

# Open Research Online

---

The Open University's repository of research publications and other research outputs

## Government and the management of information 1844-2009

### Book Section

How to cite:

Vincent, David (2011). Government and the management of information 1844-2009. In: Gunn, Simon and Vernon, James eds. The Peculiarities of Liberal Modernity in Imperial Britain. Berkeley Series in British Studies. Berkeley and Los Angeles, CA, USA and London, UK: University of California Press, pp. 165–181.

For guidance on citations see [FAQs](#).

© 2011 The Regents of University of California



<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Version: Accepted Manuscript

Link(s) to article on publisher's website:

<http://www.ucpress.edu/book.php?isbn=9780984590957>

---

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's data [policy](#) on reuse of materials please consult the policies page.

---

[oro.open.ac.uk](http://oro.open.ac.uk)

**Not for citation without author's permission**

**Government and the Management of Information 1844-2008**

**David Vincent**

[For 'Liberal Subjects: The Politics of Social and Cultural history since the 1980s'  
Manchester University 28-29 March 2008.]

I want to begin by stepping outside Pat's century. For those with an interest in the long-term history of official secrecy, a striking event took place last month. The Information Commissioner, Richard Thomas, issued a ruling on an appeal against the Cabinet Office brought by an enquirer who had sought the release of minutes of two Cabinet Meetings held between the 7<sup>th</sup> and 17<sup>th</sup> of March 2003 at which the advice of the Attorney General on the legality of invading Iraq was discussed. Unsurprisingly, the Government invoked clause 35 of the 2000 Freedom of Information Act, which gave exemption to material relating to the 'formulation of government policy'.<sup>1</sup> It argued that 'if Ministers and officials knew or thought that once a decision was reached, information pertaining to the process by which they reached that point was to be revealed, they might be less willing to engage in full and frank discussions of the issues. Their candour in these discussions could be affected by their assessment of whether the content of these discussions will be disclosed.'<sup>2</sup> It made a further confidential submission to the Commissioner, which has not been published, outlining 'the specific damages that would arise from the disclosure of this information.'<sup>3</sup>

The construction of an interdependence between candour and concealment stretched all the way back to the first modern discussion of official secrecy in 1844, when the Government asserted the right to keep secret the fact that secret issues had been debated by honourable men. The privacy of ministerial discussions had been one of the twenty-three class exemptions written into the 2000 Freedom of Information Act, and not one of the 300,000 requests for papers relating to central government made in the first three years following the introduction of the Act in 2005 had come near to

breaching the sanctum of the Cabinet.<sup>4</sup> Now, however, Richard Thomas astonished hardened observers of the management of official information by ruling against the Government. He invoked the 'public interest' clause which could override a class exemption, on two grounds. Firstly he appealed to the particular significance of the issue under discussion. Where once national security had been the overriding argument against disclosure, now he argued the reverse: 'The Commissioner considers that a decision on whether to take military action against another country is so important, that accountability for such decision making is paramount.'<sup>5</sup> Secondly he asserted that the value of openness in the democratic process did not stop at the door of the Cabinet room:

To more fully understand this particular decision of the Cabinet, the Commissioner believes that disclosure of these minutes is necessary. Release of the minutes would therefore serve the public interest in respect of transparency and public understanding of the relevant issues in this case. This would enable the public to be made aware of what was officially recorded about any evidence and argument the Cabinet considered and then the process the Cabinet followed in making a decision.<sup>6</sup>

I am commencing with this most modern moment of modernity in honour of Pat Joyce's engagement with liberalism not as a set of principles but as a culture and practice of governance embodied in the lives of citizens over time. I further want to use the issue and its antecedents to stress three dimensions of the debates inherent in his endeavour. Firstly the question of whether the transparency invoked by commentators from Bentham to Richard Thomas is the inevitable concomitant of the liberal enterprise. Secondly the extent to which the opposition between formal legal constraints and informal cultural discipline is not given but always negotiated and unstable. Thirdly the sheer instability of the liberal compromises and their constant exposure to challenge and reformulation.

The axis between liberal democracy and transparency in the communication of information was established out by the first Whig administrations of the Reform Act State. In a linked series of interventions they set about removing the obstacles to ignorance about the practice of politics, and more broadly in the conduct of social relations. They were particularly concerned to ensure that those who had the vote

would be able to exercise it in an informed manner, and that those who were as yet excluded from the franchise would set their feet on the path towards earning full citizenship by demonstrating their capacity for rational intercourse. In 1833 the Government committed itself to the creation of a literate population through a grant of a subsidy to elementary education and laid the foundation for the measurement of progress through the creation of the statistical department of the Board of Trade; in 1836 it legalized the political reading of the people through the reduction of the newspaper stamp to a penny; in 1838 it promoted access to the Parliamentary process by putting *Hansard* on sale and established the Public Record Office to preserve and make available state documents; and in 1840 it sought to create a society linked by written communication through the costly introduction of the Penny Post.<sup>7</sup>

