting trial refused to take the judge's lead and supply a conviction.

An all-party team of members of parliament, Alex Carlile, Liberal, Chris Smith, Labour, and Steve Norris, Conservative, committed themselves at a Campaign for Freedom of Information Press Conference to introduce a short Ten-Minute Rule Bill to repeal Section Two. This will be done in the Spring.

They made this promise on the eve of the 1986 Freedom of Information Awards, at which the leader of the opposition, Neil Kinnock, committed himself to repeal of Section Two, and before a Rally attended by more than 1,000 people in The Friends Meeting House at which the promise was echoed by Kinnock's deputy Roy Hattersley, and at which the leader of the Liberal Party, David Steel, reiterated the promise of the Alliance to replace Section Two with Freedom of Information legislation.

Nor did the Official Secrets Act come well out of the Westland affair. Opposition Parties, and also the media, were quick to point out the hypocrisy of ministers who were associated with prosecutions for leaks and who were themselves involved in a whole series of unofficial briefings and disclosures in order to outwit each other over Westland.

MP's ill-informed

MPs are not given sufficient information to properly monitor government spending, according to the Comptroller and Auditor General, Sir Gordon Downey.

"The answer to the simple stark question 'Does parliament get from the Government all the information it needs for effective accountability?' must today be 'No'," Sir Gordon said.

He suggested that MPs did not seem to care that accountability to parliament, a basic constitutional duty, had become a mere formality. He blamed "the general UK attitude to disclosure, and the typically overcautious response to the provision of more and better information — particularly unfavourable facts or potentially unwelcome conclusions — about government plans, objectives and results".

Page 4 of this newspaper contains a pull-out poster on your rights under the new Local Govt. (Access to Information) Act. More copies available from the Campaign FoI, 3 Endsleigh St, WC1 ODD (278 9686). 10p each plus post.

Fight to keep our water authorities accountable

Proposals to privatise Britain's water authorities have been published in a White Paper and there may well be an attempt to legislate later this year.

The Campaign for Freedom of Information has campaigned extensively about the secrecy of the present water authorities, who, with the exception of the Welsh authority, refuse to hold their meetings in public.

The Campaign's Director, Maurice Frankel, commenting on the White Paper, said that if the authorities were already too secretive when supposed to be publicly accountable, then they could only be more so when privately owned.

Maurice Frankel.

Water authorities were a supplier of a basic necessity for everybody in the country. They had public health and environmental duties. Public access to information about them was essential.

"The Campaign has no view on privatisation generally but believes there is a special case for contesting this particular privatisation measure."

Sellafield — a classic case of unhelpful secrecy

by Maurice Frankel

A disturbing series of mistakes at the Sellafield nuclear processing plant in Cumbria has provided further evidence of the need for freedom of information. In the course of a single month, February 1986, three separate instances in which inaccurate information was given either to the public or to official bodies have come to light.

The first involved Sir Douglas Black's independent inquiry into leukeamia rates around the Sellafield plant. British Nuclear Fuels Ltd told the independent Black inquiry that between 1952 and 1955 only 400 grams of uranium had been released into the air from the plant (then operated by the Atomic Energy Authority). In fact, the true figure was 50 times higher — 20 kilogrammes.

The error — so far unexplained — came to light when a scientist who had investigated the problem at the time noticed that the Black report's calculations were based on the wrong figures.

Dr Derek Jakeman, who worked for the AEA, had investigated and reported on the issue in the mid-1950s after finding high levels of radioactivity in his own home near the plant. He was threatened with dismissal, and his report was ignored. He later resigned and moved away from the area. He has now forced BNFL to acknowledge that it gave the wrong figures to the Black inquiry.

A new appendix to the Black report, containing revised calculations, is now expected to be published.

Dr Jakeman has given evidence to a DHSS committee investigating radiation hazards, but the 'Comare' committee meets in private and takes evidence in confidence. Asked about his findings, Dr Jakeman told the press "I can't discuss this with you — I am still bound by the Official Secrets Act".

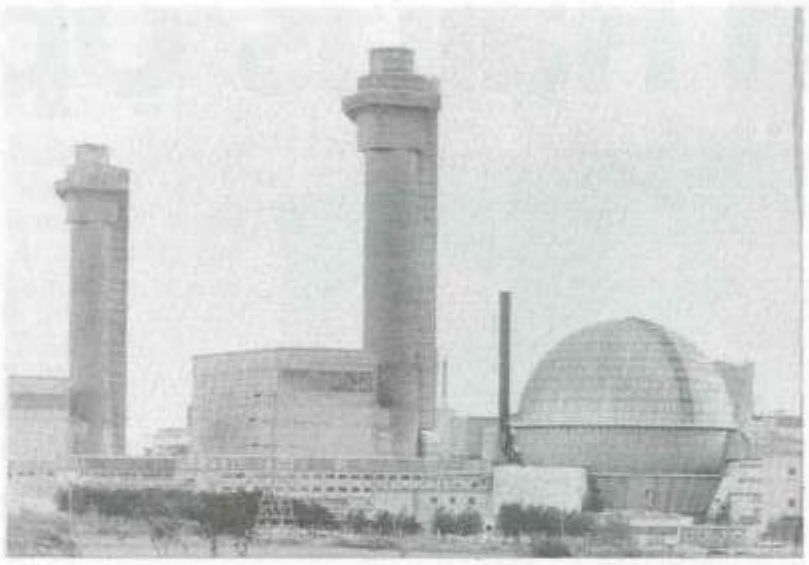
The second instance followed the leak of plutonium nitrate from a faulty pump unit on the Sellafield site. The incident led to an "amber alert" on February 5 1986 and the emergency evacuation of workers in the building. Afterwards, BNFL insisted that none of its employees had been significantly contaminated. In a letter to the Guardian on February 15, the company's chairman Mr Con Allday repeated the statement adding that only 2 workers had received any contamination and in both cases the findings were at the "limits of detection".

Yet the *same issue* of the newspaper carried an official report which contradicted this. The Health and Safety Executive's own preliminary investigation had found that *up to 15* workers appeared to have met BNFL's own criterion for contamination. One man was suspected of having received the whole of the permitted annual exposure to plutonium during the leak. Since the leak, notices threatening workers with the Official Secrets Act if they talk to the press have been posted in the plant.

But the most disturbing revelation was the news that the Sellafield reactor, and another at Chapel Cross in Scotland, could be destroyed — with devastating releases of radioactivity — by a relatively minor earth tremor. Following the disclosure, by a consultant who carried out a safety review in 1983, BNFL have acknowledged that no safeguards against seismic shock were built in to the reactors' design.

One of the consultants who carried out the review has said that their report was suppressed and they were told to produce a new one based on different assumptions.

The consultants found that a small tremor, whose chances of occurring are said to be 1 in a 100, would be enough to permanently damage the bolts supporting the reactor vessel above the ground. One such tremor occurred in 1979 only 15 miles from the Chapel Cross reactor.



A stronger tremor — which the reactor has a 1 in 1,000 chance of receiving — would be enough to sever the bolts altogether causing the reactor to crash to the ground. Either the fall itself, or the fire that would inevitably result from the severance of the cooling pipes, could lead to the uncontrolled release of radioactivity into the surroundings.

The consultant engineer, Mr Peter Phelan told the Guardian: "The findings shocked me. I checked and rechecked them. It meant that the kind of tremor that would rattle the windows but not break them could destroy this nuclear power station".

Mr Phelan stated that BNFL rejected their report and asked for a new one based on the assumption that even if the bolts fractured, friction would prevent the reactor from falling. He described this scenario as based on "unproven and as far as I know unprovable assumptions", and added "we pointed this out but were told to do it anyway". A summary of the final report — but not, as far as he knows, the original warning — was passed by BNFL to the Nuclear Installations Inspectorate. Following his disclosures the NII has begun new checks on the possible risk.

Safety reviews of the kind that Mr Phelan worked on are supposed to be carried out on all nuclear power stations when they complete 20 years of operation. The reviews are not available to the public.

Such secrecy would be unthinkable in the US, where reactor safety studies are routinely released under the Freedom of Information Act. Any weaknesses in the safety arrangements, or flaws in the review, can be detected. One safety study completed in 1975 was so widely criticised for its inadequacies that the Nuclear Regulatory Commission ordered an independent review of it two years later.

The review found that the study was biased and that earlier criticisms "either were not acknowledged or were evaded". As a result thet NRC withdrew its previous endorsement of the findings and reaffirmed its belief — not apparently shared by UK nuclear authorities — that "proper peer review is fundamental to making sound technical decisions".

In this country, Liberal MP Mr Paddy Ashdown has pressed the Energy Secretary Peter Walker to publish the 20-year safety reviews, but he has refused to do so. On December 9 1985 he told Mr Ashdown: "I am not persuaded that there would be any improvement in safety if all the documents in a review were to be published."

That statement flies in the face of what, since December 1984, is supposed to have been government policy — to favour "unrestricted access by the public" to pollution information. In the light of the 3 incidents revealed this February it also looks like a profoundly complacent response.

Australian FoI Act 'improves decisions'

Freedom of Information in Australia "has led to an improvement in primary decision making" according to Australia's Administrative Appeals Tribunal.

Some 19,000 FOI requests were made in 1983/84.

The Attorney General's report for the year says that many agencies covered by the Act have reported benefits both to the public and their own administrative processes. The department which receives most requests — the Department of Veterans Affairs — reported that FOI had helped resolve grievances that might otherwise have led to time-consuming correspondence, and had helped veterans make claims for pensions.

The Department of Social Security, which received more than 2,600 requests during the year said the Act had decreased mistrust and dissatisfaction and helped to make its decisions more easily understood. In some areas there had been a reduction in appeals as social security applicants better appreciated why their claims had not succeeded.

Several departments reported better and more consistent policy making resulting from the Act. The Department of Industry and Commerce stated that FOI requests had brought a number of bad decisions to light, and as a result it had taken remedial action. Industry's earlier concerns about possible disclosure of commercially valuable information had not been borne out. The Attorney General reported that "There have not been any reports from agencies nor complaints from business of any instance where commercially interests have been adversely affected by ... wrongful disclosure".

Several departments found that documents they had prepared for public disclosure had proved valuable to officials. A computerised index of social security guidelines and instructions had become "a useful management tool", helping officials indentify relevant rules in cases and enabling policy makers to integrate their new guidelines more effectively. Other departments described improved record keeping and better documentation of decisions as benefits brought by the Act.

The total cost of the Act for the year was $17 million, and the cost of handling each request was 40% down on the previous year. Seventy per cent of all requests were granted in full.

The Attorney General reported that in less than 2 years of operation the FOI Act was "surely and relentlessly making its mark".

No answer from BT

British Telecom has refused to provide information about the number of pay telephones out of service, or to release statistical surveys of its service. According to the Observer, BT says such information could help its competitors.

British Telecom has no competitors in the domestic market.

Access to Personal Files

A 26 year old woman was first astonished and then appalled when her new GP accused her of being a heroin addict. It took her months to discover that an addict had been impersonating her at her former GP's practice. And she only managed to persuade her new doctor to erase the references to her 'addiction' by showing him her passport which proved that she was out of the country at the time the entries were made on her notes.

It took her 10 months, and 17 letters, to achieve this simple correction.

Cases like this, reported in a recent issue of BMA News Review, explain why a growing number of professional and voluntary bodies now agree that patients should have a legal right to see and correct their medical records. Such a right would exist if the Campaign's Access to Personal Files Bill were to be adopted.

A limited right of access, but only to *computerised* personal records, will exist from November 1987 under the Data Protection Act. A recent DHSS consultation paper proposes special restrictions that would apply in relation to computerised *medical* records. Though this right is limited it will create a valuable precedent which may in practice gradually come to apply to non-computerised records also.

The British Medical Association, whose view will be crucial, is about to decide on its position. But the BMA's influential *General Medical Services Committee* which represents GPs, has already endorsed the principle of patient access provided that information can be withheld in cases where patients might harm themselves or are mentally disturbed.

Bodies representing patients, consumers and voluntary organisations have strongly supported a patient right of access in their submissions to the DHSS.

The *National Consumer Council* has told the DHSS that patients should be able to see 'manual' as well as computerised records and has called on the Department to encourage those who hold the records to allow access to non computerised medical records. It believes patients need to be told of their right to see information as soon as it comes into force and has asked the Department to undertake "a major publicity campaign aimed at ensuring that *all* consumers know who and how to ask".

The National Council for Voluntary Organisations has strongly endorsed patients' rights to their records, with restrictions only if there is a risk of serious harm resulting from access, and suggests that if possible access should be deferred, by agreement, rather than prevented altogether. It expressed concern at the fees the Department proposes might be charged for access and suggests reducing or waiving fees for those on low incomes.

The Association of Community Health Councils has said that if patients expressly wish to have information about their health it should not be possible to refuse it except where a patient who might not be capable of making a reasoned judgement about his or her best interests would be harmed by having access.

The Patients Association has told the Department it hopes the new regulations will produce a change in the climate of opinion so that patients can obtain their records without fuss. It says that it has found that many patients want to see their records because they suspect something incorrect or disagreeable has been recorded about them — but that such suspicions also inhibit them from asking. Some manage to "sneak a look" at their records — but then feel guilty for having done so. The Association adds: "It will be a relief all round when this artificial barrier to trust between doctor and patient is removed by unchallenged access".

"I know to Know What's In My File", a special report incorporating the proposed Access to Personal Files Bill is available from the Campaign, price £1.50 plus 40p p&p.

The new law that only you can enforce

From April 1 of this year the new Local Govt. (Access to Information) Act comes into force.
It creates for you new rights of access to information from your town hall.
It will only work, however, if people like you enforce it by asking for the information or attending the meetings.
These new rights have been fought for — it's up to you to use them.

