



2 pps

FCS/84/238

LORD PRIVY SEAL

nbpm
Dms
G9

1. Thank you for copying to me your letter of 1 August to Leon Brittan about reviewing the rules and conventions governing the production of documents of Government Departments and their associated public bodies to Departmental Select Committees. Related to this question, but essentially a matter for the Lord Chancellor, is the problem of the production of older documents which have been withheld from the public domain under the Public Records Acts. This too could become a matter of controversy with Select Committees.

2. I agree with your general approach to this problem. It is important for the Government that Select Committees should not make requests to which it is clear the Government cannot agree, and anything we can do with the Liaison Committee to clarify the demarcation line will be beneficial.

3. As far as the FCO is concerned, we have no problems in respect of nationalised industries. Nor have we so far had any problem with the FAC in relation to the production of documents from our two principal "associated bodies", ie the BBC External Services and the British Council. We can envisage cases where the internal documents of these two bodies (for example, on relations with overseas countries) should not be disclosed and where the existing criteria of "national security" and "the subject of sensitive negotiation with governments" might need to be widened.

4. Twice in recent years we have formally refused to provide papers which the FAC have requested. The first was the text of the agreement with the government of Belize about the garrisoning of troops which was refused on grounds that it was a confidential matter between the two governments. The second was correspondence

/with



The second was correspondence with the Treasury over the introduction of cash limits which was refused on the grounds that it constituted inter-departmental exchanges on policy issues. On neither occasion did the FAC pursue their requests. Our relations with the Committee have to date been good and most of the potential problems in this area have been settled amicably on the basis of consultation before they arise.

5. Regarding the specific categories of information not normally disclosed (paragraph 4 (ii) of the Aide Memoire), the FCO is directly and consistently concerned with (a) national security, (b) information relating to the private affairs of individuals or individual bodies, where the information has been given on a confidential basis, and (d) negotiations with other governments. On (a) we would not wish the term "national security" to be clarified, since the definition must be reserved to the Government; and on (d), as the Belize case showed, we must continue to reserve our position. On (b) the majority of consular cases deal with the private affairs of individuals where the information has been given on a private, in confidence, or even confidential basis. Some or all of this information may be made available to MPs writing on behalf of individuals who are their constituents but this has to be carefully judged on an ad hoc basis. It would not normally be right to disclose the information to a Select Committee, and there should certainly be no automaticity.

6. Finally, it may be worth adding that in all our dealings with select committees, we have found particularly useful the guidance in paragraph 8 of the Government's reply to the Education, Science and Arts Committee of July 1980 (Cmnd 7982).



7. Like you I am copying this letter to ~~Cabinet~~ colleagues,
the Minister for the Arts and Sir Robert Armstrong.

A handwritten signature in black ink, consisting of a stylized 'G' followed by a series of loops and a final horizontal stroke.

GEOFFREY HOWE

Foreign and Commonwealth Office

6 September, 1984

Pam procedure

12
11
10
9
8
7
6
5
4
3
2
1

-6 SEP 1984



HOUSE OF LORDS,
SW1A 0PW

17 September 1984

CONFIDENTIAL

*whoever
ends
17/9*

My dear John:

PRODUCTION OF PAPERS TO DEPARTMENTAL SELECT COMMITTEES

I am content with the suggestion in your letter of 1 August to Leon Brittan that we should seek to establish through the Liaison Committee a common basis for decisions on the propriety of the release of 'policy' documents to departmental select committees, whether the papers are held by Government departments, nationalised industries or other associated bodies. Ministers are responsible for policy and I do not myself consider that such advice should ordinarily be disclosable. To disclose the advice would undermine the anonymity of civil servants and their freedom from political responsibility.

I have no comments at this stage on the wider issue of defining 'internal working documents' and 'advice to Ministers'. I shall willingly participate in the review you had in mind if you think that would be helpful.

I agree with Geoffrey Howe that the production of older documents withheld from the public domain under the Public Records Acts could well become a matter of controversy with select committees. But I ought to point out that while the Lord Chancellor has a number of general and specific responsibilities under the Acts, decisions on access by individuals (or committees) to records subject to extended closure rest - like decisions on access to material less than 30 years old - with the department concerned.

I am copying this letter to other members of the Cabinet, and to Sir Robert Armstrong.

The Rt Hon John Biffen MP
Lord Privy Seal
Privy Council Office

Yrs: