

Deeply flawed information bill must be improved



Ministers will still be free to suppress embarrassing information about safety hazards, arms exports or controversial policies like privatisation under the Government's weak proposals for a Freedom of Information (FOI) Act.

For 25 years Labour has been promising a bold FOI law. But in key respects the Government's revised proposals remain weaker than the openness code introduced by the Conservatives in 1994. Ministers and authorities – not the independent Information Commissioner – would have the final say on whether information should be disclosed in key areas. If the information reveals complacency, ill-judged decisions or unjustified concessions to vested interests, government will be able to withhold it.

The inadequacies of the draft FOI bill were heavily criticised. A total of 195 MPs signed a Parliamentary motion calling for major improvements. Two select committees, in the Commons and the Lords, recommended sweeping changes. In response, the Government has made some improvements but rejected the most fundamental recommendations.

Two changes above all are essential:

■ Blanket Exemptions

Several blanket exemptions give authorities a free hand in deciding what to release and what to withhold. Exemptions should only apply where disclosure can clearly be shown to cause harm.

The most unacceptable exempts all information about the background to government policies, even the facts on which policies are based. Another exempts information which in the authority's "opinion" would prejudice "the effective conduct of public affairs". A third protects information about possible offences, such as breaches of safety laws. There are also excessive exemptions for commercial confidentiality.

■ Public Interest

The Information Commissioner is prohibited from ordering the disclosure of information in the public interest. Instead, ministers and authorities – who may have something to hide - will decide where the public interest lies. The Commissioner should have the final say.

A recent survey for Consumers' Association found that 69% of people did not trust ministers to release information in the public interest.

FOI should be about restoring public trust in government. By insisting on ministers' right to keep their secrets, the bill may have the opposite effect.

You can help! Write to your MP and insist:

“We need a much better Right to Know than this!”

Policy information

A vast exemption about policy creates a hole at the heart of the FOI bill. All information relating to "the formulation or development of government policy" is exempt. The exemption is not limited to sensitive civil service advice: it covers all information considered while drawing up a policy, even the facts. Ministers could refuse to answer the most basic questions about the justification for their decisions, on everything from genetically modified food and transport policy to decisions about the NHS or welfare reform.

The public would have no right to see scientific advice about hazards like BSE, estimates of the numbers of jobs affected by a foxhunting ban or assessments of the safety implications of privatising the London underground or the air traffic control system.

The bill is weaker than the Conservatives' openness code, which only allows policy information to be withheld if disclosure would harm frankness. It also requires the facts and analysis behind decisions to be published. Such information is exempt under the bill.

"we regret that...the exemptions remain too broad, in particular for decision-making and policy formulation, and...commercial interests. As a result the amount of information that will become available will be relatively small."

Public Administration select committee, November 1999

Public Interest

The bill requires the public interest in disclosure to be taken into account, but gives the final say to ministers and authorities, not the Information Commissioner.

An authority which has

squandered public money, ignored reports of child abuse or endangered patients through incompetent cancer screening, will decide for itself if the public interest justifies exposing its own malpractice. This is a recipe for a cover-up culture. The Commissioner will only be able to *recommend* disclosure in the public interest – not require it.

The bill already allows the Government to appeal to a tribunal and the court against the Commissioner's decisions, if it thinks they are wrong. There is no case for permitting it to ignore the Commissioner altogether. Ireland's FOI Commissioner can order disclosure in the public interest. Britain's should also be able to.

"The most important single amendment needed is to give the Commissioner a public interest override power...to overrule a ministerial decision...and to order disclosure"

Report of a House of Lords select committee, July 1999

"Public affairs"

Authorities will be able to withhold information which in their *opinion* would prejudice the "effective conduct of public affairs". Giving legal weight to their "opinions" will make most decisions under this vague exemption unchallengeable.

Investigations

A blanket exemption protects information about investigations by regulatory bodies into possible offences. Information could be withheld even if disclosure could not prejudice legal proceedings, for example, because it had been decided not to prosecute.

Investigations into accidents such as the Paddington rail crash or details of potential offences under environmental

"An effective Bill needs to be based more firmly on clear rights and less on discretionary duties. This requires a rebalancing of the draft Bill in the direction of the right to know."

Public Administration select committee, July 1999

health planning, trading standards and other legislation could all be kept secret.

Information about police investigations is also exempt, even if law enforcement could not be prejudiced. The Macpherson report rejected this kind of blanket exemption, which would have prevented Stephen Lawrence's parents discovering when the police first learnt the names of the murder suspects.

Commercial confidentiality

Commercial lobbying of government, such as Monsanto's efforts to promote genetically modified products, would be concealed by a blanket exemption for information accepted 'in confidence'.

This could apply to a vast range of information. The Government recently refused to say which councils failed to meet their waste recycling targets - because they had been told 'in confidence'.

Information which would "prejudice" commercial interests is also exempt. Facts which might damage a company's reputation, for example by revealing that it sold substandard products or exploited child labour, would prejudice its commercial interests and could be exempt.

The Government has rejected the select committees' recommendations that the "prejudice" test – which also appears in several other exemptions - should be changed to "substantially prejudice". Yet the Government's own white paper proposed that only information which caused "substantial harm" should be withheld.