Access to meetings

1. The public may attend any meeting of a council or of its committees or sub-committees.

Exclusion from meetings

2. The public must be excluded when the meeting discusses (a) information supplied in confidence by a government department, or (b) information whose disclosure is prohibited by law or a court order.

3. The public may, by resolution, be excluded when the meeting considers any exempt information. Fifteen categories of exempt information are defined in the Act.

Access to documents before the meeting

4. The following documents must be available for public inspection at least 3 clear days before a meeting:
(a) notice giving the time and place of the meeting
(b) the agenda
(c) any reports likely to be considered in public
(d) copies of background papers relied on in preparing such reports

Access to documents at the meeting

5. At the meeting, a reasonable number of copies of the agenda and of any reports likely to be considered in public must be available for the use of the public attending.

Access to documents after the meeting

6. After the meeting, the following documents must be available for public inspection:
(a) the agenda
(b) any reports considered in public
(c) background papers relied on in preparing such reports
(d) minutes of the meeting, excluding any exempt information considered when the meeting was closed to the public
(e) a summary of proceedings while the meeting was closed to the public.

7. Background papers must be available for inspection for four years; agendas, reports and minutes/summaries for six years.

Other information

8. Councils must make publicly available:
(a) a register of the names and addresses of councillors; their wards; and the membership of committees and sub-committees.
(b) a list of powers delegated to officers
(c) a summary of the public's rights of access to meetings and documents.

Councillors' rights

9. Councillors may inspect any document relating to forthcoming business provided it does not contain certain of the categories of exempt information.

The press

10. The press must be given reasonable facilities for taking and telephoning-in their reports. They are entitled to be sent in advance copies of agendas, reports and (at the authority's discretion) other documents supplied to councillors.

Inspection of documents

11. Documents available under this Act may be inspected at the council's offices at all reasonable hours.

12. A reasonable charge may be made for inspecting background papers. All other documents must be open to inspection without charge.

13. A photocopy of any document available for inspection must be provided on request on payment of a reasonable charge.

14. Unreasonable obstruction of a person exercising a right of access under this Act is an offence, punishable by a £50 fine.

It's your right to know!

The Campaign
for Freedom
of Information

3 Endsleigh Street
London WC1 0DD
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Local Govt. (Access to Information) Act 1985

FoI movement's first legislative success: Act in force from April

New public rights of access to local authority meetings and documents come into force on April 1 1986. This is the date when the Local Govt. (Access to Information) Act 1985 takes effect.

Previously, access to meetings and documents was governed by the Public Bodies (Admission to Meetings) Act 1960 and the Local Govt. Act 1972. While these did give the public some important rights they suffered from several major defects.

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. Under the new Act, sub-committees now also must admit the public to their meetings.

In the past the public could be excluded from meetings "whenever publicity would be prejudicial to the public interest by virtue of the confidential nature of the business to be transacted" [1960 Act, section 1(2)].

No specific reasons had to be given, and authorities often went into private session simply for their own convenience. Under the new Act, the public can be excluded only when specified categories of information — defined in the Act — would otherwise be disclosed.

Although councils had to give the public advance notice of their meetings, the public had no right to know what business was to be discussed. Only the *press* were entitled to receive the agenda for a council or committee meeting. The 1985 Act extends this right to individual members of the public.

Even when they turned up for a meeting that was open to the public, people had no right to see reports that were being discussed in their presence. In this, and other respects, some authorities of course went beyond the law and provided the documents — but others did not. In future, every authority will have to make these reports available.

Access to minutes of meetings was also restricted. Only local government electors for the area — not other members of the public — could inspect minutes, and then only minutes of the full council and those committees whose decisions had to be referred back to it for approval. There was no right to minutes of most other committees, even if the meetings themselves had been open to the public, and no right to sub-committee minutes. The new Act corrects these deficiencies.

Councillors' rights to documents have also been strengthened.

But the most striking innovation is a new right of access to background papers which officials have relied on in preparing reports for meetings.

Local Government (Access to Information) Act 1985

CHAPTER 43

ARRANGEMENT OF SECTIONS

Section
1. Access to meetings and documents of certain authorities, committees and sub-committees.
2. Access to meetings and documents of local authorities and certain committees and sub-committees in Scotland.
3. Consequential amendments and repeals.
4. Extent.
5. Commencement.
6. Short title.

SCHEDULES:
Schedule 1—Exempt information.
Part I—Schedule to be inserted into the Local Government Act 1972.
Part II—Schedule to be inserted into the Local Government (Scotland) Act 1973.
Schedule 2—Consequential amendments.
Schedule 3—Repeals.

The reverse of this page has been designed as a pull-out poster. Why not display it where it will draw the attention of others to their new rights?

