CAB 103/796

SECRET

CABINET OFFICE

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HR 8/15 part 1

FILE TITLE

The Lord Chancellor, his Advisory Council on Public Records and the Public Records Acts

FILE BEGINS 17 February 92 ENDS 9 Nov 93 | FILE No. HR 8/15 part 1

INDEX HEADINGS

REFERRED TO	DATE	REFERRED TO	DATE	REFERRED TO	DATE
DESTROYED DR 1993		CLOSED		1993	

CAB103/796

File No.	TITLE

PREVIOUS REFERENCE: HR 18/31

FOLIO REGISTER-FILE No. HR 8/15

FOLIO	DATE	CODE REF.
1	30.8.91	letter
1M	13.9.91	H091/572
1N	17.2.92	A2198
1MM	25.2.92	A2603 H092/93
1NN	27.2.92	A092/695
2	30.7.92	H092/423
2M	3.8.92	MINUTE
2MM	15.10.92	H92/618
3	17.12.92	letter
3M	-1-93	H/s x/s.
3N	19.1.93	H093/48
4	29.1.93	H93/122
4M	5.2.93	H093/89
5	8.2.93	A093/380
6	8.2.93	H93/225 Kb14869
7	24.2.93	H93/240 Kb15349

FOLIO	DATE	CODE REF.
8	25.2.93	H93/243 Kb15382
9	25.2.93	H93/246 A3059
10	5.3.93	A3439
11	9.3.93	H093/201 A3527
12	15.3.93	A3892
13	2.4.93	letter
14	20.4.93	A5650

FOLIO	DATE	CODE REF.
15	22.4.93	H093/336
16	23.4.93	A093/1348
17	23.4.93	A093/1349
17M	30.4.93	H93/448
17N	7.5.93	FAX
18	10.5.93	A6648
19	13.5.93	A6885
20	13.5.93	A6939
21	14.5.93	A6918

FERB's letter to Hds of Agencies put the same 3 questions.

1 in volvement with historians requests

Sec Service doesn't comment specifically but accepts the merits of an extended role for the Council.

SIS does not reject the suggestion but doubts that reviewers wd be influenced by the fact of oversight by the Council

GcHQ content with the Advis. Council's involvement ~~to 5(1) applications~~ Historians requests Wld be related to 5(1) closures

2. extension of Council's remit to 3(4) applications

Sec Service say this wd negate the rationale for the 'blanket'

SIS do not favour it but if it is to be 'blanket' records sed be described as such without details.

GcHQ accept that such an extension wd be presentationally ~~advantageous~~ attractive but unlikely to improve the the advice to LC or need to withhold.

3. Access to documents

Sec Service agree that this wd be inadvisable - responsibility sed remain with Sec of Cabinet.

SIS agree will argument against direct access to intelligence docs

GcHQ also agree that this wd be unnecessary and undesirable.

CDL's Letter to
LC, MoD, FCO, HO asked about

1. Adv Council involvement with historians' requests

MoD doubted if Adv Council is the right body

FCO agrees

Home Office agrees in principle - raises questions of what role of Council over researchers, also position of general public

2 extension of Council's remit to cover 3(4)

MoD doubts need - procedure for appeals in disputed cases shd suffice

FCO sees no fundamental difficulty but Ministers' decision shd be final research problems mentioned.

HO appear to be content as long as Council not given power to reject applications from depts.

3. Access to documents.

MoD doubtful say Council wdnt be content with titles so wd have to see docs and this wd mean PV(TS)

FCO suggest vetting a small group who cd access records in depts & advise the Council (CDL thinks this a good idea.)

Home Office seems to agree as long as access is only for the purpose of giving advice provided they can see clearance but not if it is going to lead to rejection by Council of dept'l applications.

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Sir Thomas Bingham
Master of the Rolls
(Chairman)

Sir John Blelloch
Retired Permanent Secretary

Professor Barrie Dobson
Professor of Medieval History
Christ's College Cambridge

Alex Carlile QC MP
Liberal Democrat

The Right Honourable
Lord Skidelsky of Tilton
Political Historian

Professor Bernard Alford
University of Bristol
School of History

David Vaisey FSA
Bodley's Librarian
Bodleian Library Oxford

Professor Shula Marks
Director
Institute of Commonwealth Studies
University of London

Terry Davis MP
(Labour)

Lynne Brindley
Librarian
London School of Economics

Victor Gray Esq
Head of Corporate Records
Rothschilds

David Sumberg MP
(Conservative)

Doctor Alan Borg
Director
Imperial War Museum

Andrea Duncan
Honorary Secretary
Friends of the Public Record Office

Professor Richard Chapman
Head of Politics Department
Durham University

Lynette Lithgow
Journalist and Broadcaster

FOLIO REGISTER — FILE No. HR 8/15

FOLIO	DATE	CODE REF.	FOLIO	DATE	CODE REF.	FOLIO	DATE	CODE REF.
			74	28.10.93	FAX in			
64	18.10.93	H093/897						
			75	9.11.93	H093/963 A15282			
65	20.10.93	FAX in						
66	20.10.93	H093/904 A14240						
67	21.10.93	FAX in						
68	22.10.93	KB19588						
69	22.10.93	H093/913						
70	25.10.93	Press notice						
71	25.10.93	KB02081						
72	25.10.93	Lords H/C						
73	27.10.93	H093/926						

3754 346207 20,000 5/76 GL. 3917

FOLIO REGISTER-FILE No. HR 8/15

FOLIO	DATE	CODE REF.
43	20.7.93	A10508 / Kb18088
43M	20.7.93	FAX out
44	23.7.93	H093/639 / A10692
45	26.7.93	Kb01588
46	26.7.93	H093/650
47	28.7.93	A093/2424 / Kb18275
47M	28.7.93	Kb18296
48	29.7.93	H093/666
49	30.7.93	H093/667
49M	3.8.93	H093/680
50	9-8-93	Kb18538
51	10.8.93	Kb0164 / H93/813
52	10.8.93	Kb18525
53	12.8.93	Kb18565
54	16.8.93	A11716 / Kb18620
55	17.8.93	A11770
56	20.8.93	Kb18653
57	31.8.93	Kb18704
58	13.9.93	H093/811
59	1.10.93	H093/863
60	11.10.93	FAX in
61	11.10.93	FAX out
62	13.10.93	DRO paper
63	15.10.93	H93/1043

OS90 (6/89)D

FOLIO REGISTER-FILE No. HR 8/15

FOLIO	DATE	CODE REF.
22	17-5-93	A6934
23	17.5.93	A6999
23M	17.5.93	H093/419
23N	18.5.93	H093/426
24	19.5.93	A7117 H093/431
25	19.5.93	H093/432
26	24.5.93	H093/453
27	26.5.93	FAX
28	26.5.93	H93/509 A093/1742
29	28.5.93	A7681
30	8.6.93	H93/545
31	17.6.93	H093/499 A8441
32	30.6.93	A9195
33	2.7.93	H093/544
34	5.7.93	A093/2189
35	7.7.93	H093/561 A9634
36	9.7.93	H93/663
37	9.7.93	H093/566
38	12.7.93	H093/574
39	13.7.93	Kb17928 H93/682
40	14.7.93	A093/2299
41	14.7.93	Kb01509
42	15.7.93	A093/2307

OS90 (6/89)D

Shelley
To make up + return plse

FOI 75

HO93/963 ✓

SIR ROBIN BUTLER

Spare, probably useful for Pat 9/11
pt 2.

EXTENSION OF THE ROLE OF THE LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

As you know the Lord Chancellor, in answer to a Question from Lord Teviot on 25 October, announced that the role of his Advisory Council on Public Records would be extended to allow them a) to consider departmental applications for the retention of records under Section 3(4) of the Public Records Act 1958; b) to consider applications from historians and other members of the public which had been rejected by departments and c) to have access to actual documents in cases where they could not satisfy themselves in any other way of the justification for the withholding of records.

This development was reported to Departmental Record Officers at a Conference in October and the Public Record Office has now prepared the attached note, which I saw and commented upon in draft, for circulation.

The extended role of the Advisory Council is also mentioned in the letter for the Chancellor of the Duchy to send to the Institute of Contemporary British History and may well be mentioned at the Conference on 24 November.

I understand from the Lord Chancellor's Department that the Lord Chancellor is now uneasy about the situation in which his Advisory Council may see actual documents but he, and other Ministers who are responsible for departmental records, may not, under the convention, last aired in public by the then Prime Minister in January 1980, that Ministers do not have access to the papers of previous Administrations. The Lord Chancellor may well write to you in the near future suggesting a review of this convention in the context of open government.

Pat Andrews

MISS P M ANDREWS
HISTORICAL AND RECORDS SECTION

9 November 1993

EXTENSION OF THE ROLE OF THE LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Introduction

1. The White Paper on Open Government (CM 2290), published on 15 July 1993, extended the role of the Lord Chancellor's Advisory Council in two ways. First, the Council, which already advises the Lord Chancellor on applications for extended closure under Section 5(1) of the Public Records Act 1958, will advise him also on applications for the retention of records within departments under Section 3(4) of the Act. Secondly, the Council will consider requests, by historians and other members of the public, to departments for the release of records where these requests have been refused by the department concerned.

2. In addition, it was announced by the Lord Chancellor in the House of Lords on 25th October 1993 in a response to a question from Lord Teviot that from now on, when the Council is unable to satisfy itself in any other way that an application for closure or retention is justified, the Chairman, or a member of the Council nominated by him, will be permitted to inspect the records themselves, other than those relating to security and intelligence. The practical implications of these extensions of the Council's role are set out below.

Applications for the retention of documents under Section 3(4)

3. Applications for approval to retain documents are submitted to the Council, through the Public Record Office, in the same way as applications fro approval for extended closure. With the exceptions referred to in 2. above applications for approval to retain records will be considered in the same way as those relating to approval for extended closure and the Lord Chancellor advised accordingly.

Requests for access to closed or retained records

4. Where a historian or other member of the public has written to a department with a request that certain records, subject to extended closure or retained in the department, be released, and that request has been refused, the department concerned should, when informing the applicant of the refusal, inform them that they may, if they wish, appeal against the refusal to the Lord Chancellor's Advisory Council (address of Secretary to be given).

5. The Secretary will put the appeal to the Council (accompanied by a submission from the department concerned) for consideration at its next meeting. Should the Council disagree with the department's decision to refuse a request for access it will advise the Lord Chancellor accordingly.

Access to records by members of the Council

6. The arrangements permitting access by members to records which are the subject of applications for the approval of closure or retention are described in 2. above. Where the Council is to consider an appeal against the refusal of a request to release a record, the Public Record Office will request further explanation from departments as they do when an application for the approval of extended closure or retention is queried. Only if the Council remains unhappy with the justification for the refusal to release records or an application for extended closure or retention might they ask to see the records in question.

7. The Chairman of the Council, the Master of the Rolls, will inform the Lord Chancellor that the Council wishes to examine the records and inform him which member of the Council it is proposed should so so on their behalf. The Lord Chancellor will then make the appropriate arrangements. This will include consulting the department concerned to see whether they have any objection to the individual in question examining the particular records.

8. The nominated member of the Council will examine the records in the company of a representative from both the Public Record Office and the department concerned and will report back to the Council. The Council will then advise the Lord Chancellor accordingly.

9. The role of the Council, as its name implies, remains advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

Miss Andrews

HO93/963

SIR ROBIN BUTLER

Thank you. Nonetheless, I start from the position that the convention must stand. There is nothing in the new arrangements which makes it necessary to remove it and the convention is important for political integrity. RBRB 11.11.

CABINET OFFICE
A 15282
- 9 NOV 1993
FILING INSTRUCTIONS
FILE No.

FOLIO 75

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Pat Andrews

MISS P M ANDREWS
HISTORICAL AND RECORDS SECTION

9 November 1993

CABINET OFFICE
H Internal
12 NOV 1993
FILING INSTRUCTIONS
FILE No.

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PUBLIC RECORD OFFICE

Public Record Office
Kew
Richmond
Surrey TW9 4DU

Fax message

To MISS P. M. ANDREWS

Of CABINET OFFICE

Fax No. 071 217 6010

Date 28 OCT '93

Number of pages to follow 2

From NICHOLAS COX

Department PRO ASD

Phone No. 081-878 2000

Our fax No. 081-878 8905

Message Re-Draft for your Comments

FOI 74

EXTENSION OF THE ROLE OF THE LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

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2. In addition, it was announced by the Lord Chancellor in the House of Lords on 25th October 1993 in a response to a question from Lord Teviot that from now on, when the Council is unable to satisfy itself in any other way that an application for closure or retention is justified, the Chairman, or a member of the Council nominated by him, will be permitted to inspect the records themselves. The Council will not be allowed physically to examine records which it is sought to withhold for reasons of security or intelligence. The practical implications of these extensions of the Council's role are set out below.

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previous version F62

5. The Secretary will put the appeals to the Council (accompanied by a submission from the department concerned) for consideration at its next meeting. Should the Council disagree with the department's decision to refuse a request for access it will advise the Lord Chancellor accordingly. ~~It will then be for the Lord Chancellor to decide what further action to take.~~

Access to records by the members of the Council

6. The arrangements permitting access by members to records which are the subject of applications for the approval of closure or retention are described in (2) above. Where the Council is to consider an appeal against the refusal of a request to release a record, the Public Record Office will request further explanation from departments as they do when an application for the approval of extended closure or retention is queried. **Only if the Council remain unhappy with the justification for the refusal to release records or an application for extended closure or retention might they ask to see the records in question.**

7. The Chairman of the Council, the Master of the Rolls, will inform the Lord Chancellor that the Council wish to examine the records and inform him which member of the Council it is proposed should do so on their behalf. The Lord Chancellor will then make the appropriate arrangements. This will include consulting with the department concerned to see whether they have any objections to the individual in question examining the particular records.

too tentative

8. It is envisaged that the nominated member of the Council ~~should~~ will examine the records in the company of a representative from both the Public Record Office and the department concerned. ~~This~~ An individual will then report back to the Council, and the Council will advise the Lord Chancellor accordingly.

9. The role of the Council, as its name implies, remains advisory; the final responsibility for the release or otherwise of departmental records rests with ministers.

draft/gsd/pro&lcd/October/1993

CABINET OFFICE
Kb 73
27 OCT 1993
FILING INSTRUCTIONS
FILE No.

HO93/926 ✓

From: Miss P M Andrews
Historical and Records Section
217 6050

MR DOUGAL

Thank you for returning to me the papers relating to the Lord Chancellor's reply to Lord Teviot's recent Parliamentary Question.

I was mortified to discover that we had submitted a draft with the Chancellor of the Duchy's name spelled incorrectly! Despite the rush to get a same day reply to your office from Hepburn House I have no excuse for not checking the signature-ready copy. If you think it appropriate would you please present my apologies to the Chancellor.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
27 October 1993

→ Miss Andrews

Pat,

You're not the only one who has spelt his name wrongly on sig.-ready letters - it's just we usually pick them up before putting them to him! The Chancellor didn't notice it wasn't right: there have been several occasions when, on a two page letter, he has signed above the security classification rather than above his name-block! I really wouldn't worry about it at all. Jan

FOL 72

violence how could they walk the streets without a gun? That was the nature of it. They cannot deliver. They get 2 per cent. of the votes in Northern Ireland.

The only people who can win through in Ireland as a whole are the constitutional politicians. I say to my noble friend Lord Mason that I ended detention without trial because of the advice that had been given to me. It was badly done, and I can see that now; it was done badly, and understandably so. It led to the revival of the Provisional IRA, which was a new group at that time. My information is that one of the aims of the Provisional IRA is a return to detention. It is the best thing that they can have to obtain more recruits. I wish the Government well, but I hope that no one thinks that there is an easy way through.

The Earl of Arran: My Lords, the Government are fully aware that there is no easy way through this situation. That is why we are in steadfast talks at the moment and that is why the talks progressed reasonably well last year. I have already expressed to the noble Lord, Lord Mason, and the other noble Lord the Government's view about selective detention; it is an option for the Secretary of State if he wishes to use it. But what your Lordships, and I am sure the whole of this country, are keen to bring about is a settlement which is acceptable to the people of Northern Ireland.

Lord Lyell: My Lords, from these Benches perhaps we can thank my noble friend for making this Statement this afternoon. We thank him and his ministerial team, including my right honourable and learned friend the Secretary of State, for all the work that they do that is not seen and not necessarily appreciated except on tragic occasions such as recently experienced within Northern Ireland. It is the work done by my noble friend and the ministerial team that provides the climate for the ministerial and other talks that have gone some way towards helping to solve the situation in Northern Ireland.

Perhaps my noble friend will agree that the only way to continue talks is, first, to restrict them to discussions between constitutional parties; secondly, to promote the talks between my noble friend and the ministerial team in the Northern Ireland Office and their counterparts in Dublin; and, thirdly, to do all that at the right time. Today, this week or next month may not be the right time, and the current climate of media-driven and fevered excitement that we have had since Saturday, with all kinds of media persons suggesting that something should be done, is not the right time. Can my noble friend confirm that diplomacy and the style in which he and my right honourable and learned friend the Secretary of State are continuing the talks is the only successful way to make the substantial progress that has been made over the past few years?

The Earl of Arran: My Lords, I thank my noble friend for those comments. I agree with him. I remind my noble friend that Ministers are there to do a job, which they do to the best of their ability. It is not thanks to us but to the security forces out there and to the steadfastness of the people of Northern Ireland who, in spite of all the atrocities, go on about their daily lives.

Lord Chalfont: My Lords, mention has been made of the performance of Mr. Gerry Adams on television. Am I not right in believing that there is a law designed to prevent people like Mr. Adams using television as a platform? Is the Minister aware that at least twice in the past few days Mr. Adams has been interviewed face to face on television, using the transparent device of an actor's voice to put forward his views?

Should not the law be enforced in such a way that it achieves the end that it was meant to achieve? It seems clear to me that both Mr. Adams and the television people are thumbing their noses at the Government. If the law is not enforced, perhaps it should be removed altogether. At the moment the whole thing is descending into farce.

The Earl of Arran: My Lords, I take particular note of what the noble Lord, Lord Chalfont, says. I confess that I am not totally aware of the law as it stands at the moment. The fact that the noble Lord brought the matter up suggests that the law is being improperly used. I shall immediately convey that to my right honourable and learned friend.

The Public Record Office

copied to HR 12/5

5.43 p.m.

Lord Teviot rose to ask Her Majesty's Government what action they propose to take to implement the recommendations for the Public Record Office, contained in the *Open Government* White Paper (Cm. 2290).

The noble Lord said: My Lords, one comes into the House early to feel the mood of the House beforehand. One hears about the sad and desperate situation of the present and must then talk of the not too recent history. However, one must try to get in the right mood to enable one to talk a certain amount of sense. But it is always pleasant to talk of matters concerned with records.

Since the House debated public records and archives in 1977 the situation has been transformed by the ending of the cold war and the Government's Citizen's Charter. There have been a number of welcome initiatives from the Government culminating in the White Paper published in July this year. There has also been a fruitful dialogue between the Government and the historical profession. On an individual basis historians have made requests for papers to be reviewed; collectively, they have gathered under the auspices of the Institute of Contemporary British History—an excellent institution founded as recently as 1986. They have put forward general recommendations on the operation of the 30 years' rule and have made specific requests for the release of documents.

I want to mention the subject of reducing the times between reviews. Historians particularly welcome the reviews that my noble and learned friend the Lord Chancellor and my right honourable friend the Chancellor of the Duchy of Lancaster initiated, and the releases that have already taken place. For example, there have been over 400 records released by the Foreign Office. I would press my noble and learned friend on a number of matters resulting from these

[LORD TEVIOT]

exciting developments. In some cases requests for release have been reviewed and a decision has been made not to release. In those cases a further review is planned in 10 or 20 years' time. Can my noble and learned friend try and minimise the time between reviews? Two examples of disclosure being deferred are the Cabinet Secretary's notebooks which date back to 1916, and the blanket ban on intelligence material. Historians accept the importance of protecting individuals who have helped the state. However, they feel that the blanket ban should be kept under regular review.

Another important point concerns the advisory council seeing documents. I had the privilege of serving on the advisory council of my noble and learned friend the Lord Chancellor between 1974 and 1982. The process was that of the rubber stamp. That was because only three members were security cleared. It was therefore rather difficult. The officer in the Public Record Office simply presented us with something that we had to accept. On one occasion we protested. The documents put forward concerned the Carlisle pubs which were nationalised in 1918. They should not have been involved at all. When one saw them they were basically concerned with managers being sacked for fiddling the tills. It is hardly the same thing that we are discussing now.

Has my noble and learned friend made a decision as to whether or not members of the advisory council on public records will in future be able to see the actual records under discussion, bearing in mind the background I have given. Can he also give an assurance that members of the council will be security cleared? While the council will remain an advisory council, that reform would be most welcome. Indeed, it would be the greatest single measure that could be taken to enhance the confidence of the historical profession that the absolute minimum is being retained and only for truly convincing reasons.

I move on to the importance of the Public Record Office. I gather that there have been many discussions with historians in which help and advice has been given by the staff of the Public Record Office. I have been connected with the office for many years and have great respect for its staff. The advice has been deeply appreciated and genuine bridges have been built between the Government and their customers in the historical profession in line with the prime requirements of the Citizen's Charter. "Customers" is not my word, but the word given. Their presence at the meeting of historians which took place on 25th November 1992 and led to the detailed requests for releases was welcomed in the historians' report. It is hoped that this close relationship will be continued at a further meeting of historians that will take place on 25th November this year at the Institute of Historical Research when historians will consider their response to the White Paper. The movement towards open government will make the Public Record Office an increasingly vital resource for the historical profession. As the use of the PRO increases, can my noble and learned friend assure the House that the PRO will not be denied the resources necessary to fulfil the demands of more open government?

I turn to the centrality of history to open government strategy. The dialogue which has developed and the response of historians make clear that the needs of the historical profession are a central part of the open government strategy. The collective memory of the nation must be as full and as accurate as possible if our history is not to fall into the hands of the hostile and the partisan. The ending of the cold war has critically important implications in this respect. To understand the experience of this country in that period it is necessary to have as full an access as possible to the records of government. Will my noble and learned friend reaffirm the Government's unequivocal commitment to this central strand of the nation's heritage?

We should also consider the wider world, a subject on which the noble Lord, Lord Mayhew, may say more. The peace process in the Middle East may well be ushering in a new age. Is it not time that we reviewed all the British Government's records on Palestine and perhaps other countries?

5.52 p.m.

Lord Mayhew: My Lords, I would certainly agree with the noble Lord, Lord Teviot, that the White Paper represents a move forward, but in my view it is a very small step. When the new measures are carried out it will leave the whole process illiberal, cumbersome and slow. It will be illiberal because the decisions on whether to release or close records is to be taken by Ministers—on the first 30 years, by departmental Ministers, and after that, by the Chancellor of the Duchy and the noble and learned Lord the Lord Chancellor.

The White Paper does not argue about whether Ministers are the best people to take the last decisions. There is simply no consideration of that at all. Yet it is surely questionable. The decisions to be taken will almost always be borderline interpretations of the criteria set out in the White Paper—would disclosure be harmful; would it cause distress to individuals; would it be contrary to the national interest; and so on. Why should it be supposed that Ministers are better qualified to take those decisions than, say, judges, or an ombudsman, or a panel of Privy Counsellors? I should have thought that the opposite is the case. Ministers will certainly be less disinterested than members of other professions. Politicians are not the most disinterested professionals in the country. I think that the question deserves further discussion.

A Minister is much less likely to be disinterested. The papers might embarrass his department or the department of a colleague; they might embarrass his party; they might even embarrass the Minister himself; whereas other people—experienced, responsible outsiders—are capable of taking these decisions in a way which would probably not only be fairer but would be seen to be fairer.

Another criticism I have of the White Paper is that it fails to deal with the administrative problems of reviewing records. One gets the impression that the system is overloaded, that there is a backlog of retained

papers, of records which have accumulated year after year because of excessive caution. I should have liked the White Paper to have told us how many reviewers there are; how many records are awaiting review. The White Paper is entirely silent on this point. It tells us that 30 miles of records are reviewed every year by departments at the first stage and that four and one-third miles are reviewed by departments at the 30 year stage. But those figures are meaningless. What is a mile of records? Perhaps the noble and learned Lord will explain what that means. We need figures of a much more practical kind.

For instance, what is the average time taken by the reviewer to dispose of a set number of records? How many reviewers are there? What is the backlog, if any? Is the backlog growing or diminishing? In that way we might get a clear picture of what I think is a problem; namely, the administrative problem of reviewing records.

No one will dispute the need to maintain a certain level of confidentiality in official papers. That goes without saying. But the standards of confidentiality are changing dramatically. A strange anomaly is emerging, a contrast between the standards of confidentiality laid down in the White Paper and the standards observed in ministerial memoirs. For instance, the White Paper lays down, in paragraph 9.13, that confidentiality must be observed in the case of:

"Exceptionally sensitive records containing information, the disclosure of which would not be in the public interest in that it would harm...international relations".

At the same time we have free publication by a former Prime Minister of her efforts to frustrate German reunification, revelations which have certainly harmed Anglo-German relations.

Similarly, the White Paper lays down that records should not be released which contain information about individuals, the disclosure of which would cause distress. But causing distress to individuals appears to be a major aim of recent ministerial memoirs, which freely report confidential Cabinet proceedings and confidential advice to Ministers from their colleagues or from civil servants or from service chiefs—no doubt to the distress of many of them. I venture to suggest that if ministerial memoirs were subject to the restrictions laid down in the White Paper on open government they would undoubtedly be suppressed for at least 30 years. Therefore, all the more objectionable is the closure of records needed by historians and others which could do no harm to anyone.

Perhaps I may give an example of which I have given the noble and learned Lord notice. Why are the records of the information research department of the Foreign Office not yet released after more than 40 years? Historians have complained about that. Perhaps the noble Lord, Lord Teviot, will complain about it again at the meeting in November. I should be very much obliged if he would.

For example, in the *Evening Standard* and in an authentic history called *British Intelligence Strategy and the Cold War 1945-51* the author, Richard Aldrich, writes:

"Why are the records of an organisation [with reference to the information and research department] ostensibly existing to provide information retained after more than forty years? Did British strategy for propaganda and political warfare assist in the securing of Western Europe from the communist threat and the unleashing of ideological forces that eventually overwhelmed the East European regimes? Even if the British psychological crusade in the Cold War is now acknowledged by historians, its nature and purpose await further research".

I must now declare a small personal interest. Since I founded and directed the information and research department, I thought that I would fill this gap in history by writing a book about that department. The Foreign Office approved the idea but the Parliamentary Under-Secretary, Mr. Lennox-Boyd wrote to me:

"As you probably know, IRD's internal records are retained in the FCO pending review. At this stage it is difficult to say either when they, or what proportion of them, will be released to the PRO".

At Mr. Lennox-Boyd's advice, I contacted the head of the Foreign Office library and records department, who was courteous and sympathetic, but stressed the administrative difficulty of reviewing so many records in different departments. It may well be that administration is at the heart of the difficulty. I certainly cannot believe that anyone could argue that these records were secret or sensitive. I say that not only because of the long period of time which has elapsed, but because one of my less happy actions at IRD was to appoint to this secret department an official who showed at interview a most remarkable grasp of Soviet propaganda. This was Mr. Guy Burgess. Therefore I cannot believe that secrecy is a reason for withholding these documents. I have now applied to the Russian archives for material on IRD.

I do not want to give an impression that I doubt the good intentions that have gone into this White Paper. In small detail it makes some steps forward, but all my experience suggests that it could be more liberal; it could be better administered and it should and could release for historians and others a much better flow of hitherto secret public papers.

6.3 p.m.

Lord Irvine of Lairg: My Lords, the Government say in the White Paper,

"in furtherance of the policy of greater openness"

they intend to place the emphasis

"firmly on release rather than retention"

of public records. That is both a necessary and a desirable policy goal. But the Government's approach to achieving that goal falls short of providing adequate means for ensuring that public documents are retained only when genuinely necessary in the public interest. The White Paper states,

"In future more information will be released through changes in the criteria governing decisions to withhold material for longer than 30 years".

However, no proposals for either the amendment or repeal of the Public Records Acts of 1958 and 1967 are forthcoming.

The judgment of my party is that the need to secure freedom of information is of such importance that it must be safeguarded by statute. The Government's proposal to secure that freedom by changes in the guidelines or criteria surrounding the existing law provides no basis for challenging the exercise by the noble and learned Lord the Lord Chancellor of his

[LORD IRVINE OF LAIRG]

discretion in relation to the release of public records. Moreover, it provides for only limited independent scrutiny of decisions to withhold records from the public domain. The shortcomings of the present system were highlighted most succinctly by the late Lord Devlin. He said,

"the danger of the system is that it installs, as judges of what ought to be revealed, men whose interest it is to conceal".

Whilst the temptation to suppress potentially embarrassing or "inconvenient" disclosures can never be eliminated, the imposition of a clear and comprehensive statutory framework would minimise the risk that records will be unjustifiably withheld from the public domain. Moreover, the introduction of some independent form of scrutiny would help to ensure that politicians and administrators cannot exercise their discretion in a self-serving way.

It was with this aim in mind that the committee under the chairmanship of Sir Duncan Wilson recommended in its report published in 1981 that the advisory council which currently assists the Lord Chancellor should play a larger role in providing him with an independent source of advice on questions of extended non-disclosure and retention of records by government departments. In particular, the Wilson Committee recommended that a sub-committee of Privy Councillors should be set up to scrutinise applications relating to information considered to be of a most sensitive nature.

The Government rejected this important recommendation of the Wilson Committee. It stated in their response that:

"The evaluation of the sensitivity of public records ... requires an intimate knowledge of current policies and developments which Advisory Council members ... cannot be expected to have".

That is very patronising. I would say that the evaluation of the sensitivity of public records requires a degree of independence and objectivity which the policy-makers cannot be expected to have. Whilst the Government's paternalist philosophy prevails, the British people will have no adequate safeguard against the abuse of the present system by self-serving Ministers and civil servants. Moreover, this philosophy is the very antithesis of open government to which so much lip-service is currently paid by the Government.

We say that in the field of freedom of information, the British people deserve more than just a re-hash of the old regime of paternalism and secrecy. A comprehensive statutory review of the procedure for release of public records should form part of a new Freedom of Information Act. Three basic provisions of such an Act would break the traditional mould. The first would give statutory force to the criteria to be imposed by the Lord Chancellor in deciding whether to retain records beyond the 30-year period. The second would require reasons to be given for the retention of any records beyond a period of 30 years; and the third would give an enhanced statutory role to the Advisory Council, in order to introduce a greater element of independence into decisions relating to the retention of public records.

By contrast with these proposals, the Government's approach amounts to little more than a change in emphasis in the present system. Yet this is the system which led to the following official memoranda being listed in January 1989 as closed for a whole century: prison reform and lengths of sentence (1913-17); forcible feeding in reformatory schools (1910); the sterilization of mental defectives (1911-30); imprisonment and forcible feeding of suffragettes (1913); imprisonment of Emily Pankhurst (1913-17); industrial unrest and strikes (1918); experiments on animals with poison gas (1913-16); instructions to police on sedition charges against socialists (1912-18); Home Office practices in dealings with criminal lunatics (1913); coal-miners' strike (1919); flogging of vagrants (1919); decisions against prosecuting James Joyce's *Ulysses* (1924); Fascist marches (1936); and police reports on the activities of the National Council of Civil Liberties (1935-41). The list goes on.

Even under the Government's new proposals, there will be no obligation upon government departments to justify the withholding of historical records of this nature. Were they to choose to do so, no doubt the Government would seek to justify many of the retentions that I listed by reference to their guideline (at paragraph 9.21 on page 67 of the White Paper) that documents should be closed for 100 years if they contain,

"personally sensitive information which would substantially distress or endanger individuals or their descendants".

However, in practice, what is absolutely apparent from the subject matter of those records which are withheld is that it is the avoidance of embarrassment to the department or the Government of the day which is the overriding consideration. The mere theoretical possibility of distress to family members, so many years afterwards, cannot be allowed to override the public's general right to know how it has been governed in those critical areas.

It is an irony of this traditionally secretive approach that many of the documents withheld from the public in the United Kingdom are sent, under bilateral arrangements, to other countries which do possess freedom of information legislation and where, as a result, they become immediately open to inspection. British historians are forced to travel to Washington to inspect documents which, although stored in the Public Record Office here, are not available for inspection by the British public.

I also observe that there is no discussion whatever in the Government's White Paper of the possibility that some documents might be released before the period of 30 years has elapsed. What the White Paper says wholly uncritically about the 30 year rule (at paragraph 9.5 on page 62) is as follows:

"A thirty year period is now the standard adopted by the countries of the European Community ... Retention of the overall 30 year period therefore seems appropriate and sensible".

That shows a remarkable affection for Europe. That reasoning exposes the Government's lack of rigour in addressing the question of freedom of information. We should not simply look to our immediate European neighbours and copy them. We should start from the principle that the public has a right of access to public documents, and then restrict that right only in so far as

demonstrably necessary and justifiable. In that, we would be better to take a lead from the United States rather than our fellow European Community members.

The Government's *ad hoc* approach is based on the fallacy that individuals must simply take it on trust that politicians and administrators will act at all times in good faith and in the public interest. We shall have to await to the outcome of the Scott Inquiry into British arms dealing with Iraq to see whether such trust might very recently have been misplaced. But, in any event, if the traditions of paternalism combined with secrecy which have pervaded British government administration for so long are to be overturned, the Government should be prepared to legislate against them. If they are not, the next Labour Government will fulfil their commitment to put a freedom of information Act on the statute book.

6.13 p.m.

The Lord Chancellor (Lord Mackay of Clashfern): My Lords, I am grateful to my noble friend Lord Teviot for giving me this opportunity to explain the measures which are presently being taken to ensure that the Government's policy on public records, reflected in the recent White Paper *Open Government*, is carried forward. I believe that that is what the Question is about. I could not have expected every speaker to restrict himself to the Question. Therefore, I shall deal later with some matters which went somewhat wide of the Question.

The Government's policy, as stated in the White Paper, is that all public records should be released to the public unless there are truly compelling reasons why that should not be done. I believe that the recommendations contained in the relevant chapter of the White Paper, Chapter 9, illustrate the Government's commitment to that principle.

The Public Record Office, an executive agency for which I am responsible to Parliament, has a fundamental role in that context. It is responsible for advising individual government departments on which records, out of the vast amount of records which the business of government creates, should be preserved. It makes arrangements for the transfer of those records to its custody and is responsible for providing the public with access to these records once they have been so transferred.

The Public Record Office also has a crucially important role to play in the consideration of whether any of those records should properly be withheld from public scrutiny. The recommendations contained in the White Paper aim to enhance that role to ensure that all those responsible for the process by which documents are sought to be so withheld discharge those duties in accordance with the Government's policy. In considering the matter, and with a certain degree of experience as to how it operates, I am of the view that the most important change that could be made is made in introducing the concept of the harm test, under which the actual damage that would be caused by the release of an individual record must be established before it can be withheld. That test has thus been introduced and is the touchstone for all those, including myself, who are involved in any decision to withhold that record.

No public record can be withheld from the public without the approval of the Lord Chancellor of the day. I have a very pronounced interest, therefore, in ensuring that the system works to deliver its goal of releasing documents rather than withholding them. The recommendations contained in Chapter 9 affect every part of the process. I will, if I may, first mention the recommendations which affect the Public Record Office most directly, then mention a number of other initiatives which will carry forward the principles behind the White Paper.

There are two recommendations of the White Paper which explicitly involve the Public Record Office. Those are the requirements that guidance should be drawn up for the benefit of reviewers in departments: first, to enable them to assess the element of substantial distress which might give rise to a proper application for closure; and, secondly, core guidance drawn up and disseminated to all departments to facilitate the changes resulting from the White Paper.

Clearly, the sorts of elements which will prompt an application based on substantial distress may be different from department to department. It is, therefore, important that each department issues correct guidance geared to the needs of its own reviewers, and that must be agreed with the Public Record Office so that all those involved are aware of the basis on which such an application is made. The Public Record Office is presently in the process of drafting such guidance for each department, and I expect the exercise to be completed shortly. The guidance will be reviewed over time to take account of the fact that what is considered a valid cause of substantial distress may change from time to time.

The core guidance disseminating the implications of the White Paper for all departments has already been drafted and circulated among departments. Again, it has been vitally important that the Public Record Office has approved the draft. The aim of the guidance is to inculcate into the minds of every person involved in the process by which applications for closure or retention are made the idea that unless the harm test I referred to earlier is satisfied the application should not proceed. On its way from the initial decision by a reviewing officer to the approval of the Lord Chancellor such an application must go through a number of stages. I think that it is worth reminding the House of the process so that it is clear what I mean.

Each government department has a departmental records officer whose responsibility it is to select those records which are to be preserved and to identify those which may be released and those which should properly be closed at the Public Record Office or retained within the department under the provisions of the Public Record Acts. An official of the Public Record Office is responsible for providing guidance and advice to each department during the selection process. The department concerned must satisfy the Public Record Office with its justification for making an application for closure or retention. I suggest to your Lordships that it is clear that the Public Record Office and its officials have no responsibility for the kind of policy decisions that are the subject matter of other departments. The

[LORD MACKAY OF CLASHFERN]

Public Record Office assesses whether the application is justified and, if so, includes it in a submission to my Advisory Council on Public Records, a body wholly independent of government, which will then advise me whether to accept the application.

The Public Record Office must bear in mind that the Advisory Council on Public Records, which is chaired by the Master of the Rolls, will in its turn be scrutinising the justification for the application and the council will not accept it if not satisfied. Once the advisory council has advised me that it accepts the application, I in turn scrutinise the justification for the application, and only if I too am satisfied with such justification will I sign a formal instrument allowing the records in question to be either retained within government departments or transferred to the Public Record Office where they are closed to the public for a specified period.

As I have said, it is in inculcating the need adequately to demonstrate the actual harm that would arise from release of the records at every level of that process that the greatest progress will be achieved in ensuring greater release of records. The need to justify always to the next appropriate level every application for closure or retention will ensure that any temptation to err on the side of what may appear to be safety, to the detriment of release of the records, will be avoided.

I have already mentioned my Advisory Council on Public Records and I should like to return to that subject. To date I have relied on the council, which is wholly independent of government, to advise me on applications from departments for the closure of records at the Public Record Office but not on applications for records to be retained within departments. That was the original structure. From now on, as a result of the recommendations of the White Paper, the advisory council will advise me also on applications for the retention of records within departments. I regard that as an extremely important step forward and, in so far as being liberal can be regarded as a seal of approval, I consider it to be a liberal step as well.

In addition, the council will now have an important role in considering requests which have been made to departments by historians, or indeed other members of the public, for the release of documents where those requests have been refused by the department concerned.

My right honourable friend the Chancellor of the Duchy of Lancaster, with my support, extended in the summer of 1992 an offer to historians to let him know of records which they would like to see released, an invitation to which, I may fairly say, they have not been slow in responding, and indeed I understand that a great deal of material has been released as a result of those requests. Where, however, a department believes that there is good reason to continue to close or retain the records in question, it is now intended that the advisory council should be able to consider whether the records should continue to be closed or retained and advise me accordingly. In the case of those records which have been closed in the past, of course, the council will in effect be reviewing its earlier advice that a given record should be closed.

Remaining with the subject of the advisory council, I should like to take this opportunity to announce to the House an important change in the way in which the council will now operate. It has been a criticism often levelled at the council in the past that its members have not been allowed properly to assess the case for withholding records because they have been unable to inspect the records themselves. Indeed, the proposal that the council should be allowed to see the records was rejected by the Government, after careful consideration, in their response in 1982 to the report by Sir Duncan Wilson, to which the noble Lord, Lord Irvine of Lairg, referred, during the tenure of my noble friend Lord Teviot as a member of the advisory council.

However, I am glad to say that the Government have now re-examined that matter and they have decided that from now on, where the council is unable to satisfy itself in any other way that an application for closure or retention is justified, the chairman, or a member of the council nominated by him, will be able to inspect the records himself. Having regard to the amount of records involved, that is important. It will have an important effect upon the whole scrutinising process.

It is unavoidable that there will always be a small number of matters that the Government must properly keep from any public scrutiny. For that reason the council will not be allowed physically to examine records which it is sought to withhold for reasons of security and intelligence. In such an instance it will remain open to the council, as it is now, to request that the Cabinet Secretary should examine the records and advise me accordingly. For all other records—a great many, as I have said—however, the power will be there. Extending the remit of the advisory council in that way is, in my view, an effective step and answers criticism that it is hampered in carrying out its duties. I believe that it will lend considerable authority and credibility to government decisions to withhold records only where that is absolutely necessary.

The White Paper proposals relating to public records represent a real and carefully considered commitment to more open government, the results of which are already becoming apparent. A great amount of material has already been released. I could not take down with complete accuracy all that the noble Lord, Lord Irvine of Lairg, read out, but if I am not mistaken those documents were closed for 100 years in 1958 or so. They have all now been released. The present policy has demonstrated just how effective it can be in releasing documents previously withheld.

I agree with the noble Lord, Lord Mayhew, that it is important that the reviewing process should continue. The figures in miles given in the White Paper relate to the selection process, not to scrutiny or sensitivity. The organisation of selection is a major element in the work of the records section of the nearly 150 organisations covered by the Public Records Act. In the White Paper the Government are giving an impression of the total amount of material that has to be considered. A mile of records means what it says. If one is responsible for providing bookshelves over the years, yards or miles are an important economic indicator of what is involved. No

doubt it could be dealt with in other ways, but that is a reasonable way of indicating the volume of public records in question.

During the past year or so while this matter has been under consideration, many previously withheld records have been transferred to the Public Record Office. The backlog is being reduced. It is not growing.

The noble Lord, Lord Irvine of Lairg, was intent on telling us what would be a better policy. The better policy is to create a new Act of Parliament containing a number of mechanisms which, as far as I can make out, are all intended to secure the same policy that I have sought to explain. It is true that he would seek to add the possibility of action at law to the existing possibilities, but in my judgment that is unlikely to be more effective in producing results than the system which the White Paper has indicated.

My noble friend Lord Teviot mentioned the meeting of 25th November 1992, with its good atmosphere and good results. There will, as he said, be another meeting on 25th November of this year. The Public Record Office will be represented. The keeper and officials will be attending that meeting of historians to review progress and to see what more can be done. I express willingly the Government's commitment to the preservation of the nation's history and to giving the Public Record Office the necessary facilities to achieve that. The arrangements that we have put in place, with emphasis on the identification of the harm in the harm test to which I referred, will ensure that where at all possible public records are made available unless real harm can be demonstrated.

The noble Lord, Lord Mayhew, was interested in the institution which he set up and which he had a natural desire to write about. Many of the documents of the department are covered by the intelligence and security problem. It is right that, like all records maintained within departments, these records are reviewed at least every 10 years and subjected to the test of whether actual damage would be caused by their release. Arrangements for such reviews will require that they occur at least every 10 years. If particular attention is drawn to the documents it may be possible for the review to take place more quickly. That happened in relation to matters drawn to the attention of the Public Record Office by historians to whom reference has been made. Within that 10-year review period the continuing sensitivity of the records must be established under the test of actual damage and those which do not meet the test will be released. I hope in time to enable the noble Lord, Lord Mayhew, satisfactorily to complete the work that he would like to initiate. The period of 10 years is the maximum and I have every confidence that the maximum will be sufficient—but perhaps it will not be necessary.

The noble Lord, Lord Irvine of Lairg, drew attention to the possibility of records which are closed here being available elsewhere. I should be grateful if he would indicate the records that he has in mind. I have sought to ascertain to what extent that happens and if he can help me by giving particular examples I should find that useful.

Lord Mayhew: My Lords, perhaps the noble and learned Lord will allow me to give one example. The publication of material about the information research department of the Foreign Office, the organisation of which I spoke, was first published in America under the Freedom of Information Act. That is a good example of what was said by the noble Lord, Lord Irvine.

The Lord Chancellor: My Lords, I am grateful. I have sought examples but hitherto they have been few and far between. When the noble Lord says that the information was published under the Freedom of Information Act, I suspect that as far as the United States was concerned nothing was considered to be important in retaining those records. I am grateful for that example.

The noble Lord, Lord Mayhew, also referred to ministerial memoirs. I am not sure whether it would be profitable for me to become deeply involved in that subject. I believe that the principles set out in the White Paper for the discharge by executive government of its responsibilities for the nation's records are sound principles. I did not understand the noble Lord, Lord Irvine of Lairg, to suggest the contrary. He was more concerned with the machinery by which those principles would be enforced.

Accordingly, I claim that what has been done in the White Paper, in particular Chapter 9 in relation to public records, is a very considerable step forward. It has already produced considerable results and I believe that it will continue to do so. As a consequence, only documents the release of which would cause identifiable harm will continue to be withheld from the public either by retention in their departments or by closure in the Public Record Office.

I renew my gratitude to my noble friend for raising the Question and enabling us to have a discussion on what I believe to be an extremely important subject.

London Docklands Development Corporation Bill [H.L.]

The Queen's consent signified, and Bill reported from the Unopposed Bill Committee with amendments.

European Economic Area Bill [H.L.]

Returned from the Commons agreed to with amendments and with a privilege amendment; the amendments ordered to be printed.

House adjourned at twenty-five minutes before seven o'clock.

393 LD62/29 Job 4-12

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Chancellor of the Duchy of Lancaster
Minister of Public Service and Science

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c PS/PS
Sir Robin Butler
Mr Mottram
Mr Whetnall
Mr Rose
Mr Wilton

KB 02081

The Rt Hon Lord Mackay of Clashfern FRSE
Lord Chancellor
House of Lords
London
SW1A OPW

25 October 1993

Dear Lord Chancellor,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Thank you for your letter of 22 October enclosing the text of your proposed response to Lord Teviot's oral Question. I am entirely content and I am pleased that such an opportunity to announce the enhanced role of the Advisory Council has presented itself.

Yours sincerely,
Ian C. Dougal

WILLIAM WALDEGRAVE

Agreed by the Chancellor of the Duchy of Lancaster and signed in his absence

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Minister of Public Service and Science

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The Right Honourable Lord Mackay of Clashfern FRSE
House of Lords
London SW1A 0PW

October 1993

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Yours ever,
William.

WILLIAM WALDEGRAVE

Yikes!

DMR

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OPEN GOVERNMENT AND THE PUBLIC RECORD OFFICE

The Lord Chancellor, Lord Mackay of Clashfern, this afternoon outlined measures the Government will be taking to implement two recommendations for the Public Record Office contained in the White Paper *Open Government* (Cm 2290). The recommendations are that:

* detailed guidance be given to reviewers in departments to enable them to assess when an application for closure on the grounds of substantial distress may be justified; and

* core guidance be drawn up and disseminated to all departments making clear the implications of all of the changes being brought about as a result of the White Paper.

Lord Mackay also announced that the Lord Chancellor's Advisory Council on Public Records would, in future, advise him on applications for the retention of records within departments.

He announced a change to operating procedures which will allow the Advisory Council Chairman, or a council member nominated by him, personally to inspect records of a non-security and intelligence nature which, until now, he has been unable to do.

Responding to a question in the House of Lords from Lord Teviot, the Lord Chancellor said: "The Government's policy on public records is that all public records should be released to the public unless there are truly compelling reasons why this should not be done.

/more

"The Public Record Office, an executive agency for which I am responsible to Parliament, is responsible for advising individual Government departments on which records, out of the vast amount of records which the business of Government creates, should be preserved.

"The Public Record Office also has a crucially important role to play in the consideration of whether any of those records should properly be withheld from public scrutiny.

"The recommendations contained in the White Paper aim to enhance that role to ensure that all those responsible for the process by which documents are sought to be so withheld discharge those duties in accordance with the Government's policy.

DETAILED GUIDANCE

On the proposed detailed guidance Lord Mackay said: "It is important that each department issues correct guidance geared to the needs of its own reviewers, and this must be agreed with the Public Record Office so that all those involved are aware of the basis on which an application is made for the closure or retention of records.

"The Public Record Office is presently in the process of drafting such guidance and this exercise is expected to be completed shortly. This guidance will be reviewed over time.

CORE GUIDANCE

"The core guidance disseminating the implications of the White Paper for all departments has already been drafted and circulated. The aim of this guidance is to inculcate into the minds of every person involved in the process by which applications for closure or retention are made the idea that unless the harm test I referred to earlier is satisfied the application should not proceed.

"The Public Record Office assesses whether the application is justified and, if so, includes it in a submission to my Advisory Council on Public Records, bearing in mind that the Council, which is chaired by the Master of the Rolls, will in its turn be scrutinising the justification for the application.

"Once the Advisory Council has advised me that it accepts the application, I in turn scrutinise the justification for the application and only if I, too, am satisfied will I then sign a formal Instrument allowing the records in question to be either retained within Government departments, or transferred to the Public Record Office.

ADVISORY COUNCIL'S NEW REMIT

"To date I have relied on the Council, which is wholly independent of Government, to advise me on applications from departments for the closure of records at the Public Record Office.

"From now on, as a result of the recommendations of the White Paper, the Advisory Council will advise me also on applications for the retention of records within departments.

"The Council will now have an important role in considering requests which have been made by historians to departments for the release of documents where those requests have been refused by the department concerned.

"I should like to take this opportunity to announce to this House an important change in the way in which the Council will now operate. It has been a criticism often levelled at the Council in the past that it has not been allowed properly to assess the case for withholding records because it has been unable to inspect the records themselves.

"The proposal that the Council should be allowed to see the records was rejected by the Government, after careful consideration, in its response in 1982 to the Wilson Report on Public Records.

"The Government has now re-examined this matter, and it has decided that, from now on, where the Council is unable to satisfy itself any other way that an application for closure or retention is justified, the Chairman, or a member of the Council nominated by him, will be permitted to inspect the records themselves.

"The Council will not be allowed physically to examine records which it is sought to withhold for reasons of security and intelligence. It will remain open to the Council, as it is now, to request that the Cabinet Secretary should examine the records and advise me accordingly. For all other records, however, the power will be there."

ENDS

Notes for Editors

1. The White Paper *Open Government* (Cm 2290) was laid before Parliament on 15 July 1993 by William Waldegrave, Chancellor of the Duchy of Lancaster. It is published by HMSO (£11.00). Telephone orders to 071 873 9090. ISBN 0-10-122902-X.

2. A summary of Government moves towards openness in recent years is available from the OPSS Press Office on 071-270 0297/0393.

CHANCELLOR: CONTENT WITH DRAFT REPLY TO LD CHANCELLOR?

ON

mp.

22/10

FOL 69

HO93/913 ✓

From: Miss P M Andrews
Historical and Records Section
217 6050

cc PS/Mr Davis
Sir Robin Butler
Mr Mottram
Mr Whetnall
Mr Rose
Mr Wilton

CABINET OFFICE
Kb
22 OCT 1993
FILING INSTRUCTIONS
FILE No.

MR PALMER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Attached to the Lord Chancellor's letter of today's date is the text of what he proposes to say in answer to Lord Teviot's unstarred oral Question on Monday 25 October. I have been consulted about the drafting of the reply and I am now content with it as is Sir Robin Butler who has also been consulted. I recommend a brief reply welcoming the development along the lines of the attached draft.

BACKGROUND

Following his statement to the House on the publication of the White Paper on Open Governmenton 15 July, the Chancellor of the Duchy answered a question from Rupert Allason MP about the Advisory Council's access to documents. Having discussed this matter with the Lord Chancellor, the Chancellor was able to say that the Advisory Council would have access to papers when there was a dispute and that arrangements were in hand to see how that could best be done.

The Lord Chancellor wrote to the Chancellor of the Duchy on 28 July setting out his proposals for allowing the Advisory Council, in certain circumstances, to examine the records themselves. Subject to clarification of one procedural point we agreed with those proposals and Mr Davis wrote on 10 August on the Chancellor's behalf saying so. Mr Davis raised the question of what more should be said publicly on the matter and suggested that a written Parliamentary Question might be appropriate. As the arrangements are in respect of the Lord Chancellor's Advisory Council it seemed appropriate for him to answer unless he wished the Chancellor of the Duchy or Mr Davis to do so as part of the follow up to the White Paper.

Lord Teviot's Question gives a suitable opportunity for the Lord Chancellor to announce the extension of the role of the Advisory Council including the provisions for access to documents and, as the Lord Chancellor says, obviates the need for a written PQ.

Pat Andrews

MISS P M ANDREWS
22 October 1993

DRAFT LETTER FOR THE CHANCELLOR OF THE DUCHY TO SEND TO

The Right Honourable Lord Mackay of Clashfern FRSE
House of Lords
London SW1A 0PW

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Thank you for your letter of 22 October enclosing the text of your proposed response to Lord Teviot's oral Question. I am entirely content and I am pleased that such an opportunity to announce the enhanced role of the Advisory Council has presented itself.

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE

Action	MS ANDREWS
By	ASAP
PS - Parliamentary Secretary	
PS - Second Permanent Secretary	
Special Adviser	
FOR INFORMATION: MR WHETNALL MS OAKLEY	
PS (mp)	

CONTENT WITH ATTACHED TEXT?

FOLIO 68

HOUSE OF LORDS,
SW1A 0PW

CDL

22 October 1993

The Right Honourable William Waldegrave MP
Chancellor of the Duchy of Lancaster
Minister of Public Service and Science
Cabinet Office
70 Whitehall
London SW1A 2AS

DRAFTING OFFICER
PLEASE QUOTE REF.
KB 0 2081
ON THE REPLY

CABINET OFFICE
Kb 19588
22 OCT 1993
FILING INSTRUCTIONS
FILE No. P

Dear William,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

David Davis wrote to me on 10 August suggesting that the best way to announce the Government's recent decision to allow the Advisory Council to examine actual records in certain circumstances might be by way of answer, from me, to a written Parliamentary Question.

Lord Teviot has tabled an unstarred oral Question for me to answer next Monday, 25 October, which asks about the implications of the recent White Paper on Open Government for the Public Record Office. This provides a useful opportunity to announce the enhanced role of the Advisory Council, which was decided after publication of the White Paper, and I am therefore minded to do so in my response to Lord Teviot's Question. This would obviate the need for a written Parliamentary Question.

I am enclosing a copy of the response I intend to make, which covers the point in paragraphs 13-15, and would be grateful to know if you are content. I am copying this letter to the Cabinet Secretary, who is mentioned in the draft in the context of providing advice to me on security and intelligence records.

CHANCELLOR: ADVICE FROM RECORDS SECTION (ENCLOSED) SAYS THAT THEY AND SIR ROBIN BUTLER ARE CONTENT WITH THE DRAFT REPLY. CONTENT TO SIGN ENCLOSED REPLY TO LD CHANCELLOR? mp.

22/10

Yours ever,

Jane.

OK - one syntactical consider in para 14. MW

DRAFT SPEECH FOR THE LORD CHANCELLOR IN ANSWER TO LORD TEVIOT'S QUESTION:

To ask Her Majesty's Government what action they propose to take to implement the recommendations for the Public Record Office, contained in the Open Government White Paper.

1. LORD CHANCELLOR: My Lords, I am very pleased that my noble friend, Lord Teviot, has afforded me this opportunity to explain the measures which are presently being taken to ensure that the Government's policy on public records, reflected in the recent White Paper on Open Government, is carried forward. That policy is that all public records should be released to the public unless there are truly compelling reasons why this should not be done. I believe the recommendations contained in the relevant Chapter of the White Paper, Chapter 9, illustrate the Government's commitment to this principle.

2. The Public Record Office, an executive agency for which I am responsible to Parliament, has a fundamental role in this context. The Public Record Office is responsible for advising individual Government departments on which records, out of the vast amount of records which the business of Government creates, should be preserved. It makes arrangements for the transfer of those records to its custody and is responsible for providing the public with access to these records once they have been so transferred.

3. The Public Record Office also has a crucially important role to play in the consideration of whether any of those records should properly be withheld from public scrutiny. The

recommendations contained in the White Paper aim to enhance that role to ensure that all those responsible for the process by which documents are sought to be so withheld discharge those duties in accordance with the Government's policy. The concept of the "harm test", under which the actual damage that would be caused by the release of an individual record must be established before it can be withheld, has thus been introduced, and is the touchstone for all those, including myself, who are involved in any decision to withhold that record.

4. No public record can be withheld from the public without the approval of the Lord Chancellor of the day. I have a very pronounced interest, therefore, in ensuring that the system works to deliver its goal of course releasing documents rather than withholding them. The recommendations contained in Chapter 9 affect every part of the process. I will, if I may, first mention the recommendations which affect the Public Record Office most directly, then mention a number of other initiatives which will carry forward the principles behind the White Paper.

5. There are two recommendations of the White Paper which explicitly involve the Public Record Office. These are the requirements that guidance should be drawn up for the benefit of reviewers in departments, first, to enable them to assess the element of substantial distress which might give rise to a proper application for closure, and, secondly, core guidance drawn up and disseminated to all departments to facilitate the changes resulting from the White Paper.

6. Clearly, the sorts of elements which will prompt an application based on substantial distress may be different from department to department. It is therefore important that each department issues correct guidance geared to the needs of its own reviewers, and this must be agreed with the Public Record Office so that all those involved are aware of the basis on which such an application is made. The Public Record Office is presently in the process of drafting such guidance for each department and this exercise is expected to be completed shortly. This guidance will be reviewed over time, to take account of the fact that what is considered a valid cause of substantial distress may change over time.

7. The core guidance disseminating the implications of the White Paper for all departments has already been drafted and circulated among departments, and again it has been vitally important that the Public Record Office has approved the draft. The aim of this guidance is to inculcate into the minds of every person involved in the process by which applications for closure or retention are made the idea that unless the harm test I referred to earlier is satisfied the application should not proceed. On its way from the initial decision by a reviewing officer to the approval of the Lord Chancellor such an application must go through a number of stages and I think it is worth reminding this House of the process so that it is clear what I mean.

8. Each Government department has a Departmental Records Officer whose responsibility it is to select those records which are to be preserved, and to identify those which may be released and

those which should properly be closed at the Public Record Office or retained within the department under the provisions of the Public Record Acts. An official of the Public Record Office is responsible for providing guidance and advice to each department during this selection process, and the department concerned must satisfy the Public Record Office with its justification for making an application for closure or retention. The Public Record Office assesses whether the application is justified and, if so, incudes it in a submission to my Advisory Council on Public Records, a body wholly independent of Government, who will then advise me whether or not to accept the application.

9. The Public Record Office must bear in mind that the Advisory Council on Public Records, which is chaired by the Master of the Rolls, will in its turn be scrutinising the justification for the application and Council will not accept it if not satisfied. Once the Advisory Council has advised me that it accepts the application, I in turn scrutinise the justification for the application and only if I, too, am satisfied will I then sign a formal Instrument allowing the records in question to be either retained within Government departments, or transferred to the Public Record Office where they are closed to the public for a specified period.

10. As I have said, it is in inculcating the need adequately to demonstrate the actual harm that would arise from release of the records, at every level of this process, that the greatest progress will be achieved in ensuring greater release of records. The need to justify always to the next appropriate level every

application for closure or retention will ensure that any temptation to err on the side of what may appear to be safety, to the detriment of release of the records, will be avoided.

11. I have already mentioned my Advisory Council on Public Records and I would like to return to this subject. To date I have relied on the Council, which is wholly independent of Government, to advise me on applications from departments for the closure of records at the Public Record Office, but not on applications for records to be retained within departments. From now on, as a result of the recommendations of the White Paper, the Advisory Council will advise me also on applications for the retention of records within departments. In addition, the Council will now have an important role in considering requests which have been made by historians, or indeed other members of the public,to departments for the release of documents where those requests have been refused by the department concerned.

12. My right honourable friend the Chancellor of the Duchy of Lancaster extended an offer in the summer of 1992 to historians to let him know of records which they would like to see released, an invitation to which, I may fairly say, they have not been slow in responding, and indeed I understand that a great deal of material has been released as a result of these requests. Where, however, a department believes there is good reason to continue to close or retain the records in question, it is now intended that the Advisory Council should be able to consider whether the records should continue to be closed or retained, and advise me accordingly. In the case of those records which have been closed

in the past, of course, the Council will in effect be reviewing its earlier advice that a given record should be closed.

13. Remaining with the subject of the Advisory Council, I should like to take this opportunity to announce to this House an important change in the way in which the Council will now operate. It has been a criticism often levelled at the Council in the past that they have not been allowed properly to assess the case for withholding records because it has been unable to inspect the records themselves. Indeed, the proposal that the Council should be allowed to see the records was rejected by the Government, after careful consideration, in its response in 1982 to the Wilson Report on Public Records during my noble friend, Lord Teviot's, own tenure as a member of the Advisory Council.

14. However, the Government has now reexamined this matter, and it has decided that, from now on, where the Council is unable to satisfy itself in any other way that an application for closure or retention is justified, the Chairman, or a member of the Council nominated by him, will be permitted to inspect the records themselves.

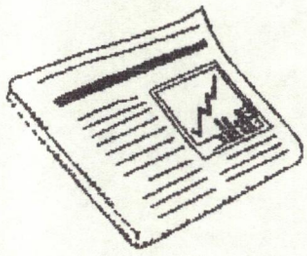
15. It is unavoidable that there will always be a small number of matters the Government must properly keep from any public scrutiny. For this reason the Council will not be allowed physically to examine records which it is sought to withhold for reasons of security and intelligence. In such an instance it will remain open to the Council, as it is now, to request that the Cabinet Secretary should examine the records and advise me

accordingly. For all other records, however, the power will be there. Extending the remit of the Advisory Council in this way conclusively answers criticisms that it is hampered in carrying out its duties and will lend added credibility, I hope, to decisions by the Government to withhold records only where this is absolutely necessary.

16. The White Paper proposals relating to public records represent a real, and carefully considered, commitment to more open government, the results of which are already becoming apparent. I am most grateful to my noble friend, Lord Teviot, for affording this House the opportunity to discuss these issues.

LORD CHANCELLOR'S DEPARTMENT

FACSIMILE HEADER



FROM:	Paul Kennedy POLICY & LEGAL SERVICES DIVISION TREVELYAN HOUSE GREAT PETER STREET LONDON SW1P 2BY
FAX NO:	071 210 8780 (ENQUIRIES 210 8599)
SUBJECT:	LC's speech
NO. OF PAGES:	1 + HEADER
TO:	Pat Adams, Cab. Office
FAX NO:	071 217 6010
NOTES:	Pat, I have slightly recast the relevant paragraph as the LC suggested - any comments? Paul

FOI 67

7. The core guidance disseminating the implications of the White Paper for all departments has already been drafted and circulated among departments, and again it has been vitally important that the Public Record Office has approved the draft. The aim of this guidance is to inculcate into the minds of every person involved in the process by which applications for closure or retention are made the idea that unless the harm test I referred to earlier is satisfied the application should not proceed. On its way from the initial decision by a reviewing officer to the approval of the Lord Chancellor such an application must go through a number of stages and I think it is worth reminding this House of the process so that it is clear what I mean.

8. Each Government department has a Departmental Records Officer whose responsibility it is to select those records which are to be preserved, and to identify those which may be released and those should properly be closed at the Public Record Office or retained within the department. under the provision of the P-R-Act. An official of the Public Record Office is responsible for providing guidance to each department during His selection process about possible grounds for closure or retention, and the department concerned must satisfy the Public Record Office with its justification for making an application for closure or retention. The Public Record Office assesses whether the application is justified and, if so, incudes it in a submission to my Advisory Council on Public Records, a body wholly independent of Government, who will then advise me whether or not to accept the application.

9. The Public Record Office must bear in mind that the Advisory Council on Public Records, which is chaired by the Master of the

Told Miss Andrews. ICH 20/10

HO93/904 Miss Andrews

SIR ROBIN BUTLER

Thank you. The draft answer looks OK to me. RBB 21.10

CABINET OFFICE
A 14240
20 OCT 1993
FILING INSTRUCTIONS
FILE No.

PUBLIC RECORDS: ROLE OF THE LORD CHANCELLOR'S ADVISORY COUNCIL

The Lord Chancellor is to answer an Oral Question from Lord Teviot on 25 October. The Question is:-

> To ask HMG what action they propose to take to implement the recommendations for the Public Record Office contained in the Open Government White Paper.

Because of the specific reference to the Public Record Office (PRO) the answer, which is in the form of a short speech, has been drafted by the Lord Chancellor's Department in consultation with the PRO. I saw an early draft and I have been invited to a briefing meeting with the Lord Chancellor tomorrow. I have just received a copy of what the Lord Chancellor is now being recommended to say (copy attached).

Given the references, in paragraphs 12-14, to the Advisory Council being allowed to see actual records and to your role in respect of security and intelligence records, I have suggested that the Chancellor of the Duchy should be informed formally by letter that this announcement is to be made in this form.

There was a suggestion that the extension of the role of the Advisory Council should be announced by means of an arranged PQ and Mr Davis mentioned it in a letter dated 10 August which he sent to the Lord Chancellor on behalf of the Chancellor of the Duchy; the letter now to be sent will be the reply to that suggestion.

Pat Andrews

MISS P M ANDREWS
HISTORICAL AND RECORDS SECTION

20 October 1993

CABINET OFFICE
H Internal
25 OCT 1993
FILING INSTRUCTIONS
FILE No.

DRAFT SPEECH FOR THE LORD CHANCELLOR IN ANSWER TO LORD TEVIOT'S QUESTION:

To ask Her Majesty's Government what action they propose to take to implement the recommendations for the Public Record Office, contained in the Open Government White Paper.

1. LORD CHANCELLOR: My Lords, I am very pleased that the noble Lord, Lord Teviot, has afforded me this opportunity to explain the measures which are presently being taken to ensure that the Government's policy on public records, reflected in the recent White Paper on Open Government, is carried forward. That policy is that all public records should be released to the public unless there are truly compelling reasons why this should not be done. I believe the recommendations contained in the relevant Chapter of the White Paper, Chapter 9, illustrate the Government's commitment to this principle.

2. The Public Record Office, an executive agency for which I am responsible to Parliament, has a fundamental role in this context. The Public Record Office is responsible for advising individual Government departments on which records, out of the vast amount of records which the business of Government creates, should be preserved. It makes arrangements for the transfer of those records to its custody and is responsible for providing the public with access to these records once they have been so transferred.

3. The Public Record Office also, of course, has a crucially important role to play in the consideration of whether any of those records should properly be withheld from public scrutiny.

The recommendations contained in the White Paper aim to enhance that role to ensure that all those responsible for the process by which documents are sought to be so withheld discharge those duties in accordance with the Government's policy. The concept of the "harm test", under which the actual damage that would be caused by the release of an individual record must be established before it can be withheld, has thus been introduced, and is the touchstone for all those, including myself, who are involved in any decision to withhold that record.

4. No public record can be withheld from the public without the approval of the Lord Chancellor of the day. I have a very pronounced interest, therefore, in ensuring that the system works to deliver its goal of course releasing documents rather than withholding them. The recommendations contained in Chapter 9 affect every part of the process. I will, if I may, first mention the recommendations which affect the Public Record Office most directly, then mention a number of other initiatives which will carry forward the principles behind the White Paper.

5. There are two recommendations of the White Paper which explicitly involve the Public Record Office. These are the requirements that guidance should be drawn up for the benefit of reviewers in departments, first, to enable them to assess the element of substantial distress which might give rise to a proper application for closure, and, secondly, the core guidance [which is] to be drawn up and disseminated to all departments to facilitate the changes resulting from the White Paper.

6. Clearly, the sorts of elements which will prompt an application based on substantial distress will be different from department to department. It is therefore important that each department issues correct guidance geared to the needs of its own reviewers, and this must be agreed with the Public Record Office so that all those involved are aware of the basis on which such an application is made. The Public Record Office is presently in the process of drafting such guidance for each department and this exercise is expected to be completed shortly. This guidance will be reviewed over time, to take account of the fact that what is considered a valid cause of substantial distress may change over time.

7. The core guidance disseminating the implications of the White Paper for all departments has already been drafted and circulated among departments, and again it has been vitally important that the Public Record Office has approved the draft. The aim of this guidance is to inculcate into the minds of every person involved in the process by which applications for closure or retention are made the idea that unless the harm test I referred to earlier is satisfied the application should not proceed. On its way from the initial decision by a reviewing officer to the approval of the Lord Chancellor such an application must go through a number of stages and I think it is worth reminding this House of this process so that it is clear what I mean. The application is generated within a Government department. The department must bear in mind that it must satisfy the Public Record Office with its justification for making an application. The Public Record Office assesses whether the application is justified and, if so,

forwards the application to me via my Advisory Council on Public Records.

8. The Public Record Office must bear in mind that the Advisory Council on Public Records, which is chaired by the Master of the Rolls, will in its turn be scrutinising the justification for the application and Council will not accept it if not satisfied. Once the Advisory Council has advised me that it accepts the application, I in turn scrutinise the justification for the application and only if I, too, am satisfied, will I then sign a formal Instrument allowing the records in question to be either retained within Government departments, or transferred to the Public Record Office where they are closed to the public for a specified period.

9. As I have said, it is in inculcating the need adequately to demonstrate the actual harm that would arise from release of the records, at every level of this process, that the greatest progress will be achieved in ensuring greater release of records. The need to justify always to the next appropriate level every application for closure or retention will ensure that any temptation to err on the side of what may appear to be safety, to the detriment of release of the records, will be avoided.

10. I have already mentioned my Advisory Council on Public Records and I would like to return to this subject. To date I have relied on the Council, which is wholly independent of Government, to advise me on applications from departments for the closure of records at the Public Record Office, but not on

applications for records to be retained within departments. From now on, as a result of the recommendations of the White Paper, the Advisory Council will advise me also on applications for the retention of records within departments. In addition, the Council will now have an important role in considering requests which have been made by historians, or indeed other members of the public, to departments for the release of documents where those requests have been refused by the department concerned.

11. My right honourable friend the Chancellor of the Duchy of Lancaster extended an offer in the summer of 1992 to historians to let him know of records which they would like to see released, an invitation which I may fairly say they have not been slow in responding to, and indeed I understand that a great deal of material has been released as a result of these requests. Where, however, a department believes there is good reason to continue to close or retain the records in question, it is now intended that the Advisory Council should be able to consider whether the records should continue to be closed or retained, and advise me accordingly. In the case of those records which have been closed in the past, of course, the Council will in effect be reviewing its earlier advice that a given record should be closed.

12. Remaining with the subject of the Advisory Council, I should like to take this opportunity to announce to this House an important change in the way in which the Council will now be allowed to operate. It has been a criticism often levelled at the Council in the past that they have not been allowed properly to assess the case for withholding records because it has been

unable to inspect the records themselves. Indeed, the argument that the Council should be allowed to see the records was considered carefully, and rejected, by the Government in its response in 1982 to the Wilson Report on Public Records during the noble Lord, Lord Teviot's, own tenure as a member of the Advisory Council.

13. The Government has carefully considered this matter and it has been decided, effective immediately, that where the Council is unable to satisfy itself any other way that an application for closure or retention is justified, the Chairman, or a member of the Council nominated by him, will now be permitted to inspect the records themselves.

14. It is unavoidable that there will always be a small number of matters the Government must properly keep from any public scrutiny. For this reason the Council will not be allowed physically to examine records which it is sought to withhold for reasons of security and intelligence. In such an instance it will remain open to the Council, as it is now, to request that the Cabinet Secretary should examine the records and advise me accordingly. For all other records, however, the power will be there. Extending the remit of the Advisory Council in this way conclusively answers criticisms that it is hampered in carrying out its duties and will lend added credibility, I hope, to decisions by the Government to withhold records only where this is absolutely necessary.

15. The White Paper proposals relating to public records represent a real, and carefully considered, commitment to more open government, the results of which are already becoming apparent. I am most grateful to my noble Lord, Lord Teviot, for affording this House the opportunity to discuss these issues.

51

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 071-270 0411

Parliamentary Secretary,
Office of Public Service and Science

c. PS/CDL
PS/FERS
PS/Mr Mottram
Mr Whetnall
Miss Andrew
+PPS

KB 01641 ✓

The Right Honourable Lord Mackay of Clashfern FRSE
House of Lords
London SW1A 0PW

10TH August 1993

Dear James.

Thank you for your letter of 28 July to William Waldegrave about the extension of the role of your Advisory Council and the arrangements for allowing the Council, in certain circumstances, to examine the records themselves. In his absence, I am replying on William's behalf.

I have only one further comment to make on the arrangements set out in your letter. As I understand it, if the Council queries an item on the application schedules, an explanation is sought from the department concerned by the Public Record Office representative who reports back to the Council. It would be only if the Council remains unsatisfied with that explanation and wishes to see the records directly that it would, through the Chairman, seek access to relevant papers and bring into play the procedure set out in your penultimate paragraph. Subject to this small clarification I am happy with what is proposed in your letter.

In response to a question from Rupert Allason in the House on 15 July (Column 1125-26) William said that the Advisory Council would have access to papers when there is a dispute and that arrangements were in hand to see how that could best be done. Before the House resumes after the Summer Recess perhaps we could consider what more should be said publicly about the arrangements. I have in mind that a written Parliamentary Question may be appropriate. As the arrangements are in respect of your Advisory Council, it may be that the answer should come from you, unless you would be content for us to do it as part of the follow up to the White Paper.

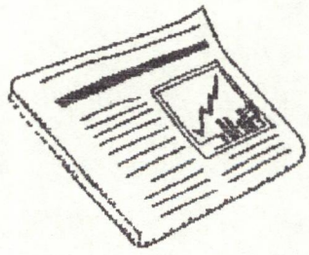
I am copying this letter to the recipients of yours.

Yours ever

DAVID DAVIS

CABINET OFFICE
93/817
11 AUG 1993
FILING INSTRUCTIONS
FILE No.

LORD CHANCELLOR'S DEPARTMENT
FACSIMILE HEADER



FROM:	Paul Kennedy POLICY & LEGAL SERVICES DIVISION TREVELYAN HOUSE GREAT PETER STREET LONDON SW1P 2BY
FAX NO:	071 210 8780 (ENQUIRIES 210 8599)
SUBJECT:	Debate on Public Records
NO. OF PAGES:	7 + HEADER
TO:	Pat Aden Cabinet Office Nicholas Cox PRO
FAX NO:	071·217·6010 / 081·878·8905
NOTES:	TS is the copy the Lord Chancellor has.

65

DRAFT SPEECH FOR THE LORD CHANCELLOR IN ANSWER TO LORD TEVIOT'S QUESTION:

To ask Her Majesty's Government what action they propose to take to implement the recommendations for the Public Record Office, contained in the Open Government White Paper.

1. LORD CHANCELLOR: My Lords, I am very pleased that the noble Lord, Lord Teviot, has afforded me this opportunity to explain the measures which are presently being taken to ensure that the Government's policy on public records, reflected in the recent White Paper on Open Government, is carried forward. That policy is that all public records should be released to the public unless there are truly compelling reasons why this should not be done. I believe the recommendations contained in the relevant Chapter of the White Paper, Chapter 9, illustrate the Government's commitment to this principle.

2. The Public Record Office, an executive agency for which I am responsible to Parliament, has a fundamental role in this context. The Public Record Office is responsible for advising individual Government departments on which records, out of the vast amount of records which the business of Government creates, should be preserved. It makes arrangements for the transfer of those records to its custody and is responsible for providing the public with access to these records once they have been so transferred.

3. The Public Record Office also, of course, has a crucially important role to play in the consideration of whether any of those records should properly be withheld from public scrutiny.

The recommendations contained in the White Paper aim to enhance that role to ensure that all those responsible for the process by which documents are sought to be so withheld discharge those duties in accordance with the Government's policy. The concept of the "harm test", under which the actual damage that would be caused by the release of an individual record must be established before it can be withheld, has thus been introduced, and is the touchstone for all those, including myself, who are involved in any decision to withhold that record.

4. No public record can be withheld from the public without the approval of the Lord Chancellor of the day. I have a very pronounced interest, therefore, in ensuring that the system works to deliver its goal of course releasing documents rather than withholding them. The recommendations contained in Chapter 9 affect every part of the process. I will, if I may, first mention the recommendations which affect the Public Record Office most directly, then mention a number of other initiatives which will carry forward the principles behind the White Paper.

5. There are two recommendations of the White Paper which explicitly involve the Public Record Office. These are the requirements that guidance should be drawn up for the benefit of reviewers in departments, first, to enable them to assess the element of substantial distress which might give rise to a proper application for closure, and, secondly, the core guidance [which is] to be drawn up and disseminated to all departments to facilitate the changes resulting from the White Paper.

6. Clearly, the sorts of elements which will prompt an application based on substantial distress will be different from department to department. It is therefore important that each department issues correct guidance geared to the needs of its own reviewers, and this must be agreed with the Public Record Office so that all those involved are aware of the basis on which such an application is made. The Public Record Office is presently in the process of drafting such guidance for each department and this exercise is expected to be completed shortly. This guidance will be reviewed over time, to take account of the fact that what is considered a valid cause of substantial distress may change over time.

7. The core guidance disseminating the implications of the White Paper for all departments has already been drafted and circulated among departments, and again it has been vitally important that the Public Record Office has approved the draft. The aim of this guidance is to inculcate into the minds of every person involved in the process by which applications for closure or retention are made the idea that unless the harm test I referred to earlier is satisfied the application should not proceed. On its way from the initial decision by a reviewing officer to the approval of the Lord Chancellor such an application must go through a number of stages and I think it is worth reminding this House of this process so that it is clear what I mean. The application is generated within a Government department. The department must bear in mind that it must satisfy the Public Record Office with its justification for making an application. The Public Record Office assesses whether the application is justified and, if so,

arrangements

forwards the application to me via my Advisory Council on Public Records.

8. The Public Record Office must bear in mind that the Advisory Council on Public Records, which is chaired by the Master of the Rolls, will in its turn be scrutinising the justification for the application and Council will not accept it if not satisfied. Once the Advisory Council has advised me that it accepts the application, I in turn scrutinise the justification for the application and only if I, too, am satisfied, will I then sign a formal Instrument allowing the records in question to be either retained within Government departments, or transferred to the Public Record Office where they are closed to the public for a specified period.

