



DEPARTMENT OF HEALTH AND SOCIAL SECURITY  
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 Telephone 01-407 5522

*From the Minister for Health*

The Rt Hon John Biffen MP  
 Lord Privy Seal  
 Privy Council Office  
 Whitehall  
 London  
 SW1A 2AT

20.9.84

*Dear John,*

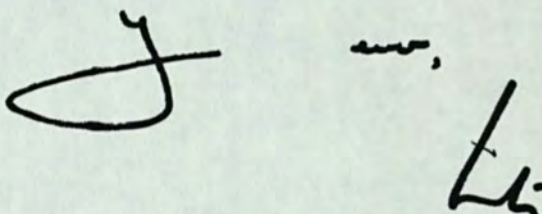
Thank you for copying to Norman Fowler your letter of 1 August to Leon Brittan about the production of documents to Departmental Select Committees.

We have perhaps been fortunate, but I think it is fair to say that we have so far experienced very little difficulty in being pressed to supply information which we were unwilling to disclose. We can recall two incidents recently when we declined to meet requests for information from the Social Services Committee, but neither became a major issue. The first concerned the Clerk's request to look through comments received from health authorities and others about the Griffiths Report on NHS Management. Our objection was partly one of timing - the comments had not then been sifted by officials, let alone considered by Ministers - and partly to the proposed method, which could have led to a distorted view of the overall picture. Nor were we willing to copy all the responses. We provided a list of bodies making the comments and left it to the Committee to pursue directly. The second incident concerned a question to my PFO at an oral session about the value of certain tenders for computer projects. He declined, on Commercial grounds, to indicate the value and the reasons were readily accepted by the Committee. I should perhaps add that we have also had to discuss commercially sensitive material with the PAC recently and found that Committee too very ready to respect its confidentiality.

You ask for views on whether a more precise definition of "internal working documents" and "advice to Ministers" may be possible. My initial reaction - no doubt coloured by our relatively trouble-free passage so far - is that there is little to be gained, and perhaps something to be lost, from attempting more precise definitions. The first aim should be to build up a relationship of mutual trust and co-operation between Departments and Committees and their Clerks: a Department which is normally helpful in meeting requests, even at considerable cost in staff time and effort, is more likely to be able to resist successfully a request for information which it wishes to withhold. Refusals in my view should be only exceptional; the circumstances which may justify them cannot always be foreseen; and in the end the decision (in the case of Government departments) is for the responsible Minister. Where a request spans the interests of several Departments or the Government as a whole, it will be for Ministers collectively to decide. In reaching their decisions and defending them, Ministers will take account of all the circumstances and definitions are unlikely to help.

When it comes to nationalised industries and other 'associated bodies' we in this Department are perhaps less likely than others to encounter the kinds of difficulties which have arisen in connection with the nationalised industries. Nonetheless, we can envisage situations in which we would not wish our main associated public bodies (the health authorities) to disclose "policy" documents. I have in mind not only commercial information but also material which Ministers or authorities would not wish to be disclosed on general policy grounds. I therefore endorse in principle your proposal that these public bodies should be regarded as on the same footing as Government Departments as far as the criteria for disclosure are concerned. But it may not be easy to negotiate such an understanding with the Liaison Committee who are likely to see our aims as contrary to their pursuit of 'open government'. We need therefore to be careful not to end our negotiation in a position less favourable than that afforded by the present lack of clarity.

Copies of this letter go to members of the Cabinet, the Minister for the Arts and Sir Robert Armstrong.

A handwritten signature in black ink, appearing to be 'K. Clarke', with a large loop at the start and a stylized 'Li' at the end.

KENNETH CLARKE

Parliament At 6

Select Committee.

CONFIDENTIAL

NBPM

AT 22/10

S/MO



## DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

The Rt Hon John Biffen MP  
 Lord Privy Seal  
 68 Whitehall  
 LONDON SW1A ZAT

18 October 1984

*John Biffen*

Thank you for copying to me your letter of 1 August to Leon Brittan asking for comments on a possible review of the rules and conventions governing the release of documents to Departmental Select Committees. I have read the comments colleagues have made with interest.

As to the treatment of the documents of "associated public bodies", I am not myself in any particular difficulty. In 1981 my predecessor, Mark Carlisle, made it clear that he regarded advice to the holder of my office from one of the main bodies of this type in my field, the University Grants Committee, as attracting the same measure of confidentiality as advice from Departmental officials. Although I have recently chosen to publish certain advice from the UGC, I would want to stand by the general principle involved. My Select Committee has probed at this on occasion but we seem to have an acceptable *modus vivendi*. Although it has not attracted probing of this kind, similar considerations apply to my other relevant main body, the Advisory Board for the Research Councils. For my part therefore I would not wish to ventilate the matter unnecessarily but I accept that colleagues with particular problems may have a different perspective.

As to the idea of pursuing a sharper definition of "internal documents" and "advice to Ministers" I strongly agree with what seems to be the general view among colleagues that there is probably more disadvantage than advantage in our raising this. I agree with for example what Nicholas Ridley says about preserving a useful degree of flexibility to handle particular cases in the most appropriate way.

I am copying this to Cabinet colleagues and to Sir Robert Armstrong.

*Erasmus Klein*

Parliament - House of Comm. Procedure Part 6



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Chancellor of the Duchy of Lancaster

CC 2/9

The Rt Hon John Biffen MP  
 Lord Privy Seal  
 Whitehall  
 LONDON SW1A 2AT

18 September 1984

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 25/9

Dear John,

Thank you for sending me a copy of your letter of 1 August to Leon Brittan about the disclosure of information to Select Committees.

From the viewpoint of my arts and libraries responsibilities, I agree with your general proposition that "policy" documents held in the custody of non-departmental public bodies (I have no responsibility for any nationalised industries as such) should be treated on a common footing with those of Government departments, as regards the question of disclosure to Select Committees.

But - like a number of colleagues - I am more doubtful about the need for a more precise definition of "internal working documents" and "advice to Ministers". I can see the attraction of establishing clear rules agreed with the Select Committees in order to avoid arguments over particular documents. On the other hand I think it would be very difficult to frame a definition which took adequate account of the wide differences in the nature of non-departmental bodies and their dealings with Government. There would be a risk of creating awkward anomalies and of limiting future flexibility, which could be to the disadvantage of both Government and the Committees.

While I would not want to discourage bodies in the arts field from making routine documents and information available wherever appropriate, there are cases where confidentiality is necessary. Some would be covered by the categories in paragraph 4(ii) of your aide memoire, or by the general "commercial - in confidence" rule. Others would probably fall within the categories of "internal working documents" and "advice to Ministers": I have in mind, for example, bodies'

detailed bids to me for annual financial allocations, their responses to informal consultations on major policy issues, or their internal assessments of grant applications and strategies prior to announced decisions. Some of these are inter-linked, and to attempt to codify them precisely and comprehensively would be difficult. It would also limit the flexibility for discretionary treatment to which Patrick Jenkin has rightly drawn attention.

That said, I am not aware of any recent difficulties with the Education, Science and Arts Committee or other Select Committees on disclosure in the arts field. On the whole, working relations with ESAC have been fairly harmonious, and it has normally been possible broadly to satisfy the Committee's information requests with memoranda specially produced for the purpose and with general oral evidence, rather than by supplying existing unpublished internal documents or answering specific questions about them.

On a more general point we shall, of course, need to time any approach to the Liaison Committee carefully. There is a danger, as Patrick Jenkin mentioned, of such an approach being misinterpreted as an attempt to muzzle Committees or to restrict their existing powers and override past departmental practice. This would run counter to the emphasis the Prime Minister laid on the important role of departmental Select Committees in the "Freedom of Information" context in her letter of 7 December 1983 to Des Wilson, the Chairman of the Freedom of Information Campaign.

I am copying this to Cabinet colleagues and to Sir Robert Armstrong.

GOWRIE

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Parliament A 6

Select Committees

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2 MARSHAM STREET  
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01-212 3434

My ref:

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5 September 1984

*Dear John,*

Thank you for sending me a copy of your letter of 1 August to Leon Brittan, about the disclosure of information to Select Committees.

In so politically sensitive an area where the rules - at present - skate over a number of semantic delicacies, we must be clear about our aims before deciding how to refine the existing procedures.

In relation to the 'Advice to Ministers' rule and documents falling within that category which are prepared, not within Departments themselves but by NDPBs, the key point seems clearly to be that if such a document has been or would be withheld by the Government from a Select Committee, the same document ought not then to be available to Select Committees through the NDPB: a document disqualified for disclosure by the one source should obviously also be protected from disclosure by the other. I therefore agree with the proposal in your sixth paragraph to seek an understanding with the Select Committees on this issue through the Liaison Committee; (I do not need to stress that the case will need to be based on procedural consistency if we are not to be suspected of seeking to muzzle the Committees).

This would mean that the documents for which we would be aiming for parity of treatment in this way should remain limited to those within the category of advice to Ministers, not extended to cover a potentially much more varied and miscellaneous category of 'policy' documents, as your letter appears to suggest.

I do not find very convincing the specific suggestion in your fifth paragraph that policy documents produced by NDPBs for their own purposes should now be made more inaccessible to Select Committees, nor do I think it would be easy to defend. Matters of commercial sensitivity are, as Alick Buchanan-Smith has pointed out, already safeguarded by a separate convention which I believe has been honoured hitherto.

On what you call the 'broader issue', I question whether we should seek significantly to redefine the terms 'internal working documents' and 'advice to Ministers'. By remaining so general, these terms obviously help to guarantee the privacy which ensures that the advice

Ministers receive is undistorted by the threat of disclosure. But they also, of course, allow Ministers adequate discretion to provide Select Committees (on a confidential basis if necessary) with information which comes close to revealing the decision processes - provided that they know it will be used responsibly. This flexibility is advantageous to all concerned,

In practice a good deal will continue to depend on the working relationship built up between Departments and their Select Committees. Where these relationships are good, the present procedural terms seem generally to have proved flexible and workable enough to provide for dealings acceptable to both parties. This certainly seems to have been the case so far with my own Department; though with the Environment Select committee undertaking investigations of up to four of our NDPBs next year, the full test may lie ahead.

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

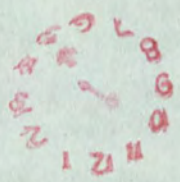
*Your ever*

*Patrick*

PATRICK JENKIN

The Rt Hon John Biffen MP

Pam Procedure Pt 6



6 SEP 1964



From the Minister

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD  
WHITEHALL PLACE, LONDON SW1A 2HH

CONFIDENTIAL

The Rt Hon John Biffen MP  
Lord Privy Seal  
Privy Council Office  
Whitehall  
London SW1A 2AT

*Sub  
18/9*

18 September 1984

*Dear Lord Privy Seal,*

POWERS OF PARLIAMENTARY SELECT COMMITTEES TO CALL FOR DOCUMENTS

Thank you for sending me a copy of your letter of 1st August to Leon Brittan on this subject.

Your letter proposed that we should seek to establish an understanding that "policy" document held in the custody of nationalised industries, other associated public bodies and Government Departments should be regarded as being on a common footing in forming a judgment about disclosure; and sought advice about whether we should seek to establish a workable and more precise definition of "internal working documents" and "advice to Ministers".

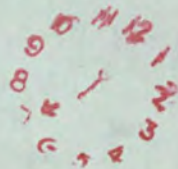
On the latter point I doubt whether a more precise definition that was workable could readily be devised; and I agree with those who have commented in this correspondence that, provided there are good relations with the Select Committee concerned, the flexibility implicit in the present definition is an advantage not a disadvantage.

As regards your first proposal, I agree that it should be the objective to ensure consistency of treatment in relation to government policy documents so that, if a Select Committee was refused access by a Government Department to a policy document, it would not be able to obtain from a Non-Departmental Public Body the same document, other documents based on it or documents referring to relevant policy discussions with the Department.

In general one could expect Parliament to be unsympathetic to attempts to tighten up the conventions in relation to NDPBs and, like Patrick Jenkin I am doubtful whether it would be profitable to seek a general tightening up of the availability of other "policy" documents produced by NDPBs apart from the cases I mention above.

/In such cases the .....

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In such cases the answer might be for the Chairman of the NDPB to refer to the Minister concerned any cases which fell within specific categories of information which the Chairman considered should not be disclosed.

One category which must certainly continue to be carefully protected is commercially confidential information. I should also mention another category of business information to which restraints on disclosure apply. Section 47 of the Agricultural Marketing Act 1958 places restrictions on disclosing information obtained under that Act, particularly where it relates to individual businesses. Similar restrictions apply under Section 3 of the Agricultural Statistics Act 1979 to agricultural census information.

I am not aware of any cases where these requirements have caused difficulty in our dealings with Select Committees and they may, in any case, be regarded as covered by the categories set out in paragraph 4(ii) of the note enclosed with your letter. However if you think it would be useful to spell this out in any recodification of the conventions governing disclosure my officials can supply the necessary details.

Finally, I note from your letter that the present conventions treat Secretaries of State differently from other Ministers such as the Chancellor or the Minister of Agriculture. There seems no good reason of public policy for this distinction, which evidently has not been applied in practice and I suggest that we seek to establish it that other Departmental Ministers should be treated in the same way as Secretaries of State. For instance, you will recall that I refused to become a Secretary of State in June 1983, purely for reasons of tradition and history.

I am sending copies of this letter to Cabinet Colleagues and Sir Robert Armstrong.

Yours sincerely,

David Hebburn

pp MICHAEL JOPLING

(Approved by the Minister  
and signed in his absence)