

The text below was the keynote speech at a conference at The Institute of Commonwealth Studies (ICWS) School of Advanced Study of the University of London on 29 May 2014. The conference was titled 'The Secret Archive. What is the significance of the FCO's "Migrated Archives" and "Special Collections" '?

Secrecy in Britain

Jonathan Bloch

Distinguished guests it is a great honour to give this keynote speech. I will use the 600,000 Foreign Office hidden files as a launching pad to examine the history of secrecy in Britain, why it is so persistent and pervasive, attempts to change it and what we could and should do about it. After all it is not only the 600,000 Foreign Office files, there are also between 66,000 and 600,000 Ministry of Defence files, depending on the source, and that is only two government departments. Interestingly enough the *Daily Telegraph* did a study in 2004 based on government information and believed that there were only 101,283 retained or extended closure files in existence across all government departments. These 101,283 files had been retained after a review under the Public Records Act; while, by contrast, the FCO Special Collections and MOD files had never been reviewed under the Act.

In an account of the history of secrecy in Britain by David Vincent titled the *The Culture of Secrecy in Britain 1832-1998*, Vincent suggests that Britain is a particularly secretive society for two main reasons: the social and political depth of the country's secrecy and the cultural rather than the institutional nature of it. He argues that this of course has a class base.

'Official secrecy was exercised mainly by the upper middle classes. That was supposed to make it all right. In their hands it was called discretion, reserve or reticence, gentlemanly qualities much admired at the time.'

Secrecy is a weapon – it is a means of control. Secrecy can be looked at from different directions: it can be seen as essential to ‘protect’ ‘national security/interests’; or it can be seen as the means by which bad deeds are covered up and hidden. Britain has always been ruled by a very small ruling class but it is not a dictatorship and force domestically is very seldom used. Ideology is the method of control. Secrecy is a very important component of this. If you can control what people know, what they believe is their history, you can determine their beliefs. Determining the national discourse is essential. This is buttressed in Britain by an unseemly deference to authority. As Glen Greenwald of Edward Snowden fame commented:

‘The political elite of (that country) Britain cling desperately to 17th century feudal traditions. Grown adults who have been elected or appointed to nothing run around with a straight face insisting that they be called “Lord” and “Baroness” and other grandiose hereditary titles of the landed gentry. They bow and curtsy to a “Queen”, who lives in a “palace”, and they call her sons “Prince”. They embrace a wide range of conceits and rituals of a long-ago collapsed empire.’

Access to historical files might mean a radical reinterpretation of historical events – the reasons for wars to be fought, countries to be invaded etc. It might also dispel myths spread by present day politicians – witness Cameron’s remarks ‘I think there is an enormous amount to be proud of in what the British Empire did and was responsible for – but, of course, there were bad events as well as good.’ People are still dying because of the legacy of empire be they in Israel/Palestine, Kashmir or other far flung places. There has never been a full reckoning of the deleterious impact of empire on the countries that were coloured red on the map.

The fight to open up the state and its secrets has been a long one. It has been a constant theme of civil society that government should be opened up. There have been some notable victories or perceived victories as well as defeats. It is true to say that the periphery of power has been opened up –

you can find out how much money MPs have falsely claimed but the leading lights of the Royal family and their covert political involvement remain protected. The tone for government secrecy was set by section 2 of the Official Secrets Act of 1911 which was signed up to on the first day of service by all civil servants. This made the unauthorised disclosure by a public servant a criminal offence. This provision was amended in 1989 with the catchall provisions of the 1911 Act been replaced by specific offences in most cases focussed on tests of harm likely to be caused by disclosure.

In the 1990s there was a sense that excessive secrecy could no longer be defended but there was a hope by the establishment that the process of document release could be governed by a non-statutory code of practice other than where personal data was involved where there would be statutory provisions extending the scope of the Data Protection Act 1984 to manual files. The white paper 'Open Government' published in 1993 acknowledged that 'the need for confidentiality diminishes with time as sensitivity reduces'; and while it did not recommend a change to the 30 year rule it set out proposals for reducing the amount of material subject to retention beyond 30 years.

Under the Public Records Act 1958 public records were normally made available for inspection in the PRO, now called the National Archives, after 50 years. This was reduced in 1967 to 30 years by the Labour government after a successful campaign by historians and others. Subsequently the Dacre Review recommended that the 30 year rule should be replaced by 15 years. The Constitutional Reform and Governance Act 2010 reduced the 30 year rule to 20 years for some records with this target been reached over an extended period of time.

The Public Records Act made provision for the Lord Chancellor to give approval for public inspection of documents in existence for periods shorter or longer than 30 years. There were two provisions under the 1958 Act for documents to be withheld for longer periods than 30 years: namely Section 5 (1) allows for records to be closed in the PRO for a

prescribed period in accordance with agreed criteria – these mainly relate to census and tax information. Section 3 (4) is of more relevance as it allows records to be retained where the Lord Chancellor has given special reasons and I will come to this later.

In 1981 a Government Committee 'Modern Public Records' argued that department records could be closed for a longer period than 30 years if they were exceptionally sensitive and their disclosure would be contrary to the public interest, contain information supplied in confidence and contain information about individuals, the disclosure of which would cause distress to or endanger living persons or their immediate descendants. In 1992 there was a further review of these criteria and the scope for retention was narrowed to those 'where it is possible to establish the actual damage that would be caused by release and that the damage falls within the criteria' mentioned. This is the rub of the matter. They defined and the Government accepted a definition of 'public interest'. '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 dependent territories.*' Examples given of records to be closed for longer than 30 years were references to possible plans for intervention in a foreign state and documents concerning the security or defence of a UK dependent territory where release would jeopardise the security of the territory concerned. There were another two criteria but they involved mainly individuals and personal information rather than matters of state. Those records retained under the first criteria were subject to periodic 10 year reviews.

On 'Defence and National Security' the White Paper was firm. I will quote at length the white paper because it summarises the then government's attitude and one that has continued to this day.

'Legislation can exempt all information relating to defence, security and terrorism or can exempt such

information only if its disclosure would be actually or potentially harmful. It may set out as in Canada a specific list of information which will not be disclosed concerning for example military operations or cyphers. Government agencies whose information is largely of a necessarily secret kind such as security and intelligence services, are in some countries excluded from the access requirements altogether or in others included but subject to exemptions which in practice need to cover a large part of their information. Whether particular information needs to be protected is in some countries established by conclusive Ministerial certificates; in others it is judged by whichever body hears appeals against refusals to supply information.'

And here comes the crux:

'The Government believes that decisions affecting national security and defence should be taken by Ministers accountable to parliament for those matters. In the final analysis Ministers are best placed to judge what is likely to cause damage.'

It then goes on to say that they see no purpose in giving access rights to information in this area because in any event they would exempt the data to be released. Given that most commentators regard parliament's role in keeping the security services accountable as totally lacking in substance, Ministers and the Government have total unaccountable power in this area. This has meant that the security services MI5, MI6 and GCHQ have effectively been exempt from the provisions of the Data Protection and Freedom of Information Acts which were brought in the 1980s and 2005 respectively. But this exemption goes beyond these three organisations to cover any mention of the intelligence agencies or information obtained from them in files of other organisations: e.g. FCO, MOD etc. Special Branch which is not specifically mentioned as an organisation enjoying absolute exemption is nevertheless caught by Section 24(1) of the Freedom of Information Act which covers national security. In the later instance a public interest test is applied. These exemptions from these two

pieces of legislation were also reflected in the provisions of the Public Records Act allowing for the retention of documents 'whose sensitivity is such that no date can be put on their potential release'. With respect to these the Lord Chancellor has given 'blanket' approval to retain, the most crucial of which is Security and intelligence material. Under Section 3(4) of the Public Records Act the Lord Chancellor has made an instrument, the most recent dated 19 December 2011 expiring 31 December 2021, which allows documents to be retained in the department concerned because the transfer of the records to the Public Record Office 'will create a real risk of prejudice to national security'.

Schedule 2 of this instrument lists 10 types of documents relating to MI6, MI5 and GCHQ which are excluded from deposit and they effectively cover most areas of activity of the agencies. No time limit is set for the retention. The reason given for this was that 'the agencies depend for their effectiveness on maintaining the confidentiality both of their methods of operations which, despite the passage of time are still extant, and most of all, of the identities of people who put themselves at risk in the service of the state.' Based on this we will never know the full extent of British intelligence involvement in the War on Terror and all that it entailed – torture, rendition etc. In 2012 there was an Early Day Motion as well as a full debate in the House of Commons calling on the papers relating to the Shrewsbury 24, a group of convicted building workers who were prosecuted in 1973 following a strike in 1972, to be released to the Public Record Office. On the 40th anniversary of the strike the papers were still been withheld from deposit in the National Archives on grounds of national security.

There was, however, a minor concession to the rule that the intelligence services were exempt: namely that papers originating in the agencies which have been held in other departments over the years would be reviewed as part of the normal process and would be released if no longer sensitive. Also, unlike the exemption in Section 23 of the Freedom of Information Act which is absolute in relation to departmental

files, where historical intelligence records are held in the National Archives the exemption will not be absolute and a public interest test will be applied before they are released. However most of these records are unlikely to land up in the National Archives for the reasons stated earlier.

Off course, some historical intelligence records are released in a controlled way usually showing the skilfulness and intrepidity of the security agencies. For example GCHQ has completed the process of releasing all its Second World War and earlier material. In addition post-War material relating to Venona has been released complementing that released by the USA. However there are still some World War II Records withheld 'withheld on grounds of continuing sensitivity' – one can only guess widely what they must cover. GCHQ has agreed with the Advisory Committee criteria for the retention of documents and these are comprehensive and read well. But again without independent checks there are no guarantees that they are being adhered to. As regards MI5, otherwise known as the Security Service, similar criteria have been published. According to a document prepared by the National Archives in 2001 and revised in 2005: 'The selection criteria will be applied without regards to whether the records may appear to reflect well or badly on the Service.'

Records which have been transferred to the National Archives may be returned to the department from which they have been transferred. The fact of the records being 'on loan to the department' does not affect their status as open records and if a member of the public wishes to see them they should be returned to the National Archives. This leads to some peculiar situations. A contact of mine was researching a book on a particular Soviet spy. He found an interesting document written by said spy in a file at the National Archives. It was 12 pages – he copied 6 pages and left it for another time to do the rest. On his return the file was 'on loan to a government department' and he did not obtain access. Why was it returned to the government department after the researcher had viewed it? What prompted them to do so? Is a record kept of the files accessed by researchers at the

National Archives? What is more bizarre is that there is no limit to the length of time that the Department can hold the file. The National Archives responding to an FOI request admitted that there is no deadline to return loaned documents although it went onto add, 'Government Departments can't withhold documents indefinitely from the Archives.' Without a deadline what compulsion exists to compel the return of documents? Why can documents not be scanned or photocopied rather than loaned?

In effect a record that was in the public domain has been effectively withdrawn, and this has happened, in the same case, to several associated files. Ironically, the contents of the file were a copy of one discovered in a KGB archive, which is freely available. It seems clear that what is being protected is less to do with security, but more to do with the official narrative of events which occurred almost seventy years ago, an attempt to what I referred to at the beginning of my speech, to control history.

The availability or withdrawal of files is one thing. There has been over the years concern by historians that the security services had systematically destroyed some of their records which would not be retained to be examined by future historians in the long distance future. The Wilson committee in 1981 came across two egregious examples of this namely in relation to SOE and PWE records which in one case had been accidentally and in the other deliberately destroyed. On this point the Wilson committee got a 'categoric assurance that the records of the security and intelligence agencies 'were being carefully selected for preservation' in accordance with the Public Records Act of 1958. It also secured a concession from the Government that the words 'never released' would never be used again. Subsequently some intelligence records have been released to the National Archives, albeit heavily redacted.