9. As I have said, it is in inculcating the need adequately to demonstrate the actual harm that would arise from release of the records, at every level of this process, that the greatest progress will be achieved in ensuring greater release of records. The need to justify always to the next appropriate level every application for closure or retention will ensure that any temptation to err ~~of~~ the side of what may appear to be safety, to the detriment of release of the records, will be avoided.

10. I have already mentioned my Advisory Council on Public Records and I would like to return to this subject. To date I have relied on the Council, which is wholly independent of Government, to advise me on applications from departments for the closure of records at the Public Record Office, but not on

applications for records to be retained within departments. From now on, as a result of the recommendations of the White Paper, the Advisory Council will advise me also on applications for the retention of records within departments. In addition, the Council will now have an important role in considering requests which have been made by historians, or indeed other members of the public, to departments for the release of documents where those requests have been refused by the department concerned.

11. My right honourable friend the Chancellor of the Duchy of Lancaster extended an offer in the summer of 1992 to historians to let him know of records which they would like to see released, an invitation which I may fairly say they have not been slow in responding to, and indeed I understand that a great deal of material has been released as a result of these requests. Where, however, a department believes there is good reason to continue to close or retain the records in question, it is now intended that the Advisory Council should be able to consider whether the records should continue to be closed or retained, and advise me accordingly. In the case of those records which have been closed in the past, of course, the Council will in effect be reviewing its earlier advice that a given record should be closed.

12. Remaining with the subject of the Advisory Council, I should like to take this opportunity to announce to this House an important change in the way in which the Council will now be allowed to operate. It has been a criticism often levelled at the Council in the past that they have not been allowed properly to assess the case for withholding records because it has been

unable to inspect the records themselves. Indeed, the argument that the Council should be allowed to see the records was considered carefully, and rejected, by the Government in its response in 1982 to the Wilson Report on Public Records during the noble Lord, Lord Teviot's, own tenure as a member of the Advisory Council.

13. The Government has carefully considered this matter and it has been decided, effective immediately, that where the Council is unable to satisfy itself any other way that an application for closure or retention is justified, the Chairman, or a member of the Council nominated by him, will now be permitted to inspect the records themselves.

14. It is unavoidable that there will always be a small number of matters the Government must properly keep from any public scrutiny. For this reason the Council will not be allowed physically to examine records which it is sought to withhold for reasons of security and intelligence. In such an instance it will remain open to the Council, as it is now, to request that the Cabinet Secretary should examine the records and advise me accordingly. For all other records, however, the power will be there. Extending the remit of the Advisory Council in this way conclusively answers criticisms that it is hampered in carrying out its duties and will lend added credibility, I hope, to decisions by the Government to withhold records only where this is absolutely necessary.

15. The White Paper proposals relating to public records represent a real, and carefully considered, commitment to more open government, the results of which are already becoming apparent. I am most grateful to my noble Lord, Lord Teviot, for affording this House the opportunity to discuss these issues.

FOI 64

HO93/897

From: Miss P M Andrews
Historical and Records Section
217 6050

CC Mr Whetnall
Mr Wilson
Mr Hicks

MR MAINWOOD

LORD TEVIOT: ORAL QUESTION ON OPEN GOVERNMENT WHITE PAPER

This is just to confirm that Lord Teviot's Oral PQ, due for answer on 25 October 1993 and referred to in your minute of 15 October to Mr Whetnall, reads as follows:-

> "To ask HMG what action they propose to take to implement the recommendations for the Public Record Office contained in the Open Government White Paper."

Because of the specific reference to the Public Record Office the answering speech and Q & A briefing is being prepared by the Lord Chancellor's Department in consultation with me and with the PRO. I have been invited to a briefing meeting on 21 October and to be in the Box on 25 October so if there is any further material you would like to feed in I shall be delighted to have it!

Pat Andrews

MISS P M ANDREWS

18 October 1993

POLI 63

From: D M Mainwood
MG Division

Date: 15 October 1993

MR WHETNALL

Copy: Miss Andrews
Mr Wilson
Mr Hicks

LORD TEVIOT: ORAL QUESTION ON OPEN GOVERNMENT WHITE PAPER

Lord Teviot has an oral question down for answer on 25 October:

> "To ask HMG what steps are being taken to implement the proposals in Chapter 9 of Cm 2290 on Open Government on access to public records?"

The Lord Chancellor will be replying for the Government. Miss Andrews is leading on preparing the answering speech and Q&A briefing.

The Lord Chancellor has made it clear that he will want to keep to the area of public records - and his responsibilities in particular - and will not allow it extend to other areas of the White Paper.

His office have, however, asked for a line to take on "Why not a full FOI Act?". I have sent the attached, plus a copy of the standard briefing on open government that we supply to No 10.

D M Mainwood
D M Mainwood

CABINET OFFICE
H93/1043....
18 OCT 1993
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FILE No. .....

Q. Why not a full Freedom of Information Act?

* Government agrees with the goal of freedom of information legislation - legitimate requests for information should be met - but not necessarily with the method.

* Believe proposals in the Open Government White Paper will meet this goal but in a less legalistic way.

* Government is proposing a legislative approach where there are questions of personal rights and interests to be defined.

  - a statutory right of access, by the subject, to his or her personal records

  - a statutory right to health and safety information; clearly of vital interest to individuals and community at large.

* Worth noting that these two areas account for great majority of usage under other countries' Freedom of Information legislation.

* But Government believes a legislative approach is less appropriate where the questions turn not so much on personal rights as on the balancing of two types of public interest; the public interest of disclosure against the public interest of confidentiality - for example, the public interest in the effective conduct of international negotiations, in effective defence and in the effective conduct of government business generally.

* These are, and should be, matters for Ministers and for Parliament, rather than for the Courts as such. The Government believes, as a matter of principle, that this direct link with Ministerial accountability to Parliament should be maintained.

* Hence the proposal of a Code of Practice which Ministers will be committed to - and against which their actions can be tested.

* Ministers will not have a wholly free hand in making decisions on disclosure of information. Central to our proposals is the role of the Ombudsman in policing the Code of Practice - again providing a direct link with Parliament. Believe this is the right mechanism. Would be a mistake to underestimate the authority of the Ombudsman in ensuring that Ministers are kept up to the mark in their adherence to the Code.

As circulated to DROs at Chester Conference 13.10.93.

FOI 62

ROLE OF THE LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

1. The White Paper on Open Government (CM 2290), published on 15 July 1993, extended the role of the Lord Chancellor's Advisory Council in two ways. First, the Council, which [at present] already advises the Lord Chancellor on applications for extended closure under section 5(1) of the Public Records Act 1958, will [in future] advise him also on applications for the retention of records within departments under section 3(4) of the Act. Secondly, the Council will consider requests for the release of records by historians and other members of the public ~~which~~ where their requests to depts have been rejected by the departments concerned. This was announced by the LC in the H of C on a

2. In addition, it has been agreed that the Advisory Council may, in certain circumstances, have access to the records themselves which at present they do not; this will shortly be announced by answer to a Parliamentary Question. The practical implications of these extensions of the Council's role are set out below.

Applications for retention

3. Applications for the retention of documents will in future be submitted to the Council, through the Public Record Office, in the same way as applications for extended closure have previously been submitted. The Council will not examine in detail any applications concerning security or intelligence applications; all other applications for retention will be considered in the same way as closure applications and the Lord Chancellor advised accordingly.

Requests from Historians

4. Where a historian or other member of the public has written to a department with a request that certain records should be released, and that request has been refused, the department concerned should when informing the applicant of the refusal, inform him or her that they may, if they wish, appeal against the refusal to the Lord Chancellor's Advisory Council (Secretary P. Kennedy, Lord Chancellor's Department, Trevelyan House, 30 Great Peter Street, London SW1P 2BY).

NOW See 974

The Secretary will put the appeals to the Council for consideration at its next meeting. Should the Council disagree with the department's decision to refuse release it will inform the Lord Chancellor accordingly. It will then be for the Lord Chancellor to decide what further action to take.

Access to records

6. The Council will be allowed, in certain circumstances, to see records which are the subject of an application for closure or retention (except where such an application concerns security or intelligence matters). Where the Council queries an application, the present practice whereby the Public Record Office request further explanation from departments will continue to be followed. Only if the Council remain unhappy with the justification for an application might they ask to see the records in question.

7. The Chairman of the Council, the Master of the Rolls, will inform the Lord Chancellor that the Council wish to examine the records and the identity of the member of the Council who it is proposed should do so. The Lord Chancellor will then make the appropriate arrangements. This will include consulting with the department concerned to see whether they have any objections to the individual in question examining the particular records.

8. It is envisaged that the relevant member of the Council should examine the records in the company of a representative from both the Public Record Office and the department concerned. He or she will then report back to the Council on whether the application is justified and the Council will advise the Lord Chancellor accordingly.

9. It is anticipated that these provisions will be used only rarely and it has been stated publicly, particularly in the White Paper, that the role of the Council, as its name implies, remains advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050
FAX 217 6010 (GIN)

FAX LEADER

The following facsimile message is for:

Name Paul Kennedy

Dept. LCD

Room

Building Trevellyan House

FAX NO. 210 8786

From

.....Pat Andrews.....Name

Amendments for consideration as agreed!

Pat-

11/10.

Number of pages to follow: 3

URGENT/~~ROUTINE~~ ACK: REQD: YES/NO

Date sent 11-10-93

Document reference/title

ADVCOUEXT

FOL 61

ROLE OF THE LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

1. The White Paper on Open Government **(Cm 2290) published on 15 July 1993,** extended the role of the **Lord Chancellor's** Advisory Council in two ways. First, the Council, **which at present advises the Lord Chancellor on applications for extended closure under Section 5(1) of the Public Records Act 1958,** will, **in future,** advise **him also** on applications for the retention of records within departments **under Section 3(4).** Secondly, **the Council** will consider requests **for the release of records by historians and other members of the public which have been rejected by departments.**

2. In addition, it has been agreed that the Advisory Council may, in certain circumstances, have access to the records themselves **which at present they do not;** this will shortly be announced by answer to a Parliamentary Question. The practical implications of these extensions of the Council's role are set out below.

Applications for retention

3. Applications for the retention of documents **will in future** be submitted to the Council, through the Public Record Office, in the same way as applications for extended closure have previously been submitted. The Council will **not** examine in detail any applications concerning security and intelligence; all other applications for retention will be considered in the same way as closure applications and **the Lord Chancellor advised accordingly.**

Requests from Historians

4. Where a historian **or other member of the public** has written to a department with a request that certain records should be released, and that request has been refused, the department concerned should, when informing the **applicant** of the refusal, **inform him or her that they may, if they wish, appeal against the refusal to the Lord Chancellor's Advisory Council (Secretary, P Kennedy, Lord Chancellor's Department, Trevellyan House, Great Peter Street, London SW1P 2BY).**

5. **The Secretary will put the appeals to the Council for consideration at its next meeting.** Should the Council disagree with the department's decision to refuse release it will inform the Lord Chancellor accordingly. It will then be for the Lord Chancellor to decide what further action to take.

Access to Records

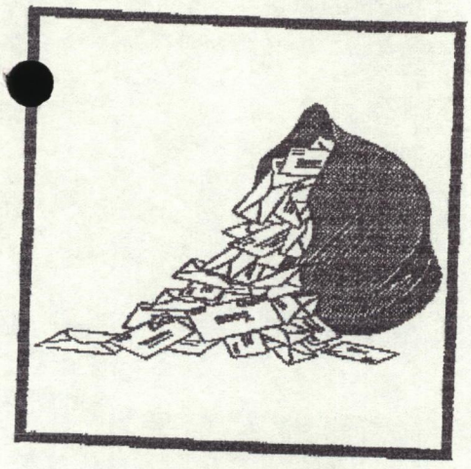
6. The Council will be allowed, in certain circumstances, to see records which are the subject of an application for closure or retention (except where such an aplication concerns security or intelligence matters). Where the Council queries an application, the present practice whereby the Public Record Office request further explanation from departments will continue to be followed. Only if the Council remains unhappy with the justification for an application might they ask to see the records in question.

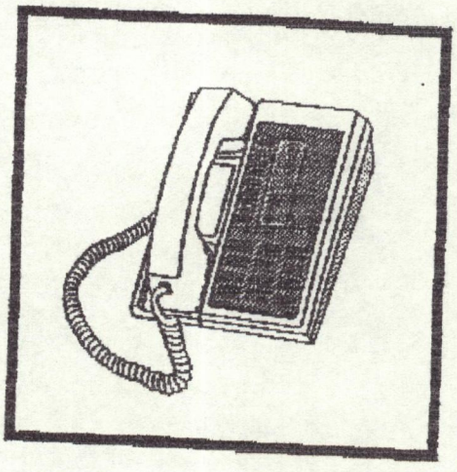
7. The Chairman of the Council, the Master of the Rolls, will inform the Lord Chancellor that the Council wishes to examine the records and the identity of the member of the Council it is proposed should do so. The Lord Chancellor will then make the appropriate arrangements. This will include consulting the department concerned to see whether they have any objection to the individual in question examining the particular records.

8. It is envisaged that the relevant members of the Council should examine the records in the company of a representative from the Public Record Office and **from** the department concerned. He or she will then report back to the Council on whether the application is justified and the Council will advise the Lord Chancellor accordingly.

9. It is anticipated that these provisions will be used only rarely and it has been stated publicly, particularly in the White Paper, that the role of the Council, as its name implies, remains advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

POA





THE LORD CHANCELLOR'S DEPARTMENT

FACSIMILE TRANSMISSION

FROM	Paul Kennedy (LCD).
FAX NO	
SUBJECT	Advisory Council
NO. OF PAGES	3 inc. this one.
TO	Pat Andrews
FAX NO	071. 217. 6050

– I hope this covers the points we agreed the other day – if not please give me a ring. Sorry about the delay. Paul.

ROLE OF THE LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

1. The White Paper on Open Government extended the role of the Advisory Council in two ways: first, the Council will now advise the Lord Chancellor whether he should accept applications for the retention of records within departments and, secondly, it will consider requests from historians, following Mr Waldegrave's offer last year for them to write to him with details of documents they would like to see released, where those requests have been rejected by departments.

2. In addition, it has been agreed that the Advisory Council may, in certain circumstances, have access to the records themselves (this will shortly be announced by answer to a Parliamentary Question). The practical implications of these extensions of the Council's role are set out below.

Applications for retention

3. Applications for the retention of documents ~~should~~ will now be submitted to the Council, through the Public Record Office, in ~~exact~~ the same way as applications for closure have previously been submitted. The Council will not examine in detail any applications concerning security or intelligence applications, but for all other applications for retention will consider the application in the same way as they presently consider closure applications, and advise the Lord Chancellor accordingly.

Requests from Historians

4. Where a historian has written to a department with a request that certain records should be released, and that request has been refused, the department concerned should when informing the historian in question of refusal also tell him of her that the department's decision will be considered by the Advisory Council. The Advisory Council will then consider the matter at its next meeting following the department's decision. Where the initial request concerns records which have been closed, the Council must have agreed to that closure sometime in the past and will in

effect, therefore, be reconsidering its original recommendation that the Lord Chancellor should agree to closure.

5. At the end of its deliberations, should the Council disagree with the department's decision it will inform the Lord Chancellor accordingly. It will then be for him to decide what further action to take.

Access to the records

6. The council will be allowed, in certain circumstances, to see records which are the subject of an application for closure or retention (except where such an application concerns security or intelligence matters). Where the Council queries an application, the present practice whereby the Public Record Office request further explanation from departments will continue to be followed. Only if the Council remain unhappy with the justification for an application might they ask to see the records in question to enable them to recommend to the Lord Chancellor acceptance or otherwise.

7. The Chairman of the Council, the Master of the Rolls, will inform the Lord Chancellor that the Council wish to examine the records and the identity of the member of the Council who it is proposed should do so. The Lord Chancellor will then make the appropriate arrangements. This will include consulting with the department concerned to see whether they have any objections to the individual in question examining the particular records.

8. It is envisaged that the relevant member of the Council should examine the records in the company of a representative from both the Public Record Office and the department concerned. He or she will then report back to the Council on whether the application is justified and the Council will advise the Lord Chancellor accordingly.

FOI 59

HO93/863 ✓

NOTE FOR RECORD

Paul Kennedy and I met on Thursday 30 September to discuss what needs to be done to implement the changes to the role of the Lord Chancellor's Advisory Council. There are three areas to be covered:-

a) Section 3(4) applications which the Advisory Council will now see in addition to Section 5(1) applications. The only action here seems to be to remind departments to word their applications clearly so that the Advisory Council does not have to query them.

b) rejected applications from historians and other members of the public. We agreed that when an application is rejected by a department the applicant should be told that the papers will be submitted to the Advisory Council and that, if the applicant wishes, supporting information may be sent to the Secretary (Mr Kennedy). If the Advisory Council disagrees with the department's rejection of the application it will so inform the department and, if the department persists with its rejection the Council will inform the Lord Chancellor. It would then be for the Lord Chancellor to decide whether to take the matter up with the relevant Minister. Mr Kennedy took the view that cases were rarely, if ever, likely to get to this point.

c) access to documents. It has been agreed that if the Council is unhappy with a departmental application to close or retain material or, indeed, with rejection of an application from a member of the public the Council may, after having received an explanation from the PRO and still being unhappy, ask the Lord Chancellor to make arrangements for a representative of the Council to see the actual document(s). The Master of the Rolls and the Lord Chancellor will decide who this should be and the department will be informed and invited to comment. When agreement is reached on who should see the documents arrangements will be made for them to be seen in the department with a departmental official and a representative of the PRO present. The Council representative will then report back to the Council and the Council will advise the Lord Chancellor accordingly.

Mr Kennedy agreed to draft something to go to DROs sounding them out on these procedures. We would hope to circulate a paper before the Chester Conference with a view to discussing it in the Open Government session on 13 October.

Mr Kennedy would also discuss with Dr Cox, PRO, the timetable for submitting Section 3(4) applications so that the Council meetings could be called at an appropriate time for them to see these as well as the usual 5(1) applications.

Mr Kennedy said finally that it had been agreed that the Lord Chancellor should answer an arranged PQ to announce the changes to the role of the Council including its future access to documents. A letter would be sent to Mr Waldegrave on this shortly.

PMA

MISS P M ANDREWS

1 October 1993

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217-6050
Fax 071 217 6010

FOLIO 58

HO93/811

P Kennedy Esq
Lord Chancellor's Department
Trevellyan House
Great Peter Street
London SW1P 2BY

13 September 1993

Dear Paul

LORD CHANCELLOR'S ADVISORY COUNCIL

Now that all the replies to the Lord Chancellor's letter of 28 July have been received and the Master of the Rolls informed of the changes to the role of the Advisory Council perhaps we should meet to discuss how best to proceed?

We need, I think, to establish the procedures to be adopted, not only in respect of the Council's role with regard to Section 3(4) applications and the occasions on which they ask to see records, but also their role with regard to historians' requests. Is it envisaged that when a historians' request is rejected he or she should be informed that they have a right of appeal to the Council, if so I think we should warn departments that this is what we have in mind. Perhaps we can do this at the DRO's Conference in Chester but we shall need to be clear what we do have in mind well in advance of that!

I am away from 15-23 September but perhaps I could get in touch on my return to arrange to discuss these matters with you?

Yours ever
Pat

MISS P M ANDREWS

POIA

FOI 57

TREVELYAN HOUSE
30 GREAT PETER STREET
LONDON SW1P 2BY

TEL. 071-210 8562

CABINET OFFICE
Kb 18704
- 1 SEP 1993
FILING INSTRUCTIONS
FILE No A

JOHN M TAYLOR M.P.
Parliamentary Secretary
LORD CHANCELLOR'S DEPARTMENT

31 August 1993

The Right Honourable
William Waldegrave MP
Chancellor of the Duchy of Lancaster
Minister of Public Service and Science
Cabinet Office
70 whitehall
London SW1A 2AS

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE
Action: Miss Andrews
By:
PS - Parliamentary Secretary
PS - Second Permanent Secretary
Special Advisor
FOR INFORMATION:
PS/Sir Robin Butler
PS (LD) Mr Whetnall

Dear William,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

James Mackay wrote to you on 28 July seeking your approval, and that of other Cabinet colleagues, to the proposal that the Advisory Council should be allowed to examine public records themselves in certain circumstances.

I am writing in the Lord Chancellor's absence to let you know that replies have been received from the Foreign and Commonwealth Office, the Department of Social Security, the Department of Trade and Industry, the Welsh Office, the Department of Health, the Office of Public Service and Science, the Department of National Heritage, the Department of Employment, the Northern Ireland Office, the Ministry of Defence and the Scottish Office.

All those who replied have supported the proposal. I am therefore writing today to the Chairman of the Advisory Council, the Master of the Rolls, to inform him of the outcome. I know that both he and the Council members will welcome this development, which should serve to reinforce the Government's commitment to greater openness in public records matters.

I am copying this letter to members of the Cabinet.

Yours ever,

John

CABINET OFFICE
H Internal...
- 3 SEP 1993
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FILE No

FOLIO 56

THE SCOTTISH OFFICE

CABINET OFFICE
Kb 18653
23 AUG 1993
FILING INSTRUCTIONS
FILE No. P

From the Minister for Home Affairs and Health
The Rt Hon the Lord Fraser of Carmyllie.QC

St. Andrew's House
Edinburgh EH1 3DG

Telephone 031-244 4017

The Rt Hon William Waldegrave MP
Chancellor of the Duchy of Lancaster
Minister of Public Service and Science
Cabinet Office
70 Whitehall
LONDON
SW1A 2AF

20 August 1993

Dear William,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

I have seen James Mackay's letter of 28 July seeking agreement to the arrangements he proposes to allow the Advisory Council on Public Records to comment on applications for the retention of records within Departments, and David Davis's response.

I have no comments to make on James's proposals, which relate only to England and Wales. I am writing, however, to inform colleagues that similar but separate arrangements will be set up in Scotland where the Secretary of State receives advice on public records from the Scottish Records Advisory Council set up under Section 7 of the Public Records (Scotland) Act 1937. As in England and Wales, the Scottish Records Advisory Council will also be given the opportunity to comment on cases where a request from a member of the public to see a closed or retained record is refused. If there is to be a written Parliamentary Question, as David Davis has suggested, it would be helpful if the Answer could refer to the Scottish position also. I would be grateful if the relevant officials would contact mine in due course. (Richard Scott, 031-244 2258).

Copies of this letter go to Members of the Cabinet.

X

CABINET OFFICE
H Internal
25 AUG 1993
FILING INSTRUCTIONS
FILE No.

Yours ever

Peter.

FRASER OF CARMYLLIE

CABINET OFFICE
PUBLIC SERVICE
Action P ANDREWS - TO NOTE X PLSE.
FOR INFORMATION:
MR WHETNALL, MR MAINWOOD
PS (mp)
CDL

MAB00217.083

PS/Minister of State

Copy to: PS/Secretary of State
PS/US of S
PS/HHD 16/7/8 17/8
Mr Essery
Mr Jamieson
Mr Rennie
Keeper of the Records

CABINET OFFICE
A 11770
20 AUG 1993
FILING INSTRUCTIONS
FILE No.

C. Miss Andrews

FOI 55

OPEN GOVERNMENT: LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

1. I refer to my minute of 10 August and the draft letter for the Minister to send in response to the Lord Chancellor's letter of 28 July indicating that similar but separate arrangements to those proposed for handling applications for the retention of public records in England and Wales would be set up in Scotland.

2. I have now seen the OPSS reply to the Lord Chancellor's letter (copy attached - top copy only) which suggests a PQ. It would be useful if any PQ could refer to Scotland also. I attach a revised draft for the Minister which makes this point.

RICHARD SCOTT
17 August 1993

HHD IA
Room 225
SAH
Ext 2258

CABINET OFFICE
H Internal..
20 AUG 1993
FILING INSTRUCTIONS
FILE No

THE SCOTTISH OFFICE

From the Minister for Home Affairs and Health
The Rt Hon the Lord Fraser of Carmyllie QC

St. Andrew's House
Edinburgh EH1 3DG

Telephone 031-244 4017

The Rt Hon William Waldegrave MP
Chancellor of the Duchy of Lancaster
Minister of Public Service and Science
Cabinet Office
70 Whitehall
LONDON
SW1A 2AF

August 1993

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

I have seen James Mackay's letter of 28 July seeking agreement to the arrangements he proposes to allow the Advisory Council on Public Records to comment on applications for the retention of records within Departments, and David Davis's response.

I have no comments to make on James's proposals, which relate only to England and Wales. I am writing, however, to inform colleagues that similar but separate arrangements will be set up in Scotland where the Secretary of State receives advice on public records from the Scottish Records Advisory Council set up under Section 7 of the Public Records (Scotland) Act 1937. As in England and Wales, the Scottish Records Advisory Council will also be given the opportunity to comment on cases where a request from a member of the public to see a closed or retained record is refused. If there is to be a written Parliamentary Question, as David Davis has suggested, it would be helpful if the Answer could refer to the Scottish position also. I would be grateful if the relevant officials would contact mine in due course. (Richard Scott, 031-244 2258).

Copies of this letter go to Members of the Cabinet.

FRASER OF CARMYLLIE

MAB00217.083

Recycled

FOI 54

MINISTRY OF DEFENCE
WHITEHALL LONDON SW1A 2HB
Telephone 071-21 82111/2/3

SECRETARY OF STATE

CABINET OFFICE
A 11716
18 AUG 1993
FILING INSTRUCTIONS
FILE No. .....

c - Miss Andrews

MO 28/3/2G

16 August 1993

Dear Lord

LORD CHANCELLOR's ADVISORY COUNCIL ON PUBLIC RECORDS

Thank you for sending me a copy of your letter of 28th July to William Waldegrave in which you seek approval to the proposal to allow the Advisory Council, in certain circumstances, to examine public records themselves.

I have no difficulty with the suggestion that the Advisory Council, on those occasions when it is not satisfied that an application for retention or closure is justified on the basis of the departmental explanation alone, should have access to the records. I am equally content that either the Chairman or the Council, or a member nominated by him, should have the right of access provided, as you suggest, that in the latter case departments will always be consulted beforehand. Presumably, in the first instance, you will not wish any right of access to extend automatically to classified documents which fall within the scope of Sir Robin Butler's role as your adviser on security and intelligence matters. Should the latter not exclude the need to consider access by a Council member to some classified information, we should need, of course, to arrange appropriate security clearance (assuming that the member has not received such clearance already in some other capacity).

CABINET OFFICE
H Internal
19 AUG 1993
FILING INSTRUCTIONS

Lord Mackay of Clashfern
Lord Chancellor

Recycled Paper

I am sending a copy of this letter to all Cabinet colleagues.

Malcolm Rifkind

KR.

CABINET OFFICE
Kb 1.8.565
16 AUG 1993
FILING INSTRUCTIONS
FILE No. P

Department of Employment
Caxton House, Tothill Street, London SW1H 9NF

Telephone 071-273-5804/5
Telex 915564 Fax 071-273 5821

Parliamentary Under Secretary of State
Ann Widdecombe MP

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE
P ANDREWS
Special Adviser
FOR INFORMATION:
PS/ SIR ROBIN BUTLER
PS (MP)
CDL

The Rt Hon the Lord Mackay of Clashfern
Lord Chancellor
House of Lords
London
SW1A 0PW

12 August 1993

Dear James

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Thank you for copying to the Secretary of State your letter to the Chancellor of the Duchy about extending the remit of your Advisory Council on Public Records. It has been passed to me for reply on the Secretary of State's behalf while he is on leave.

I fully support the changes you propose. The new arrangements are unlikely to have any significant implications for this Department.

I am copying this letter to Cabinet colleagues.

Yours ever

Ann

ANN WIDDECOMBE

CABINET OFFICE
H Internal
17 AUG 1993
FILING INSTRUCTIONS
FILE No

CABINET OFFICE
Kb 18525
10 AUG 1993
FILING INSTRUCTIONS
FILE No. 0

FOI 52

DEPARTMENT OF HEALTH

Richmond House
79 Whitehall
London SW1A 2NS
Telephone 071 210 3000
From the Secretary of State for Health

The Rt Hon The Lord Mackay of Clashfern
Lord Chancellor
Lord Chancellor's Department
House of Lords
LONDON
SW1A 0DP

10 August 1993

D James,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Thank you for sending me a copy of your letter of 28 July to the Chancellor of the Duchy of Lancaster about extending the access rights of the Advisory Council on Public Records. I am content with the proposals as described in your letter.

A copy of this letter is being sent to Cabinet colleagues.

VIRGINIA BOTTOMLEY

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC DEPARTMENTS AND SCIENCE
Action: Miss Andrews
PS - Parliament
PS - Second Parliament
Special Adviser
FOR INFORMATION:
PS/Sir Robin Butler
Mr Whetnall
PS(I)

CABINET OFFICE
H Internal
12 AUG 1993
FILING INSTRUCTIONS
FILE No.

PA

VOL 51

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 071-270 0411

Parliamentary Secretary,
Office of Public Service and Science

KB 01641 ✓

c. PS/CDL
PS/FERS
PS/Mr Nottra
Mr Whetnall
Miss Andrew
+PPS

The Right Honourable Lord Mackay of Clashfern FRSE
House of Lords
London SW1A 0PW

10TH August 1993

Dear James,

Thank you for your letter of 28 July to William Waldegrave about the extension of the role of your Advisory Council and the arrangements for allowing the Council, in certain circumstances, to examine the records themselves. In his absence, I am replying on William's behalf.

I have only one further comment to make on the arrangements set out in your letter. As I understand it, if the Council queries an item on the application schedules, an explanation is sought from the department concerned by the Public Record Office representative who reports back to the Council. It would be only if the Council remains unsatisfied with that explanation and wishes to see the records directly that it would, through the Chairman, seek access to relevant papers and bring into play the procedure set out in your penultimate paragraph. Subject to this small clarification I am happy with what is proposed in your letter.

In response to a question from Rupert Allason in the House on 15 July (Column 1125-26) William said that the Advisory Council would have access to papers when there is a dispute and that arrangements were in hand to see how that could best be done. Before the House resumes after the Summer Recess perhaps we could consider what more should be said publicly about the arrangements. I have in mind that a written Parliamentary Question may be appropriate. As the arrangements are in respect of your Advisory Council, it may be that the answer should come from you, unless you would be content for us to do it as part of the follow up to the White Paper.

I am copying this letter to the recipients of yours.

Yours ever

DAVID DAVIS

CABINET OFFICE
H 93/817 ✓
11 AUG 1993
FILING INSTRUCTIONS
FILE No.

CABINET OFFICE
Kb 18538
12 AUG 1993
FILING INSTRUCTIONS
FILE No. P

FOI
5D

Y SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 071-270 3000 (Switsfwrdd)
071-270 0549 (Llinell Union)
Fax: 071-270 0561

ODDI WRTH YSGRIFENNYDD
PREIFAT YSGRIFENNYDD
GWLADOL CYMRU

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE
Action: MRS ANDREWS
PS - Parliamentary Secretary
PS - Second Permanent Secretary
Special Adviser
FOR INFORMATION:
MR WHETNALL
PS (Kyd)

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 071-270 3000 (Switchboard)
071-270 0549 (Direct Line)
Fax: 071-270 0561

FROM THE PRIVATE SECRETARY
TO THE SECRETARY OF STATE
FOR WALES

9th August 1993

Dear Mark,

PA

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

My Secretary of State has seen the Lord Chancellor's letter of 28 July to the Chancellor of the Duchy of Lancaster. Mr Redwood is content with the proposals in that letter.

/ Copies of this go to Private Secretaries to members of the Cabinet and to Sir Robin Butler.

Yours sincerely,

Judith Simpson

MISS J C SIMPSON
PS/Secretary of State

Mark Ormerod Esq
PS/Lord Chancellor
Cabinet Office
70 Whitehall
LONDON SW1A 2AS

CABINET OFFICE
Internal....
16 AUG 1993
FILING INSTRUCTIONS
FILE No.

HR 8/1/3
HR 8/15

FOI 49M

HO93/680

SIR ROBIN BUTLER

OPEN GOVERNMENT WHITE PAPER: FOLLOW UP ON PUBLIC RECORDS

Chapter 9 of the White Paper on Open Government incorporated, inter alia, a recommendation from the Lord Chancellor's Working Party Report that "core guidance" should be disseminated to all departments. It is envisaged, as stated in paragraph 9.28, that this guidance should reflect the changes referred to in the White Paper relating to the closure and retention of records and related matters.

I thought that you may wish to know that this work is in hand. The attached is a draft of the guidance which takes account of comments from the first round of consultations with the Working Party. If you had time to glance at it I should be grateful for any comments you have on whether it is on the right lines - it is rather long!

I am proposing to circulate the draft more widely and to discuss it at a seminar with the Departmental Record Officers (DROs) during the last week of August. My intention then, subject to your views, is to have the guidance agreed so that shortly after your return from holiday I can provide a letter for you to send to Permanent Secretaries letting them know that the guidance has been made available to their DROs, who should be encouraged to implement it as soon as possible.

One matter which is not wholly within the DROs' area of responsibility is the recommendation contained in the White Paper that consideration should be given to blocks of records which, although not 30 years old, may be released (also paragraph 9.28). DROs would be responsible for the actual release to the Public Record Office but they may not be best placed to identify the material in the first place. I shall, therefore, if you agree, include this in the letter to Permanent Secretaries as something which they should consider.

When Ministers have replied to the Lord Chancellor's letter about the role of the Advisory Council I shall contact his department to arrange to discuss further the procedures to be adopted in future should the Council express the wish to see papers; we shall need also to discuss exactly how the Advisory Council is going to be involved with historians' requests which are rejected by departments. I shall, of course, let you know the outcome of these discussions.

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
3 August 1993

FOLIO 49

HO93/667 ✓

From: Miss P M Andrews
Historical and Records Section
217 6050

cc PS/Mr Davis
PS/Sir Robin Butler
PS/Mr Mottram
Mr Whetnall

CHANCELLOR OF THE DUCHY

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

The purpose of this minute is to submit a suggested reply to the Lord Chancellor's letter of 28 July 1993 in which he seeks your approval, and that of Cabinet colleagues to whom his letter is copied, to the proposal to allow his Advisory Council on Public Records, in certain circumstances, to examine records themselves. The suggested reply has been seen and approved by Sir Robin Butler.

The arrangements set out in the Lord Chancellor's letter are those agreed in your discussion with him on 15 July and in an exchange of letters between Sir Robin Butler and Sir Thomas Legg. They are acceptable, subject to clarification of one point. It seems, from the Lord Chancellor's letter, that the Council would go straight from querying a departmental application to close or retain records, to asking the Lord Chancellor to arrange for them to see the records. There is however a stage in between where the Council asks the Public Record Office representative to consult the department(s) concerned about any applications about which the Council has reservations. Only if the Council is dissatisfied with the explanation given to them following that consultation would they invoke the procedure of asking to see records. Clarification of this point is sought in the letter.

You suggested that the agreement on the Council's access to records should be made public by means of a written PQ. Given the Lord Chancellor's wish to seek the approval of Cabinet colleagues to his proposals on this matter it was not possible to do so before the House rose for the Summer Recess. As the changes are to the role and procedures of his Advisory Council it may be that the Lord Chancellor would wish to make any announcement himself. This point is also covered in the letter.

Pat Andrews

MISS P M ANDREWS
30 July 1993

time, the Select Committee on which the hon. Member serves considers them and the guidance given to civil servants, and comments on them.

Mr. John Gorst (Hendon, North): Apart from that information to which we have a statutory right and information that is classified for some reason of privacy or national security, what is the status of all the rest of the information that may be given voluntarily, or may have to be prised out of the civil service and Government by the ombudsman?

Furthermore, is it consistent with any sort of freedom of information that the great wisdom and experience of one Government should continue to be denied to their successor Government by the arrangements that exist, or will it be open to the ombudsman to say that some of the things that were done by the Government or their predecessor should be made available, if requested, by their successors?

Mr. Waldegrave: All the information laid down in the code belongs, by right, to those who want it. As I said in my original statement, however, the Government should not wait to be asked. We should improve the practice of initiating the publication of information on many subjects, as we are doing.

Advice given to Ministers by officials should be covered by privacy laws, and I think that all freedom of information regimes throughout the world cover it. I believe that the rule that Ministers of a successor Government cannot demand by right to see the previous Government's papers on those matters is correct. It would damage the opennes and frankness between officials and Ministers if officials thought that they would constantly have to explain to a successor Minister why they argued in a particular way.

Mr. Fisher: It happens in the United States.

Mr. Waldegrave: That seems to me to be an extremely bad analogy, because in the United States large parts of the bureaucracy change with the Government, at great cost to good government there.

Mr. Dennis Skinner (Bolsover): Why should anybody take a blind bit of notice of this Tory Government when they talk about open government? We have just witnessed the Prime Minister refusing to answer a question that the Leader of the Opposition put to him three times and he has refused to give an answer about summat that is going to happen next Thursday. If they believe in open government, why do they not tell us where they get the money from for the Tory party—from all the sleazebags rouind the world? Why does the Minister not tell us the names of the eight Tory Members of Parliament who are in Asil Nadir's pocket? That is open government.

Mr. Waldegrave: Perhaps one day the hon. Member will think up a really smart question to ask the Prime Minister, such as when he stopped beating his wife, and be cross when he refuses to answer.

Mr. Rupert Allason (Torbay): I congratulate my right hon. Friend on the publication of the code of practice. I also thank him for his generosity in agreeing to meet me and to publish the criteria for the retention of official documents within Departments and their release by the Public Record Office. Can he confirm that, under the new regime, the advisory committee that allows the Lord Chancellor to retain documents beyond the 30-year limit will now at least be allowed to read them?

Mr. Waldegrave: My hon. Friend is right. The advisory committee, which advises the Lord Chancellor and is chaired by the Master of the Rolls, will have access to papers when there is a dispute. Disputes between Departments about releasing documents are rare, but arrangements are in hand to see how that can best be done so that access to documents will be available.

Mr. Mark Fisher (Stoke-on-Trent, Central): I congratulate the Chancellor on the White Paper and many of the details in it. However, in responding for the Opposition, my hon. Friend the Member for Redcar (Ms Mowlam) was right to say that although the White Paper is well argued and researched and the code of practice furthers the principles of open government well, in practice it will not make much difference, because it contains no means of enforcement.

The Chancellor rests on the ombudsman, but the ombudsman is slower. He rests on Mr. Grace, but everybody knows—and his own research show—that Canada has the worst form of enforcement. Australia has a better system, with delivery of material in 30 days, as my Bill provides. The Chancellor knows that the ombudsman's present record is, as my hon. Friend said, 14 months and 18 days. What specific extra resources will he provide? Will he publish a target for response times for the ombudsman?

The White Paper's real weakness is that Ministes will continue to decide. That is the position now and nothing will change. Ministers will be in the dock for not releasing information and will be judge and jury in their own case. They have been hiding information consistently throughout last year.

We need a freedom of information Bill and we shall have one, as Australia, Canada, New Zealand, the United States and every other country does. The Government know that they have lost this argument this year. They are like King Canute. Having brought themselves to the brink of freedom of information with the White Paper, they have not the courage to jump in the water and accept that the game is up. We cannot be behind the rest of the world by not having freedom of information legislation any longer. I believe that the Conservative party will include freedom of information legislation in the next Tory party manifesto, but they will not have a chance to implement it because we shall be in government.

