

MEETING NOTE

Lord Burns and the Rt. Hon. Norman Baker

Tuesday 19 January 2016, 16:15 to 17:00, 102 Petty France

Attendees

- Lord Burns, Chair of the Independent Commission on Freedom of Information (LB)
 - The Rt. Hon. Norman Baker (NB)
 - Alexandra Avlonitis, Secretariat (AA)
1. Lord Burns (LB) opened the meeting by thanking Norman Baker (NB) for taking the time to meet with him and for the evidence which he submitted in November. LB gave a summary of the Commission's inception, and of the evidence received and considered by the Commission thus far. NB expressed concern about the Commission's terms of references, which he felt were too narrow.
 2. NB explained that he was an advocate of the Act, which he considered to be a key democratic right. He went on to explain that he had not seen any evidence that the Act had eroded the "safe space" for policy formulation and/or development or that it had resulted in a chilling effect, referencing his time as a government Minister.
 3. NB felt that the benefits of the Act outweighed considerably the 'burden' alluded to in the call for evidence paper, and that it was much harder to quantify the full extent of the savings incurred as a result of the legislation. He cited MP's expenses and made clear that he was opposed to the introduction of a charge for making an FOI request.
 4. LB explained that the Commission was considering how the ministerial override should operate in light of the UKSC's judgement in the Evans case; specifically, how and at what stage it could be exercised. NB recommended that, if reinstated, the veto should be challengeable by means of judicial review, particularly if it were to be used more frequently and at an earlier stage against the Information Commissioner. NB added that he felt that there was a culture of secrecy in some areas of Whitehall, and that he disagreed with the introduction of an absolute exemption for some members of the Royal Family in the Constitutional Reform and Governance Act 2010.
 5. LB asked NB whether he thought sections 35 and 36 of the Act provided adequate protection for sensitive material. NB felt that they did, and that the public interest test should be retained. LB and NB agreed that the drafting of both provisions could be made clearer, but that there were very few cases in which government departments had been ordered to release truly damaging material by the ICO, the Tribunals and the Courts. NB felt that it would be difficult to redraft the two provisions in a way that did not limit further the amount of information which could be released under the Act. He added that the public interest test was a dynamic feature of the Act that would inevitably develop as time goes on, and in light of the case law.
 6. LB and NB discussed the appeals system in place for the Act – they agreed that there were significant delays in resolving issues after the ICO stage and it would be preferable to reduce these. LB explained that whilst the FTT rarely overturns the ICO's decision in relation to most exemptions in the Act, the record is different and significantly higher, when it comes to section 35 and 36 cases.

7. LB and NB discussed the burden imposed on public authorities by the Act, particularly where local authorities with shrinking budgets had to deal with significant numbers of commercial requests. They agreed that section 14 was designed to protect public authorities against vexatious requests and that the *Dransfield*¹ case would aid this further. NB was sympathetic to the inclusion of redaction in the cost limit activities, where it was required by law – e.g. where personal data needed to be cleansed.
8. LB explained that the Information Commissioner and the Tribunal afforded significant weight to protecting the doctrine of cabinet collective responsibility. NB and LB discussed the extent to which the advice of civil servants should have the same protection and both agreed that immediate disclosure was in some cases unwise. Both agreed that at safe space of some sort was a necessity.

Secretariat
January 2016

¹ *Information Commissioner vs Devon CC and Dransfield*.
<http://www.osscsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>