However, questions were again raised in 1998 over the destruction of MI5 files. Alan Clark, the MP and historian, commented on the Home Secretary's assertion in a parliamentary debate that MI5 only retained files which were

essential for their fulfilment of their statutory functions or which' were of historical importance.

'The problem is that almost invariably that judgement is made by civil servants – although laughably Ministers may occasionally try to get something taken out to protect their political reputation. For the historian the really obstructive thing is when civil servants, to defend their reputation as administrators or having made colossal errors of judgement, weed out or repress things that will reflect badly on them.'

In a seminal article, 'In Never Never Land? The British Archives on Intelligence', Wesley Wark, a Canadian academic, in 1992 commented after mentioning various strategies for dealing with the then virtual absence of intelligence records at the National Archives:

'In the best of all possible worlds, all intelligence research would offer historical lessons: about the perennial difficulties of knowing one's enemies or knowing one's allies. The closure of parts of the intelligence archive make this difficult. Dedicated users of the British intelligence archive can escape the closure of records by a variety of stratagems from widening the circle of research to widening the basis of the definition of intelligence itself. The only losers are those who insist on making a never-never land out of security service records. There are no lessons to be learned from such a far-off place.'

In 1993 the Chancellor of the Duchy of Lancaster invited historians to suggest what historical records should be released and as a result several files were released, including those relating to Rudolf Hess and the Derek Bentley case. Openness or secrecy relating to secret service issues, according to Richard Aldrich, were at the centre of the debate over the Waldegrave Initiative. This was partly because most of the files withheld for more than 30 years contained secret service material and also because Waldegrave deliberately chose to make 'revelations' in the area of secret service

history as well as current secret service practice a flagship in the presentation of Open Government to the media. To that end amongst other items in 1993 Waldegrave also announced that the Joint Intelligence Committee files were to be reviewed and released on the same basis as other public records. Douglas Hurd, the Foreign Secretary also made known that the Special Operations Executive (SOE) archive would also be reviewed for release.

However Aldrich in 1998 sounded a warning note on the Waldegrave initiative and these words are even more true today after the discovery of the Foreign Office and MOD files. He argued and I quote:

'The Waldegrave Initiative has introduced a more complex and seemingly discriminating range of criteria for restricting documents, with the intention of weeding more selectively and releasing portions of files that would previously suffered blanket closure. Inescapably, this more complex process requires more time, care and expert knowledge. These extra resources have not been made available. We know that the review staffs in many departments are still being cut rather than expanded and results are there for all to see.'

He drew attention to two key areas where files had been virtually totally culled doing irreparable damage to historians digging in those areas – one was the area of Axis prisoners in the UK and the other was the records of the Intelligence Division of the British occupation of Germany where only 10 files out of a reputed 1 million survived.

The end of the Cold War also marked the beginning of the end of 'never never' and in 1997 MI5 began releasing files to the PRO. The availability of raw material has allowed for previous historical events to be re-examined. The official histories which have been written have tended to be bland and written within tight parameters. Bernard Porter in his review of Christopher Andrew's *Defence of the Realm*, the authorised history of MI5, in the *London Review of Books* summed it up. After praising the book as terrific in many ways – rich, immensely readable and fascinating – he put the knife

in and I quote:

'Even if we trust Andrew to be telling the truth as he understands it, it would be naïve to assume that MI5 has been as open and honest with him, or that its archive whose use is what distinguishes this account from all others can tell us everything, indeed, even more if they are authorised, but restricted as much as Andrew has been: not allowed to see certain stuff or to reveal other stuff or even – the fundamental requirement, this, for an academic historian in all other circumstances – to permit verification by others.'

Unfortunately in Britain there is no independent scrutiny of what is to be released by the security services. The Lord Chancellor's Advisory Council on Public Records, comprising 'the good and great', is not robust enough in dealing with those hell bent in maintaining secrets. As Andrew Horrall, a Canadian archivist, in a *London Review of Books* article commented:

'Uncovering secrets lies at the centre of intelligence history. Official disclosure has.....not prevented the most capable of researchers to wonder what remains safely stored away and whether the hidden hand is not still at work.'