The British people want the right to know and they will get it. But the White Paper does not give people the right to know.

Mr. Waldegrave: Unfortunately for the hon. Member who is a real expert on the subject—unlike the hon. Member for Redcar—the Labour Government's record was outstandingly bad. When we measure progress under the two parties since the war, my party does much better. A famous example was quoted by a former Member of Parliament, Clement Freud, of the resounding minute written by the great Mr. Herbert Morrison saying that people had a right to know, which he classified "secret". So that made little progress.

The hon. Gentleman's mentioned timing. He said that the response time was 30 days and that is fair enough. We must have proper targets for Departments to respond.

FOI 48

HO93/666

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

The letter from the Lord Chancellor to the Chancellor of the Duchy dated 28 July 1993 asks the Chancellor, and Cabinet colleagues to whom the letter has been copied, to let him know by 13 August whether they approve of the arrangements for allowing the Advisory Council access to records.

A box is to go to the Chancellor tomorrow and then not until 13 August - too late to meet the Lord Chancellor's deadline. I have therefore been asked to advise on a reply in time for it to go into tomorrow's box.

The arrangements set out in the Lord Chancellor's letter are those agreed in his discussion with the Chancellor and with you on 15 July and in your exchange of letters with Sir Thomas Legg of 15 and 20 July. They are acceptable except that I think it could be more clearly stated that at the first stage of the Council querying a departmental application, the Public Record Office would consult the department(s) concerned; only if the Council were dissatisfied with a further explanation would they invoke the process of asking to see the records. This is the point on which I sought and received assurances from the Lord Chancellor's department. Subject only to clarification on this I think we could now agree to what is proposed.

As you know the Chancellor of the Duchy suggested that the agreement on access to records should be made public by means of a written PQ. Given that this could not be done until the Lord Chancellor had written to Ministers and advised the Master of the Rolls of the outcome, it was too late to make such an announcement before the House rose for the Summer Recess. The Chancellor of the Duchy told Mr Rupert Allason in the House on 15 July that the Advisory Council would have access to papers when there is a dispute and that arrangements were in hand to see how that can best be done. If a further announcement is to be made we shall, I think,, need to make clear that it excludes records relating to security and intelligence. Perhaps the reply to the Lord Chancellor could just touch on the subject of an announcement and we will give it further thought during the summer?

Would you be content please for me to submit a reply for the Chancellor of the Duchy to send, along the lines of the attached draft?

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
29 July 1993

DRAFT LETTER FOR THE CHANCELLOR OF THE DUCHY TO SEND TO:-

The Right Honourable Lord Mackay of Clashfern FRSE
House of Lords
London SW1A 0PW

Thank you for your letter of 28 July 1993 about the extension of the role of your Advisory Council and the arrangements for allowing the Council, in certain circumstances, to examine the records themselves.

I have only one further comment to make on the arrangements set out in your letter. As I understand it, if the Council queries an item on the application schedules, an explanation is sought from the department concerned by the Public Record Office representative who reports back to the Council. ~~I assume that~~, ~~under the proposed new arrangements~~, It would be only if the Council remains unsatisfied with that explanation and I/we like to see the records directly that it would, through the Chairman, seek access to relevant papers and bring into play the procedure set out in your penultimate paragraph. Subject to this small ~~refinement~~ clarification I am happy with what is proposed in your letter.

/In response to

In response to a question from Rupert Allason in the House on 15 July (Column 1125-26) I said that the Advisory Council would have access to papers when there is a dispute and that arrangements were in hand to see how that could best be done. Before the House resumes after the Summer Recess perhaps we could consider what more should be said publicly about the arrangements. I have in mind that a written Parliamentary Question may be appropriate. As the arrangements are in respect of your Advisory Council, it may be that the answer should come from you, unless you would be content for me to do it as part of the follow up to the White Paper.

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

LORD CHANCELLOR

CONFIDENTIAL

HOUSE OF LORDS,
LONDON SW1A 0PW

CABINET OFFICE
KB 18296
29 JUL 1993
FILING INSTRUCTIONS
FILE No. 0

FAX D15.9.93

28 July 1993

The Right Honourable
William Waldegrave MP
Chancellor of the Duchy of Lancaster,
Minister of Public Service and Science
Cabinet Office
70 Whitehall
London SW1A 2AS

DRAFTING OFFICER
PLEASE QUOTE REF.
IC30164
ON THE REPLY

Dear William,

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE
Action: Miss Andrews
By: 30/7
PS - Parliamentary Secretary
PS - Second Parliamentary Secretary
Special Adviser
FOR INFORMATION: Mr Whitehall
PS/Sir Robin Butler
PS(LD)

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

I am writing further to our recent discussions about extending the remit of my Advisory Council on Public Records to ask for your approval, and the approval of Cabinet colleagues, to the proposal to allow the Advisory Council, in certain circumstances, to examine the records themselves.

The recently published White Paper on Open Government makes it clear that the Advisory Council will now be able to advise me on applications for the retention of records within departments as well as applications for the closure of records transferred to the Public Record Office. In addition, the Council will advise me in future on requests for the release of records made by historians and other members of the public which are rejected by departments, whether these records were originally closed or retained. Although the White Paper does not explicitly mention the fact, the Council will not be allowed to examine in detail any applications for closure or retention which concern security or intelligence matters.

The one outstanding aspect of extending the Advisory Council's role is the question of allowing it access to the records themselves on those occasions, which are expected to be rare, when it is unable to satisfy itself that an application for retention or closure is justified on the basis of departmental explanations alone.

/...

We have discussed this matter, and agreed that where the Council wishes to investigate the grounds for such an application further it should invite me to arrange that the Chairman of the Council, or a member nominated by him, should have access to the relevant papers, and I will make the necessary arrangements.

The practical result of this is that the Chairman, the Master of the Rolls, would approach me in such cases to say whether he wished to view the records himself or to nominate a member of the Council to do so. Where a nominee was proposed I would consult interested parties within Government on the detail of the proposed arrangements and either inform the Chairman that the nominee was acceptable or suggest alternative courses.

I should be grateful if you, and Cabinet colleagues to whom this letter is copied, would let me know whether you approve of these arrangements by 13 August. I will then inform the Master of the Rolls accordingly.

Yours ever,

James.

FOLIO 47

CABINET OFFICE
Kb 18275
28 JUL 1993
FILING INSTRUCTIONS
FILE No.

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A093/2424

28 July 1993

1. cc. PS/PS
R. Mottram
R. Whitehall
Miss Adams

PMA's private office copy
D 3.8.93

My dear David,

2. CDL to see.
3. file Openness.

Lord Chancellor's Advisory Council on Public Records

We corresponded earlier this year about the proposal made by the Master of the Rolls as Chairman of the Lord Chancellor's Advisory Council that the Council should be involved in the consideration of requests from historians for the release of records, and the Lord Chancellor's consideration of the extension of the Council's remit to enable it to advise the Lord Chancellor on applications to retain material under Section 3(4) of the Public Records Act as well as on closures under Section 5(1).

These matters were resolved in time to be included in the White Paper on Open Government (Cm 2290) which, as you know, was published on 15 July 1993. I attach* a copy of the relevant paragraphs for ease of reference and you will see that the fact that the role of the Council will remain purely advisory was stressed, and that the Council will be involved with requests from members of the public as well as with those from historians made in response to the Chancellor of the Duchy's invitation to them to notify him of blocks of records they wished to see released.

One matter which was not resolved before publication of the White Paper was the question of access to documents. However, after further consultation with the Lord Chancellor, the Chancellor of the Duchy and the Master of the Rolls, it has been agreed that where, after having questioned an entry on a schedule and having received a further justification for closure or retention, the Advisory Council is still dissatisfied and wishes to investigate the records themselves it would invite the Lord Chancellor to arrange that the Chairman of the Council or a member nominated by him should have access to the relevant papers, and the Lord Chancellor would make the necessary arrangements.

/This applies

Sir David Gillmore KCMG
Foreign and Commonwealth Office

This applies only in respect of records which do not affect security and intelligence. My role as the Lord Chancellor's Adviser in respect of records relating to security and intelligence is unaltered.

The practical effect of this arrangement is that if the Council questions an item on the schedules an explanation is provided by the Public Record Office following consultation with the relevant Department. If the Council remains unsatisfied with that explanation it may, through the Chairman, seek access to relevant papers. The Chairman of the Council would approach the Lord Chancellor in the rare cases in which the Council wished to see papers to say whether he wished to view them himself or to nominate a member of the Council to do so. The Lord Chancellor would consult interested parties within Government on the detail of the proposed arrangements and either inform the Chairman that the nominee was acceptable to him or suggest alterative courses, of which the most obvious would be that the Master of the Rolls (who is of course a Privy Councillor) should look at the papers himself.

This may seem somewhat cumbersome but it will allow departments to comment on a proposal that a particular member of the Council should see their records and, if necessary, to make representations to the Lord Chancellor that the papers should be seen by the Chairman of the Council himself rather than another nominated member.

The Lord Chancellor will shortly be writing to Ministers to advise them of the revised procedures and to the Master of the Rolls to let him know the outcome of the deliberations on access to documents. When this has been done we shall make arrangements to announce the revised procedures and put them into practice.

I am copying this letter to Clive Whitmore, Chris France, Tom Legg, 'C', Stella Rimington, John Adye and to Andrew Cahn (PS/Chancellor of the Duchy of Lancaster).

Yours ever,

Robin

LORD CHANCELLOR'S ADVISORY COUNCIL

9.29 In addition to the review of criteria and retention of records, the Lord Chancellor has also given consideration to the role of the Advisory Council which is set up under Section 1(2) of the *Public Records Act 1958*, under the Chairmanship of the Master of the Rolls, to advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of its facilities.

9.30 At present the Advisory Council sees applications to the Lord Chancellor from departments for the closure of records under Section 5(1) of the *Public Records Act*. In future the Advisory Council will also see applications from departments for the retention of records under Section 3(4) of the Act. The Advisory Council will also advise the Lord Chancellor on requests for the release of records made by historians and other members of the public which departments reject. The role of the Advisory Council, as it name implies, will however remain advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

46

HO93/650

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

On receipt of your manuscript note of 24 July 1993 on my minute of 23 July I have spoken to the Secretary of the Advisory Council in the Lord Chancellor's Department. He confirms your understanding that access to actual records will be a last resort. The process of commenting on the schedules, which is referred to in the formula in Sir Thomas Legg's letter, goes through various stages including asking for an explanation which is provided by the Public Record Office representative following consultation with the department concerned. Only if the Council is not satisfied with the explanation given will they invoke the new procedure of asking, through the Chairman, for access to the relevant papers.

To cover this point in the draft letter you may wish to add, to the second page of the draft, last paragraph, after "The practical effect of this arrangement..." :-

> "is that if the Council questions an item on the schedules an explanation is provided by the Public Record Office following consultation with the relevant Department. If the Council remains unsatisfied with that explanation it may, through the Chairman, seek access to relevant papers. The Chairman of the Council would approach the Lord Chancellor in the rare cases....."

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
26 July 1993

FOI 45

Chancellor of the Duchy of Lancaster

Kb01588

FROM: MR I C DOUGAL
DATE: 26 JULY 1993

MISS ANDREWS

cc: PS/Mr Davis
PS/Sir Robin Butler
PS/Mr Mottram
Mr Whetnall
Mr Wilton

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

The Chancellor of Duchy of Lancaster has seen Sir Thomas Legg's letter of 20 July to Sir Robin Butler. The Chancellor has said that we should make public, by means of a written PQ, the fact that members of the Advisory Council should be able to examine public records.

Ian C. Dougal

IAN DOUGAL
Assistant Private Secretary

CABINET OFFICE
H Internal
27 JUL 1993
FILING INSTRUCTIONS
FILE No.

FOI 44

HO93/639

CABINET OFFICE
A 10692
23 JUL 1993
FILING INSTRUCTIONS
FILE No.

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

In his letter of 20 July 1993, Sir Thomas Legg confirms, as requested in your letter of 15 July, that the Lord Chancellor agrees with your account of the discussion which you and the Chancellor of the Duchy had with him on the morning of 15 July. He would, however, prefer the conclusion to be expressed in terms of his general agreement that members of the Council should be able to examine public records and Sir Thomas sets out a form of words for use, if you agree, in further correspondence.

The practical effect of the change proposed by the Lord Chancellor is to remove the clause in the formula set out in your letter which suggests that the Master of the Rolls would normally look at papers himself, and the revised formula does not spell out quite so clearly that the Lord Chancellor could veto delegation to a member of the Council. However Sir Thomas Legg says that in cases in which a nominee was proposed the Lord Chancellor would consult to ensure that the nominee is acceptable - this gives us the assurance we required - and it would be open to the Lord Chancellor under the terms of the revised formula to ask the Master of the Rolls to look at the papers himself if the case so required.

If you agree you may wish to write to Permanent Secretary colleagues along the lines of the attached draft to put them in the picture. The Lord Chancellor will be writing to Ministerial colleagues to advise them of the revised procedures and he will then write to the Master of the Rolls to advise him of the outcome. At that point a meeting will be arranged to discuss the procedures to be adopted to bring the Council's extended role into effect.

C. [illegible]

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
23 July 1993

Miss Andrews

I will accept the LC's formula (which is not what he agreed with the CDL and me) but before I write there is one further point I should like to clarify. The formula in Sir T. Legg's minute suggests that, whenever the Advisory Council questioned an item on the schedule, they would ask to see the papers. I had understood that the first step is that they would ask for a further explanation and would only ask to see the papers if they were not satisfied with that. Can you clear this up? RRB 24.7.

CABINET OFFICE
HOInternal
26 JUL 1993
FILING INSTRUCTIONS
FILE No

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:

Sir David Gillmore KCMG
Foreign and Commonwealth Office
London SW1A 2AH

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

We corresponded earlier this year about the proposal made by the Master of the Rolls as Chairman of the Lord Chancellor's Advisory Council that the Council should be involved in the consideration of requests from historians for the release of records, and the Lord Chancellor's consideration of the extension of the Council's remit to enable it to advise the Lord Chancellor on applications to retain material under Section 3(4) of the Public Records Act as well as on closures under Section 5(1).

These matters were resolved in time to be included in the White Paper on Open Government (Cm 2290) which, as you know, was published on 15 July 1993. I attach a copy of the relevant paragraphs for ease of reference and you will see that the fact that the role of the Council will remain purely advisory was stressed, and that the Council will be involved with requests from members of the public as well as with those from historians made in response to the Chancellor of the Duchy's invitation to them to notify him of blocks of records they wished to see released.

One matter which was not resolved before publication of the White Paper was the question of access to documents. However, after further consultation with the Lord Chancellor, the Chancellor of the Duchy and the Master of the Rolls, it has been agreed that where the Advisory Council wishes to investigate further an application for the closure or retention of public records it would, when commenting on the schedules, invite the Lord Chancellor to arrange that the Chairman of the Council or a member nominated by him should have access to the relevant papers, and the Lord Chancellor would make the necessary arrangements.

This applies only in respect of records which do not affect security and intelligence. My role as the Lord Chancellor's Adviser in respect of records relating to security and intelligence is unaltered.

The practical effect of this arrangement is that the Chairman of the Council would approach the Lord Chancellor in the rare cases in which the Council wished to see papers to say whether he wished to view them himself or to nominate a member of the Council to do so. Where a nominee was proposed, the Lord Chancellor would consult interested parties within Government on the detail of the proposed arrangements and either inform the Chairman that the nominee was acceptable to him or suggest alternative courses.

This may seem somewhat cumbersome but it will allow departments to comment on a proposal that a particular member of the Council should see their records and, if necessary, to make representations to the Lord Chancellor that the papers should be seen by a different member or by the Chairman of the Council himself.

The Lord Chancellor will shortly be writing to Ministers to advise them of the revised procedures and to the Master of the Rolls to let him know the outcome of the deliberations on access to documents. When this has been done we shall make arrangements to put the revised procedures into practice.

I am copying this letter to [PS/Chancellor of the Duchy], Clive Whitmore, Chris France, Tom Legg, 'C', Stella Rimington and John Adye.

LORD CHANCELLOR'S ADVISORY COUNCIL

9.29 In addition to the review of criteria and retention of records, the Lord Chancellor has also given consideration to the role of the Advisory Council which is set up under Section 1(2) of the *Public Records Act 1958*, under the Chairmanship of the Master of the Rolls, to advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of its facilities.

9.30 At present the Advisory Council sees applications to the Lord Chancellor from departments for the closure of records under Section 5(1) of the *Public Records Act*. In future the Advisory Council will also see applications from departments for the retention of records under Section 3(4) of the Act. The Advisory Council will also advise the Lord Chancellor on requests for the release of records made by historians and other members of the public which departments reject. The role of the Advisory Council, as it name implies, will however remain advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

FOL 43H

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050
FAX 217 6010 (GTN)

FAX LEADER

The following facsimile message is for:

Name PAUL KENNEDY

Dept. LORD CHANCELLOR'S DEPARTMENT

Room

Building TREVELLYAN HOUSE

FAX NO. 210 8780

From

.....PAT ANDREWS.....Name

Hansard Extract as requested.

Pat

Number of pages to follow: 1

URGENT/~~ROUTINE~~ ACK: REQD: YES/NO

Date sent 20-7-93

Document reference/title

time, the Select Committee on which the hon. Member serves considers them and the guidance given to civil servants, and comments on them.

Mr. John Gorst (Hendon, North): Apart from that information to which we have a statutory right and information that is classified for some reason of privacy or national security, what is the status of all the rest of the information that may be given voluntarily, or may have to be prised out of the civil service and Government by the ombudsman?

Furthermore, is it consistent with any sort of freedom of information that the great wisdom and experience of one Government should continue to be denied to their successor Government by the arrangements that exist, or will it be open to the ombudsman to say that some of the things that were done by the Government or their predecessor should be made available, if requested, by their successors?

Mr. Waldegrave: All the information laid down in the code belongs, by right, to those who want it. As I said in my original statement, however, the Government should not wait to be asked. We should improve the practice of initiating the publication of information on many subjects, as we are doing.

Advice given to Ministers by officials should be covered by privacy laws, and I think that all freedom of information regimes throughout the world cover it. I believe that the rule that Ministers of a successor Government cannot demand by right to see the previous Government's papers on those matters is correct. It would damage the opennes and frankness between officials and Ministers if officials thought that they would constantly have to explain to a successor Minister why they argued in a particular way.

Mr. Fisher: It happens in the United States.

Mr. Waldegrave: That seems to me to be an extremely bad analogy, because in the United States large parts of the bureaucracy change with the Government, at great cost to good government there.

Mr. Dennis Skinner (Bolsover): Why should anybody take a blind bit of notice of this Tory Government when they talk about open government? We have just witnessed the Prime Minister refusing to answer a question that the Leader of the Opposition put to him three times and he has refused to give an answer about summat that is going to happen next Thursday. If they believe in open government, why do they not tell us where they get the money from for the Tory party—from all the sleazebags rouind the world? Why does the Minister not tell us the names of the eight Tory Members of Parliament who are in Asil Nadir's pocket? That is open government.

Mr. Waldegrave: Perhaps one day the hon. Member will think up a really smart question to ask the Prime Minister, such as when he stopped beating his wife, and be cross when he refuses to answer.

Mr. Rupert Allason (Torbay): I congratulate my right hon. Friend on the publication of the code of practice. I also thank him for his generosity in agreeing to meet me and to publish the criteria for the retention of official documents within Departments and their release by the Public Record Office. Can he confirm that, under the new regime, the advisory committee that allows the Lord Chancellor to retain documents beyond the 30-year limit will now at least be allowed to read them?

Mr. Waldegrave: My hon. Friend is right. The advisory committee, which advises the Lord Chancellor and is chaired by the Master of the Rolls, will have access to papers when there is a dispute. Disputes between Departments about releasing documents are rare, but arrangements are in hand to see how that can best be done so that access to documents will be available.

Mr. Mark Fisher (Stoke-on-Trent, Central): I congratulate the Chancellor on the White Paper and many of the details in it. However, in responding for the Opposition, my hon. Friend the Member for Redcar (Ms Mowlam) was right to say that although the White Paper is well argued and researched and the code of practice furthers the principles of open government well, in practice it will not make much difference, because it contains no means of enforcement.

The Chancellor rests on the ombudsman, but the ombudsman is slower. He rests on Mr. Grace, but everybody knows—and his own research show—that Canada has the worst form of enforcement. Australia has a better system, with delivery of material in 30 days, as my Bill provides. The Chancellor knows that the ombudsman's present record is, as my hon. Friend said, 14 months and 18 days. What specific extra resources will he provide? Will he publish a target for response times for the ombudsman?

The White Paper's real weakness is that Ministes will continue to decide. That is the position now and nothing will change. Ministers will be in the dock for not releasing information and will be judge and jury in their own case. They have been hiding information consistently throughout last year.

We need a freedom of information Bill and we shall have one, as Australia, Canada, New Zealand, the United States and every other country does. The Government know that they have lost this argument this year. They are like King Canute. Having brought themselves to the brink of freedom of information with the White Paper, they have not the courage to jump in the water and accept that the game is up. We cannot be behind the rest of the world by not having freedom of information legislation any longer. I believe that the Conservative party will include freedom of information legislation in the next Tory party manifesto, but they will not have a chance to implement it because we shall be in government.

The British people want the right to know and they will get it. But the White Paper does not give people the right to know.

Mr. Waldegrave: Unfortunately for the hon. Member who is a real expert on the subject—unlike the hon. Member for Redcar—the Labour Government's record was outstandingly bad. When we measure progress under the two parties since the war, my party does much better. A famous example was quoted by a former Member of Parliament, Clement Freud, of the resounding minute written by the great Mr. Herbert Morrison saying that people had a right to know, which he classified "secret". So that made little progress.

The hon. Gentleman's mentioned timing. He said that the response time was 30 days and that is fair enough. We must have proper targets for Departments to respond.

Permanent Secretary and
Clerk of the Crown in Chancery
Sir Thomas Legg KCB QC

CABINET OFFICE
A 10508
21 JUL 1993
FILING INSTRUCTIONS
FILE No.

HOUSE OF LORDS,
LONDON SW1A 0PW

Tel. 071-219 3246
Fax. 071-219 4711

FOI 43

CONFIDENTIAL
Your ref: A093/2307

Sir Robin Butler GCB CVO
Cabinet Office
70 Whitehall
London SW1A 2AS

20 July 1993

C. Miss Andrews
Grateful for advice pls
Martin
21/7

Dear Robin,

Lord Chancellor's Advisory Council on Public Records

Thank you for your letter of 15 July, in which you asked me to confirm that the Lord Chancellor agreed with your understanding of the result of your recent discussion with the Lord Chancellor and the Chancellor of the Duchy of Lancaster.

The Lord Chancellor agrees with your account of the meeting, but would prefer the conclusion to be expressed rather more in terms of his general agreement that members of the Council should be able to examine public records. He therefore proposes the following form of words:

> Where the Advisory Council wishes to investigate further an application for the closure or retention of public records it would, when commenting on the schedules, invite the Lord Chancellor to arrange that the Chairman of the Council or a member nominated by him should have access to the relevant papers, and the Lord Chancellor would make the necessary arrangements.

The practical result of this is that the Chairman of the Council would approach the Lord Chancellor in such cases to say whether he wished to view the records himself or to nominate a member of the Council to do so. Where a nominee was proposed the Lord Chancellor would consult interested parties within Government on the detail of the proposed arrangements and either inform the Chairman that the nominee was acceptable to him or suggest alternative courses.

CABINET OFFICE
H /...
22 JUL 1993
FILING INSTRUCTIONS
FILE No

You may wish to incorporate the Lord Chancellor's preferred form of words into any letter to be circulated more widely, as you propose. The Lord Chancellor will wish to take the views of Ministerial colleagues on what is proposed, following which he will in due course write to the Master of the Rolls to let him know the outcome.

I am copying this letter to the Private Secretary to the Chancellor of the Duchy of Lancaster.

Yours ever.
Tom

VOL. 42

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

C. Mgr Andrew

Ref: A093/2307

CABINET OFFICE
H Int
16 JUL 1993
FILING INSTRUCTIONS
FILE No.

15 July 1993

Dear Tom,

Lord Chancellor's Advisory Council on Public Records

As suggested in your letter of 13 July, the Lord Chancellor had a word with the Chancellor of the Duchy of Lancaster and myself in the margins of Cabinet this morning about the question whether, in the event of a disagreement not affecting security and intelligence records, the Master of the Rolls should nominate a member of the Advisory Council to examine the records. We reached agreement that the Master of the Rolls, or (subject to the agreement of the Lord Chancellor) a member of the Advisory Council nominated by him, should have such access. What underlay this formula was an agreement that:-

i On the rare occasions when this is likely to happen, the Master of the Rolls would normally look at such papers himself;

ii On occasions when he wishes to nominate another member of the Advisory Council, he should first agree with the Lord Chancellor both the fact that he was going to do so and the identity of the member. The Lord Chancellor would in turn consult other interested parties within Government in such cases.

The effect of this agreement is that the Lord Chancellor would have a veto on the Master of the Rolls' delegating this function as well as on the identify of the member of the Advisory Council to whom he delegated it.

All this may be a sledgehammer to crack a nut, but it is worth being clear about the procedure from the outset. In practice I am sure that we will have no difficulty in making satisfactory arrangements, at least with the present Master of the Rolls.

/We also agreed

Sir Thomas Legg KCB QC
Lord Chancellor's Office

We also agreed that, if the Chancellor of the Duchy of Lancaster was asked today about whether the Lord Chancellor's Advisory Council would have access to actual records, he would reply that arrangements were being devised under which this could be done.

Before I copy this letter more widely, perhaps you would confirm that the Lord Chancellor agrees with my understanding of the conclusion we reached this morning.

I am copying this letter to the Private Secretaries to the Lord Chancellor and the Chancellor of the Duchy of Lancaster.

Yours ever,

Robin

CABINET OFFICE
H Internal
1 JUL 93
FILING INSTRUCTIONS
FILE No.

VOL 41

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 071-270 0400

Chancellor of the Duchy of Lancaster
Minister of Public Service and Science

bcc PS/Sir Robin Butler
Miss Andrews
Mr Whetnall

Kb01509

The Rt Hon Sir Thomas Bingham
Master of the Rolls
Royal Courts of Justice
Strand
LONDON
WC2A 2LL

14 July 1993

Dear Sir Thomas,

You wrote to me as long ago as 17 December last in your capacity as Chairman of the Lord Chancellor's Advisory Council on Public Records about the role of the Council in relation to the requests from historians made as a result of my invitation to them to let me know of blocks of records they wish to have released. I was, as I said in my acknowledgement of your letter, most grateful for the Council's support on the question of making more public records available for public inspection.

I am sorry to have taken so long to reply formally to your letter but I know that James Mackay and Robin Butler have spoken to you on several occasions whilst we have been considering the Council's request. I am very pleased to say that after consultation with the Lord Chancellor and other Ministers most closely concerned it has been agreed that the Advisory Council should advise on requests from historians on those occasions when departments are unable to release the records requested and, indeed, on similar requests to departments from other members of the public.

The Lord Chancellor has also agreed that the Advisory Council should advise on applications from departments to retain material under Section 3(4) of the Public Records Act as well as application to close material for longer than 30 years under Section 5(1). These extensions to the role of the Advisory Council will be announced in the White Paper on Open Government to be published on 15 July. I attach a copy of the draft paragraphs.

The Lord Chancellor will be in touch with you as soon as possible on the outstanding issue of access to actual documents about which you have written to him separately.

WILLIAM WALDEGRAVE

pp (Approved by the Chancellor of the Duchy and signed in his absence)

9.29 In addition to the review of criteria and retention of records, the Lord Chancellor has also given consideration to the role of the Advisory Council which is set up under Section 1(2) of the *Public Records Act 1958*, under the Chairmanship of the Master of the Rolls,to advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of its facilities.

9.30 At present the Advisory Council sees applications to the Lord Chancellor from departments for the closure of records under Section 5(1) of the Public Records Act. In future the Advisory Council will also see applications from departments for the retention of records under Section 3(4) of the Act. The Advisory Council will also advise the Lord Chancellor on requests for the release of records made by Historians and other members of the public which departments reject. The role of the Advisory Council, as it name implies, will however remain advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

FOL 40

Ref: A093/2299

C-Miss Andrews

MR CAHN

Lord Chancellor's Advisory Council

The Master of the Rolls raised with the Chancellor of the Duchy, in a letter dated 17 December, the question of the role of the Advisory Council in respect of requests from historians. This got caught up with the Lord Chancellor's own review of the role of the Council and we now need to let Sir Thomas Bingham know the outcome and to inform him of what is to appear in the White Paper.

2. The Lord Chancellor's Department are content for the Chancellor to include in his letter to Sir Thomas Bingham both aspects of the extension of the role of the Council which are referred to in the White Paper, leaving the Lord Chancellor to confirm the decision on access when this has finally been agreed.

3. I attach a draft letter for the Chancellor to send to Sir Thomas Bingham. Ideally this should be sent before publication of the White Paper tomorrow. If this is not possible the reference to the White Paper will need to be slightly amended.

Melanie Leech

MELANIE LEECH

14 July 1993

CABINET OFFICE
H Internal
15 JUL 1993
FILING INSTR
FILE No.

DRAFT LETTER FOR THE CHANCELLOR OF THE DUCHY TO SEND TO:-

The Rt Hon Sir Thomas Bingham
Master of the Rolls
Royal Courts of Justice
Strand
London WC2A 2LL

You wrote to me as long ago as 17 December last in your capacity as Chairman of the Lord Chancellor's Advisory Council on Public Records about the role of the Council in relation to the requests from historians made as a result of my invitation to them to let me know of blocks of records they wish to have released. I was, as I said in my acknowledgement of your letter, most grateful for the Council's support on the question of making more public records available for public inspection.

I am sorry to have taken so long to reply formally to your letter but I know that James Mackay and Robin Butler have spoken to you on several occasions whilst we have been considering the Council's request. I am very pleased to say that after consultation with the Lord Chancellor and other Ministers most closely concerned it has been agreed that the Advisory Council should advise on requests from historians on those occasions when departments are unable to release the records requested and, indeed, on similar requests to departments from other members of the public.

The Lord Chancellor has also agreed that the Advisory Council should advise on applications from departments to retain material under Section 3(4) of the Public Records Act as well as application to close material for longer than 30 years under Section 5(1). These extensions to the role of the Advisory Council will be announced in the White Paper on Open Government to be published on 15 July [today]. I attach a copy of the ~~relevant~~ draft paragraphs.

The Lord Chancellor will be in touch with you as soon as possible on the outstanding issue of access to actual documents about which you have written to him separately.

9.29 In addition to the review of criteria and retention of records, the Lord Chancellor has also given consideration to the role of the Advisory Council which is set up under Section 1(2) of the *Public Records Act 1958*, under the Chairmanship of the Master of the Rolls,to advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of its facilities.

9.30 At present the Advisory Council sees applications to the Lord Chancellor from departments for the closure of records under Section 5(1) of the Public Records Act. In future the Advisory Council will also see applications from departments for the retention of records under Section 3(4) of the Act. The Advisory Council will also advise the Lord Chancellor on requests for the release of records made by Historians and other members of the public which departments reject. The role of the Advisory Council, as it name implies, will however remain advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

CABINET OFFICE
Internal
19 JUL 1993
FILING INSTRUCTIONS
FILE No

CABINET OFFICE
Kb 17928
16 JUL 1993
FILING INSTRUCTIONS
FILE No

39

HOUSE OF LORDS,
LONDON SW1A 0PW

Tel. 071-219 3246
Fax. 071-219 4711

Permanent Secretary and
Clerk of the Crown in Chancery
Sir Thomas Legg KCB QC

CONFIDENTIAL

13 July 1993

Your ref: AO93/2189

Sir Robin Butler GCB CVO
Cabinet Office
70 Whitehall
London SW1A 2AS

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE
Action
By
PS - Parliamentary Secretary
PS - Second Permanent Secretary
Special Advisor
FOR INFORMATION:
Miss Adams, Whitehall
PS(7)

1)

2) CDL

Dear Robin.

Lord Chancellor's Advisory Council on Public Records

Thank you for your letter of 5 July, following which the Lord Chancellor has reconsidered whether a nominated member of his Advisory Council should have access to public records which are the subject of an application for closure or retention.

The Lord Chancellor appreciates your reservation about extending the remit of the Council in this way. He would be very willing to discuss it with you personally if you would like to do so. At present, however, he remains of the view that a member of the Council other than the Master of the Rolls should, in appropriate circumstances, be able to examine records in order that the Council may satisfy itself that an application for closure or retention is justified. As you say, the possibility will always exist that a person whose judgement or discretion are suspect may gain access to the records. The Lord Chancellor therefore agrees that on each occasion when it arises, the member of the Council who will examine the records should be nominated by the Master of the Rolls and approved by the Lord Chancellor. When considering such a nomination

/ ...

the Lord Chancellor will of course seek advice, if necessary, from other interested parties within Government.

As it has now been agreed that the remit of the Council should be extended to encompass applications from departments for retention as well as closure, and that the Council should review requests from historians which have been refused by departments, for records to be released, the way is clear for the Chancellor of the Duchy of Lancaster to reply on these aspects to the Master of the Rolls' original letter. Once the remaining question (as to which members of the Council should be able to examine the records) has been resolved, the Lord Chancellor will write to the Master of the Rolls to inform him of the outcome. All outstanding points will then have been dealt with.

I am copying this letter to David Gillmore, Clive Whitmore, Chris France, 'C', John Adye and Stella Rimington, and to the Private Secretary to the Chancellor of the Duchy of Lancaster.

Yours ever.
Tom

FOL 38

HO93/574

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL

I understand that Sir Thomas Legg is about to reply to your letter of 5 July saying that the Lord Chancellor is still of the view that a member or members of the Advisory Council should see actual documents and asking whether you would like to discuss the matter with him.

In his letter Sir Thomas is likely to raise the question of whether the Lord Chancellor should advise Ministers, including the Prime Minister, of his decision before any announcement is made; as you will recall in the context of the security and intelligence 'blanket' the Lord Chancellor was concerned to establish firmly that Ministers are responsible for their department's records. Such a letter would have to go round very quickly if we are to be able to say anything about access to documents in the context of the White Paper.

The Master of the Rolls raised with the Chancellor of the Duchy, in a letter dated 17 December, the question of the role of the Advisory Council in respect of requests from historians. This got caught up with the Lord Chancellor's own review of the role of the Council and we now need to let Sir Thomas Bingham know the outcome, and to inform him of what is to appear in the White Paper (paragraphs 9.29 and 9.30).

The Lord Chancellor's department would be content for Mr Waldegrave to include, in his letter to Sir Thomas Bingham, both aspects of the extension of the role of the Council which are referred to in the White Paper, leaving the Lord Chancellor to confirm the decision on access when this had finally been agreed.

If you agree, would you be content for me to submit the attached draft to the Chancellor of the Duchy? I had thought that we might send a Final Confidential Revise to the Master of the Rolls with the letter but I understand that they will not be available until Wednesday which is rather late for this purpose.

In an earlier submission on 24 May I suggested that a meeting might be arranged between some members of the Advisory Council and representatives perhaps of the Cabinet Office, Public Record Office and Lord Chancellor's Department to discuss the procedure to be adopted for putting the extension of the role of the Council into practice. I went on to say that this might turn into a forum for discussing the concerns of historians about records management generally.

If the Lord Chancellor's Department and the Public Record Office are content would you be happy for such a meeting to be arranged? I attach also an extract from the briefing which I am preparing for the Chancellor of the Duchy which at present covers both the consideration being given to access and the Advisory Council becoming the focal point for historians' concerns. This has gone to the Lord Chancellor's Department for comment. I should be glad to know if you have any views on it.

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
12 July 1993

DRAFT LETTER FOR THE CHANCELLOR OF THE DUCHY TO SEND TO:-

The Rt Hon Sir Thomas Bingham
Master of the Rolls
Royal Courts of Justice
Strand
London WC2A 2LL

You wrote to me as long ago as 17 December last in your capacity as Chairman of the Lord Chancellor's Advisory Council on Public Records about the role of the Council in relation to the requests from historians made as a result of my invitation to them to let me know of blocks of records they wish to have released. I was, as I said in my acknowledgement of your letter, most grateful for the Council's support on the question of making more public records available for public inspection.

I am sorry to have taken so long to reply formally to your letter but I know that Robin Butler has spoken to you on several occasions whilst we have been considering the Council's request. I am very pleased to say that after consultation with the Lord Chancellor and other Ministers most closely concerned it has been agreed that the Advisory Council should advise on requests from historians on those occasions when departments are unable to release the records requested and, indeed, on similar requests to departments from other members of the public.

The Lord Chancellor has also agreed that the Advisory Council should advise on applications from departments to retain material under Section 3(4) of the Public Records Act as well as application to close material for longer than 30 years under Section 5(1). These extensions to the role of the Advisory Council will be announced in the White Paper on Open Government to be published on 15 July. I attach a copy of the relevant paragraphs.

The Lord Chancellor will be in touch with you as soon as possible on the outstanding issue of access to actual documents about which you have written to him separately.

9.29 In addition to the review of criteria and retention of records, the Lord Chancellor has also given consideration to the role of the Advisory Council which is set up under Section 1(2) of the *Public Records Act 1958*, under the Chairmanship of the Master of the Rolls,to advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of its facilities.

9.30 At present the Advisory Council sees applications to the Lord Chancellor from departments for the closure of records under Section 5(1) of the Public Records Act. In future the Advisory Council will also see applications from departments for the retention of records under Section 3(4) of the Act. The Advisory Council will also advise the Lord Chancellor on requests for the release of records made by Historians and other members of the public which departments reject. The role of the Advisory Council, as it name implies, will however remain advisory; the final responsibility for the release or otherwise of departmental records rests with Ministers.

LORD CHANCELLOR'S ADVISORY COUNCIL

the role of the Lord Chancellor's Advisory Council is to be extended to allow it to cover departmental applications to retain material under Section 3(4) of the Public Records Act as well as, as at present, applications to close material for longer than 30 years under Section 5(1) of the Act.

The Advisory Council will also cover requests from historians and other members of the public which departments have rejected

Consideration is being given to documents being made available to the Council (at present they advise on the basis of information provided by departments, the Public Record Office and the Lord Chancellor's department - they do not see actual documents).

[the Advisory Council will thus become the focal point for bring the concerns of historians and researchers to the Lord Chancellor's attention.]

FOI 37

HO93/566 ✓

SIR ROBIN BUTLER

cc Mr Whetnall

LORD CHANCELLOR'S ADVISORY COUNCIL: AMENDMENTS TO WHITE PAPER

The Lord Chancellor's Department has notified me of two drafting amendments to the White Paper suggested by the Lord Chancellor's Advisory Council which the Lord Chancellor wishes to accept.

They are first to amend the Guiding Principle which, at the moment, reads as follows:-

> "All records not retained in departments should be released after 30 years unless it is possible to establish the actual damage that would be caused by release, under the 3 criteria set out below."

to:-

> "All records not retained in departments should be released after 30 years unless a) it is possible to establish the actual damage that would be caused by release, and b) that the damage falls within the 3 criteria set out below."

This makes clear that it is a two stage test but otherwise does not affect the substance.