A guide to the new legislation

The new Act amends the Local Government Act 1972 by adding eleven new sections to section 100 of the 1972 Act. These are numbered 100A to 100K.

The Local Government (Scotland) Act 1973 is amended in virtually identical terms by new sections numbered 50A to 50K.

Public Right to Attend Council Meetings

You are entitled to attend any meeting of a council or any of its committees or sub-committees. These meetings must be open to the public except where the public has been specifically excluded during particular items of business as described below. [100A(1)]

Exclusion of the Public

(1) When the following types of "confidential information" would be disclosed "in breach of the obligation of confidence":

(a) information supplied to the council by a government department which the department has stated must not be made public;. and [100A(3)(a)]

(b) information whose disclosure is prohibited by law or by a court order. [100A(3)(b)]

(2) When "exempt information" would be disclosed.

Councils may, *but do not have to*, exclude the public from any part of a meeting during an item of business when it is likely that "exempt information" would otherwise be disclosed. [100A(4)]

Fifteen categories of "exempt information" are defined in the Schedule of the Act. In general terms, these cover personal information about various groups of individuals; information about the business affairs of third parties; information which if disclosed would prejudice certain types of negotiations or the enforcement of statutory requirements; information about legal and other formal proceedings; and information about crime prevention.

Access to documents before the meeting

Before a meeting you are entitled to inspect, copy, or be supplied with photocopies of, certain documents.

The documents must be available to the public at least "three clear days" before the meeting.

If a meeting is called at less than three clear days notice, the documents must be available from the time the meeting is called.

The documents to be available in advance of the meeting are:

(a) a notice of the meeting
This must state the time and place of the meeting. [100A(6)(a)]

(b) the agenda [100B(1)]
An item which has not been listed in an agenda made available to the public in advance cannot be considered at the meeting. The only exception is if there are "special circumstances" which make it a "matter of urgency" that the item be considered. The special circumstances must be recorded in the minutes. [100B(4)]

(c) reports for the meeting
Reports must be available to the public in advance.

However, any report which in the opinion of the "proper officer" (nominated by the council for this purpose) is likely to be considered when the meeting is closed to the public can be withheld. [100B(2)]

(d) background papers
When any report is available for public inspection;

(a) a list of background papers relating to the report, and

(b) at least one copy of each background paper listed must also be available to the public.

"Background papers" are defined as those which:

"(a) disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of the report is based, and

(b) have, in his opinion, been relied on to a material extent in preparing the report.

but do not include any published works." [100D(5)]

Access to documents at the meeting

At the meeting itself, you should be able to obtain a copy of the agenda and copies of any reports relating to items likely to be considered in public. [100B(6)]

Access to documents after the meeting

After a meeting, you are entitled to inspect, copy, or be supplied with a photocopy of:

(a) the agenda for the meeting [100C(1)(c)]

(b) any part of a report considered when the meeting was open to the public [100C(1)(d)]

(c) a list of background papers relating to such reports, and copies of the background papers themselves [100D(1)]

(d) minutes of the meeting (subject to the arrangements described below) [100C(1)(a)]

Minutes

If, as a result of excluding exempt information, the minutes do not provide "a reasonably fair and coherent record" of the proceedings then an additional summary, which gives such a record, must be provided. [100C(2)]

Length of time documents to be available

Agendas reports and minutes must be available for public inspection for a period of six years after the date of the meeting. [100C(1)]

Lists, and copies, of background papers must be available for public inspection for a period of four years after the day of the meeting. [100D(2)]

Other Information

Councils must make publicly available:

(a) a register of councillors
This must state the name and address of every councillor; the ward or division each represents; and the name and address of every member of each committee and sub-committee of the council. [100G(1)]

(b) a list of delegated powers
This must specify those powers which the council has delegated to officers for periods of more than six months, and the title of the officer concerned in each case. [100G(2)]

(c) a summary of the public's rights
This must describe the rights to attend meetings, and to inspect, copy and be provided with documents.

Councillors' rights

A councillor may inspect "any document" (not just those listed as "background papers") that relates to any forthcoming business at a council, committee or sub-committee meeting. However, a document can be withheld if it appears to the proper officer to contain certain categories of exempt information. [100F(1) and (2)]

These provisions do not restrict any rights to information that councillors have other than under this Act. A councillor who can show a "need to know" has a common law right to inspect documents even if they contain exempt information. [100F(5)]

The press

Facilities

At any meeting open to the public, the press must be provided with reasonable facilities for taking their reports and (if the meeting is on council premises or on other premises where there is a telephone) for telephoning in their reports at their own expense. [100A(6)(c)]

Documents

The press are entitled to receive, on payment of postage or other necessary delivery charges:

(a) agendas

(b) reports likely to be considered when the meeting is open to the public.