The drama of the Mazzini crisis of 1844, when Peel's administration was caught opening the correspondence of Italian exiles at the behest of the Austrian Government, was generated by the collision between the momentum towards transparency and the persistence of forms of public secrecy redolent, as the radical M.P. Thomas Duncombe put it, 'of the spy system of foreign states', which was 'repugnant to every principle of the British constitution, and subversive of the public confidence, which was so essential to a commercial country.'<sup>8</sup> The liberal state stood charged with a double betrayal of its principles. Not only was it aligning itself with the old reactionary European order, it was denying public debate of its actions. The Home Secretary, Sir James Graham, responded to a petition submitted on behalf of the Italian exiles by refusing to confirm or deny the practice of postal surveillance. His comments provoked Duncombe to make the first modern attack on official secrecy: 'if a Secretary of State, or the Government, were justified in screening and sheltering themselves behind this official secrecy, he wanted to know what became of that responsibility of which we heard so much when any measure was submitted giving more extensive powers to the Secretary of State or the Government?'<sup>9</sup>

Whig and Tory Governments, deeply exercised by the continuing challenge from the new working class and the mounting problems in the new industrial communities, sought to reach a particularly British compromise to their dilemma. It was critical that the new ministries allayed suspicion by distancing themselves from the repressive mechanisms of the old order and by declining to exploit the despotic potential of the

infrastructure they were creating. Yet they also needed to retain reserve powers of defence on behalf of both the Government and the propertied classes who now possessed the franchise. The solution was a double negative which was to resonate through British politics for the next century and a half. As Henry Taylor wrote in The Statesman of 1836: 'A secret may be sometimes best kept by keeping the secret of its being secret.'<sup>10</sup> By this means the ambitions of the liberal state could be reconciled with its fears. Less self-confidence would have rendered the policing of communication more blatant, more would have rendered it unnecessary. Declining to communicate the control of communication preserved the state's moral authority without sacrificing its physical safeguards.

The compromise required a deliberate substitution of culture for law. Sir James Graham wrapped his position in unwritten constitutional precedent but he and successive Home Secretaries declined to legislate and thus incur Parliamentary debate and scrutiny. The practice of excluding the management of information from public scrutiny was sustained by appeal to the concept of honourable secrecy. It was not so much that the emerging political system was inherently secretive, but rather that in the British version of a liberal state, secrecy was embodied as a cultural form. This was true of its negative aspect, where attacks were smothered by tradition, and also of its creative dimension. The attempt to keep secrecy secret redoubled the requirement of trust which any blocked communication imposes. In the absence of a clear legal definition of the right to withhold official information or interrupt its flow, the ethical basis of government and in particular of its professional servants was thrust into the foreground. In the words of Sir George Cornwall Lewis,

One of the first qualities required in the clerks of a public office is trustworthiness. In many public offices, papers containing information respecting pending questions of great importance, and of deep interest to private individuals, to companies and associations, to the public at large, and to the whole civilised world, necessarily pass through the hands of clerks in their successive stages of preparation. The honourable secrecy which has distinguished the clerks of our superior offices, and their abstinence from communicating information to interested parties or public journals, cannot be too highly commended.<sup>11</sup>

A new spirit of public service founded on the notion of 'discreet reserve',<sup>12</sup> integrated the self-restraint of the gentlemanly ideal with the emerging self-discipline of the professional ethos.

Attitudes and values, and the means by which they were inculcated and displayed, became not merely the cladding but the very framework of the edifice which was constructed after 1832. Everything depended on voluntary restraint, which in turn required the transmission and development of broader forms of cultural capital. The management of official information foregrounded the issue of character, which Pat Joyce has rightly seen as a key issue in the construction of liberal governance. To borrow a concern from Tony Bennett's paper earlier today, the habits of a reconfigured social and professional elite guaranteed the ethical handling of blocked communication. Just as the Reform Act state represented not the defeat of the landowning elite but rather its accommodation to the rising middle class, so the new spirit of public service integrated the self-restraint of the gentlemanly ideal with the self-discipline of the professional ethos. Just as the modern rationality of rule implied a modesty of government, so the control of official communication displayed a negation of personal interest.