The second suggested amendment is that "substantial distress" should replace "distress" in the third criterion so that it reads:-

> "Documents containing information about individuals the disclosure of which would cause either:
>
> substantial distress, or
>
> endangerment from a third party, to persons affected by disclosure or their descendants."

This applies a stiffer test than the original and is therefore a change in the right direction.

As these were the only amendments suggested by the Advisory Council - they were otherwise very pleased with the recommendations and the Guidelines - the Lord Chancellor is anxious that their contribution should be reflected in the White Paper. I have therefore, subject to your agreement, made the necessary amendments to the Guidelines, also in the relevant paragraphs of the White Paper.

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
9 July 1993

FOL 36

LORD CHANCELLOR'S DEPARTMENT
Trevelyan House 30 Great Peter Street
London SW1P 2BY

Telephone Direct Line 071-210 8810
Enquiries 071-210 8500
Fax 071-210 8549

Miss Pat Andrews
Cabinet Office
Historical Sectiom
Hepburn House
Marsham Street
London SW1

Your reference

Our reference

Date 9 July 1993

Dear Pat

WHITE PAPER ON OPENNESS: PUBLIC RECORDS

As you know, the Lord Chancellor has been keen to involve his Advisory Council on Public Records as far as possible in the deliberations about the closure and retention of public records. Accordingly, at a recent meeting the Council were given a copy of the recommendations of our working party relating to the criteria themselves, together with a copy of the Guidance which will be published in the imminent White Paper.

I think that the Council was genuinely pleased to be able to offer a view about the recommendations. It warmly welcomed the recommendations and offered up only two drafting points, neither of which affect the substance of the recommendations.

The first point is that "substantial" should be inserted before "distress" in criterion three, the personal sensitivity criterion. It is intended, of course, that distress should always be substantial before it is a ground for applying for closure in any event; it is unlikely that the actual damage test will be met by insubstantial distress.

CABINET OFFICE
H 93/662
- 9 JUL 1993
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The second point is simply a slight redrafting of the Guiding Principle to make plain the message it contains. The Council suggest that the Guiding Principle should now read:

> "All records not retained in departments should be released after 30 years unless (a) it is possible to establish the actual damage which would be caused by release and (b) the damage falls within the 3 criteria set out below.

As neither of these suggestions affects the substance of the recommendations, and the Lord Chancellor was keen to ask the Council to contribute to this exercise, he will want to take them on board in the White Paper. The Council will also be encouraged that they have been able to make a contribution to this exercise. My purpose in writing is to let you know what is proposed and to ensure that you have no objections. My own view is that these alterations enhance the Government's line about greater openness.

If you wish to discuss this further please do let me know.

Yours Sincerely



Paul Kennedy

FOL 35

CFGRB

Miss Andrews

CABINET OFFICE
A 9634
-7 JUL 1993
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I doubt whether this announcement adds much to the White Paper. I would hold it for briefing. The way to use it might be: "In cases where the Advisory Board are not satisfied about the case for withholding documents, the Chairman of the Advisory Board will for the first time be able to inspect directly all but the most sensitive categories of papers".

HERD 7.7.

HO93/561

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL

The Lord Chancellor's department are hoping to respond this week to your letter of 5 July to Sir Thomas Legg. If they do we should be able to get a reference into the White Paper to access to documents.

Would you be content with something along the following lines, to be inserted into the existing paragraph 9.29:-

> "Under arrangements agreed with the Lord Chancellor, [the Master of the Rolls as Chairman of the Council/the Council] will in future have access to relevant documents, other than those relating to security and intelligence, in cases where they disagree with departmental views on closure or retention. The Secretary of the Cabinet will continue to advise the Lord Chancellor, as necessary, on records relating to security and intelligence."

This formula does not go into detail about how the decision is to be made on who should have access, should the Lord Chancellor decide that it should be a Council member rather than the Master of the Rolls himself, and thus may avoid the accusation of Government interference. Although the reference to security and intelligence records detracts somewhat from the announcement on access it would, I think, be wrong to give the impression that the Master of the Rolls and/or the Council will see such material; such an impression would only have to be corrected at a later stage.

If you are content I will clear the above wording with the Lord Chancellor's Department.

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
7 July 1993

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H Internal...
-8 JUL 1993
FILING INSTRUCTIONS
FILE No.

FOL 34

C. Miss Andrews

CABINET OFFICE
70 Whitehall, London SW1A 2AS
***Telephone* 071-270 0101 *Facsimile* 071-270 0208**

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A093/2189

5 July 1993

Dear Tom,

Thank you for your letter of 30 June 1993.

I am glad that the proposals put forward in my letter of 26 May were acceptable with the exception only of the question of who should have access to actual records on behalf of the Council on the rare occasions when that might become necessary.

You asked me to consider the question of access again in the light of the Lord Chancellor's preference for the proposal put to him by the Master of the Rolls that a selected member of the Council should see actual records in the company of a representative of the Public Record Office and of the Department concerned. I have discussed the issue briefly with the Chancellor of the Duchy of Lancaster.

The Master of the Rolls, who is always a Privy Councillor, seems to me to be uniquely suited to be the person to see actual records in the circumstances envisaged above. The alternative proposal could lead to a situation in which the person nominated by the Council was someone with whose judgement or discretion the Government was not entirely happy. One way of getting round this point would be to say that the member of the Advisory Council should be nominated by the Chairman with the agreement of the Lord Chancellor. But I could imagine future difficulties about this (perhaps with a different Master of the Rolls) and accusations that the Government was seeking to interfere in its own interests. This would be avoided if it was agreed in advance that the Master of the Rolls, in whom both the Government and the Advisory Council would have confidence, should always be the person who would, if necessary, have access to the documents on the Council's behalf.

Sir Thomas Legg KCB QC
House of Lords
London SW1A 0PW

CABINET OFFICE
Internal
- 6 JUL 1993
FILING INSTRUCTIONS
FILE No.

I have to say, therefore, that having reconsidered this particular point as you asked, my preference would still be that documents should be seen only by the Master of the Rolls. If the Lord Chancellor remains of the view that a member of the Council should see documents I would suggest that this should be some-one nominated by the Master of the Rolls with the agreement of the Lord Chancellor. But for the reasons I have given above I think that this would be a much less satisfactory arrangement.

I hope therefore that the Lord Chancellor might be willing to try to persuade the Master of the Rolls of this. It would be good if this could be settled before the White Paper on Open Government is published, although it would not be unreasonable if we still had some details of this type to sort out.

I am copying this letter to David Gillmore, Clive Whitmore, Chris France, 'C', John Adye and Stella Rimington, and to the Private Secretary to the Chancellor of the Duchy of Lancaster.

Yours ever,

Robin

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FOI 33

f16

HO93/544 ✓

SIR ROBIN BUTLER

cc PS/Chancellor of the Duchy

LORD CHANCELLOR' ADVISORY COUNCIL

As requested, I attach a draft letter to Sir Thomas Legg, Lord Chancellor's Department in response to his of 30 June 1993 which I hope is self-explanatory.

In conversation about the White Paper on Openness this morning you said that the square brackets around the relevant paragraphs in Chapter IX: Public Records could now be removed. When we have the Lord Chancellor's final decision on access to records, which I shall press for as a matter of urgency, we may wish to consider whether anything should be added to what is at the moment paragraph 9.29 or whether reference should be made to the new access arrangements at the time of publication.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
2 July 1993

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DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

Sir Thomas Legg KCB QC
House of Lords
London SW1A 0PW

Thank you for your letter of 30 June 1993.

I am glad that the proposals put forward in my letter of 26 May were acceptable with the exception only of the question of access by Council members to actual records.

You asked me to consider the question of access again in the light of the Lord Chancellor's preference for the proposal put to him by the Master of the Rolls that nominated members of the Council should see actual records on the occasions when the Council is not satisfied with departments' explanation of the need for records to be withheld.

The Master of the Rolls, who is I understand always a Privy Councillor, seems to me to be uniquely suited to be the person to see actual records in the circumstances envisaged above. The alternative proposal could lead to a situation in which the person nominated by the Council was some-one in whose judgement in this respect we were not entirely happy. Although I quite take the point made by the Master of the Rolls that the Council's role is purely advisory we do, I believe, want to avoid, if at

all possible, getting into a situation in which there was a danger of a Council member making a recommendation, having seen the documents, and having that recommendation rejected. This would simply serve to damage the good effect created by having agreed to the extension of the role of the Council in the first place.

I have to say, therefore, that having re-considered this particular point as you asked, my preference would still be that documents should be seen only by the Master of the Rolls. If the Lord Chancellor remains of the view that a member of the Council should see documents I would suggest that this should be some-one nominated by the Master of the Rolls following consultation with the Lord Chancellor. This would safeguard our interests and give us the opportunity to raise objections should anyone in whose judgement we do not have confidence be nominated.

If the Lord Chancellor is content with this proposal you will no doubt wish now to include it in the submission to the Prime Minister covering the report of the Working Group on the Closure and Retention of Records and the extension of the role of the Advisory Council both of which are of course referred to in the White Paper on Openness.

FOL 32

CONFIDENTIAL

HOUSE OF LORDS,
LONDON SW1A 0PW

Permanent Secretary and
Clerk of the Crown in Chancery
Sir Thomas Legg KCB QC

Tel. 071-219 3246
Fax. 071-219 4711

CABINET OFFICE
A 9195
30 JUN 1993
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FILE No.

Sir Robin Butler GCB CVO
Secretary of the Cabinet and
Head of the Home Civil Service
Cabinet Office
70 Whitehall
London SW1A 2AS

30 June 1993

your ref: A093/1742

C. Mrs Andrews
Advice and draft reply on 'x' pls
Mark
30/6

CABINET OFFICE
H Internal
- 1 JUL 1993
FILING INSTRUCTIONS
FILE No.

Dear Robin,

Lord Chancellor's Advisory Council on Public Records

You wrote to me on 26 May setting out the recommendations which had been agreed upon, in principle, by Departments and Agencies following discussions about extending the remit of the Lord Chancellor's Advisory Council on Public Records. You suggested that the Lord Chancellor should seek the views of the Advisory Council about these recommendations and I am writing to let you know the outcome of this and the Lord Chancellor's view.

FOL 27 X

You may know that the Master of the Rolls wrote to the Lord Chancellor with the Advisory Council's own proposals on 26 May. The recommendations which you have put forward wholly cover each of the Council's proposals with one exception. Whereas your recommendations envisage that only the Master of the Rolls should be allowed to see actual records, the Council proposes that a selected member of the Council should do so in the company of a representative of the Public Record Office and, crucially, an official of the department concerned. In order to ensure objectivity, the member of the Council charged with examining the documents would always be a member other than the member or members who requested that the records should be examined. The member carrying out the inspection would report his or her findings back to the Council as a whole.

The Council feels that this would meet the concern that has been expressed in the past, that a Council member would not be in a position to assess the damage that release of a seemingly innocuous document might do in reality, since the departmental representative would be able to clarify matters as the records were examined. The Master of the Rolls is keen to stress that

the role of the Council is of course advisory only, that it will not be empowered to examine any records relating to matters concerning security and intelligence, and that the number of occasions on which the Council might be expected to request to examine records is expected to very low.

The Master of the Rolls and the Lord Chancellor have discussed this matter and the Lord Chancellor agrees with the Council's view. He would therefore wish nominated members of the Council to be able to examine non-security and intelligence records in the last resort where the Council cannot satisfy itself about the justification for closure in any other way. I am writing, therefore, to ask you to reconsider this particular point in the light of the Lord Chancellor's decision.

In the context of the Government's openness initiative, there is of course a real gain to be made in answering accusations of unjustified secrecy, from whatever corner, since the Council in operating as a body independent of Government will be seen to be fully informed. When it agrees with the Government, therefore, it will add credibility to the Government's position. As presently drafted, the forthcoming White Paper on openness, which has gone to Ministers this week, does not mention explicitly whether the Council will be permitted to examine the records. Should this become the case, the Government would be able to highlight this further, and substantial, advance towards openness.

I should be grateful to know your further thoughts on this. I am copying this letter to David Gillmore, Clive Whitmore, Chris France and to 'C', John Adye and Stella Rimington.

Yours ever.

Tom

Miss Andrews

HO93/499

Good. Thank you. Keep at Hom. RBB 18.6

CABINET OFFICE
A 8441
17 JUN 1993
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FILE No.

FOL'D 31

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

We spoke yesterday about Sir Thomas Legg's letter of 28 May 1993 in which he said that he would put to the Lord Chancellor, on his return, the recommendations set out in your letter of 26 May on the extension of the role of the Advisory Council. In that letter you suggested that, if the Lord Chancellor was content with your proposals he would wish to seek the views of the Advisory Council, perhaps through the Chairman, before replying to the Chancellor of the Duchy and putting a submission to the Prime Minister.

I told you that I had been given to understand that, in advance of the Lord Chancellor seeking his views, the Master of the Rolls has made representations to the Lord Chancellor on behalf of the Council on the question of access to actual documents. The Master of the Rolls appears to be proposing that, on the rare occasions it feels it to be necessary, a selected member of the Council should be allowed to see documents (except those relating to security and intelligence) in the company of a representative of the Public Record Office and of the department concerned, and to report his or her findings to the Council.

We do not yet know whether the Master of the Rolls will accept the proposal that he should see actual documents, unencumbered by representatives of the PRO and the relevant department. He and the Lord Chancellor are to meet tomorrow, originally on a different topic, but this one is to be raised. I have today impressed upon the Lord Chancellor's Department the need to get agreement on this matter in time for it to be incorporated in the White Paper and I have informed them of the timetable for so doing.

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
17 June 1993

A Cahn spoke 25/6. Said he wd ask Melanie to 'chase'. I spoke to P Kennedy 28/6. He said letter with T Legg. No reason for it not to be with Sir RB by today 28/6.

Spoke P. Kennedy 22/6. He will get TL to write tomorrow 23/6. with LC/Bingham's views on RB's proposal.

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21 JUN 1993
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FILE No.

HO93/499 ✓

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

In his letter of 28 May 1993 Sir Thomas Legg said that he would put to the Lord Chancellor, on his return, the recommendations set out in your letter of 26 May on the extension of the role of the Advisory Council.

You suggested that, if the Lord Chancellor was content, he would wish to seek the views of the Advisory Council, perhaps through the Chairman, before replying to the Chancellor of the Duchy and putting a submission to the Prime Minister.

I understand that, in advance of the Lord Chancellor seeking his views, the Master of the Rolls has made representations to the Lord Chancellor on behalf of the Council on the question of access to actual documents. The Master of the Rolls appears to be proposing that, on the rare occasions it feels it to be necessary, a selected member of the Council should be allowed to see documents (except those relating to security and intelligence) in the company of a representative of the Public Record Office and of the department concerned, and to report his or her findings to the Council.

We do not yet know whether the Master of the Rolls will accept instead that <u>he</u> should see actual documents, unencumbered by representatives of the PRO and the relevant department, but I thought you may wish to be aware of this possible counter-proposal. If the Master of the Rolls is not happy with your proposals it may be that the proposed submission to the Prime Minister will have to cover the recommendations of the Working Group on Closure and Retention of Records only and that decisions on the extension of the role of the Advisory Council will not be made in time to be incorporated in the White Paper but we await formal notification of the Lord Chancellor's response.

MISS P M ANDREWS
Historical and Records Section
15 June 1993

Amended

Spoke to Sir Robin about this on 16/6. He said he had not oppose as long we have the final say over who should see the papers but would await approach from LCD. He wants the outcome to go into the White Paper. Spk P Kennedy about timetable on 17/6.

THE NATIONAL ARCHIVES

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Enter extract details if it is an extract rather than a whole piece.
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29

Permanent Secretary and
Clerk of the Crown in Chancery
Sir Thomas Legg KCB QC

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A 7681
-2 JUN 1993
FILING INSTRUCTIONS
FILE No. .....

HOUSE OF LORDS,
LONDON SW1A 0PW

Tel. 071-219 3246
Fax. 071-219 4711

28 May 1993

Your ref: A093/1742

Sir Robin Butler GCB CVO
Cabinet Office
70 Whitehall
London SW1A 2AS

C. M.J. Andrews

Dear Robin.

Lord Chancellor's Advisory Council on Public Records

Thank you for your letter of 26 May. I am glad that we have reached agreement between Departments on the lines you have set out, and I will now put the matter forward to the Lord Chancellor as soon as possible after he returns the week after next. I will let you know his reaction as soon as I can.

I am copying this letter to the recipients of yours.

Yours ever.
Tom

CABINET OFFICE
H Internal
02 JUN 1993
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FILE No. .....

FOLIO 28

C. Miss Andrews

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A093/1742 ✓

26 May 1993

Dear Tom,

Lord Chancellor's Advisory Council on Public Records

In my letter of 23 April I said that I would let you know as soon as possible the reactions to my letter of the same date to David Gillmore about the proposed extension of the role of the Lord Chancellor's Advisory Council. The views expressed varied quite widely but, following further discussions between Pat Andrews, Head of the Historical and Records Section of the Cabinet Office, and the Departments and Agencies consulted, we have, I believe, reached agreement in principle on recommendations to go forward to the Lord Chancellor.

In essence there is agreement that the role of the Advisory Council should be extended first to allow it to consider applications from departments to retain material under Section 3(4) of the Public Records Act in addition to closure under Section 5(1) and secondly to consider requests from historians and other members of the public which departments have refused. This is on the understanding, however, that applications and documentations accompanying cases refused by departments relating to security and intelligence will indicate only that the material has been withheld on grounds of national security.

If the Advisory Council queries an application or a departmental refusal to release documents on request I recommend that the case should be referred to me as Secretary of the Cabinet and the Lord Chancellor's Adviser on such matters. In such cases I would review the material and advise the Lord Chancellor, copying my advice

/to the Advisory

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H 93/509 ✓
27 MAY 1993
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FILE No.

Sir Thomas Legg KCB QC
Lord Chancellor's Department

to the Advisory Council, except in cases of material relating to security and intelligence. If, in non-security and intelligence related cases, the Council is unconvinced by my advice, I would propose to show the Master of the Rolls, as Chairman of the Council, the relevant document or documents to enable him to offer further advice to the Council and the Council, in turn, to advise the Lord Chancellor.

The above may not go as far as some members of the Advisory Council or, indeed, some Departments, would wish, but I believe that the proposals balance the needs of the Council with the concerns, particularly, of the Agencies.

I suggest, therefore, that the recommendations to the Lord Chancellor on the question of extending the role of the Advisory Council might be as follows:-

a) that the role of the Advisory Council should be extended to cover applications under Section 3(4) of the Public Records Act but applications to retain material relating to security and intelligence to indicate only that it is retained on grounds of national security;

b) that the Advisory Council should be empowered to consider requests from historians and from other members of the public which are refused by departments. Documentation relating to requests for security and intelligence related material would indicate only that the retention was on grounds of national security;

c) that should the Advisory Council query an application or refusal to release requested documents the case would be referred to the Secretary of the Cabinet who would review the papers and advise the Lord Chancellor (except in security and intelligence related cases copying his advice to the Advisory Council);

d) that should the Advisory Council remain unconvinced by the advice proffered by the Secretary of the Cabinet, the Master of the Rolls (Chairman of the Council) should be shown relevant documents (except in cases relating to security and intelligence) and further advise the Council;

e) that the role of the Advisory Council should remain advisory and that, as now, Ministers will be responsible for the records of their departments and will continue to make the final decision on release or retention, subject to the approval of the Lord Chancellor.

If the Lord Chancellor is content he will wish to seek the views of the Advisory Council, perhaps through the Master of the Rolls as Chairman since I understand that the Council met only last week, before replying to the Chancellor of the Duchy's letter of 29 January and putting a submission to the Prime Minister encompassing this topic and the recommendations of the Working Group on the Closure and Retention of Records. As you know it is the intention to include our decisions on the role of the Council, as well as the recommendations of the Working Group, in the White Paper on Openness to be published before the Summer recess.

/I am copying

I am copying this letter to David Gillmore, Clive Whitmore, Chris France and to 'C', John Adye and Stella Rimington.

Yours ever,

Robin

FOLIO 27

I would wish to accede to the wishes of the Council – [illegible] matters.

MASTER OF THE ROLLS

: OF JUSTICE
)N, WC2A 2LL

Telephone. 071 936 6002
Fax: 071-936 7475

The Right Honourable
The Lord Mackay of
The Lord Chancellor,
House of Lords,
London, SW1A OPW

[illegible] 26 May 1993

Dear James,

Advisory Council on Public Records

I understand that discussions are continuing within Government about the two, related, points about which I wrote to you on 2 April. These are, first, the extension of the Council's remit to include applications for the retention of records within departments and, secondly, the degree to which the Council should be permitted to examine the records themselves.

Since I first wrote there has been a further meeting of the Council at which these matters have been discussed. My purpose in writing is to convey the further viws of the Council, especially regarding the question of its access to the records.

You know that the Council strongly believes that it should consider requests to departments for records to be released where such requests have been refused, in the context of the offer made by William Waldegrave to historians last summer. In order to do this properly the Council must be allowed to consider records which have been retained within departments. It is axiomatic, in the Council's view, that its remit should therefore be extended to include advising you on applications from departments for records to be retained as well as applications for records to be closed.

In my earlier letter I conveyed to you the Council's wish to have the greatest possible flexibility to satisfy itself that an application for closure, or retention, is well founded before advising that you should accept it. The Council has now considered this point further and is firmly of the view that, on the rare occasions where it feels it is necessary to examine the actual records themselves, it should be allowed to do so. As I said in my earlier letter, the Council quite accepts that there will be some records in the context of security and intelligence which it should not be able to examine in detail. For all other records, however, it should be empowered to do so, since it is inherently unsatisfactory for historians, as for judges, to express views on documents which, in cases of real doubt, they have not been able to see.

One of the principal objections to this is that without a working knowledge of the context in which the records are sought to be closed or retained, the Council might advocate release of an apparently innocuous record which would actually cause damage if released. There are two points to make about this. First, the Council has no power of veto but exists to advise you about these matters.

Secondly, it has never been suggested that the Council should be allowed to examine these records in an indiscriminate or unsupervised way. We propose that a selected member of the Council, on its behalf, should examine records where appropriate in the company of a representative of the Public Record Office and, crucially, an official of the department concerned. Further clarification of the grounds for the application would thus be available, if necessary, at the time the records were inspected. In order to demonstrate objectivity, the member of the Council charged with examining the documents would always be a member other than the member or members who requested that the records should be examined. The member carrying out the inspection would report his or her findings back to the Council as a whole.

It seems to me that the arrangement proposed above would provide a workable means by which the Council would be able to ensure that it is carrying out the duties incumbent upon it. I think it is worth pointing out that the members of the Council are people of distinction in their varied fields of expertise, and are personally chosen by you to perform those duties, for which they are not rewarded. I find it very difficult to see what objections might remain to an arrangement such as the one I have outlined above.

I should be very happy to discuss with you the Council's views about all this, if you think it would be helpful.

Yours ever,

Ian.

file FOLIO 26

HO93/453

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

In my minute of 19 May 1993 I said that I was consulting my colleagues in the Agencies further about the extension of the role of the Advisory Council to see whether the concerns expressed in the replies to your letter of 23 April to Sir David Gillmore could be allayed by putting a ring-fence around security and intelligence-related material.

The Agencies' main concern, as well as protecting material withheld on grounds of national security (particularly that retained under the 'blanket') is that any extension of the role of the Advisory Council should not become the thin end of a wedge which might be used to bring pressure to bear which might in turn undermine the 'blanket'. However, despite the reservations expressed in the correspondence, they would be content with a recommendation to the Lord Chancellor that the Council's role should be extended to cover applications under Section 3(4), with applications relating to security and intelligence related material indicating only that it was being withheld on grounds of national security; and to enable the Council to consider requests from historians and others which are refused by departments, with a similar caveat in respect of requests for security and intelligence and related material.

I then consulted about your proposal that the Chairman of the Advisory Council should have access to papers should there be cases which you had reviewed and advised upon but about which the Council remained unconvinced. Departments (Ministry of Defence, Foreign and Commonwealth Office, Home Office) would have no difficulty with this; it does not go as far as the MOD suggested in their reply but it is movement in the direction favoured by all three. The Agencies, however, prefer the ring-fencing set out above, with the Security Service, in particular, unwilling to agree to the proposal on the grounds that it represents the thin end of the wedge concept about which they expressed such concern.

I understand that the Master of the Rolls is about to re-iterate, in a letter to the Lord Chancellor, following a meeting of the Advisory Council on 20 May, the Council's view that on the rare occasions when it feels it is necessary to examine actual records it should be allowed to do so, and outlining a suggested procedure which he suggests that he might discuss with the Lord Chancellor. The letter also, however, re-states the point made in the Master of the Rolls' earlier letter, that the Council would not expect to examine security and intelligence records.

I believe, from what the Secretary of the Advisory Council has said to me, that the ring-fencing of security and intelligence material in the way suggested, with any cases relating to such material being referred to the Secretary of the Cabinet, would be acceptable to the Advisory Council and to the Master of the Rolls. The proposal to show actual documents only to the Chairman, however, will be a disappointment to them and they will doubtless keep pressing for more but, if the Lord Chancellor agrees to it, they will, of course, accept it.

If you agree, and if I have read your manuscript note correctly as meaning that you will review and advise on all cases, not just those relating to security and intelligence, the recommendations to the Lord Chancellor would be:-

a) that the role of the Advisory Council should be extended to cover applications under Section 3(4) of the Public Records Act but applications to retain material relating to security and intelligence to indicate only that it is retained on grounds of national security

b) that the Advisory Council should be empowered to consider requests from historians and from other members of the public which are refused by departments. Documentation relating to requests for security and intelligence and related material would indicate only that the retention was on grounds of national security.

c) that should the Advisory Council query an application or a refusal to release requested documents the case would be referred to the Secretary of the Cabinet who would review the papers and advise the Council (except in security and intelligence and related cases on which he would advise the Lord Chancellor direct).

d) that should the Advisory Council remain unconvinced by advice proffered by the Secretary of the Cabinet the Master of the Rolls (Chairman of the Council) should be shown relevant documents (except in cases relating to security and intelligence) and further advise the Council

e) that the role of the Advisory Council should remain advisory and that, as now, Ministers will be responsible for the records of their departments and will continue to make the final decision on release or retention, subject to the approval of the Lord Chancellor.

The underlined words in b) are a suggestion from Sir Clive Whitmore that the position of the general public should also be considered. I understand that by this he means that historians who seek the release of records in response to the Chancellor of the Duchy's invitation are being given preferential treatment and that applications made by other members of the public should also be referred to the Advisory Council if refused by departments. This would seem to be a reasonable further extension of the Advisory Council's remit.

If you are content to go ahead on the basis of a) - e) above you may wish to write to Sir Thomas Legg along the lines of the attached draft. If you wish to pursue further the question of access to documents relating to security and intelligence I am afraid I shall have to ask you to write to the Heads of the Agencies again in which case I shall provide a different draft letter.

It occurs to me that when we have agreed on the extension of the role of the Advisory Council it might be a good idea to arrange a meeting between some members of the Council and some members of the Working Group (perhaps the PRO, Lord Chancellor's Department and me) to discuss matters relating to applications and requests for release and the procedures to be adopted to put the present proposals into practice. This may then turn into a forum for discussing the concerns of historians about records management generally. Would you be happy for me to explore this further?

On timing, the Advisory Council met last week to consider the Working Group's recommendations. It meets again on 15 June but it is to be hoped that the Lord Chancellor will clear the extension of the Council's role in one of his frequent meetings with the Master of the Rolls otherwise we shall not be in time to include the outcome in the White Paper. I have referred to this in the draft letter.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
24 May 1993

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

Sir Thomas Legg KCB QC
Lord Chancellor's Department
House of Lords
London SW1A 0PW

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

In my letter of 23 April I said that I would let you know as soon as possible the reactions to my letter of the same date to David Gillmore about the proposed extension of the role of the Lord Chancellor's Advisory Council. The views expressed varied quite widely but, following further discussions between Pat Andrews, Head of the Historical and Records Section of the Cabinet Office, and the Departments and Agencies consulted, we have, I believe, reached agreement in principle on recommendations to go forward to the Lord Chancellor.

In essence there is agreement that the role of the Advisory Council should be extended first to allow it to consider applications from departments to retain material under Section 3(4) of the Public Records Act in addition to closures under Section 5(1) and secondly to consider requests from historians and other members of the public which departments have refused. This is on the understanding, however, that applications and documentation accompanying cases refused by departments relating to security and intelligence will indicate only that the material has been withheld on grounds of national security.

If the Advisory Council queries an application or a departmental refusal to release documents on request I recommend that the case should be referred to me as Secretary of the Cabinet and the Lord Chancellor's Adviser on such matters. In such cases I would review the material and advise the Council, except where the material is related to security and intelligence, in which case I would advise the Lord Chancellor direct. If, in non-security and intelligence related cases, the Council is unconvinced by my advice, I would propose to show the Master of the Rolls, as Chairman of the Council, the relevant document or documents to enable him to offer further advice to the Council and the Council, in turn, to advise the Lord Chancellor.

The above may not go as far as some members of the Advisory Council or, indeed, some Departments, would wish, but I believe that the proposals balance the needs of the Council with the concerns, particularly, of the Agencies.

I suggest, therefore, that the recommendations to the Lord Chancellor on the question of extending the role of the Advisory Council might be as follows:-

a) that the role of the Advisory Council should be extended to cover applications under Section 3(4) of the Public Records Act but applications to retain material relating to security and intelligence to indicate only that it is retained on grounds of national security

b) that the Advisory Council should be empowered to consider requests from historians and from other members of the public which are refused by departments. Documentation relating to requests for security and intelligence and related material would indicate only that the retention was on grounds of national security.

c) that should the Advisory Council query an application or refusal to release requested documents the case would be referred to the Secretary of the Cabinet who would review the papers and advise the Council (except in security and intelligence and related cases on which he would advise the Lord Chancellor direct).

d) that should the Advisory Council remain unconvinced by the advice proffered by the Secretary of the Cabinet, the Master of the Rolls (Chairman of the Council) should be shown relevant documents (except in cases relating to security and intelligence) and further advise the Council

e) that the role of the Advisory Council should remain advisory and that, as now, Ministers will be responsible for the records of their departments and will continue to make the final decision on release or retention, subject to the approval of the Lord Chancellor.

If the Lord Chancellor is content he will wish to seek the views of the Advisory Council, perhaps through the Master of the Rolls as Chairman since I understand that the Council met only last week, before replying to the Chancellor of the Duchy's letter of 29 January and putting a submission to the Prime Minister encompassing this topic and the recommendations of the Working Group on the Closure and Retention of Records. As you know it is the intention to include our decisions on the role of the Council, as well as the recommendations of the Working Group, in the White Paper on Openness to be published before the Summer Recess.

I am copying this letter to David Gillmore, Clive Whitmore, Chris France and to 'C', John Adye and Stella Rimington.

file

FOLIO 25

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO93/432 ✓

Mrs D J Jackson
P O Box 500
London SW1P 1XH

19 May 1993

Dear Jane

We spoke earlier today about the Director General's letter to Sir Robin Butler dated 17 May on the subject of the extension of the role of the Lord Chancellor's Advisory Council.

We agreed that as material retained under S 3(4) of the Public Records Act ranges wider than security and intelligence - as you know it includes not only a great deal of material retained on administrative grounds but also material retained under other 'blankets' eg civil and home defence and defence-related atomic - the Advisory Council's role could be extended without endangering security and intelligence material. There would, we thought, be no objection from your organisation's viewpoint to the Advisory Council considering applications and requests for material retained under S 3(4) generally as long as any accompanying documentation did not reveal any information other than that the retention was on grounds of national security.

I should be most grateful if you could confirm that this is so and for any comments you may have on the attached draft submission to Sir Robin Butler. As I mentioned to you I have put an interim submission forward today. If I get any comment on that which affects your consideration of the draft I shall let you know straight away. I must put the substantive submission forward on Friday!

Yours

Pat

MISS P M ANDREWS

DRAFT MINUTE TO SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

In your letter of 23 April 1993 to Sir David Gillmore, you said that, subject to the views of those to whom your letter was copied, you would suggest to Sir Thomas Legg that he should advise the Lord Chancellor that the role of the Advisory Council should be extended to allow it to consider requests from historians which are refused by departments, and advise him on Section 3(4) applications. You also asked for the views of copy recipients on the question of the Council's access to documents.

2 The replies vary, as they did on the previous round of correspondence, but there is now a more clearly defined split between the views of departments and those of the security and intelligence agencies. The Foreign and Commonwealth Office, the Ministry of Defence and the Home Office all agree with the proposed extension of the role of the Council as above. Sir Clive Whitmore suggests that the position of the general public should be considered at some stage. I understand that by this he means that historians who seek the release of records in response to the Chancellor of the Duchy's invitation are being given preferential treatment and that consideration should be given to whether applications made by other members of the public which are refused by departments could also be referred to the Advisory Council. This would seem to be a reasonable further extension of the Advisory Council's remit.

3 On the question of access to documents, Sir Clive Whitmore, whilst agreeing with the thrust of your proposal that the present arrangement under which cases are referred to the Secretary of the Cabinet should continue, suggests that perhaps some flexibility could be built into the procedures for "non-sensitive material". Sir Christopher France (taking a somewhat different line from that taken in the Secretary of State's reply to the Chancellor of the Duchy of 8 February) suggests that to maintain the present arrangement may not carry sufficient public conviction and suggests that a small number of the Council should be given appropriate security clearance and given access to disputed documents to enable them to advise the Lord Chancellor. Sir Christopher suggests that it would be better to offer this solution now than to risk being driven eventually to accepting, for example, the intervention of an Ombudsman. Sir David Gillmore points out that in his reply to the Chancellor of the Duchy of 25 February, the Foreign and Commonwealth Secretary also supported the idea of a small panel being set up to advise the Council. The Chancellor of the Duchy indicated that he thought this was a good idea.

4 The security and intelligence agencies continue to be concerned about the proposals, although 'C' expresses himself content that the Advisory Council's remit should be extended to cover requests from historians which are refused by departments and acknowledges that these will largely relate to material retained under S 3(4).

5 The agencies' main concerns are, first, that material withheld on grounds of national security and particularly that which is retained under the security and intelligence 'blanket' should be ~~exempt from~~ protected in any of the proposed changes and, secondly, that any extension should not be regarded as, or be, the thin end of the wedge, with any concession being "exploited" by the historians thus bringing about a relaxation of the 'blanket'.

6 I have discussed these concerns with my colleagues in the agencies. I think they could be met if we could ring-fence material withheld on grounds of national security and the Master of the Rolls has already indicated, in his letter of 2 April to the Lord Chancellor, that the Council accepts that it would have a limited role in this area. Material is retained under Section 3(4) for a variety of reasons other than security and intelligence (eg civil defence, atomic energy, administrative purposes); the agencies would have no objection to the Council being involved with applications and requests relating to this material as long as there are no security and intelligence implications.

7 If, therefore, in the light of the replies received, you feel that, even if mainly for presentational reasons, we should go down the road of allowing the Council to see actual records we could either adopt the approach suggested by Sir Clive Whitmore

and make "non-sensitive" material available, or go further along the path recommended by the Foreign and Commonwealth Office and, now, the Ministry of Defence and allow them access to closed or retained records other than security and intelligence records. This could mean making available, for example, atomic and civil and home defence material, and would require security clearance of the Council members.

8 To meet the wishes of departments, agencies and of historians and others seeking access to withheld material it seems to me that a possible way forward is to recommend to the Lord Chancellor:-

a) that the role of the Advisory Council should be extended to cover applications under Section 3(4) but that applications to retain material relating to security and intelligence would indicate only that it was being withheld on grounds of national security.

b) that the Advisory Council should be empowered to consider requests from historians and from other members of the public which are refused by departments, but that the documentation relating to requests for security and intelligence and related material would indicate only that the retention was on grounds of national security; no further details would be provided.

[c) that the Advisory Council (or a group of people drawn from the Council) should, in cases where the Council wished to challenge an application or a departmental refusal to release, and if the Council so requests, be shown relevant documents, other than in cases where the refusal has been on grounds of national security]

d) that should the Advisory Council query a refusal to release documents relating to national security the case would be referred to the Secretary of the Cabinet who would advise the Council or, in cases he considers particularly sensitive, the Chairman of the Council only.

e) that the role of the Advisory Council should remain advisory and that, as now, in the last resort, Ministers are responsible for the records of their departments and will continue to make the final decision on release or retention, subject to the approval of the Lord Chancellor.

9 These provisions would allow the Advisory Council to see some documents - probably very few - but would, as suggested, ring-fence security and intelligence and related material.

CFGRB

Miss Andrews

Note at end

PERB

19.5.

HO93/431

SIR ROBIN BUTLER

CABINET OFFICE
A 7117
19 MAY 1993
FILING INSTRUCTIONS
FILE No.

FOLIO 24

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

In your letter of 23 April 1993 to Sir David Gillmore you said that, subject to the views of those who whom your letter was copied, you proposed to suggest to Sir Thomas Legg that he should advise the Lord Chancellor that the role of the Advisory Council should be extended both to allow it to consider requests from historians which are refused by departments, and to advise the Lord Chancellor on Section 3(4) applications from departments. You also asked for views on the question of the Council's access to actual documents.

The replies vary with all three departments consulted (Foreign and Commonwealth Office, Ministry of Defence and Home Office) agreeing to the proposed extension of the Advisory Council's role and, in slightly different ways, expressing the view that the Council, or a group of its members, should see actual documents. The Agencies, on the other hand, continue to be concerned about the proposals with the Security Service taking a particularly negative stance.

I think the Agencies' concerns could perhaps be allayed by putting a ring-fence around security and intelligence and related material. Their replies, particularly that from the Security Service, seem to overlook the fact that applications to retain records under Section 3(4) cover a wide variety of material in addition to security and intelligence, ranging from material awaiting review to atomic and civil defence records; the Agencies should have no objection to the Advisory Council being involved with applications and requests relating to this material as long as there are no security and intelligence implications. Given that the Master of the Rolls has already said that the Advisory Council accepts that it would have only a limited role in the area of national security it should be possible to extend the Council's role in the way proposed whilst not providing information about security and intelligence and related records other than to say that they are retained on grounds of national security.

To try to avoid a further round of correspondence I am consulting my colleagues in the Agencies to see whether the above would be acceptable and, if you agree, I shall put a further submission to you before the weekend (my SIS contact is away until Friday).

In preparing a letter to go to Sir Thomas Legg, which is the next stage, it would be most helpful to know whether, in the light of the replies received, you feel that, even if mainly for presentational reasons, we should go down the road of allowing the Council to see any actual records. My concern is that if we get agreement to extending the role of the Advisory Council and this is announced in the White Paper any benefit in terms of 'openness' will be negated if we do not allow any access to documents because all the publicity will be directed at that and it will be adverse.

Sir Clive Whitmore, whilst agreeing with the thrust of your proposal that the present arrangement under which cases are referred to the Secretary of the Cabinet should continue, suggests that perhaps some flexibility could be built into the procedures for "non-sensitive material". Sir Christopher France and Sir David Gillmore indicate that they would be prepared to go further and that brings us into the realm of security clearances and panels which, as Sir David suggests, we may not be able to resolve before publication of the White Paper.