(c) any further particulars necessary to indicate the nature of agenda items.

(d) if the proper officer thinks fit, copies of any other documents about an item which have been supplied to councillors. [100B(7)]

Defamation

A defamatory statement contained in a document provided to the press (or the public) under this Act is protected by privilege.

No action for defamation can succeed unless the statement is shown to have been made with malice. [100H(5)]

Obtaining documents

You can inspect any document available to the public under this Act at the offices of the council at "all reasonable hours". [100H(1)]

A council is not required to deposit background papers for all reports ready for inspection as long as it has made arrangements to provide them "as soon as is reasonably practicable after the making of a request to inspect [them]". [100D(3)]

You can copy any document that is available to the public under this Act or require the council to provide you with a photocopy, for which "a reasonable fee" may be charged. [100H(2)]

You may have to pay a "reasonable fee" for inspecting background papers. No fee can be charged for inspecting any other document available under the Act. [100H(1)]

Obstruction

A person who, without good reason, intentionally obstructs you in exercising your rights to inspect or copy documents, or who refuses to provide you with copies to which you are entitled, is guilty of an offence punishable by a fine of up to £50. [100H(4)]

More than 1,000 pack London rally to call for repeal of Section Two in its 75th year

More than 1,000 people packed a Rally to "celebrate" the 75th anniversary of the Official Secrets Act organised by the Campaign for Freedom of Information at The Friends Meeting House in January and heard of the experiences of those prosecuted under the Act and received promises from senior politicians to repeal Section Two.

Roy Hattersley, deputy leader of the Labour Party, firmly committed Labour to repeal of Section Two and the introduction of Freedom of Information.

Both he and David Steel, leader of the Liberal Party, drew on the Westland affair to illustrate the hypocrisy over secrecy.

Mr Hattersley said that Freedom of Information was a pre-requisite of more effective administration at local and national level.

David Steel told the Rally that "the use by Mrs Thatcher's government of the Official Secrets Act has created a climate of fear and insecurity in Whitehall. It has reinforced the presumption that all information should be secret unless an overwhelming case is made for publicity.

Servants, who said that senior civil servants supported repeal, and freedom of information legislation. "It is the politicians, not the majority of civil servants who wish to preserve secrecy and who have to commit themselves to reform", he said.

Sarah Spencer, General Secretary of the NCCL, talked of the draconian nature of sentences under Section Two. Criminal trials and sentences for actions that did not endanger national security were disproportionate.

The Rally heard Sarah Tisdall say that she had now become a volunteer helper of the Campaign from Freedom of Information, and also heard from Clive Ponting how he had been prosecuted for no greater offence than making available information to a member of parliament — information that the prosecution acknowledged in court did not endanger national security.

American Campaigner Ralph Nader holds in his right hand the Official Secrets Act and in his left hand a book called "Former Secrets" listing the information released under the US Freedom of Information Act. "Which would you prefer?" he asks.

"Government has become more centralised and more Draconian, with secret decisions secretly arrived at." The channel tunnel was a 'monstrous example' of this.

Jonathan Aitken, the Conservative MP who has been prosecuted under the Act, was detained in the USA, but sent a message urging repeal of Section Two.

The Rally heard from John Ward, General Secretary of the First Division Association of Civil

New Statesman journalist Duncan Campbell, another who had been prosecuted under the Act, took the view that the Campaign was not sufficiently radical in its demands, but Des Wilson, Chairman of the Campaign for Freedom of Information, replied that the Campaign was not concerned with gestures, but results, and if it took some compromise to develop a consensus for repeal of Section Two and the introduction of freedom of information, he would not apologise for that.

Peter Preston, editor of The Guardian, acknowledged that the newspaper had mishandled its part in the Tisdall affair. He went on to say that recent secrets trials had

The Rt Hon David Steel, leader of the Liberal Party, speaking at the Rally.

reflected the determination of the prosecution to achieve confessions in advance, and guilty pleas, because they were afraid that juries would not convict under the Act.

The guest speaker from the United States, Ralph Nader, talked of the success of freedom of information legislation in that country.

He pointed out that FoI legislation had to be enforced by the people themselves, for if they did not use the legislation, it would have no effect.

At the beginning of the Rally, the audience listened intently to a presentation by BBC television journalist Vincent Hanna and actor Julien Glover on the history of the Official Secrets Act.

Afterwards Des Wilson described the event as "a considerable success". He pointed out that for more than 1,000 people to pack a Rally after relatively little publicity showed the public concern that existed on the issue.

The audience of more than 1,000 listen intently to speakers at the Rally in Friends Meeting House.