There is a danger that government embarrassment could lead to more documents been retained. An uproar ensued when documents released showed that Lord Howe, the then foreign secretary, had sent an SAS officer to advise Gandhi on the Golden Temple siege in Amritsar. Subsequently the raid on the temple led to the killing of hundreds of Sikhs. Cameron immediately appointed Sir Jeremy Heywood to investigate what role the UK played in the attack and why the documents were released despite their obvious sensitivity. This can only have had a chilling effect on the reviewers. Embarrassment is part of the political process and should not be used to prevent the full story been told.

One issue which is going to loom large in several decades time is whether documents withheld under the

Freedom of Information Act as a result of the exercise of a Ministerial veto will be released after a passage of time. During the first 4 years of the FOI Act there were no ministerial vetoes – the first one was in 2009 and related to the contents of the legal advice on military action against Iraq. Subsequently there have been another 5, including one prohibiting the disclosure of correspondence between Mr Charles Windsor and government ministers. One can only guess why these vetoes were exercised: perhaps the war against Saddam Hussein was illegal; perhaps Mr Charles Windsor should not have been lobbying Ministers and Government Departments? Embarrassment should not be a reason to withhold documents.

The Information Commissioner has commented on this interaction in a special report to Parliament in September 2012:

'If the veto continues to be exercised in response to the majority of orders for the disclosure of Cabinet or Cabinet committee minutes, it is hard to imagine how the most significant proceedings of the Cabinet with ever be made known before the elapse of 30 years (to be reduced over time to 20 years under the Constitutional Reform and Governance Act 2010.)'

This Act also created a new absolute exemption for correspondence with the Sovereign, the heir and second in line to the Throne members, so the question of the Ministerial veto in this regard will no longer arise.

What can be done to change the situation?

- All security organisations should be brought within the ambit of the Freedom of Information Act and the release should be subject to the normal exemptions. This is the case in the USA, Canada and New Zealand. A precedent exists in Britain itself as the intelligence agencies are covered by the Environmental Information Regulations.

- The instrument issued under Section 3(4) which allows the intelligence agencies to retain documents should be revoked and they should be subject to the normal exemptions.

- There should be a presumption in favour of release unless strong reasons in the public interest indicate otherwise. These reasons need to be given and be subject to review.

- The Cold War is now over. All the files gathered on the 'state's enemies during this period should be opened for scrutiny. If Romania and some of the other Eastern European countries can do this there can be no conceivable reason for not doing so other than it would shock the public as to the extent of surveillance, spying and the use of informants. MI5 is on record as destroying a vast number of these files – what has not been destroyed should be preserved for history.

- More resources need to be allocated to employ more reviewers.

- There should be a time limit placed on the borrowing of files from the National Archives – currently there is no deadline to return loaned documents.

- The Ministerial veto should be removed from the FOI Act

- The absolute exemption for members of the Royal Family should be repealed

If we had full access to all government files what would our views be, for example, of the Pinochet affair, attempted deals over the Falklands Islands, the miners' strike etc.? The most notable case of history having to be rewritten because of documents becoming available is the Hillsborough disaster. Our view of policing and the integrity of British police forces might never be the same after the revelations of the cover-up of this tragic incident. Historians have an important role to play in uncovering the truth and working for a better, more equal and fairer society. Historians should go where others have not dared to go. It is not going to make them popular but the struggle for human betterment has always been a hard one with opposition along the way. A prerequisite to this is having access to the raw and original information and data. And that is what we should seek.

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studied law at the University of Cape Town and the London School of Economics. He was politically active in South Africa and remains involved in Southern African causes. He is now a London-based businessman and is a former Liberal Democrat councillor in the London Borough of Haringey. He co-authored British Intelligence and Covert Action and KGB/CIA, Global Intelligence: The World's Secret Services Today and was also a co-author of three chapters in the collection Dirty Work 2: The CIA in Africa.