It is, as Sir Clive Whitmore suggests, unlikely that the Advisory Council will wish to see actual documents in more than a small number of cases. We could, if you agreed, offer to give access to non-sensitive material and, perhaps, to explore with the Master of the Rolls the possibility of further access being granted to sensitive material (other than security and intelligence which would, as now, be referred to the Secretary of the Cabinet). It may be that when the Council members became aware of the level of security clearance needed just to enable them to see, say, a single document headed ATOMIC, they may think it not worth while.

I can set out the issues in more detail in my further submission but it would, as I have said, be most helpful to know whether you find the arguments for agreeing to some degree of access at all persuasive.

Thank you.

Pat Andrews

I would have no difficulty about a procedure in which, after I have reviewed and advised, the Chairman of the Advisory Panel had access to the papers if the Panel were still unconvinced. Try asking, first to your contacts. I doubt whether the agencies would object to L.J. Bingham seeing the papers and we could surely rely on future Masters of the Rolls

RRR 19.5.

MISS P M ANDREWS

Historical and Records Section
19 May 1993

FOI 23N

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO93/426

P Kennedy Esq
Lord Chancellor's Department
Trevellyan House
Great Peter Street
London SW1P 2BY

18 May 1993

Dear Paul

MEETING OF THE LORD CHANCELLOR'S ADVISORY COUNCIL

You told me that when the Advisory Council next meets it will have before it the Report of the Conference of the Institute of Contemporary British History which was submitted to the Chancellor of the Duchy of Lancaster on 21 December 1992 together with a copy of a letter from the Keeper of Public Records.

The Council may be interested also to see Mr Waldegrave's reply dated 12 January 1993 and a letter which I sent on 24 February 1993 with Mr Waldegrave's approval (copies attached). These show the extent to which the concerns expressed by the historians are already being addressed and the progress made by end-February on the records they asked to see, quite a few of which were, in fact, already open.

Departments are now working through the lists, some of which are very lengthy and will take some time to complete. As Mr Waldegrave said in his letter of 12 January the Cabinet Office is monitoring progress; further reports will be made later in the year.

Yours Pat

MISS P M ANDREWS

CABINET OFFICE
Kb .....
17 MAY 1993
FILING INSTRUCTIONS
FILE No. [redacted]

FOL 23H

→ Miss Andrews.

HO93/419

From: Miss P M Andrews
Historical and Records Section
217 6050

Mr CAHN

First move.

HR 8/1/4

The Lord Chancellor's Advisory Council is meeting on 20 May to consider the recommendations of the Working Group on Closure and Retention of Records. The Chancellor of the Duchy agreed to this in his letter of 16 April (Kb 0940).

HR 8/1/3

At the same meeting the Advisory Council will have before them the report of the Institute of Contemporary British History which was submitted to the Chancellor of the Duchy on 21 December last. It would be useful, in my view, if the Council could also see Mr Waldegrave's reply of 12 January and the letter which I sent, with his approval, on 24 February (copies attached).

As both letters are in the public domain I assume there would be no objection to this but I should be grateful for confirmation that the letters may be made available to members of the Council on 20 May.

Pat Andrews

MISS P M ANDREWS

17 May 1993

CABINET OFFICE
H 34
13 JAN 19
FILING INSTRUCTIONS
FILE No. 34

A HR 8/1/3- (26)

cc: Miss Andrews + pgs.
PS/Mr Jackson
PS/FERB
PS/Mr Mattram
Mr Whetnall
Mr Thore.

Chancellor of the Duchy of Lancaster
Minister of Public Service and Science

KB5459

Dr Brian Brivati
Institute of Contemporary
British History
34 Tavistock Square
LONDON
SW1H 9EZ

12 January 1993

Dr Dr Brivati,

Thank you for your letter of 21 December enclosing the final report from the Conference of Historians held on 25 November 1992.

I am grateful for the work undertaken by the historians and for the thought which has been given to the whole question of the release of records and the procedures and practices adopted by Government departments. The lists of files and classes of records which those historians present at the conference wish to have released have been passed to the relevant Government departments for consideration. I am sure all concerned will appreciate that it will take some time to work through the lists but the Cabinet Office will monitor progress and keep you informed.

Detailed consideration is also being given to the general recommendations made in the report attached to your letter. I shall reply substantively when these considerations have been completed. In the meantime, however, you will know, I am sure, that the Lord Chancellor is already conducting a review of the criteria governing closures and retentions and the guidelines on closure periods. The results of the review will be made public and any resulting changes applied immediately.

In connection with the recommendation for such a review your report refers to two practices which cause difficulties for historians. The first - retention under Section 3(4) at the end of a closure period - is only used when a record is found still to be sensitive at the end of a closure period stipulated some years ago and when no firm date on which the sensitivity will have passed can be given. Legal advice has recently been taken which has established that this practice, which is used infrequently, falls within the provisions of the Public Records Act. The second - closing records after they have been opened -

is not allowed. If any historian has evidence of such a practice being carried out please let me know.

You refer in your third section first to grounds for closure such as embarrassment, and secondly to the 'censoring' of files to remove sensitive material rather than closing the whole file. "Embarrassment" was removed as a criterion for closure following the Government's acceptance of the recommendations of the Wilson Committee's Report in 1981; it only ever operated to protect individuals against personal embarrassment, not official or political. The relevant criterion now reads "distress or danger to living persons or their immediate descendants" rather than, as formerly, "distress or embarrassment". Steps are already being taken to "blank out" sensitive material to enable more files to be released; the recent Home Office release of the records relating to the German occupation of the Channel Islands was an example of this practice being put into effect.

I hope these comments will serve to assure you that we are all thinking along similar lines. I shall write again when the considerations to which I referred earlier have been completed.

Yours sincerely,

WILLIAM WALDEGRAVE

B
HR 8/1/3-
FOLIO 10

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050
Fax 071 217 6010

HO93/167

Dr Brian Brivati
Institute of Contemporary British History
34 Tavistock Square
LONDON
SW1H 9EZ

24 February 1993

Dear Dr Brivati

In his letter of 12 January, the Chancellor of the Duchy of Lancaster, Mr Waldegrave, said that the lists of files and classes of records, suggested for release by historians and which formed part of the final report from the November 1992 Conference attached to your letter of 21 December, had been passed to the relevant Government departments for consideration. Mr Waldegrave pointed out that it would take departments some time to work through the lists, but said that the Cabinet Office would monitor progress and keep you informed. The purpose of this letter is to report on progress to date.

The lists have been given preliminary consideration by departments and the reviewing process has begun. Work on the shorter lists is already well advanced and some should soon be completed - the longer lists may well take the rest of the year to complete but I shall, as promised, keep you informed.

Taking the departments in the same order as on your lists:-

ATOMIC ENERGY -

AB 1 material relating to Tube Alloys - being reviewed

BOARD OF TRADE -

As Duncan Chalmers (PRO) said at the Conference, Census of Production material was not generally preserved until comparatively recently because of the statutory bar on release.

Material relating to shipbuilding after the Second Word War is to be found in DTI files from 1959. Only one file over 30 years has been withheld - it is being reviewed. Earlier material is in Ministry of Transport files MT 9 and MT 73, in which no closed material has so far been identified, and in Admiralty Class ADM 1 which will be included in the Ministry of Defence list.

No closed material found. letter dated 7.5.93 from ID Goode

CABINET - Several items listed are already open:-

CAB 65/13
CAB 106/115, 117, 118, 149, 195
CAB 128/28
CAB 130/177-180 (with some deletions)
CAB 133 (many pieces)
CAB 134 (except for 1544 due to open in 1994, and 1523)

Work has begun on closed Cabinet minutes and papers as a block as well as on the other items listed.

MINISTRY OF DEFENCE (including ADMIRALTY, AIR MINISTRY, MINISTRY OF AIRCRAFT PRODUCTION and WAR OFFICE)

A few items listed are already open. As the Keeper of Public Records said in her letter of 12 January, WO 199/3288 A and B are now available at the Public Record Office. The Directorate of Air Intelligence files and 419 Flight Operations Record Books are also open.

MOD will review the other records on the lists in the next few months with the exception of the World War II War Diaries in WO 165-179. These comprise some 90,000 items which are already available to researchers in the PRO, albeit on a 'permit' basis which requires the reader to give an undertaking not to publish personally sensitive information. To devote resources to these would detract from the work on the closed items on the list.

FOREIGN OFFICE (including COLONIAL OFFICE, DOMINIONS AND COMMONWEALTH RELATIONS OFFICE)

As the Keeper of Public Records said in her letter of 12 January the Nuremberg Trial Records are available in the Imperial War Museum with related FO correspondence already at the PRO. The review of SOE papers was announced by the Foreign Secretary on 26 November 1992; the first batch is to be released in the second half of 1993. FO 371/115689 and 115965 - Plan Alpha are open in the PRO. About half of the Russia Committee minutes and papers referred to on Page 10 are open. The Foreign Secretary said, in a speech given in May 1992, that all FCO files withheld for longer than 30 years were to be reviewed. This exercise will include the files listed in the ICBH Report.

LOCAL GOVERNMENT

There are no closed items in HLG 40 and HLG 101. the situation with regard to 1950 housing files, which were re-registered into later file series, was explained in the Keeper of Public Records' letter of 12 January 1993.

HOME OFFICE

Much of the material listed is being reviewed as a result of earlier requests. They are large blocks of records the reviewing of which will take some time to complete. HO 144 in particular is a very large class - a method of handling it is now under consideration.

MINISTRY OF INFORMATION

INF 1 comprises some 990 files of which only 11 are closed. They are being reviewed.

REVENUE

IR 26 and 27 contain no closed material.

METROPOLITAN POLICE

No specific files requested. Work has begun to identify the material referred to.

PRIME MINISTER'S OFFICE

Most of the items listed are already open:-

PREM 3/418/1
PREM 8 - 1946 files covering Anglo-Soviet relations
PREM 11/941
PREM 11/2940/41
PREM 11/3000
PREM 11 material on Algeria

The remainder are being re-reviewed.

TREASURY

T 225/179-80 and T 235/78-50 have been re-reviewed and are to be released with the exception of two extracts.

The Historical Memoranda are to be reviewed during 1993.

am contacting the India Office separately and will let you know the outcome.

I hope this information will be useful to the historians who have requested the release of the records. If there are any queries or comments on the information provided so far please let me know. I shall write again when further progress has been made.

Yours sincerely

Pat Andrews

MISS P M ANDREWS

THE NATIONAL ARCHIVES

DEPARTMENT/SERIES CAB 103/796 PIECE/ITEM ..... (one piece/item number)	Date and sign
Extract details: Letter dated 17 May 1993	X
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	07/03/2024
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	

Instructions for completion of Dummy Card



Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer
or Number not used.

THE NATIONAL ARCHIVES

DEPARTMENT/SERIES CAB 103/796 PIECE/ITEM ..... (one piece/item number)	Date and sign
Extract details: Letter dated 14 May 1993	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	07/03/2024
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	

Instructions for completion of Dummy Card



Use black or blue pen to complete form.

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Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer
or Number not used.

CABINET OFFICE
A 6934
17 MAY 1993
FILING INSTRUCTIONS
FILE No.

Foreign &
Commonwealth
Office

London SW1A 2AH
Sir David Gillmore KCMG
The Permanent Under Secretary of State
071 270 2150

17 May 1993

Sir Robin Butler GCB CVO
Cabinet Office

C. Miss Andrews

My dear Robin,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

1. Thank you for your letter of 23 April. Like you I agree with Sir Thomas Bingham that the Advisory Council is well placed to advise the Lord Chancellor on requests from historians and that there is no need today to maintain the distinction between different types of applications. I also agree that this small step forward would provide useful evidence of an independent assessment of departmental decisions in respect of records closures and retentions.

2. The Foreign Secretary was prepared to go somewhat further than this. In his letter of 25 February to the Chancellor of the Duchy of Lancaster he supported the idea of a small group of historians being appointed to advise the Council in cases where departmental decisions were disputed. Nonetheless, I can see that if the White Paper is to be tabled before the end of the Summer Recess any re-opening of this issue may be unwelcome. Your proposal to activate the procedure whereby disputed cases are referred to you for further review, and to extend it so that the Chairman of the Council or the Council itself should be told of the outcome of your review, and then given a further chance to comment to the Lord Chancellor, seems to me to be a pragmatic way forward which should satisfy most but probably not all of the present critics of the Council.

Yours ever,
David

David Gillmore

CABINET OFFICE
H Internal
18 MAY 1993
FILING INSTRUCTIONS
FILE No

CABINET OFFICE
A 6939
17 MAY 1993
FILING INSTRUCTIONS
FILE No. .....

FOI 20

MINISTRY OF DEFENCE
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Telephone 071-21 82193 (Direct Dialling)
071-21 89000 (Switchboard)

PERMANENT UNDER-SECRETARY OF STATE
SIR CHRISTOPHER FRANCE KCB

C. Mir Andrew

PUS/E93/257
17/1

13 May 1993

Dear Cabinet Secretary,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Thank you for your letter of 23 April to David Gillmore setting out proposals for providing the Lord Chancellor with a second opinion in cases where his Advisory Council challenges a Departmental decision on the continued retention of official records.

2. I have no difficulty with your proposals, which I agree would give historians greater assurance that we are not necessarily holding records under the "blanket". I am sure that it is sensible for the Council's role to be extended to include advice on Section 3(4) as well as on Section 5(1) records.

3. I recognise the case for asking the Advisory Council to consider requests from historians which are refused by Departments, but to do so on the basis that if necessary you would read disputed documents and advise the Council members (or in some cases the Chairman only) of the reasons for refusing their release. But I have some doubts about whether that procedure would carry sufficient public conviction. I wonder whether an alternative would be for a small number of members of the Council, who would have to have PV(TS) clearances, to read disputed documents and advise the Lord Chancellor on them? It may be that it would be better to offer such a solution than to risk being driven eventually to even less welcome alternatives (such as the intervention of an Ombudsman).

4. My Secretary of State has taken an interest in this subject in earlier correspondence. I should like to be able to tell him what advice it is eventually decided to give to the Lord Chancellor.

5. I am sending copies of this letter to the recipients of yours.

Yours sincerely,

Private Secretary
(APPROVED BY SIR CHRISTOPHER AND SIGNED IN HIS ABSENCE)

Sir Robin Butler GCB CVO
Cabinet Office
70 Whitehall
London SW1A 2AS

CABINET OFFICE
H Internal..
18 MAY 1993
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FILE No. .....

Recycled Paper

PERMANENT UNDER-SECRETARY OF STATE
SIR CLIVE WHITMORE GCB CVO

CABINET OFFICE
A 6885 ✓
14 MAY 1993
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FILE No. .....

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

CABINET OFFICE
H Internal
17 MAY 1993
FILING INSTRUCTIONS
FILE No. .....

13 May 1993

C. Miss Andrews

Dear Robin,

Thank you for sending me a copy of your letter of 23 April to David Gillmore about the Lord Chancellor's Advisory Council on Public Records.

I am, in general, content with the new procedures proposed for the Council in dealing with applications under section 5(1) or 3(4) of the Public Records Act. In the main these answer the concerns expressed by the Home Secretary in his letter of 24 February to the Chancellor of the Duchy of Lancaster, although further thought will need to be given, at some stage, to the position of the general public in this approach.

I also agree with the thrust of your proposal to maintain the present arrangement under which cases are referred to the Secretary of the Cabinet for advice, rather than the Council seeing the actual documents. I do wonder, however, whether a degree of flexibility could not be built into the procedures, for non-sensitive material, which would allow the Council to see documents if they wished. In reality, given time pressures, this would undoubtedly apply only to a small number of high profile cases, but it might go some way to addressing your point about credibility, which given the push towards greater openness should not be underestimated.

I am concerned, however, that the arrangements proposed in the penultimate paragraph of your letter, as they apply to security and intelligence material, should be clearly set out for the Council and the departments concerned. This will mean establishing what makes a "more sensitive case", together with who decides this and when, the extent and sensitivity of the information to be given, which members of the Council will be told of the conclusions (if this is not to be restricted to the Chairman only), and the level of costs involved for each area. The intelligence and security agencies will need to be fully consulted and satisfied about these arrangements and to be content that the Council members involved have an appropriate level of security clearance.

If it is agreed to allow Council members some flexibility over seeing actual documents in non-sensitive cases, the arrangements here too will need to be clear and unambiguous.

I am copying this letter to David Gillmore, Chris France, Tom Legg, 'C', Stella Rimington and John Adye.

Yours ever,

Sir Robin Butler GCB CVO

CAW1202

From the Director: Sir John Adye KCMG
Government Communications Headquarters
Priors Road Cheltenham GL52 5AJ
Telephone 0242 (Cheltenham) 221491 ext
GTN 3073

CONFIDENTIAL

18

D/0402DD/3612/1

10 May 1993

POA
C. M. Andrew

CABINET OFFICE
A 6648
11 MAY 1993
FILING INSTRUCTIONS
FILE No.

Sir Robin Butler GCB CVO
Cabinet Office

Dear Robin,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

In your letter of 23 April you ask for any further comments on this subject, including the question of the Council's access to documents and your role in reviewing security and intelligence cases.

2. Gerald Wynn, writing on my behalf on 25 February, expressed our reservations about the extension of the Council's role to Section 3(4) applications. I agree that the distinction seems illogical, but I still think it very important that the security and intelligence "blanket" should not be undermined (perhaps I mean the moths should not be allowed to eat into it). So I would welcome continuance of the arrangement whereby the Lord Chancellor can ask the Cabinet Secretary to read documents and submit advice if he wants a further opinion, rather letting the Advisory Council see documents themselves; and I think it right that they should only examine the broad reasons for "blanket" closures.

3. I am copying this letter to the recipients of yours.

Yours ever
John

JOHN ADYE

CABINET OFFICE
12 MAY 1993
FILING INSTRUCTIONS
FILE No.

CONFIDENTIAL

FOLIO 17N

FACSIMILE MESSAGE COVER SHEET

FROM ST CHRISTOPHER HOUSE

FROM: IAIN GOODE

BRANCH: HD CS(RM)1

ROOM NO: 7127

TELE EXT: 1552 ST

FAX NO: 1271 ST

TO: Miss Andrews

BRANCH: Cabinet Office

ROOM NO: —

TELE EXT: 6050

FAX NO: 92-217-2010

CLASSIFICATION:

DOCUMENT REF:

DOCUMENT DATE: U/C

NO OF PAGES (Incl this one): 5

MESSAGE: Pat

Aus(SCT)'s submission to PS/PUS following Sir Robin Butler letter to Sir David Gillmore.

I hope to have something in writing, which I will fax, re the criteria (white paper).

[signature]

SIGNATURE OF AUTHORISING OFFICER:

DATE OF TRANSMISSION:

TIME OF TRANSMISSION:

TRANSMITTED BY:

TELE EXT:

COVER NOTES TO BE RETAINED FOR ONE CALENDER YEAR FROM THE DATE OF TRANSMISSION. PLEASE GIVE COVER SHEET TO REGISTRY CLERK.



MINISTRY OF DEFENCE
CS (R) 1
12 MAY 1993
ST. CHRISTOPHER HOUSE

LOOSE MINUTE

D/AUS(SCS) 5/3 (330/93)
D/Sy Sec 18/3

Hd CS(RM)

Outcome of the meeting Hd HB(A) and I attended first week.

12 May 93. Hd CS(RM)

7 May 1993

PS/PUS

Copy to:

D MOD Sy (with copy of Refs A-C)
Head of CS Division
Head of CS(RM)
HB(A)

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

References:

A. DH/93/482 dated 27 April 1993
B. A093/1348 dated 23 April 1993
C. HB(A)/13/1/8 dated 30 April 1993
D. MO 21/8/5 dated 8 February 1993

1. At Reference A you sought my advice on the Cabinet Secretary's letter at Reference B. You will recall that this subject was covered in page 3 of the Secretary of State's letter to the Chancellor of the Duchy of Lancaster at Reference D. Reference C is also relevant.

2. We believe that the proposals at Reference B pose no great difficulties for us:-

(a) It is sensible for the Lord Chancellor's Advisory Council to advise him on documents retained by Departments under the 'blanket' arrangements (Section 3(4)) as well as on those passed to the PRO but kept closed for specified periods (Section 5(1)). In doing so, they would not read the actual documents but would merely (as with Section 5(1) documents) read brief statements about the reasons why they should remain closed for the time being.

Recycled Paper

(b) It also seems sensible for the Advisory Council to advise the Lord Chancellor on requests from historians which had been refused by Departments. This too would not involve them in reading the actual documents; but, if they were dissatisfied, they would be able to call upon the Cabinet Secretary to do so and to explain (probably to the Chairman only) why it had been decided that the documents should remain closed. That too is unexceptional; although it might require the Chairman to hold a PV(TS) clearance, if he was to be given any detail on the reasons for refusing to make particular documents available.

3. The worry is that this procedure will not satify the historians; and that, if we do not offer more, we could be driven down an even less attractive route (e.g. an Open Government Ombudsman with authority to direct the release of documents - or to make recommendations, the rejection of which would be subject to judicial review). It is for consideration, therefore, whether it would not be better to assign the task of reading disputed documents and advising the Lord Chancellor on their release to a small number of the members of the Advisory Council (including at least one historian) who could be given PV(TS) clearance.

4. In view of S of S's earlier involvement and continuing Ministerial interest in the release of records, it will be necessary to advise him of the advice eventually given to the Lord Chancellor.

5. A draft reply to the Cabinet Secretary is attached.

A G RUCKER
AUS(SCT)
MB 4139 80462 MB

14 MAY '93 11:07 FROM CS (RM)1 PAGE.003

DRAFT LETTER FROM PUS TO THE CABINET SECRETARY

LORD CHANCELLOR's ADVISORY COUNCIL ON PUBLIC RECORDS

1. Thank you for your letter reference A093/1348 of 23 April 1993.

2. I have no difficulty with the proposals in your letter, which I agree would give historians greater assurance that we are not holding records under the 'blanket' unnecessarily. I am sure that it is sensible for the Council's role to be extended to include advice on Section 3(4) as well as on Section 5(1) records. I recognise the case for asking the Advisory Council to consider requests from historians which are refused by Departments but to do so on the basis that if necessary you would read disputed documents and advise the Council members (or in some cases the Chairman only) of the reasons for refusing their release. But I have some questions as to whether that procedure would carry sufficient public conviction. I wonder whether an alternative would be for a small number of members of the Council, who would have to have PV(TS) clearances, to read disputed documents and advise the Lord Chancellor on them. It may be that it would be better to offer such a solution than to risk being driven eventually to even less welcome alternatives (such as the intervention of an Ombudsman).

FOI 17M

Loose Minute

HB(A)/13/1/8

30 April 1993

PS/PUS
PS/Min(AF)
PS/USofS
AUS(SCT)
Head of CS
Head of CS(RM)
Head of Sec SCT
Head of GS Sec
Head of NHB
Head of AHB(RAF)
Copy to Cabinet Office Historical Section
FCO:LRD
PRO

WALDEGRAVE INITIATIVE ON RELEASE OF RECORDS: ROLE OF LORD CHANCELLOR'S ADVISORY COUNCIL

Ref A: HB(A) 13/1/8 of 27.11.92 & 8.1.93
Ref B: TJ/E92/1459 - 17/1 (APS PUS) of 2.12.92

1. At Ref A. I circulated to addressees my report of the historians'conference on the Waldegrave initiative on releasing records. I subsequently received a letter from the Institute of Contemporary British History, which organised the conference. (Copy attached).

2. The letter, which went to the participants, poses them the question of how to monitor the Government's performance. The ICBH wishes to sustain the network of historians and says 'We feel it might be appropriate to have a further meeting in the summer to discuss progress'.

3. In view of MOD's interest, I have asked to be kept informed about this meeting. If it takes place, given PUS's concern that we take some initiative in educating the historians about records matters, and given their intention to monitor progress on the release of documents they have asked for, it is for consideration whether an official presentation might be offered - perhaps by the Cabinet Office and the Public Record Office ???

4. Since the November conference, the historians have maintained the pressure for release of documents, with television and newspaper items. These have included much that is ill-informed, but the historians' cries fall on receptive media ears, and are likely to continue to do so. Members of the public too are increasingly inclined to question any official reply that does not immediately give them the documents or information they seek. This is the climate of expectation in which we now operate.

CABINET OFFICE
H 93/448
11 MAY 1993
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5. The historians made it clear in their Newsnight item that they consider officials to be determined to reduce the Waldegrave Initiative to a series of PR exercises, releasing enough documents to dress windows but with no substantial change in policy. It will be difficult to convince them otherwise because, despite the release of much new material - which is in hand and will continue - so much of what they want is in the Intelligence field, where substantial changes in release policy are unlikely to be possible.

6. There is a diversity of opinion among the historians about how to make their views felt. The ICBH report favoured an enhanced role for the Lord Chancellor's Advisory Council, an idea pushed by Peter Hennessy. This will be accepted only if it is seen to produce results ie released documents or refusals which are understood. The Advisory Council has the merit of including historians, thus visibly involving them in the records process and increasing the potential for trust. If the Advisory Council does not produce the desired results however, it will not solve the problem.

7. Given the historians' distrust of officials, the impossibility of releasing everything they want and the fact that the more radical among the historians were pushing for freedom of information, we seem to be moving towards an independent arbitrator who can settle disputes when historians (or others) will not accept Departmental refusals to release documents. Whether this arbitrator should be the Advisory Council or some form of ombudsman should depend on whether the Government wishes to retain control over the implementation of its own records policy or not.

8. Of the two options, the Advisory Council is just that - advisory - and this route would leave final decisions with Ministers. An Ombudsman, on the other hand, would either have the power to make recommendations, which on overseas experience can become the basis of an application for judicial review if the government does not accept them, or to make binding decisions. Either way, Departments would have to adjust their release policy in the wake of outside decisions, made case-by-case, by those who do not necessarily understand or take any wider implications into account.

9. If the ombudsman option is not considered an attractive route, then it makes sense to try to ensure that the Advisory Council alternative works. For this it will need to be seen to be independent and to be qualified to judge both sides of the case. It will need to be able to consider not only papers closed under Section 5(1) of the Public Records Acts but also papers retained under Section 3(4). It will need some mechanism to enable it to see papers on which it is asked to advise. These are considerable steps, but without them the Council will not satisfy the demands of historians.

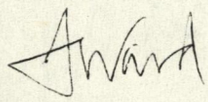
10. It must be noted that those attending the ICBH conference expressed incredulity that anyone could be expected to take seriously the work of an Advisory Council that could not advise on certain categories of records and was not allowed to see many of the records it was asked to judge. Further, it is unlikely that Ministers, commited to 'greater openess', will accept a solution that does not contain at least some public demonstration of this openess in practice; the 'beefing-up' of the Advisory Council might offer a way forward <u>without</u> surrendering Ministerial control.

11. Two practical problems obviously need attention: volume of work and security. The Wilson Committee on Public Records considered this matter in 1981 and recommended surmounting both problems by establishing a confidential panel of members of the Advisory Council which would have both time and security clearances to tackle the work. Wilson envisaged using the retired senior civil servants and privy councillors on the Council for this work and having enough of them to spread the load. It would now be necessary to widen this to some of the historians, who would need to be PVd (and to accept formally and openly the limitations this imposes on them in terms of the confidentiality of the material thus seen). Such a confidential panel would <u>not</u> in practice need or want to see <u>all</u> closed and retained material, but enough to satisfy itself both for its advice on general retention categories and policy and to consider disputed cases.

12. In certain instances of very sensitive material, the panel would still have to judge on the basis of advice from officials, but they should be able to receive sufficiently detailed reasons for non-release to satisfy themselves. If the Council members - and particularly the 'outside' members are known to have made properly informed decisions, there is a much better chance that at least the majority of historians (and others) will accept their judgements. These judgements will also provide better informed advice for the Lord Chancellor.

13. This system will not remove all problems: the Council may not be unanimous; the Lord Chancellor may reject its advice (and should retain the arrangement of using the Cabinet Secretary as arbitrator between the Council and Departments); the complaining historian may not accept the Council's refusal to support his case; but whatever system is adopted, not everyone will agree on every case and it is evident that the present system does not satisfy and will continue to be criticised. The propsal for enhancing the credibility and role of the Council is worth considering, if the more radical move to an outside arbitrator, with its inevitable disadvantages from the Departmental point of view, is not felt to be desirable.

14. In 1981 the Wilson Committee on Public Records stated (Cmnd 8204 para 318) 'It would...be a considerable reassurance to the public interested in access to records to know that departmental judgements on withholding all records could be subject to independent review within the framework of existing machinery.'



Miss A J Ward
Head of HB(A)
GSY403 85251MB

INSTITUTE OF CONTEMPORARY BRITISH HISTORY

34 Tavistock Square, London WC1H 9EZ
071-387 2331

MINISTRY OF DEFENCE
- 4 FEB 1993
ARMY HISTORICAL BRANCH

February 2 1993

Dear Mr Ward

Re: Waldegrave Initiative on PRO Releases

Please find enclosed a copy of the final report from the Conference held on November 25 1992. This has been forwarded to Mr Waldegrave, the Keeper of the Public Records, Sarah Tyacke and the Master of the Rolls Sir Thomas Bingham. We thought you would be interested in their responses.

Mr Waldegrave has passed the lists of files and classes to the relevant Government departments for consideration, the general recommendations are being considered as part of the on-going review of criteria for release. In his letter he points out that retention under section 3 (4) at the end of a closure period is only used infrequently and does fall within the provisions of the Public Record Act. Perhaps more importantly he states that " closing records after they have ben opened is not allowed. If any historian has evidence of such a practice being carried out please let me know."

Mrs Tyacke said that it was inappropriate for the PRO to comment on specific requests. However she did point out that all the Nuremberg Trial records are available at the Imperial War Museum and that WO 199/3288 A and B on the capture of Rudolf Hess are now open. With regard to housing files she stressed that many of these had been re-registered or attached to later files; "This is a good example of how difficulties of using complicated records...can lead researchers to assume either that the records they want do not exist, or that they have been withheld."

Sir Thomas Bingham said he had already suggested to the involvement of the Advistory Committee on Public Records in any review process and welcomed the changes that appeared to be in the air.

These responses raise a number of questions:

- have historians specific examples of documents being opened for inspection and then closed (such as those raised by Paul Vysny regarding Czechoslovakia in 1938 or by Martin Moir regarding the India Office Public and Judicial files) ?

- how are we as a profession going to monitor progress both on overall criteria for release and also on specific files ?

The ICBH feels that an important network was established by the conference and we would like to sustain this. We would encourage you to keep us informed of any progress made in the relase of documents and indeed any further documents that you or your colleagues have identified that should be released. We feel it therefore might be appropriate to have a further meeting in the summer to discuss the progress of the Waldegrave initiative.

Yours sincerely

Dr Brian Brivati
Deputy Director, ICBH

Chairman of The Patrons: Rt.Hon. Sir Frank Cooper. Chairman of the Advisory Council: Dr. David Butler. Chairman of the Board: Sir Kenneth Stowe.
Honorary Secretary: Lady Wood. Honorary Treasurer: Mr. David Severn (National Westminster Bank). Honorary Legal Adviser: Mr. Craig Eadie (Frere Cholmeley)
Auditors, Price Waterhouse. Co-Founders: Dr. Peter Hennessy, Dr. Anthony Seldon. Director: Dr. Peter Catterall.
The Institute is a Registered Charity - No. 295161

FOI 17

C. Miss Andrews

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A093/1349 ✓

23 April 1993

Dear Tom,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Thank you for your letter of 20 April about how best to take forward consideration of the role of the Lord Chancellor's Advisory Council.

I was grateful for your suggestion that I might like to write to --- Permanent Secretaries and I have taken up this option. I attach a copy of the letter which I have today sent to David Gillmore, Clive Whitmore, Chris France and to the Heads of the Agencies and I shall, of course, let you know their reaction as soon as possible.

You mention the need to consider how best to enable the Advisory Council to make its views known. In his letter of 2 April, Sir Thomas Bingham says that the Advisory Council has signalled its willingness to call an additional meeting to discuss the recommendations of the Working Party's final report. Perhaps the Council could consider proposals with regard to the extension of its role at the same time and advise the Lord Chancellor on both? As you know it is the intention that the outcome of both reviews should be incorporated into the White Paper on Openness to be published before the Summer Parliamentary Recess. We shall therefore need to ensure that the Advisory Council's views are known in sufficient time for them to be taken into account in the White Paper. Perhaps you should be arranging a meeting of the Advisory Council for the first week of June?

19 or 20 May.

Yours ever,

Robin

Sir Thomas Legg KCB QC
Lord Chancellor's Department

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26 APR 1993
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26 APR 1993
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FOL'S 16

C. Mia Andrew

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A093/1348

23 April 1993

My dear David,

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

The Chancellor of the Duchy wrote to the Lord Chancellor, the Foreign Secretary, Home Secretary and Secretary of State for Defence on 29 January, about a suggestion made by the Master of the Rolls, Sir Thomas Bingham, that the Lord Chancellor's Advisory Council should be involved in the consideration of requests from historians following the Chancellor's invitation to them to let him know of blocks of closed records which should now be released. He also referred to the Lord Chancellor's separate consideration of the possibility of extending the Advisory Council's remit so that it may advise the Lord Chancellor on applications to retain material under Section 3(4) of the Public Records Act as well as, as at present, on closures under Section 5(1). Before replying to Mr Waldegrave and advising the Prime Minister, the Lord Chancellor has asked Tom Legg to consider both questions. Tom has sought my views and I, in turn, am seeking yours and those of others to whom this letter is copied.

Sir Thomas Bingham takes the view that the Advisory Council is ideally placed to advise the Lord Chancellor on historians' requests and that the current distinction drawn between records closed under Section 5(1) on which the Council may advise and those retained under Section 3(4) on which they may not is somewhat illogical. I agree with him on both counts; a review of departmental decisions by the Council would provide useful evidence of an independent assessment and have considerable presentational value whereas the distinction drawn between closed and retained records would, in my view, be difficult to defend now in the context of more open Government.

Reservations were expressed in the replies to Mr Waldegrave's letter about the security implications of an extension of the role of the Advisory Council and about whether any extended role would allow the Council to reject departmental applications and pre-empt Ministers' rights to make decisions, subject to the Lord Chancellor's

/ approval, with regard

Sir David Gillmore KCMG
Foreign and Commonwealth Office

approval, with regard to the records of their departments. The Master of the Rolls has, however, informed the Lord Chancellor that the Advisory Council accepts that it should have a very limited role in respect of security and intelligence matters and that it will not expect to examine applications in detail. As regards records retained under the 'blanket' arrangements it should be possible to restrict the role of the Advisory Council to examining the broad reasons for blanket closure of such records. Tom Legg has also confirmed that there is no intention that the role of the Council, however extended, should become anything other than explicitly advisory.

In the light of these assurances I would, subject to your views, like to suggest to Tom Legg that he should advise the Lord Chancellor:-

a) that the Advisory Council should consider requests from historians which are refused by departments, and

b) that the role of the Council should be extended to allow it to advise him on Section 3(4) applications.

In his letter of 29 January the Chancellor of the Duchy raised the question of the Council's access to documents, particularly sensitive documents. There was some divergence of views on this in the replies. My initial view is that it is both unnecessary and undesirable for the Advisory Council to see actual documents. It would be cumbersome (are we to imagine members of the Advisory Council reading through piles of old files?), it would give wider access to specific information without much illuminating the judgement and, most importantly, in respect of sensitive material, it would not allow people who do not have a direct and current involvement in government affairs to judge what impact may be made on a current situation by the release of records. I should prefer to continue with the arrangement that, if the Advisory Council queries a Department's application and the Lord Chancellor wants a further opinion, he should ask the Cabinet Secretary to read the documents and submit further advice to him. Of course, I accept that in this sceptical age it gives the Advisory Council more plausibility if it can be said that they have examined the papers themselves. I doubt whether this argument outweighs the practical arguments set out above, but Ministers may be attracted by the arguments of greater openness and I would welcome your and other recipients' views.

If it is agreed that we should continue with the present arrangement whereby cases are referred to the Secretary of the Cabinet for advice and, in any event, in respect of security and intelligence material, I should be content that the Council (or perhaps, in more sensitive cases, the Chairman only) should be told of the conclusions drawn from that review and given a chance to offer further comments to the Lord Chancellor who would then decide. Views on this would also be appreciated.

/I am copying

I am copying this letter to Clive Whitmore, Chris France and Tom Legg, and to 'C', Stella Rimington and John Adye with whom I have had one exchange of correspondence on this matter but whose further comments, if any, would of course be welcome. So that we can report to Ministers in time for them to consult the Advisory Council and then make recommendations to their Ministerial colleagues in time for incorporation in the Openness White Paper, I should be grateful for replies <u>at the very latest by 14 May</u>.

Yours ever,

Robin

POLIS 15

HO93/336

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

In his letter of 20 April 1993, Sir Thomas Legg suggests that he should now write to interested departments and Heads of Agencies - unless you prefer to do so yourself - in the light of the replies to the Chancellor of the Duchy's letter of 29 January to the Lord Chancellor, yours of 8 February to the Agencies and the Master of the Rolls' letter of 2 April to the Lord Chancellor (copy attached to Sir Thomas Legg's letter) in which he says, inter alia, that the Advisory Council accepts that it would not expect to examine in detail applications to retain security and intelligence material.

Sir Thomas proposes that it should be suggested to interested departments and Agencies that the remit of the Advisory Council should be extended to cover retained records both those requested by historians and those for which departments make application to the Lord Chancellor; also that, whilst it might not be possible for the Council to see documents, when further advice is sought from the Secretary of the Cabinet reasons for the subsequent decision should be made available to the Advisory Council for comment.

I assume that it is Sir Thomas Legg's intention that a letter should now go either from him or from you to the Permanent Secretaries of those "interested departments" whose Ministers have already been consulted - Foreign and Commonwealth Office (FCO), Ministry of Defence (MoD) and Home Office, and to the heads of the three Agencies. To consult wider at this stage would take time and it would be difficult to know where to draw the line. At some stage of course all departments will have to be made aware of the proposed changes but this could perhaps be after the Chancellor of the Duchy and the Prime Minister have seen and agreed to the proposals.

In the correspondence to date the FCO was in agreement with the involvement of the Council in the Historians' requests, and has no fundamental difficulty with an extension of its remit to cover Section 3(4) retentions as long as Ministers' right to decide is not prejudiced. The Foreign Secretary also suggested, and the Chancellor of the Duchy indicated that he thought the suggestion a good one, that a small group drawn from the Advisory Council might review records in departments and advise the Council (this is much in line with the Wilson recommendation which was rejected). The Home Office, with some reservations, agreed in principle to the involvement of the Council in Historians' requests and did not object to extension of the Council's remit

including, it would seem, some access to records so long as this does not give the Council powers to reject departmental applications. The MoD reply was a strange one - it cast doubt on the need for any of the proposed changes but suggested that a different body might be sought to look at the requests from historians. The Agencies' main concern, as expected, was in respect of records retained under the 'blanket'.