The Rt Hon Neil Kinnock, leader of the Labour Party, speaking at the 1986 Freedom of Information Awards.

Kinnock promises FoI at Campaign's awards

Speaking at the 1986 Freedom of Information Awards, the Rt Hon Neil Kinnock, leader of the Labour Party, firmly committed himself and his Party to act when in office.

"I repeat here the commitment which I made on a number of occasions since I became leader, that the next Labour government will, as a matter of priority, repeal Section Two of the Official Secrets Act and replace it with a Freedom of Information Act that will provide a public right of access to information held by government while safeguarding materials genuinely relating to national security and other matters directly affecting the national interest, and, of course, protecting the privacy of individuals," he said.

"Our Freedom of Information Act will strike the balance between the liberty of the individual and the liberty of the community that should be the hallmark of modern democracy. It will empower the citizen, make the government more accountable, and strengthen our democracy."

Mr Kinnock said that these objectives should be supported by every democratic politician of every democratic Party.

"I therefore put it to the Prime Minister and to all others that the time for an effective Freedom of Information Act has come.

Mr Kinnock presented the award for the individual who has done most for freedom of information in the past year to Robin Squire, the Conservative MP who introduced the Local Government (Access to Information) Act.

He presented a special award to the American campaigner Ralph Nader, and to Prue Stevenson, who resigned her position at Holloway prison in order to publicise inadequate facilities there.

Media awards went to Granada's "World in Action" and The Observer's David Leigh, and local authority awards to Leeds City Council and Calderdale Metropolitan Borough Council.

Neil Kinnock presents a special award to Prue Stevenson.

Mr Kinnock (left) with American campaigner Ralph Nader (centre) and Des Wilson, Chairman of the Campaign for Freedom of Information.

Section Two after the Westland affair

Let's be clear where we are at:

- At our 1986 Freedom of Information Awards, the leader of the Labour Party, Neil Kinnock, could not have been more specific: "*We will, as a matter of priority, repeal Section Two of the Official Secrets Act and replace it with a Freedom of Information Act . . . these objectives should be supported by every democratic politician of every democratic party . . . I look forward to putting pledges into practice at the earliest opportunity.*"
- One day later the deputy leader of the Labour Party, Roy Hattersley, repeated the promise at our Rally to mark the 75th anniversary of the Official Secrets Act.
- On the same occasion David Steel, leader of the Liberal Party, repeated the promise he has made on many occasions to "*replace the Official Secrets Act with Freedom of Information legislation with exemptions to cover information that would endanger national security.*"
- David Owen, leader of the Social Democratic Party has written in our own newspaper that "*freedom of information legislation is essential if we are to effectively tackle our national problems.*"
- Every civil service union is a declared supporter of our Campaign. At our Rally the General Secretary of the First Division Association of Civil Servants declared its policy: "*We do not believe in leaks. What we believe in is freedom of information legislation, with sensible exemptions. It is the politicians and not the civil servants who stand in the way.*"
- Every organisation representative of the media from the NUJ to the British Guild of Newspaper Editors, together with individual newspapers including The Sunday Times, The Observer, The Times and The Guardian has condemned excessive secrecy and called for reform.
- While senior jurists like Lord Scarman have called for the repeal of the Official Secrets Act "lock, stock and barrel", ordinary members of the jury in the Ponting case refused a conviction under Section 2, despite clear advice from the judge that they should find Ponting guilty.
- Professional organisations representative of teachers and social workers have called for an individual right of access to personal files.
- The Royal Commission on Environmental Pollution has called for radical reforms to make more information on environmental issues available to the public.
- Some of our most respected former administrators, including two former Heads of the Civil Service, Lord Croham and Sir Douglas Wass, have stated from their vast experience that the time has now come for greater freedom of information and repeal of Section Two.

There *is* a national consensus for action.

Yet the Prime Minister, in the midst of the Westland crisis, when it had become clear that in its 75th year Section Two of the Official Secrets Act had lost all credibility, still told the House of Commons that the problem is that there is no accord on an alternative.

Conservative ministers have said this repeatedly simply because their own Protection of Official Information Bill proved so unacceptable and unworkable that it was dropped.

It is not rational to say that because one's own ideas have proved unacceptable, that there is no consensus for action.

The consensus view is clear: it is that instead of the *negative* approach attempted with that piece of legislation, there is a need for a *positive* approach, namely legislation that creates a presumption that all information should be available — unless it falls within an area that any reasonable person would accept should clearly be exempted (like information that would endanger the security of the state).

Incidentally, the political consensus includes many Conservatives, some who have spoken out, but most of whom unfortunately remain silent, constrained by the probability of the Prime Minister's disapproval.

How many times do we have to comment on the irrationality of Mrs Thatcher's obduracy on this issue:

First, freedom of information is totally consistent, indeed necessary, to the very society Conservatives claim to wish to achieve. This is why Thatcherites on economic and social policy like Sir John Hoskyns, Head of the Institute of Directors, say that freedom of information is a "pre-condition" to the solution of so many of our problems.

Second, freedom of information legislation was introduced in three major Commonwealth countries, Canada, Australia, and New Zealand, by Conservative administrations.

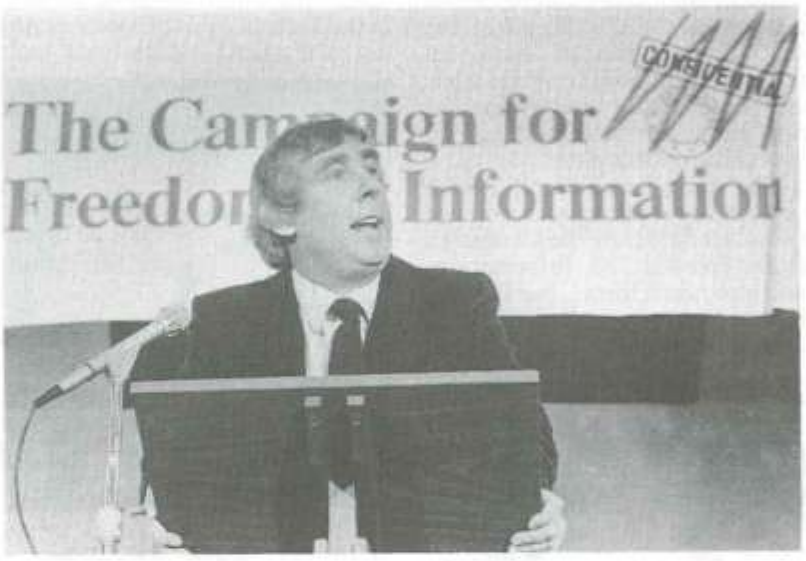
Third, Mrs Thatcher's first act when elected to the House of Commons was to introduce a Private Members Bill to open up local authorities, and recently she supported further advances on that legislation, to come into effect this April. The principle is apparently acceptable at local level but not at national level while she is Prime Minister.

Likewise, she and her ministers have accepted the need for a more open approach on environmental matters and have a Working Party due to report on the issue shortly.

Finally, she is trapped in an impossible situation, where Section Two is no longer operable, because there is little possibility that a jury will convict, as was shown in the Ponting case, and as has been shown by the absence of subsequent prosecutions, for instance in the Cathy Massiter affair, or over the publication by the *New Statesman* of the *Questions of Procedure for Ministers*.

So vital has this reform become to the interests of the people of this country that it should be a major election issue, and there is, in our view, no case for voting for a Party that will not commit itself to this reform.

What a triumph of obstinacy over rationality it will be if the Prime Minister loses crucial votes because she would not act when her political and the public interest coincided.



Comment by Des Wilson

The Westland Affair

Leon Brittan did *not* break Section Two of the Official Secrets Act, nor did his civil servants, when he 'leaked' information during the Westland affair.

Under the Official Secrets Act, Ministers decide whether information should be disclosed or not, and provided they have approved the disclosure, it is not "unauthorised" and thus not an offence.

The real offence, therefore, was the hypocrisy — the fact that both he and Michael Heseltine, who had a part in the prosecution of a civil servant who disclosed information which did not endanger the national security, and would have happily seen Clive Ponting sent to prison — chose themselves, when involved in a sordid political squabble within the Cabinet, to betray each other's trust on a daily basis.

It could be said that the end result was in the public interest — that for once the public and, in particular, the shareholders of Westland, were given adequate information in order to make their own judgement on the issue.

As campaigners for freedom of information we can have no part of a campaign to condemn either of them for making information available. Our criticism is that their belief in an open approach only coincided with their own political interests, and is not reflected in any other part of their ministerial record. If British public life suffers from one disease worse than secrecy it is hypocrisy.

Become a campaign supporter

There are three ways you can help the Campaign for Freedom of Information:

First, (need we say it?) with money. The Campaign operates on a small budget and needs every penny you can spare. Individuals can become subscribers, and local organisations can become affiliates by subscription of £7.50 per year. But if you can afford more, it's always welcome.

Second, by taking up the issues yourself, or within your own organisation. Join the campaign to repeal Section Two or to make Water Authorities more publicly accountable, or to end environmental secrecy, or to achieve a right of individual access to personal files.

Or if you are in London, you can help as a volunteer in our London office (just telephone 278 9686 for details).

Name _____

Address _____

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To: Campaign for Freedom of Information
3 Endsleigh St. London WC1 6DD (278 9686)

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