

Freedom of Information

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Editor: Rick Snell

Reporters: Jason Pizer (Vic.),
Cathy Mitchell (Vic.)
Brendan Reilly (Vic.)
Jeremy Whelen (Vic.)
Helen Townley (Tas.)
Ron Fraser (Cth)
Geoff Harness (Cth)

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Elizabeth Boulton

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Correspondence to Legal Service Bulletin Co-op., Cf- Faculty of Law, Monash University, Clayton 3168 Tel. (03) 9544 0974

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Opinion

The UK Government's proposals on freedom of information were published on the 11 December in its White Paper *Your Right to Know* (Cm 3818). Set out below are the salient features of the proposal as discussed in a press release by the UK Campaign for Freedom of Information. The UK Government appears ready to adopt a pro-disclosure regime that incorporates the best features of FoI legislation in Canada, US, New Zealand and Australia. A more detailed and critical review of the White Paper will appear in the next issue of the *FoI Review*. Below are extracts from a press release by the Campaign for Freedom of Information.

The Campaign for Freedom of Information has welcomed the White Paper. The Campaign's director Maurice Frankel said:

The white paper goes further than we had thought any British government would be willing to go. It could lead to an outstanding freedom of information act that in many respects is better than most overseas FoI laws. Compared to many of these laws, the range of bodies covered in the new proposals is wider; the test the government would have to meet before it could withhold information is tougher; and the enforcement mechanism is as powerful but more accessible. This is a substantial reform that, for the first time, will give the British public a genuine right to know what its government is doing in its name.

The Campaign particularly welcomed the following facts.

- Under most exemptions, only information capable of causing 'substantial damage' could be withheld. This is a more difficult test for the government to meet than applies under the American and other countries' FOI laws. Most overseas exemptions refer to 'damage' (or 'harm' or 'injury') but do not require the damage to be 'substantial'.
- The scope of the proposed Act would be impressively wide — it would even cover the privatised utilities, and private bodies working on contracted-out functions, as well as government departments, NHS bodies, quangos and local authorities [para 2.2].
- All records and information held will be accessible — the right of access applies to all existing records, regardless of how long ago they were compiled, to historical records not yet available under the Public Records Acts [paras 2.13-2.14], and even to information which was known to officials but had not been recorded in official files [para 2.7]
- The Act would be enforced by an Information Commissioner with legal enforcement powers.

The Campaign also welcomed the fact that the Commissioner would have the powers of a court to compel government to release information, but that complainants would not have to bear the potentially prohibitive costs of going to court to enforce their rights.

- Some access to civil service advice and internal discussion will be possible, where disclosure does not cause harm. Although the harm test for the exemption for advice is easier for the government to meet than other exemptions (it refers to 'harm' not 'substantial damage') it does make clear that internal advice and discussion may be obtained under the Act.

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- The government intends to repeal or amend existing statutory restrictions on disclosure [para 3.20]. The Campaign said these included several 'deeply objectionable' provisions which make it an offence for officials to disclose information about various kinds of safety problems.

Some form of 'public interest' balancing test would apply, allowing the Commissioner to consider whether any refusal to disclose was in line with the Act's general objective of encouraging more accountability [para 3.19].