Given the Advisory Council's acceptance of a very limited role in respect of security and intelligence records and Sir Thomas Legg's assurance that the Council's role is, and will remain, explicitly advisory, most of the concerns expressed in the earlier round of correspondence should be allayed. There is, however, some divergence of views with regard to access to documents. The argument put to the Agencies in your letter of 8 February that people who do not have current involvement in government affairs would not be helped in their judgement of what should or should not be released by access to documents was certainly accepted by the Agencies and seems likely to be accepted also by departments in respect of security and intelligence records. The other arguments - cumbersome procedures which would give wider access without much illumination of judgement would apply to all records but it may be that the presentational advantage of being seen to allow some access to non-security and intelligence records would outweigh them. There may be merit in asking departments to consider whether the Advisory Council could, in exceptional cases, where they were unhappy with a departmental application, be shown records dealing, for example, with personal sensitivity and/or material containing information given in confidence.

A further round of consultation on the <u>whole</u> issue would not take the matter much further forward. The letter to Permanent Secretaries should perhaps make proposals in the light of the earlier round of correspondence, seeking views only on the question of the information to be provided to the Advisory Council. If you agree the letter would include:-

a) a proposal that the Advisory Council should consider those requests from historians which are refused by departments,

b) a proposal that the role of the Advisory Council should be extended to allow it to advise on Section 3(4) retentions generally,

c) a request for views on whether the Advisory Council should see records in exceptional cases relating to non-security and intelligence matters accepting that possibly the only advantage of this would be presentational or, if you prefer,

d) that the Council should not see documents but that they would be able to ask the Secretary of the Cabinet to review documents if they remained dissatisfied about the proposal to withhold them from the public and,

e) that further consideration should be given to the information to be provided to the Council as a consequence of the Secretary of the Cabinet's review.

(the only views expressed so far on (e) are those of the Security Service which doubts whether the Council should be given access to any of the decision-making process and GCHQ which suggests that to show advice to the Council may be inhibiting and an alternative may be to show conclusions to the Master of the Rolls on a personal basis although they see drawbacks to this also).

The suggestion in Sir Thomas Legg's letter that you might wish to write to Permanent Secretaries yourself was his own - it was the only amendment he made to the draft letter put forward to him and you may think that in order to get the topic moving this would be the preferable course. I therefore attach a draft letter to Permanent Secretaries for your consideration and one to Sir Thomas Legg.

If you wish to omit the further consultation about the Council's access to records - (c) above - the letter to Sir David Gillmore could be amended by deletion of the paragraph beginning "Given the Council's attitude..."

In the eighth paragraph of his letter Sir Thomas Legg refers to the Master of the Rolls' request that the Council should in some way be allowed to make its view on these matters known and that consideration will need to be given to the appropriate way for this to be done. In his letter of 2 April, Sir Thomas Bingham says that the Council members have expressed themselves willing to call an additional meeting to discuss the recommendations of the Working Group on Closure and Retention of Records; the Council could presumably consider both topics at the same time and advise the Lord Chancellor accordingly.

When replies are received from Permanent Secretaries you will wish to write again to Sir Thomas with proposals to put to the Lord Chancellor who, if he agrees, will presumably seek the views of the Advisory Council before replying substantively to the Chancellor of the Duchy and then putting a submission to the Prime Minister encompassing this topic and the recommendations of the Working Group on Closure and Retention of Records. The outcome of both reviews would then be incorporated in the White Paper on Openness.

On a separate but related point, in his letter of 24 February, the Home Secretary refers to the question of resources, as indeed, does the Foreign Secretary in his of 25 February although the latter says that he would try to re-allocate resources for this purpose. At the end of the letter from Mr Petty, written on behalf of 'C,' dated 5 March, your guidance is sought on the priority to be accorded by reviewers to the requests from historians. This is something which SIS reviewers raise with me frequently and it is linked to the resource point; it is also a problem for the Security Service and for departments. So far we have been operating on an ad hoc basis, asking the reviewers to keep each group of records moving rather than completing work on one before turning to another but SIS are reluctant to continue on this basis. I think part of the purpose of the question is to ensure that Ministers, particularly the Chancellor of the Duchy, are aware of the resource implications of the open government initiatives. This is something which will emerge more generally when we are drafting for the White Paper but perhaps, when the main issue is resolved we could address these questions in a separate letter?

MISS P M ANDREWS
Historical and Records Section
22 April 1993

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:

Sir David Gillmore KCMG
Foreign and Commonwealth Office

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

The Chancellor of the Duchy wrote to the Lord Chancellor, the Foreign Secretary, Home Secretary and Secretary of State for Defence on 29 January, about a suggestion made by the Master of the Rolls, Sir Thomas Bingham, that the Lord Chancellor's Advisory Council should be involved in the consideration of requests from historians following the Chancellor's invitation to them to let him know of blocks of closed records which should now be released. He also referred to the Lord Chancellor's separate consideration of the possibility of extending the Advisory Council's remit so that it may advise the Lord Chancellor on applications to retain material under Section 3(4) of the Public Records Act as well as, as at present, on closures under Section 5(1). Before replying to Mr Waldegrave and advising the Prime Minister, the Lord Chancellor has asked Tom Legg to consider both questions. Tom has sought my views and I, in turn, am seeking yours and those to whom this letter is copied.

Sir Thomas Bingham takes the view that the Advisory Council is ideally placed to advise the Lord Chancellor on historians' requests and that the current distinction drawn between records closed under Section 5(1) on which the Council may advise and those retained under Section 3(4) on which they may not is somewhat illogical. I must say that I agree with him on both counts; a review of departmental decisions by the Council would provide useful evidence of an independent assessment and have considerable presentational value whereas the distinction drawn between closed and retained records would, in my view, be difficult to defend now in the context of more open Government. Reservations were expressed in the replies to Mr Waldegrave's letter about the security implications of an extension of the role of the Advisory Council and about whether any extended role would allow the Council to reject departmental applications and pre-empt Ministers' rights to make decisions, subject to the Lord Chancellor's approval, with regard to the records of their departments. The Master of the Rolls has, however, informed the Lord Chancellor that the Advisory Council accepts that it should have a very limited role in respect of security and intelligence matters and that it will not expect to examine applications in detail. Tom Legg has also confirmed that there is no intention that the role of the Council, however extended, should become anything other than explicitly advisory.

In the light of these assurances I would, subject to your views, like to suggest to Tom Legg that he should advise the Lord Chancellor:-

a) that the Advisory Council should consider requests from historians which are refused by departments and,

b) that the role of the Council should be extended to allow it to advise him on Section 3(4) applications

In his letter of 29 January the Chancellor of the Duchy raised the question of the Council's access to documents, particularly sensitive documents. There was some divergence of views on this in the replies. My initial view is that it is both unnecessary and undesirable for the Advisory Council to see actual documents. It would be cumbersome, it would give wider access to specific information without much illuminating the judgement and, most importantly in respect of sensitive material, it would not allow people who do not have a direct and current involvement in government affairs to judge what impact may be made on a current situation by the release of records. I should prefer to continue with the arrangement that, if the Advisory Council queries a Department's application and the Lord Chancellor wants a further opinion, he should ask the Cabinet Secretary to read the documents and submit further advice to him.

[Given the Council's attitude to its role in relation to security and intelligence material there should be no difficulty in getting acceptance of this in respect of material withheld on grounds of national security. For other material there is obviously a presentational advantage in allowing the Council, in exceptional cases, to see documents relating to, say, personal sensitivity, or containing information provided in confidence and I would welcome your views on whether this presentational advantage would outweigh the objections set out above.]

If it is agreed that we should continue with the present arrangement whereby cases are referred to the Secretary of the Cabinet for advice and, in any event, in respect of security and intelligence material, we shall need to decide what if anything the Council may be told and/or see of the conclusions drawn from that review. It may be that each case should be decided upon its merits depending upon the sensitivity of the material or that the Master of the Rolls only should see the conclusions and offer further advice to the Lord Chancellor on them. Views on this would [also] be appreciated.

I am copying this letter to Clive Whitmore, Chris France and Tom Legg; and to 'C', Stella Rimington and John Adye with whom I have had one exchange of correspondence on this matter but whose further comments, if any, would of course be welcome.

DRAFT LETTER FOR SIR ROBIN BUTLER TO SEND TO:-

Sir Thomas Legg KCB QC
Lord Chancellor's Department
House of Lords
London SW1A 0PW

LORD CHANCELLOR'S ADVISORY COUNCIL ON PUBLIC RECORDS

Thank you for your letter of 20 April about how best to take forward consideration of the role of the Lord Chancellor's Advisory Council.

I was grateful for your suggestion that I might like to write to Permanent Secretaries and I have taken up this option. I attach a copy of the letter which I have today sent to David Gillmore, Clive Whitmore, Chris France and to the Heads of the Agencies and I shall, of course, let you know their reaction as soon as possible.

You mention the need to consider how best to enable the Advisory Council to make its views known. In his letter of 2 April, Sir Thomas Bingham says that the Advisory Council has signalled its willingness to call an additional meeting to discuss the recommendations of the Working Party's final report. Perhaps the Council could consider proposals with regard to the extension of its role at the same time and advise the Lord Chancellor on both? As you know it is the intention that the outcome of both reviews should be incorporated into the White Paper on Openness to be published before the Summer Parliamentary Recess. We

shall therefore need to ensure that the Advisory Council's views are known in sufficient time for them to be taken into account in the White Paper.

[As you know the Chancellor of the Duchy wrote to the Lord Chancellor on 29 January on this matter having received a letter from the Master of the Rolls dated 17 December. It is obvious from Sir Thomas Bingham's letter of 2 April to the Lord Chancellor which you copied to me that he is aware of the considerations which are taking place, but you may think that an interim reply to the Chancellor of the Duchy to keep him in the picture would be appropriate.]

POLIS 14

Permanent Secretary and
Clerk of the Crown in Chancery
Sir Thomas Legg KCB QC

HOUSE OF LORDS,
LONDON SW1A 0PW

Tel. 071-219 3246
Fax. 071-219 4711

CABINET OFFICE
A 5650 ✓
20 APR 1993

20 April 1993

Sir Robin Butler GCB CVO
Cabinet Office
70 Whitehall
London SW1A 2AS

C. Miss Andrews
Grateful for a draft pls
Martin.
20/4

Your ref: A093/380

Dear Robin.

Lord Chancellor's Advisory Council on Public Records

The Chancellor of the Duchy of Lancaster wrote to the Lord Chancellor at the end of January about the possible future role of the Advisory Council, both in considering requests made by historians for closed or retained records to be released and generally.

You subsequently wrote the Agencies to canvass views on extending the role of the Council to cover retained as well as closed documents, and on the proper degree of access which it might have to the records themselves. I am writing as a result of the views expressed in that correspondence to let you know my own view and to seek your advice on how best to take this matter forward.

In your letter to the Agencies you suggested that in future the Council might usefully be able to consider applications for retention from departments in the same way as they presently consider applications for closure, and that in the case of "blanket" applications the Council should be restricted to considering the general class of records forming the application. In the context of requests from historians the principal concern expressed, by Box 500, was that the Council should have no right of veto over the decisions of individual departments. In fact the Council's function is explicitly advisory, and I do not think it is countenanced anywhere that this will change.

Turning to the question of whether the Council's remit should be extended to cover applications for retention generally, reservations were expressed about the implications for "blanket" retentions if the Council were to seek to examine individual records contained within them. The Master of the Rolls, in his capacity as Chairman of the

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21 APR 1993
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FILE No. .....

Advisory Council wrote to the Lord Chancellor about this on 2 April and I enclose a copy of that letter. As you will see, the Council fully accepts that it would not be proper for it to seek to examine records relating to security and intelligence in detail. As you suggested in your original letter, therefore, the Council might be restricted to examining the broad reasons for any "blanket" closure involving such records.

The remaining matter is the question of the degree of access by the Council to the records themselves. Both you and fellow correspondents support a continuation of the present arrangements, whereby the Lord Chancellor can ask you to provide him with further advice as necessary. On this matter the Chairman in his letter asks simply for the greatest degree of flexibility possible, and to be included in discussions on the point. The Council feels strongly that, in exceptional cases, it must be allowed to assuage any doubts about a department's application. Clearly it would be impractical to PV each member of the Council and allow them unlimited access to records. In the past it has been suggested that some sort of panel or sub-committee of members who have been vetted might examine examples of records on behalf of the full Council. However this does not counter the most convincing argument against allowing the Council access to the records, which is that it will not be in a position to assess the harm that might be caused to present operations by the release of old, and perhaps apparently harmless, records.

You have suggested that where your further advice is sought, the reasons for your subsequent decision might usefully be known to the Council for their comments. Although this would fall short of what the Council might wish, it would represent some advance from their point of view provided that there was a real prospect of such further advice being sought where necessary. It is worth emphasising, perhaps, that this would only ever be on an exceptional basis.

Having considered all this, I am minded to propose to interested departments that Ministers should be advised that the remit of the Advisory Council should be extended to cover retained records. This would apply both specifically in the context of William Waldegrave's invitation to historians, and generally to enable the Council to consider applications for retention just as it presently considers those for closure. I would also suggest that, while it may not be possible to allow the Council to see the records themselves, where further advice is sought from you about a particular application, reasons for the subsequent decision should be available to the Council for comment.

The Lord Chancellor will be keen to accede to the Chairman's request that the Council should in some way be allowed to make its views about all this known, and consideration will need to be given

/ ...

to the appropriate way in which to do so.

I should be grateful to know whether you would be content for me to contact interested departments including of course the heads of the Agencies, on the lines I have suggested. (You might of course prefer to do so yourself.) Ideally, the conclusions on this exercise should be presented together with the findings of the review of the criteria for closure and retention.

Yours ever.

Tom

BH 27/4/93

233164

FOL 13

From: The Rt. Hon. Sir Thomas Bingham

MASTER OF THE ROLLS

ROYAL COURTS OF JUSTICE
STRAND, LONDON, WC2A 2LL

Telephone: 071-936 6002
Fax: 071-936 7475

The Right Honourable
The Lord Mackay of Clashfern,
The Lord Chancellor,
House of Lords,
London, SW1A 0PW

2 April 1993

Dear James,

ADVISORY COUNCIL ON PUBLIC RECORDS

I am writing in my capacity as Chairman of your Advisory Council on Public Records to register the views of the Council on two present initiatives on public records. These are, first, the recently completed review of the criteria for closure and retention and, secondly, the implications for the Council's future rôle arising from the Chancellor of the Duchy of Lancaster's consideration of requests from historians for records to be released.

Considering first the review of the criteria for closure and retention of public records, I understand that the working party has now presented to you its final report and that its recommendations will shortly be approved by Ministers. The Advisory Council presently has an important rôle, which it takes very seriously, in considering applications by departments for records to be closed for longer than the normal 30 year period. I think it is important, therefore, for the Council to be given an opportunity to comment on the findings of the report in this context before they are reflected in the forthcoming White Paper on openness, which I understand is to be published in the summer. If you agree to this, the members of the Council have already signalled their willingness to call an additional meeting to discuss the report's recommendations and to advise you accordingly.

Turning to the question of the Council's future rôle in considering the closure or retention of records, I wrote before Christmas to William Waldegrave asking him to consider how best the Council might be involved in considering requests for departments to release identified records. This followed his offer to historians earlier in the year for them to approach him with details of records which they would like to see released. I am particularly concerned that the Council, as the body charged by statute to advise you on public records matters, should be involved in considering such requests where they have been refused by departments. I understand that Mr. Waldegrave has subsequently written to you about this and that the matter is presently under active consideration.

The Council, as you know, is presently restricted to examining applications for documents to be closed for longer than 30 years, and does not consider applications for documents to be retained within departments. There is no doubt that many of the requests from historians as a result of Mr. Waldegrave's offer will relate to records which have been retained rather than closed, and as things stand, therefore, the Council would be able to consider some requests but not others. This distinction seems illogical, since in considering applications for closure alone the Council is routinely entrusted with making recommendations about highly sensitive documents.

If the Council is to be able to examine the basis on which records requested by historians have been retained, it follows that it should also be able to advise you generally on applications from departments for records to be retained, just as it presently advises you on closure applications. Having said this, the Council quite accepts that there may be some applications for retention - I am thinking of those relating to national security and intelligence - which it should not examine in detail. Except for this area, however, it is firmly of the view that it should be allowed to advise you on applications for retention as on applications for closure.

Where the Council expresses reservations about an application for the closure or retention of a particular record, which seems likely to occur only infrequently, it is important that members are able to make an informed decision. I know that you are familiar with concerns expressed in the past about the fact that the Council has to rely on explanations without being able to inspect the records themselves. The Council's general view is that it should be permitted the greatest possible flexibility to satisfy itself about the grounds on which records are withheld from the public. I understand that this matter, too, is presently being discussed and I should be grateful for the Council to be given the opportunity to contribute to those discussions.

I look forward to hearing from you about all this in due course.

Yours ever

Tom.

THE NATIONAL ARCHIVES

DEPARTMENT/SERIES CAB 103/796 PIECE/ITEM ..... (one piece/item number)	Date and sign
Extract details: Letter dated 15 March 1993	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	08/03/24
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	

Instructions for completion of Dummy Card

Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer
or Number not used.

HO93/201

Miss Andrews CFERB

Thank you

RBB 10.5

CABINET OFFICE
A 3527
-9 MAR 1993
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FILE No.

FOLIO 11

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL

The Chancellor of the Duchy has received replies to his letter of 29 January to the Lord Chancellor on the above topic from the Secretary of State for Defence (8 February), the Home Secretary (24 February) and the Foreign Secretary (25 February) but not yet from the Lord Chancellor himself.

I understand that the Lord Chancellor's reply is due to be sent this week and that it will say only that he is asking Sir Thomas Legg to consult Permanent Secretaries; Sir Thomas will write to you at the same time. By then you may have received all the replies to your letter of 8 February to the heads of the agencies. Mr Wynn has replied on behalf of Sir John Adye (25 February) and 'C''s reply of 5 March has just arrived; Mrs Rimington's reply is awaited.

The replies to the Chancellor of the Duchy's letter received so far have been sent to me with no action requested but we shall not, in any event, be able to take the matter forward until you hear from Sir Thomas Legg.

Sir Thomas Bingham's original letter, which began the correspondence, was dated 17 December but I believe he is aware, from the Lord Chancellor's Department, of the deliberations which ae taking place.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
9 March 1993

THE NATIONAL ARCHIVES

DEPARTMENT/SERIES CAB 103/796 PIECE/ITEM ..... (one piece/item number)	Date and sign
Extract details: Letter dated 05 March 1993	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	08/03/2024
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	

Instructions for completion of Dummy Card



Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer
or Number not used.

From: G D Wynn - Director of Organisation and Establishments
Government Communications Headquarters
Priors Road Cheltenham GL52 5AJ
Telephone 0242 (Cheltenham) 221491 ext
GTN 3073

FOLIO 9

CONFIDENTIAL

D/9978DO/3612/1

25 February 1993

CABINET OFFICE
A 3059
26 FEB 1993
FILING INSTRUCTIONS
FILE No.

C. Miss Andrews

Sir Robin Butler GCB CVO
Cabinet Office
70 Whitehall
LONDON SW1A 2AS

Dear Robin,

THE LORD CHANCELLOR'S ADVISORY COUNCIL

John Adye, who is currently in the Far East, has asked me to reply on his behalf to your letter of 8 February 1993. We are generally content with the line you propose. The involvement of the Advisory Council in respect of requests from historians where Departments or Agencies wished to refuse release under Section 5(1) of the Public Records Act would be consistent with their current functions, and would provide a measure of public reassurance.

2. The involvement of the Advisory Council in closures under Section 3(4) would indeed seem to raise some problems. The problems are smaller for specific closures, but the nature and volume of material held under "blanket" instruments would make an extension into this area much more difficult. Any proposal to provide a meaningful itemised listing of such material would seem to be likely to be either very expensive to implement, or unworkable in practice, which is, as you point out, the reason for having a blanket in the first place. In providing a list of characteristics of such material we would wish to describe the reasons for continued closure only in broad terms - which might add little to what is already understood about the material.

3. In the circumstances it seems unlikely that the extension of the Council's remit to Section 3(4) would actually provide the Lord Chancellor with improved advice about the need for withholding. Whilst an extension might appear presentationally attractive, I suggest that the reality of continued restrictions on the Committee's access (caused by their only seeing broad outlines) would soon become apparent.

CABINET OFFICE
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FILE No

CONFIDENTIAL

4. I believe that you have identified the main reason why it is both unnecessary and undesirable for the Advisory Council to have access to the records: that the judgement must be based on knowledge gained from direct and current involvement in government affairs. We see no difficulty in adhering to the arrangement whereby if the Lord Chancellor wants a further opinion, he should ask the Cabinet Secretary to read the documents, though against the possibility that this might prove an unreasonably onerous task if too many requests were made, you might wish to consider whether such a service should not be available in respect of documents retained under "blankets". As to whether the Advisory Council should see your further advice to the Lord Chancellor, you might feel that such a procedure would be inhibiting if you wished to mention sensitive information; and the idea of providing both open and secret conclusions seems impracticable and open to misinterpretation. An alternative approach might be to show your conclusions to the Master of the Rolls on a strictly personal basis, though there are obvious drawbacks.

5. I am copying this letter for information to Stella Rimington, 'C' and Sir Thomas Legg.

Yours ever,

G D WYNN

→ Miss Andrews

To see the CAL's comment.

[illegible] D.

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE

Action	Miss Andrews
By	

PS - Parliamentary Secretary

PS - Second Permanent Secretary

Special Advisor

FOR INFORMATION: Sir Robin Butler

Mr Whetnall

PS (JD)

CAL

of the Duchy of Lancaster

X. Good idea.

[illegible]

CABINET OFFICE
Kb 1558
26 FEB 1993
FILING INSTRUCTIONS
FILE No. 0

FOI 8

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE
Action: Miss Andrews
By:
PS - Parliamentary Secretary
PS - Second Permanent Secretary
Special Advisor
FOR INFORMATION: Sir Robin Butler
Mr Whetnall
PS (JD)

FCS/93/040
Chancellor of the Duchy of Lancaster

Open Government : Advisory Council on Public Records

Thank you for sending me a copy of your letter to the Lord Chancellor outlining Thomas Bingham's ideas for expanding the role of the Lord Chancellor's Advisory Council to deal with requests from historians.

I share your view that the Council could perform a useful function in providing an independent assessment of Departmental decisions and in providing a further incentive to keep down the number of refusals. In the FCO, we are already working to achieve this and the number of refusals will go down sharply when we have completed our review of our substantial withheld archive.

Your proposals, of course, break new ground in suggesting that the Council's remit be extended to cover retentions under Section 3(4) of the Public Records Act and that its members be given access to the sensitive documents in question. Although this latter idea has been rejected

CABINET OFFICE
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in the past I do not see any fundamental difficulty with the principle although we shall have to consider carefully, particularly bearing in mind the interests of the agencies, how it should best be implemented. It would be impractical to vet all the members of the Council and, in any event, it would probably be unwelcome to them. An acceptable alternative would be to appoint a small group of sufficiently eminent historians whose advice would be respected by the Council. Once given the necessary clearances they could, in instances where the Council is not satisfied with the briefings given by Departments, review the records in the Department and advise the Council. In the event of a continuing difference of opinion the decision of the Minister responsible for the records should be accepted as final. The preparation of such briefings for the Council and properly controlled access arrangements for the accredited historians will not be cost free, but I would try to re-allocate resources in order to implement what would be substantial evidence of our commitment to open government in this area.

DH

Douglas Hurd

Foreign and Commonwealth Office
25 February 1993

CABINET OFFICE
Kb 15399
25 FEB 1993
FILING INSTRUCTIONS
FILE No. 0

FOL 1

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

24 FEB 1993

Dear William.

Thank you for sending me a copy of your letter dated 29 January to Lord Mackay about the involvement of the Advisory Council in the consideration of requests from historians for the release of records.

The proposal put forward by Sir Thomas Bingham appears sound in principle, although I am unsure whether this is a short-term exercise designed to meet the current high level of requests from historians for access to departmental records, following your invitation last June, or something perhaps more permanent, but again targeted at historians. If the latter, the position of the general public in this area should also be considered. There will also be a need for us to establish what sort of role the Council should be adopting in the future - advisory body, as now; an appeal board; or a council with more wide-ranging powers. Each of these roles raises difficult issues which must be addressed, but whatever the outcome, there are likely to be high resource costs and major record handling problems for the Council members and Public Record Office, and an inevitable knock-on effect to the departments concerned.

In respect of the proposal to extend the Advisory Council's remit to applications for retention of records under section 3(4) of the Public Records Act 1958, could I put up a marker for the future. It is one thing to consider giving Council members access to sensitive documents in order to give advice to the Lord Chancellor, provided they have the appropriate level of security clearance, but quite another if this is the forerunner to allowing wider powers, such as to reject applications. Any changes of policy here would undermine the key role of Box 500 and could compromise the Home Office's commitment to protecting current security service operations and personnel.

Yours ever,

KENNETH CLARKE

The Rt Hon William Waldegrave, MP
Cabinet Office
70 Whitehall
London SW1

CABINET OFFICE
H 240
26 FEB 1993
FILING INSTRUCTIONS
FILE No

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE
Action: Miss Andrews
By:
PS - Parliamentary Secretary
PS - Second Permanent Secretary
Special Adviser
FOR INFORMATION:
Sir Robin Butler
Mr Whetnall
PS (D)

POLICY 6

SECRETARY OF STATE

MINISTRY OF DEFENCE
WHITEHALL LONDON SW1A 2HB
Telephone 071-21-82111/2/3

CHANCELLOR OF THE DUCHY OF LANCASTER AND MINISTER OF PUBLIC SERVICE AND SCIENCE

Action	Whitehead
By	–
PS - Parliamentary Secretary	
PS - Second Permanent Secretary	
Special Advisor	
FOR INFORMATION: Rose	
PS(2)	

– we will arrange a briefing in due course.

Shelley
Our interest is page 3 which refers to the LC's Advisory Council. Plse put with the other pps for the moment.
Par 26/2

MO 21/8/5

8 February 1993

CABINET OFFICE
KB 1486
09 FEB 1993
FILING INSTRUCTIONS
FILE No. 6

Dear William,

OPEN GOVERNMENT

Thank you for giving me the opportunity to comment on your letter to James Mackay and Gillian Shepherd of 29 January 1993 on the subject of open government.

I am strongly in favour of your general objective of greater openness and I recognise the need to make a convincing response to Mr Fisher's 'Right to Know' Bill on 19 February. I welcome your intention to publish a White Paper on this subject in the Spring. The contents of this White Paper will be of particular concern to my Department, in view of the sensitivity of so much of the information that we handle; and I hope therefore that you will very soon be able to give your colleagues a clear view of all the proposals that it will contain and that there will also be adequate time for Departments to offer detailed comments on the text. I am grateful that you have accepted that there will not be time to complete this process before the Second Reading of Mr Fisher's Bill.

Full Consultation before W.P.

The Rt Hon William Waldegrave MP
The Chancellor of the Duchy of Lancaster

CABINET OFFICE
H 225-V
22 FEB 1993
FILING INSTRUCTIONS
FILE No.

POLICY IN CONFIDENCE

Recycled Paper

I understand that the White Paper will cover the subject of access rights to personal files and o health and safety information, on which you circulated papers with your letters; that it will cover the release of public records, to which you referred in your letter and on which an interdepartmental working group has separately made recommendations to James Mackay which I understand are uncontroversial; and that it will also include new proposals on the publication of the reasoning behind major policy decisions (whilst continuing to protect the formulation of internal advice). This last is potentially a highly controversial issue, in which I will wish to take a particularly close interest. I am told that you will be proposing new enforcement machinery. Your letters indicate what you have in mind in the areas of personal files, health and safety information and the release of public records; but I believe that you may wish to propose enforcement arrangements in the field of major policy decisions too. The Data Protection Act, of course, already provides enforcement machinery to protect and to provide individual access rights to personal data held on computers (subject to important exemptions, including national security); and the right of access to information on the environment under EC Directive 90/313/EEC can be enforced by judicial review.

I agree that all this amounts to a substantial package of measures, which will remove much unnecessary secrecy in some important areas of government and which will thus provide a reasonable basis for resisting Mr Fisher's Bill. But I am concerned that Departments have not yet been consulted about some major aspects of your proposals; and that in the fields where your officials have consulted Departments much important detail, especially as concerns enforcement machinery and the precise wording of the proposed exemptions, has still to be worked through. I am also conscious that the pressure of events may bring your proposals to a head before work on Robin Butler's review of protective security procedures has got very far, while

Peter Brooke is still considering his response to the Calcutt Report on privacy and which the future of the D-Notice system is also under discussion. I do not dispute the urgency of completing your White Paper; but I hope that you will be able to give us a complete picture of its contents very soon; and I hope too that my officials will have adequate time to look at the detail of what you are proposing, particularly in respect of making public the rationale for policy decisions.

Turning now to the specific proposals in your letters and starting with the release of public records, it is already my Department's policy to make our records available for public inspection after 30 years in the absence of good reasons for not doing so. In this connection, for example, 71 per cent of the material previously retained in my Department beyond the 30 year period was released to the PRO upon review in 1992. I accept, however, that some historians - and others - will only accept decisions which go against their wishes if they are subject to some kind of independent arbitration. I doubt whether a procedure under which the independent arbiter was informed only of the titles of the disputed subject-matter would carry much conviction: I believe, as you imply, that the arbiter would have to read papers which had been requested and which Departments had refused to release. In the more sensitive areas this would mean that arbiters would need to hold PV(TS) clearances. This could perhaps point against using an existing body such as James Mackay's Advisory Council for this work; and some of its members might in any case be reluctant to undertake such a time-consuming task. It might therefore be better to leave them to give the Lord Chancellor general policy advice on public records policy and to look elsewhere for a body to exercise this function. On the point which you raise in your fourth paragraph, I rather doubt whether there is a real need for an independent review of Departments' retentions of records under Section 3(4) of the 1958 Public Records Act - an even more time consuming task with some difficult security implications. A procedure for appeals in

disputed cases should surely suffice.

Turning now to your letter about health and safety information, I agree with the general thrust of what you say. But the detail will need to be worked out with great care. The heading is such a wide one that the exemptions will have to be defined with some precision. In the fields of defence and national security, for example, the harm test which you propose will need to reflect any changes in the classification system which may emerge from Robin Butler's protective security review.

In health and safety and indeed in other areas, the problem of internal advice is another difficult issue where there will certainly need to be exemptions, and not just over advice on doubtful points of law (to which you refer in your letter about personel files). For example, my Department receives innumerable letters from Servicemen, ex-Servicemen and members of the public requesting some form of assistance (not necessarily financial) or compensation. When dealing with such casework it is often necessary for officials to consult internally and to analyse on paper the pros and cons of meeting the request or granting the application. Do you envisage that such information would in the future be available to the applicant? I am sure that you will wish to make clear that there is still a great deal of work to be done over issues of this kind; and that any proposals in the White Paper must therefore for the present have distinctly Green edges.

(A) This would make cases right very tedious.

As for other aspects of your letter about personal files here too I agree with the general thrust of what you say, but we need to see the detail worked out. On an important point of principle, I am glad that you feel that you can resist giving individuals the right of access to their Departments' personnel files. Especially if applied restrospectively, apart from the considerable resource implications, such an access right would raise formidable problems over information provided in confidence

and (depending on what the arrangements were) over information provided for national security purposes. Even without retrospection, the effectiveness of Departmental personnel management would be weakened, as you rightly say. I recognise, however, as you do, that the pressures for greater openness in this area will be strong; and that we shall need to be ready to show that we are as open as is reasonable in our dealings with our Service and civilian personnel - for example over their periodic staff reports.

The charging and enforcement regimes will be key elements of both your personal files and health and safety information papers. We look forward to being consulted further on both these aspects.

I have one particular difficulty which also affects both these papers. This concerns the right of access to Service Board of Inquiry Accident Reports, where Defence Ministers have announced new procedures following judicial criticism in the Sancto case last July. I recognise that there will be a lot of pressure to give a general right of access to such reports. But I would much prefer that access should be confined to the next of kin of those who have suffered fatal injuries; and that it should be discretionary rather than statutory. If Board of Inquiry reports had to be written in the expectation that they would be put fully into the public domain, they would be much less likely to be frank in their descriptions of the faults of those invovlved; and they would not then be as helpful as they should be in avoiding repetitions of what went wrong. I accept that those who have suffered directly should be entitled to know what caused their suffering. This need is now being met by acceding to the requests of next of kin for the release of BOI reports (less any classified material) whenever there are good reasons for doing so; and by allowing the injured to obtain disclosure of BOI reports through the courts, should they wish to claim compensation from the Department. I am much less ready to accept a general right of access for the media and others whose main

MOD have such a bad press that Parliament would not accept their discretionary right continuing

interest may be in following up newsworthy stories and in finding people to pillory publicly. I acknowledge that there is a genuine public interest in such inquiries, but there is an even greater public interest in maintaining their effectiveness. Nevertheless, in view of the sensitivity of this area, I am ready for my officials to discuss these arrangements further with your officials, if you feel that the line which we have taken would be too difficult to hold.

I am sending copies of this letter to the recipients of yours.

Malcolm Rifkind

CABINET OFFICE
H 158
10 FEB 1993
FILING INSTRUCTIONS
FILE No.

F

5

POA

C. Miss Andrews

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref. AO93/380

8 February 1993

Dear C,

The Lord Chancellor's Advisory Council

The Chancellor of the Duchy of Lancaster has received a letter from the Master of the Rolls, Sir Thomas Bingham, about the role of the Lord Chancellor's Advisory Council in consideration of requests from historians for the release of records. This follows an invitation issued by the Chancellor last June to historians to let him know of blocks of closed records which they believe should now be open.

Sir Thomas takes the view that the Advisory Council, set up under the Public Records Act 1958 to advise the Lord Chancellor on matters relating to public records, is ideally placed to advise on this matter given that one of its principal duties is to consider applications from Government Departments for records to be closed under Section 5(1) of the Act, and to make recommendations on whether the Lord Chancellor should accept such applications.

Mr Waldegrave's view, and mine, is that the Advisory Council could perform a useful function in respect of records which Departments do not wish to release in response to historians' requests. The fact that the courts reviewed Departmental decisions, would provide useful evidence of an independent assessment and have considerable presentational value. Conversely, the possibility of rejection by the Council of a Departmental decision should provide a further incentive to Departments to keep the number of refusals to a minimum. I would envisage that the Advisory Council would see a schedule of requests and Departments' conclusions on them with, in the case of refusals, a general description of the reasons for refusal on the lines now given to the Advisory Council in the case of closure under Section 5(1) of the Public Records Act (copy of an example enclosed).

The Lord Chancellor is also considering whether the Advisory Council's remit, which is limited at present to closures under Section 5(1) of the Public Records Act, should be extended to cover retentions under Section 3(4). Again, if the Advisory Council were given a role in

/relation to this

'C'

relation to this category, they would presumably be given a schedule similar to that for closures under Section 5(1). But the question then arises whether they should consider retentions covered by the 'blanket'. It would seem to me unrealistic that they should be given an item by item list of such material - that is, after all, the rationale for a 'blanket': in such cases I suggest that the most that the Advisory Council could consider is the list of characteristics which material has if it is held back under the 'blanket'.

Finally the Chancellor of the Duchy of Lancaster also wants to consider again whether the Advisory Council should have access to sensitive documents themselves - a suggestion which has been rejected in the past - or should give advice on the basis of descriptions of the characteristics of the documents. My predecessor consulted yours on this topic in 1980 prior to the publication of the Wilson Report (Cmnd 8204) which recommended the setting up of a confidential panel of Advisory Panel members who are Privy Councillors or otherwise qualified to see material of the highest sensitivity to advise the Lord Chancellor on any protests or appeals he may receive about withheld records, and again in 1982 prior to publication of the Government's response to the Wilson Report which rejected this recommendation and placed the responsibility for advising the Lord Chancellor on these matters on the Secretary of the Cabinet.

My feeling is that it is both unnecessary and undesirable for members of the Advisory Council to have to read the documents themselves. First, it would be a cumbersome procedure. Second, compared with a description of the characteristics of the papers, it would give wider access to the specific information without much illuminating the judgement. Third, as my predecessor argued in 1981, judgements about what should or should not be withheld in the public interest require not so much access to the raw material as a direct and current involvement in government affairs. People who do not have that involvement may not necessarily be well placed to judge what impact might be made on a current situation by the release of old papers. If that view continues to prevail, I believe that we should continue with the arrangement that, if the Advisory Council queries a Department's recommendation and the Lord Chancellor wants a further opinion, he should ask the Cabinet Secretary to read the documents themselves and submit further advice to him. We could perhaps consider whether the Advisory Council should see the Cabinet Secretary's conclusion and offer further advice to the Lord Chancellor on it.

We shall need to form a view on these three issues and I should very much welcome your views on them as soon as possible.

I am copying this letter to Stella Rimington and John Adye, and for information to Tom Legg.

Yours ever,

Robin

HO93/89 ✓

From: Miss P M Andrews
Historical and Records Section
217 6050

cc PS/Mr Jackson
Sir Robin Butler
Mr Mottram
Mr Whetnall
Mr Wilton
Mr Rose

HR 8/15 ?

MR CAHN

BRIEFING FOR THE AD HOC MEETING ON 9 FEBRUARY

As agreed on the telephone this morning, I attach briefing on public records matters for the meeting on Tuesday 9 February. This comprises the draft Working Group recommendations which you said the Chancellor would wish to have and short notes on other aspects which may possibly be raised at the meeting and which will be included in the White Paper.

If I can provide anything more please let me know on Monday.

Pat Andrews

MISS P M ANDREWS
5 February 1993

BRIEFING ON PUBLIC RECORDS MATTERS FOR THE AD HOC MEETING ON 9 FEBRUARY

WORKING GROUP ON CLOSURES AND RETENTIONS

Attached is the draft summary of recommendations from the final report of the Lord Chancellor's Working Group on Closures and Retentions.

It is expected that the final report will be with the Lord Chancellor on Friday next, 12 February. As he has seen the report in draft form and has expressed himself generally content with it, it should be forwarded to you quite quickly thereafter.

The paper circulated for the meeting on 9 February refers to the most important recommendations - in paragraph 28 the "harm test" (Rec 3), in paragraph 29, the reductions in closure periods (Recs 6, 7 and 8) with the proviso that some longer closure periods will be necessary where there is an existing commitment, for example, the Census records, or where there is a statutory requirement, for example, in respect of records relating to rape victims or where, under the personal sensitivity criterion, release of records would cause distress or danger to living persons or their descendants. Recommendations 11 and 12 relating to the giving of more information about the reasons for closure are also referred to in the paper (paragraph 28).

The remainder of the recommendations relate mainly to information to be published in the White Paper and to the guidelines which are to be drawn up for the benefit of reviewers.

LORD CHANCELLOR'S ADVISORY COUNCIL

Paragraph 30 of the paper refers to the Master of the Rolls' suggestion that the Lord Chancellor's Advisory Council should be involved in considering the historians' requests for release of records and to the Lord Chancellor's review of the role of the Council. Your letter to the Lord Chancellor seeking his views on this suggestion, dated 29 January, was copied to the Foreign Secretary, the Home Secretary and the Secretary of State for Defence.

REQUESTS FROM HISTORIANS

Your invitation to historians to let you know of blocks of records which they believe should be released is referred to in paragraph 30 of the paper. Individual requests are being processed and departments are due to let me know their plans and timetable for dealing with the "shopping list" submitted by the Institute of Contemporary British History. I shall be chasing these next week.

THE THIRTY YEAR RULE

We shall be giving consideration to and shall include in the White Paper:-

a) the release of material within the 30 year period under the existing provisions of the Public Records Act

b) the release of records over 30 years old both by systematic review on the basis of the revised criteria and in response to ad hoc requests and the historians' "shopping list"

c) the pros and cons of reducing the 30 year rule

RESOURCES

The Working Group has not referred to resources though the point was made in its discussions that the recommendations have resource implications. The point will need to be addressed in the White Paper as will the related topic of charging for ad hoc reviewing.

Historical and Records Section
5 February 1993

RESTRICTED

WORKING PARTY ON CLOSURE AND RETENTION

Summary of Recommendations

1. The criteria under which documents are closed and retained should be published in the White Paper, together with illustrative examples.

3. The White Paper should draw attention to the requirement for regular review of records retained in departments.

2. The Guidelines on Extended Closure should be published in the White Paper.

3. Applications for closure should be informed by the Guiding Principle, which is:

> "All records not retained in departments should be released after 30 years unless it is possible to ~~/~~ the actual /demonstrate damage that would be caused by release, under the 3 established criteria set out below." (see B attached)

4. The prescribed closure periods in the Guidelines, eg "40 years", should be prefaced with the words "up to" and should include the words "or until death, if known" where appropriate.

5. Where appropriate, departments should consider requests for individual records to be released where there is proof of death.

6. The normal closure period under the first, public interest, criterion should be reduced from 50 to 40 years and the criterion should be redrafted to read:

> "Exceptionally sensitive records containing information the disclosure of which would not be in the public interest in that it would harm defence, international relations, national security including the maintenance of law and order, or the economic interests of the UK and its overseas territories."

7. The normal closure period under the second, breach of confidence, criterion should be reduced from 50 or 75 years to 40 years.

8. The normal closure period under the third, personal sensitivity, criterion should be reduced from 50, 75 or 100 years to 40 years, and the criterion should be redrafted to read:

> "Documents containing information about individuals the disclosure of which would cause either:
>
> (i) distress, or
>
> (ii) endangerment from a third party,
>
> to living persons or their descendants."

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9. Departments should draw up internal guidance to indicate circumstances in which distress would be caused by the release of records.

10. Specific reference to Ireland and the Royal Family should be removed from the Guidelines, and the White Paper should make it clear that records relating to the Royal Family are closed under the same criteria as all other records.

11. In answering queries about the withholding of records departments may refer to one of the following reasons, which should be published in the White Paper, for doing so:

(i) administrative reasons

(ii) international relations

(iii) material given in confidence

(iv) personal sensitivity

(v) national security

12. Where the reason given by departments is (i) administrative reasons, departments should supply further information to support this. Where the reason given is either (ii) international relations, (iii) material given in confidence or (iv) personal sensitivity, further information is to be given is at the department's discretion. Where the reason given is (v) national security, departments should not supply any further explanation.

13. Core guidance on the procedures involved in closure and retention, and disseminating best practice, should be drawn up and distributed to all departments.

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CRITERIA FOR EXTENDED CLOSURE B

As stated in the 1982 White Paper (Cmnd 8531)

1 Exceptionally sensitive papers, the disclosure of which would be contrary to the public interest whether on security or other grounds (including the need to safeguard the Revenue).

to be amended to read:-

Exceptionally sensitive records containing information the disclosure of which would not be in the public interest in that it would harm defence, international relations, national security including the maintenance of law and order, or the economic interests of the UK and its overseas territories.

2 Documents containing information supplied in confidence, the disclosure of which would or might constitute a breach of good faith.

to remain unchanged. The "might" has been left in this criterion as it corresponds with the wording of Section 5(2) of the Public Records Act 1958.

3 Documents containing information about individuals the disclosure of which would cause distress to or endanger living persons or their immediate descendants

to be amended to read:-

Documents containing information about individuals the disclosure of which would cause either:-

(i) distress, or
(ii) endangerment from a third party,

to living persons or their descendants.

FOLIO 4

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 071-270 0400

Chancellor of the Duchy of Lancaster
Minister of Public Service and Science

Miss Andrews
+PPS

C -
Miss ~~R. Nockolds~~

PS/PS
Mr Mottram
Mr Whetnall

Kb0126

Rt Hon Lord Mackay of Clashfern FRSE
House of Lords
LONDON
SW1A 0PW

29 January 1993

Dear James,

I have received a letter from the Master of the Rolls, Sir Thomas Bingham, about the involvement of your Advisory Council in the consideration of requests from historians for the release of records following my invitation to them in June last year.

Sir Thomas takes the view that the Advisory Council, set up under the Public Records Act 1958 to advise you on matters relating to public records, is ideally placed to advise on the requests from historians given that one of its principal duties is to consider applications from Government Departments for records to be closed under Section 5(1) of the Act, and to make recommendations to you on whether you should accept such applications. Sir Thomas adds that the Advisory Council strongly supports our objective of making public records available for public inspection in the absence of good reasons for not doing so.

In my view, the Advisory Council could perform a useful function in respect of records which Departments do not wish to release in response to historians' requests. The Council's endorsement of Departmental decisions, which could be made known to an enquirer, would provide useful evidence of an independent assessment and have considerable presentational value. Conversely, the possibility of rejection by the Council of a Departmental decision should provide a further incentive to Departments to keep the number of refusals to a minimum.

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H 122 ✓
03 FEB 1993
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I have told the Master of the Rolls in an interim reply that, whilst I should be glad to consider ways in which the Council may be involved, I should need to consult colleagues before making firm proposals on the matter. I understand that you are considering, inter alia, whether the Advisory Council's remit, which is limited at present to closures under Section 5(1) of the Public Records Act, should be extended to cover retentions under Section 3(4). This would give the Council the right to express views on the whole range of records requested by historians and others.

We would need also to consider again whether the Advisory Council should have access to sensitive documents themselves - a suggestion which has been rejected in the past - or should give advice to you on the basis of descriptions of the characteristics of the documents.

I should be grateful for your views, and those of colleagues to whom this letter is copied, on the suggestion by the Master of the Rolls for the involvement of the Advisory Council.

I am copying this letter to the Foreign Secretary, the Home Secretary, the Secretary of State for Defence and Sir Robin Butler.

WILLIAM WALDEGRAVE

Miss Andrews C. [illegible]

Thank you. I think that the letter should be addressed to the Lord Chancellor since it relates to his Advisory Council. You are right to remind me of the point at x/. I have suggested inserting a sentence flagging up the point, which I should be grateful if you would consider. My inclination is that they should not have access to the documents themselves.

PBRB 19.1.

CABINET OFFICE
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19 JAN 1993
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H093/48

SIR ROBIN BUTLER

LORD CHANCELLOR'S ADVISORY COUNCIL

In my minute of 7 January to the Chancellor of the Duchy I said that I would consult departmental colleagues about how best to involve the Advisory Council in consideration of the requests from historians for the release of records and that I would then prepare letters to go to Ministers seeking their agreement to what is proposed.

At a meeting of the Working Group on Closures and Retention on 13 January the Chairman referred to Sir Thomas Bingham's letter to Mr Waldegrave and said that the Lord Chancellor had asked for consideration to be given to extending the role of the Advisory Council, which is at present limited to consideration of applications from Departments for closure under Section 5(1) of the Public Records Act to enable it to consider also retentions by departments under Section 3(4); this would bring security and intelligence-related records within the Council's scope. Consideration is also to be given to whether the Council should be allowed to see actual papers rather than be given information about them by the Secretary; some vetting of Council members would be needed if this change was proposed.

Departments most closely concerned, FCO, MOD, Home Office, as well as the security and intelligence agencies, are represented on the Working Group and so, as the Lord Chancellor has asked for this work to be done and departments are alerted to it, I see no reason why the Chancellor of the Duchy should not write now about Sir Thomas Bingham's letter.

X Before submitting draft letters to the Chancellor however, I thought I should remind you that when Sir Thomas Legg wrote to you last year about the review of the Advisory Council following the recommendations of the Efficiency Scrutiny of the Public Record Office, you asked to be kept informed of any proposal to extend the remit of the Council which could have implications for your role as advisor to the Lord Chancellor on these matters (see attached). I have asked the Secretary of the Advisory Council to ensure that you are consulted before any decision is taken and before the Lord Chancellor replies to Mr Waldegrave on the role of the Advisory Council in respect of historians' requests for the release of records.

This whole matter will form part of our wider considerations relating to the further paper from the Lord Chancellor and the Chancellor of the Duchy commissioned at the Prime Minister's meeting on 13 January but there is, in my view, no reason why departments should not be considering this as a separate issue in the meantime.

I attach a draft, which, if you agree I shall put to the Chancellor.

Pat Andrews

copied from HR 8/1/3

MISS P M ANDREWS
Historical and Records Section
19 January 1993

Miss Andrews
C. CERB

HO93/45

From: Miss P M Andrews
Historical and Records Section
217 6050

cc PS/Mr Jackson
Sir Robin Butler
Mr Mottram
Mr Whetnall

CHANCELLOR OF THE DUCHY

OPENNESS: ROLE OF THE ADVISORY COUNCIL

In my submission of 7 January I said that I would prepare letters for you to send to Ministerial colleagues seeking their views on the Master of the Rolls' suggestion with regard to the involvement of the Advisory Council in considering the letters from historians seeking the release of public records.

Sir Thomas Bingham's suggestion was referred to during a meeting of the Working Group on Closures and Retentions on Wednesday 13 January when the Chairman said that the Lord Chancellor was giving consideration to extending the role of the Advisory Council, at present limited to consideration of applications for extended closure under Section 5(1) of the Public Records Act, to enable it to consider also retentions by Departments under Section 3(4) of the Act. This would bring the majority of security and intelligence-related records within the Council's scope.

Departments are now alerted to these matters and the way is clear now for you to write to Ministerial colleagues. A draft letter to the ~~Foreign Secretary~~ Lord Chancellor, copied to the ~~Lord Chancellor~~ Foreign Secretary, the Home

Secretary and the Secretary of State for Defence is attached for consideration.

MISS P M ANDREWS

January 1993

DRAFT LETTER FOR THE CHANCELLOR OF THE DUCHY TO SEND TO:-

The Rt Hon Douglas Hurd CBE MP
Secretary of State for Foreign and Commonwealth Affairs
Downing Street
London SW1A 3AL

I have received a letter from the Master of the Rolls, Sir Thomas Bingham, about the involvement of ~~the Lord Chancellor's~~ Your Advisory Council, of which he is the Chairman, in consideration of the requests from historians for the release of records following my invitation to them in June last year to notify me of blocks of records which, in their view, should now be publicly available.

Sir Thomas takes the view that the Advisory Council, set up under the Public Records Act 1958 to advise ~~the Lord Chancellor~~ Your on matters relating to public records, is ideally placed to advise on the requests from historians given that one of its principal duties is to consider applications from Government departments for records to be closed under Section 5(1) of the Act, and to recommend to ~~the Lord Chancellor~~ Your whether he should accept such applications. Sir Thomas adds that the Advisory Council strongly supports our objective of making public records available for public inspection in the absence of good reasons for not doing so.

In my view the Advisory Council could perform a useful function in respect of records which departments do not wish to release in response to historians' requests. The Council's endorsement of departmental decisions, which could be made known

to an enquirer, would provide useful evidence of an independent assessment and have considerable presentational value. Conversely, the possibility of rejection by the Council of a departmental decision should provide a further incentive to departments to keep the number of refusals to a minimum.

I have told the Master of the Rolls in an interim reply, that whilst I should be glad to consider ways in which the Council may be involved and that the Council's views seem likely to be most useful as I have outlined above, I should need to consult colleagues before making firm proposals on the matter. I understand that ~~the Lord Chancellor, to whom I am copying this letter, is~~ you are considering, inter alia, whether the Advisory Council's remit, which is limited at present to closures under Section 5(1) of the Public Records Act, should be extended to cover retentions under Section 3(4). This would give the Council the right to express views on the whole range of records requested by historians and others. We would also need to consider again whether the Advisory Council should have access to sensitive documents themselves — a suggestion which has been rejected in the past — or should, I should be grateful for your views on the suggestion by the Master of the Rolls for the involvement of the Advisory Council.

I am copying this letter to the ~~Lord Chancellor~~ Foreign Secretary, the Home Secretary and the Secretary of State for Defence.

~~Consider~~ give advice to you on the basis of descriptions of the characteristics of the documents.

VOL 1
2H

Public Record Office

Mr. Llew Smith: To ask the Parliamentary Secretary, Lord Chancellor's Department how many peapers withheld at the Public Record Office have been subsequently released after review by the Lord Chancellor's advisory council in each year since 1979.

Mr. John M. Taylor: The Advisory Council on Public Records has a role in considering and commenting on applications to the Lord Chancellor by departments for the extended closure of public records, that is, beyond the statutory period of 30 years after their creation. It has never reviewed records after they have been closed.

Hansard January 1993

Written Answer col. 262

Chancellor - to see

3

From: The Rt. Hon. Sir Thomas Bingham

ROYAL COURTS OF JUSTICE
STRAND, LONDON, WC2A 2LL

Telephone: 071-936 6002
Fax: 071-936 7475

Sir Robin

Advise I had better meet him myself after the holiday: we should write this comment. If we can't keep them in evidence. [illegible]

The Right Honourable
William Waldegrave, M.P.,
Chancellor of the Duchy of Lancaster,
Minister of Public Service and Science,
Cabinet Office,
70 Whitehall,
London, SW1A 2AS

17 December 1992

Dear Chancellor,

I am writing as Chairman of the Lord Chancellor's Advisory Council on Public Records concerning your invitation to serious historians earlier this year to write to you to request the release of papers which are presently withheld from the public.

As you may know, the Advisory Council was established under the Public Records Act 1958 to advise the Lord Chancellor on matters relating to public records. Members of the Council are appointed by the Lord Chancellor and are distinguished individuals drawn from a variety of backgrounds to represent a wide range of interests in public records.

I understand that since you extended your invitation on 25 June you have received a considerable amount of correspondence from historians. I know also that the Institute of Contemporary British History recently conducted a seminar to discuss your invitation which was attended by many senior historians.

My purpose in writing is to raise with you the role of the Advisory Council on Public Records in the consideration of requests for records to be opened resulting from your invitation to historians. One of the Council's principal duties is to consider all applications from government departments for records to be closed and to recommend to the Lord Chancellor whether he should accept such applications. It therefore represents a body of expertise about the closure of public records which is relied upon by the Lord Chancellor as the Minister with overall responsibility for public records.

It seems to me that the Advisory Council is ideally placed to consider and to advise on the requests for records to be opened now being received, which appear to fall squarely within its remit. Indeed, it is difficult to see why any alternative machinery for considering these requests might be established given the existence of the Council. My own feeling is that if

it were intended that the members, who attend on a voluntary basis, should be excluded from the present exercise they may well question the usefulness of serving on the Council at all.

I should be grateful, therefore, to know your views on what role the Council might play in the context of the present exercise. I would add that the Advisory Council strongly supports your own objective of making public records available for public inspection in the absence of good reasons for not doing so.

Yours sincerely,

Tom Sington.

Mr Glennie
Man
for info.
Brian 11/8

?

Archives

Paul
For information

Lesley

From: Lesley Blundell
Library Adviser
Tel: 210 6783

Date: 3 August 1992

P/S Secretary of State

LETTER FROM LORD RENTON RE THE IMPACT ON LOCAL ARCHIVE SERVICES OF THE LOCAL GOVERNMENT REVIEW.

The Secretary of State has received a letter from Lord Renton asking for comments on a letter he has received from the Executive Secretary of the Society of Archivists.

Both DNH and the Department of the Environment have an interest in local archive services. The attached suggested reply has therefore been drafted taking account of a line supplied by the DoE.

LBlundell

Lesley Blundell, Library Adviser.

See f1, 1H and Oct. 94

DRAFT REPLY FROM MR. MELLOR TO THE LORD RENTON PC KBE QC

Thank you for your letter of 22nd July asking for my comments on one from Mr. Patrick Cleary,Executive Secretary of the Society of Archivists,concerning the proposed local government review and its impact on archive services.

Mr.Cleary can be assured that we are fully aware of the importance of archives and of the valuable service provided by County Record Offices and other local government managed archive collections.Our proposals seek to secure effective arrangements for all services, including archives, and it is for this reason that the procedure guidance to which the Local Government Commission must have regard includes the Advisory Council on Public Records and the Royal Commission on Historical Manuscripts in the list of bodies to be consulted about the review.

The new Commission's main task will be to make recommendations for improving the structure of local government in the shire counties, area by area, taking account of local views, the costs and benefits of change and the economy and effectiveness of service arrangements. In recommending any unitary authorities the Commission would have to be satisified about the delivery of services, including archive services.There is no presumption in favour of either county or district councils as the basis for the new unitary authorities.We want the Commission to recommend the most appropriate local government structure to suit local circumstances,and retention of two tiers of local government is not ruled out as an option if that is what local people want.

When the Commission comes to review any particular area there will be ample opportunity for interested parties, including the Society of Archivists and interested local groups and individuals to put forward their views and comment on its proposals.Final decisions about local government structure in any area will be for Parliament.

HO92/423

FOL'N 2

Spare from HR 8/1/?

MISS PHIPPARD

cc Mr Whetnall

I mentioend to you that No 10 have only today sent across the letter from the Lord Chancellor's Private Secretary dated 30 June which says that the Lord Chancellor would be agreeable to being invited to conduct a review of the operation of the criteria established under the Public Records Acts. It would, however, appear that the Prime Minister has already written to Mr Winnick MP, referring to this review,(assuming that the draft attached to Miss Sandell's letter was approved and sent).

It is necessary for a letter to go from the Chancellor of the Duchy to the Lord Chancellor as a matter of some urgency now and I should be grateful if you could ascertain whether Sir Robin Butler would be content for me to submit a letter along the lines of the attached draft.

Although the Lord Chancellor appears to be prepared to consider the operation only of the criteria I would have thought an inderdepartmental committee of the kind suggested should be able to give some thought to the criteria themselves - hence the drafting of the attached which I have cleared with Mr Whetnall.

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
30 July 1992

DRAFT LETTER FOR THE CHANCELLOR OF THE DUCHY TO SEND TO*

THE LORD CHANCELLOR

I am concerned, as I know you are too, to ensure that, as part of the Government's commitment to more open Government, as much official information as possible should be released, commensurate, of course, with the need to protect truly sensitive material.

There has been considerable interest in the records released recently - the Hess papers, the Farm Hall transcripts, the Shingle Street papers and some interesting suggestions are being made in response to my invitation to historians to let me know of blocks of records which, in their view, should be released. We need to keep /up this momentum and, in connection with a reply to a Parliamentary Question from David Winnick MP to the Prime Minister about documents relating to the wartime occupation of the Channel Islands, the criteria which govern requests to you to withhold material under the provisions of the Public Records Act came to my attention. I believe that it would form a most useful part of our general thrust to reducee to a minimum the amount of information which is withheld if the operation of the criteria could be reviewed and, indeed, given that the criteria themselves were drawn up over 10 years ago, if consideration could be given to whether the wording of them might, with advantage, be tightened up.

I am threfore writing, with the Prime Minister's consent, to ask if, as the Minister responsible for the Public Records Acts, you

would carry out such a review. Perhaps our officials could discuss precise terms of reference but I envisage that they would cover:-

i the possibility of tightening up the wording of the criteria,

ii the operation of the criteria including the periods for which material not rleased after 30 years is withheld,

iii the balance to be achieved in explanations of decisions to continue to withhold material,

iv the guidance to be given to those applying the criteria and seeking authority to withhold information

I assume that for this purpose your Department would chair a committee with members drawn from interested departments. When it has reported, if you agree, perhaps you and I could jointly put a papers to interested colleagues with our conclusions. I am envisaging a White Paper on our general policy before the turn of the year and hope to put proposals to colleagues in the Autumn. It would be helpful if something of the Committee's findings could be reflected in these proposals.

If you are happy to proceed in this way perhaps you would ask who-ever is to chair the committee to contact Pat Andrews, Head of the Historical and Records Section, so that terms of reference and membership can be agreed.

CABINET OFFICE
Internal
28 FEB 1992
INSTRUCTIONS
FILE No.

copied from HR 8/1/3

CABINET OFFICE

70 Whitehall London SW1A 2AS
Telephone 071-270 0101 Fax 071-270 0208

CABINET OFFICE
HISTORICAL SECTION,
HEPBURN HOUSE,
MARSHAM STREET,
LONDON. SW1P 4HW

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler KCB CVO

Ref. A092/595

27 February 1992

Miss Andrews

Dear Tom,

Review of the Advisory Council on Public Records

Thank you for your letter of 17 February enclosing a copy of the report on the review of the Lord Chancellor's Advisory Council.

The recommendations contained in the report should go a long way towards achieving a more independent Council and one which will be able to carry out its advisory role more effectively; I note that the Lord Chancellor has approved their implementation.

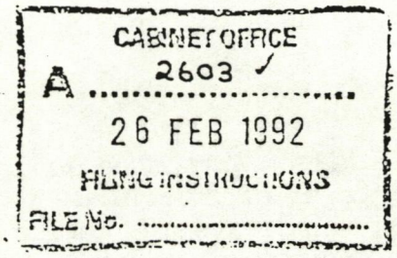
The question of the Council's role in respect of the extended closure or retention of records was considered, as you know, following publication of the Wilson Committee's report in 1981 and the deliberations which took place then led to my predecessor in his capacity as Secretary of the Cabinet assuming the advisory role envisaged by the Committee in respect of such records. Any extension of the Council's remit in this area would have implications for this arrangement and, as you say, more widely for Government. I am glad therefore that the issue has been set aside for consideration at a later date and I should be grateful if I and/or Miss Andrews in the Historical and Records Section of the Cabinet Office could be kept fully informed.

Yours ever,

Robin

T S Legg Esq CB QC
Lord Chancellor's Department

Thank you. Pl. type letter for my sig. FERB 27.2.



HO92/93

copied from HR 8/1/3

SIR ROBIN BUTLER
cc Mr Davie

REVIEW OF THE ADVISORY COUNCIL ON PUBLIC RECORDS

The role, composition, and procedures of the Advisory Council on Public Records have been the subject of a review by officials in the Lord Chancellor's Department following recommendations by the team which carried out a scrutiny of the Public Record Office (PRO) in 1990.

The recommendations set out in the report which Mr Legg has sent to you for information under cover of his letter of 17 February, are designed, in the main to emphasize the statutory role of the Council which is to advise the Lord Chancellor:-

> ".....on matters concerning public records in general and, in particular, on those aspects of the work of the Public Record Office which affect members of the public who make use of the facilities provided by the Public Record Office."

Terms of Reference are being considered to supplement the above wording in the legislation; the Council is to have a formal role in relation to the change to Agency status for the PRO and subsequently in respect of the business plans and changes to the Framework document, and the Secretariat will, in future, be provided by the Lord Chancellor's Department rather than the PRO. The Lord Chancellor has agreed that these and other recommendations relating to membership of the Council - the Chairman no longer automatically to be the Master of the Rolls but appointed by the Lord Chancellor from whatever field he chooses and consideration to be given to the appointment of three non-academic users of the PRO and a senior archivist - should now be implemented. The Scrutiny Team commented that the relationship between the Council and the PRO was "too cosy". The changes being made as a result of the review should enable the Council to be more independent.

As Mr Legg says, so far as extended closures and retentions are concerned, the report merely indicates that further consideration will be given to the role of the Council in this respect. At present the Council is not involved at all with retentions under Section 3(4) of the Public Records Act; it does, however, according to the Scrutiny Report, "devote most of its attention to the provision of advice to the Lord Chancellor on the exercise of his powers under Section 5 of the Act concerning extended closures...." The Council does not see the papers for which extended closure is sought (though it could, with the agreement of the department concerned). It sees schedules, and relies on the Secretariat to answer any queries it might have.

The Wilson Committee, which reported in 1981, thought that this situation was unsatisfactory and recommended that Advisory Council members who were Privy Counsellors or otherwise qualified to see material of the highest sensitivity should form a confidential panel to review the justification for withholding certain categories of records and to advise the Lord Chancellor on any appeals he received on the matter. This recommendation was rejected in the

Government's response to the Wilson Committee Report on the grounds first that it would not be right for a panel of this kind, however eminent its membership to have access to the most sensitive of public records and secondly that evaluation of such material requires an intimate knowledge of current policies and developments which Advisory Council members, even those who are former Crown servants, could not have. It was therefore agreed that the Secretary of the Cabinet would assume the advisory role recommended by the Committee; if the Lord Chancellor wished for a further opinion about proposals for extended closure or retention he could ask the Secretary of the Cabinet to look into the matter and advise him. This arrangement, which was recommended following considerable interdepartmental discussion, and a meeting between your predecessor and the Heads of the Agencies and Permanent Secretaries of the Foreign Office, Ministry of Defence, Home Office and Lord Chancellor's Department in January 1982, was to supplement, but not replace, the Advisory Council's functions in relation to access to records. Lord Hailsham, when Lord Chancellor, sought such advice from your predecessor on at least one occasion; the present Lord Chancellor has done so in respect of the security and intelligence 'blanket' but not, so far as I am aware, in respect of individual applications.

Any proposal to extend the Advisory Council's role in respect of retained records could however have implications for your role as adviser to the Lord Chancellor and the reservations which were expressed in the early 1980s would have to be looked at again in the light of developments in the intervening years.

I attach a draft reply to Mr Legg for your consideration.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
25 February 1992

Mail corres. HR 8/1

FOLIO 1N

HOUSE OF LORDS,
LONDON SW1A 0PW

Tel. 071 219 3246

Thomas Legg, C.B., Q.C.
Permanent Secretary

CABINET OFFICE
A 2198
19 FEB 1992
FILING INSTRUCTIONS
FILE No

CONFIDENTIAL

Our ref: MS30/30/12

17 February 1992

c- Miss Andrews

Dear Robin.

Review of the Advisory Council on Public Records

I am writing to let you know that following the recommendation in the Action Plan for the Efficiency Scrutiny of the Public Record Office, officials here have recently undertaken a review of the Advisory Council on Public records. I enclose a copy of the report for your information.

The Lord Chancellor has agreed that the recommendations, which are summarised in section 2 of the report, should now be implemented; and Council members have welcomed its assessment of the ways in which the Council's role might be developed.

The report does not go into detail about the role that the Council should play in relation to applications for the extended closure and retention of records. Enlargement of that function could have far-reaching implications for Government, and the Lord Chancellor is therefore of the view that now is not the right time to consider changes in that area. The reference at paragraph 3.11 of the report is therefore couched in general terms and indicates that further thought will need to be given to these matters.

X

Yours ever.
Tom

Sir Robin Butler KCB CVO
Secretary of the Cabinet and
Head of the Home Civil Service
Cabinet Office

Mr Glennie
Alan - You may be interested to see this. I don't think there is any great implication for us ~~except~~ unless there are developments as at X.
Pat 20/2.

e Times
anuary 4th 1992
Page: 5

5

Mackay reviews arcane role of records committee

By Andrew Lycett

■ Those who advise on which public records should stay secret work under a handicap: they cannot read them

AS OFFICIAL papers for 1962 become generally available in the Public Record Office (PRO) for the first time today, the Lord Chancellor is contemplating an overhaul of the little-known committee that advises him on the release of government documents.

The 16 members of the Lord Chancellor's advisory council on public records, comprising historians, archivists and MPs, operate under a classic bureaucratic Catch-22: they have to advise the Lord Chancellor without looking at the records on which they give their counsel.

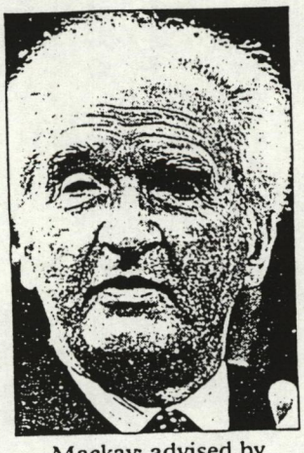
Lord Mackay of Clashfern, the Lord Chancellor, is responsible for the preservation and release of British public records. Under his ultimate authority, 5,108 feet of records were transferred to the PRO in Kew in 1991. But about 2 per cent of those were kept closed to the public for 50, 75 or 100 years, and another unspecified number were retained in government departments on grounds of sensitivity.

Under the 1958 Public Records Act, each government department is responsible for maintaining its own files. After approximately five years, it throws out the trivia and the duplicates. At the Foreign Office, the retained files are transferred to its new archives building near Milton Keynes.

After 27 years, these documents are reviewed to select those which merit preservation. The remainder are destroyed (with the agreement of an inspecting officer of the PRO). The Foreign Office says that 70 per cent of political files are retained.

After 29 years, the Foreign Office, in keeping with other departments, conducts a further review, when a team of retired diplomats weeds the material to ensure that nothing sensitive is released.

If after this procedure a minister still wants to hold back documents, he has two options. Section 3.4 of the Public Records Act stipulates "blanket bans" on files dealing with security and intelligence, atomic and nuclear issues, and civil defence. It also allows the retention of files for "administrative reasons". Alternatively, under section 5.4 the minister can send documents to the records office subject to a closure period of up to 100 years, if he feels the national interest may be imperilled, confidences breached or personal sensitivities hurt.



Mackay: advised by council kept in dark

Thus, material on British involvement in Ireland in the 1920s is held back because it includes names of British informers, whose families might still be compromised.

At each stage, ministers must convince the PRO's government services department, headed by Dr Nicholas Cox, that they have cogent reasons for withholding material. If the ministers want items to be held under "extended closure", Dr Cox submits a list of the documents, with brief reasons, to the Lord Chancellor's advisory council. The council meets four times a year under the chairmanship of the Master of the Rolls. It can question Dr Cox on why a department has withheld certain documents, but it cannot examine them. Last year, the council called on Dr Cox to provide further justification on 15 classes of material. The previous year the closure on one category was rescinded.

During the past year, however, the advisory council has taken to airing its grievances. In the council's latest report, Lord Donaldson of Lymington, the former Master of the Rolls, expressed his disappointment at the failure to involve council members in decisions on extended closures. Lord Skidelsky, the recent biographer of John Maynard Keynes, and a member of the council, suggests that he and his colleagues be positively vetted or allowed to see contentious documents.

Copied for convenience of this file from HR 8/1/3

Sun
January 4th 1992
Page: 6

● *POLITICIANS work on the mushroom principle. They try to keep us in the dark and feed us bulls**t.*

Secrecy laws exist to hide their official cock-ups. So they also want legislation to gag the Press and suppress their private mistakes and misconduct.

Government papers are not released for 30 years to hide their embarrassment.

Even then some are held back. We are considered too stupid to be trusted with this information, even though they are paid to serve us.

Given what we already know about this present bunch, I hate to think what might come out on January 1, 2023.

3

CABINET OFFICE

Historical Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071-217 6050

HO91/572

MR M WILLIAMS MG

RESPONSIBILITY FOR ARCHIVES

Thank you for your minute of 30 August enclosing Mr A Poulter's letter of 30 August 1991 about the allocation of responsibility for archives matters.

I have been unable to locate any previous enquiries record on this. MG Division have queried with us on a couple of occasions the reasoning behind the Lord Chancellor's responsibility for public records and whether departmental responsibility should move to the centre (to the now defunct CSD or the Cabinet Office) but nothing as wide-ranging as Mr Poulter's concerns!

I agree with you that the boundaries are already pretty clear and that Mr Poulter is wrong on the question of University archives; we have checked that and find, as you thought, that the Universities own their own archives.

It would appear therefore that OAL's main concerns are about the national role being adopted by the Keeper of Public Records and the effect of this on the role of the Secretary of the Royal Commission on Historical Manuscripts. You will recall that the PRO was recently the subject of a scrutiny and is shortly to become an Agency. One of the scrutiny team's recommendations was that the PRO should be re-named 'The National Archives'. This recommendation was not accepted but it may be indicative of the role foreseen for the Agency! Chapter 7 and Annex O of the Scrutiny Team's report relate, inter alia, to the PRO's relationship with the Royal Commission on Historical Manuscripts (if you have not got a copy I can photocopy from ours).

I think therefore that unless you regard Mr Poulter's enquiry as a machinery of government one already, which I think you do not, it would be as well if he took the matter up with LCD, under whose auspices the scrutiny took place.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
13 September 1991

Now with RP to go to LSP when he is ready to read it

R Thankyou for your help. Better keep the Scrutiny Report for a while in case MG Lovett got a copy.

P 13/9.

related ref. Oct. 94 and f 2H

Public Records (PRA)

Established under PRA – LCD, → PRO. [DRA]

Local Govt – – – – – – DOE

Others – Univs, Libraries Museums

? OAL problem

Univ. resp for own archives

See 18/31 II Fo 8 on historical reasons for LC's position, and responsibility of PRO.

1955 Cabinet concs (Post Grigg)

Selected LC after considering HS CX LP

See 18/31 I 1980

Fo 3 (+4, 5)

CABINET OFFICE
HISTORICAL SECTION,
GREAT GEORGE STREET,
LONDON, SW1P 3AQ

The Cabinet Office Historical Section has now moved to the above address. Please note the changes to my room and telephone number.

My telephone number is 01 - 233 .....

My room number is .....

Signed

From: Mike Williams
Date: 30 August 1991

MISS ANDREWS

RESPONSIBILITY FOR ARCHIVES

Attached is a letter I recently received from Mr Poulter in the OAL concerning the allocation of responsibility between departments on Archives matters.

2. I realise that your responsibility as Departmental Records Adviser to government departments only relates to public, ie mainly central government, records but I wonder whether you are aware of this question ever having arisen before? We, in MG, do not have any record of being consulted if it has.

3. Mr Poulter's letter could be construed as an OAL bid to take responsibility for a national archives policy which would presumably take in the current responsibilities of the Lord Chancellor's Department (including the PRO) for public records and the DOE for local government records. If so, I think it is for the OAL to make the running with the departments concerned and I would not particularly want to be drawn in at this stage.

4. Although it is some years since I had much to do in this area, I do not think that the picture is as bleak as is painted by Mr Poulter. It seems to me that the boundaries are pretty X clearly established; it's just that OAL (or the Secretary of the Royal Commission on Historical Manuscripts) do not like where they are drawn. I wonder, too, if all Mr Poulter's facts are correct? I doubt if university archives' collections 'come under DES'; universities are independent institutions established Y under Royal Charters and I suspect are responsible for their own archive collections.

MW.

MICHAEL WILLIAMS

Shelley says no exc Poss 18/31 on LC/PRA — the MG query of 1980

Re Y, Carol Dimmer (PRO) says Univs own their own archives.

Richard.
I certainly cannot recall being asked about this before - have we any relevant papers. I tend to agree with X and Y but will our much knowledge of the subject. Any thoughts?
Pat
2/9/91

WP3/MW30AUG.1

DES Mrs Lawrence 3914 0833
Carol Dimmer

Pat
Is it the EC angle which is really bothering OAL? If so, perhaps they cd sort it out with the PRO? (Shall I send Alan a copy for info?) R.

Mr Williams

Can you please see whether we have ever been consulted on this question.

Your 'side' now, I think.

23/8

27/viii

Office of Arts and Libraries

Horse Guards Road, London SW1P 3AL
Telephone 071-270 5868

Alastair Howe Esq
Machinery of Government Division
Room 61D/3
Office of the Minister for the Civil Service
Horse Guards Road
London
SW1P 3AL

23 August 1991

Dear Mr Howe

RESPONSIBILITY FOR ARCHIVES

Government responsibility for archives and archives policy is split between various bodies and sponsor departments and the boundaries are not at all clearly drawn. As a result there are a number of grey areas and potential overlaps as regards responsibilities.

I set out the position in more detail below. The matter has assumed greater importance since archives have begun to feature more often on the EC agenda. Culture Ministers have discussed the subject and there has been talk of setting up an EC expert group on archive matters. The Dutch are now taking advantage of their Presidency to promote the formation of this expert group with a view to developing a European archive programme under the aegis of EC Culture Ministers. Our concern is that the Keeper of the Public Record Office appears to be assuming a United Kingdom lead role. He attends meetings of heads of national archives of the Twelve. We do not know on what basis those meetings take place and while we do not dispute his authority and key role regarding public records, we wish to preserve the position of the Secretary of the Royal Commission on Historical Manuscripts, a body sponsored by OAL, to represent the interests of non-public records.

We should therefore like to establish clearer definitions of archive responsibilities. We should be grateful for any advice or information which you can give. I understand that the role of MGD is not a pro-active one in the sense of initiating reviews and reallocation of responsibilities but you may have some historical information on how responsibilities have been allocated.

Briefly, the situation is as follows. General responsibility for the supervision, care and preservation of public records has rested since 1959 with the Lord Chancellor. Public records are defined as the records of central government in the United Kingdom, with those of courts in England and Wales and of certain named nationalised industries and non-departmental government organisations. They are subject to the Public Records Acts 1958 and 1967. The Public Record Office is the main depository for public

records and is regulated by the 1958 Act. (There are separate legislative, administrative and Ministerial arrangements for Scotland and Northern Ireland.)

The Lord Chancellor may also appoint places of deposit for public records other than the PRO and about one-fifth of public records in England and Wales are held in repositories (Local Record Offices) financed by local authorities. Publicly funded bodies and nationalised industries not named in the Public Records Act 1958 are responsible for making their own arrangements for the care and use of their records. Some have placed them in appropriate publicly financed repositories.

Local government records are the responsibility of the appropriate local authority and are covered by the appropriate Local Government Acts. Responsibility in England rests with the Department of the Environment. Privately owned and other records deposited for safe custody and public use in local authority record offices and libraries are covered by separate local government legislation and, in the case of local historical records within the context of public library services, by the Public Libraries and Museums Act 1964.

Many public libraries and museums have archive collections. This could lead one to assume that hey are therefore within the responsibility of the Minister for the Arts and the OAL. But since there is no statutory responsibility under the Public Libraries and Museums Act 1964 for the provision of archive collections, it is not at all certain that it is really our responsibility. This is one of the grey areas.

OAL is the sponsor department for the Royal Commission on Historical Manuscripts, an independent investigatory, co-ordinating and advisory body with responsibilities towards all historical records in the United Kingdom except the public records. It was established in 1869 and its functions are defined in its Royal Warrant, revised in 1959. OAL also finances a National Manuscripts Conservation Fund which assists owners and guardians of publicly accessible manuscripts with their conservation.

It might therefore be argued that OAL should take on any overall national archives policy but this is by no means agreed. At one stage OAL were to take over DoE responsibilities but DoE ultimately resisted the transfer. There have also been pressures for the Lord Chancellor's Department to co-ordinate a national archives policy, as I indicated above, and the Keeper of the PRO sees himself as head of national archives, although this is not something which we accept.

I should add that this brief outline of the situation is by no means complete. Other bodies and departments also have archives responsibilities - for example university libraries have archives collections and these come under the DES. So it is a confused picture. Any serious change of responsibility would presumably need primary legislation. Our first objective is to try to establish the boundaries more clearly, before considering whether we should given attention to broader policy issues. Any information or advice which you felt able to give would be appreciated.

Yours sincerely

A POULTER