Liberalism, in the words of a recent study, was 'not about governing less but about the continual injunction that politicians and rulers should govern cautiously, delicately, economically, modestly.'<sup>13</sup> The revolution in mass communication which was set in motion by and in turn sustained the Reform Act state, was as a quintessential but contingent liberal achievement. Within a few decades of the first steam train carrying the first mailbag, every state with a pretence to modernity possessed some kind of national network. Correspondence and the associated means of transmitting people and information were adaptable to political traditions of all kinds. If in one context it strengthened the private sector against the public, in another it equipped the state with unprecedented weapons of intrusion and discipline. The defining issue was not the presence but the control of the new mechanisms. What distinguished the liberal from the illiberal regime was how communication was blocked. Britain established its identity against much of the rest of the world by its claim that its public discourse was open to inspection and its private was closed. Declining to communicate the control of communication preserved the state's moral authority without sacrificing its

physical safeguards. The means by which the post Reform Act state sought to strike the characteristic liberal balance between the public and the private realm remained half-hidden from view. Secrecy became the virtue that dare not speak its name.

The strength of the new democratic settlement derived from the association of abstract values with the material advantages of birth and education brought together in the middle decades of the nineteenth century by the reformed public schools and the colleges of Oxford and Cambridge. At the same time the pervasive sense of closure inherent in the code reflected the constant and growing threat from below. As formal marks of rank and privilege faded and the lower orders were admitted to the outer reaches of the political nation and the lower rungs of the meritocratic ladder, so the need to sustain artificial barriers increased. The more open the competition for authority and status, the more resolute was the attempt to police the boundaries of character and knowledge. The instability of the balance between formal and informal controls derived from the steady expansion of the official bureaucracy, which drew into its ranks more and more employees from outside the gentlemanly-professional elite. The increasing number of low-born clerks lacked the character traits of self-denial, displayed the wrong kind of habits of mind. Still worse was the prospect of women who were brought into government offices by the introduction of the typewriter from the 1880s onwards. These employees were the best products of the new structures of inspected elementary schooling, whose mission was to instil the same kind instincts of self-denial and self-discipline that it was assumed their social superiors acquired from their birth and training. In practice, when it came to matters as critical as public secrets the state could not bring itself to trust those whose acculturation was so thin and so recent.

Governments remained extremely reluctant to expose the issue of blocked official communication to public debate. Had the strategy which took its modern form amidst the challenge of Chartism survived unscathed, there would have been no laws, no debates, no public inquiries, nothing except a succession of Home Secretaries rising in the House to evoke the behaviour of their predecessors in defence of their silence. However, when the danger posed by this 'cheap and untrustworthy class of people'<sup>14</sup> was compounded by the emergence of new external threats to the state, firstly Fenianism and then the rise of German militarism, it became necessary to go to

Parliament to seek formal legal sanction for controlling official information. The Official Secrets Acts of 1889 and 1911 contained a minimum of detail and were rushed through both Houses with scant debate. The Acts were designed not to defend the public from government, but government from the growing numbers of its employees who were beyond the influence of the code of gentlemanly conduct. They represented a kind of defeat of the initial settlement, but its lineaments survived in the new order of formal control. Under the terms of the 1911 Act, senior civil servants, who were still drawn from the public schools and universities, remained free to self-authorise the communication of official information. It was the lower ranks who were policed by the ceremonial (and in legal terms meaningless) ritual of 'signing the Act' and were occasionally made the subject of symbolic prosecutions.

Until the 1989 Official Secrets Act an official secret remained a piece of information which a minister or their close official said could not be communicated. It took nearly a century and a half for the state to bring itself to define what a public secret was in a liberal polity and until the first year of this century for citizens to be given the legal 'right to know'. A nervous Government then allowed itself a further five years before implementing the Freedom of Information Act. The reluctant move towards the formal codification of rights in the management of information, which also included the Data Protection Acts of 1984 and 1998, the Interception of Communications Act of 1985, the Privacy and Electronic Communication Regulations of 2003 and the Environmental Information Regulations of 2004, was a consequence of the nineteenth-century drivers of change taking on a new form. Where once British liberalism had been explicitly defined against European practices, membership of the European Union and the belated acceptance into Anglo-Saxon law of the European Human Rights Act forced an alignment of legal processes across the now democratic cultures. Where the nineteenth century revolution in written mass communication had posed new questions in the management of information, now the revolution in electronic communication created fresh problems in privacy and secrecy which are far from resolved. Above all, where the issue of trust had sustained an informal culture of regulation, now it undermined the whole edifice.

The decline in honourable secrecy was located in a growing failure of the ethical standards of public life. It was a century-long process, with key milestones the Suez

invasion of 1956, and the 2003 invasion of Iraq whose consequences are still being worked through. In both cases the mismanagement of secret information caused foreign policy disasters which called into question both the competence and the integrity of the British liberal state. The public lost confidence in government, and public administration lost confidence in itself. The professional-gentlemanly elite no longer seemed capable of reproducing habits of collective self-denial, knowing what to say and when not to say it. 'The culture of secrecy', a phrase never used at the time when it might have had a positive meaning, now stood as the shorthand for all that needed changing. The White Paper of 1997, *Your Right to Know. Freedom of Information*, which represented the high-tide of reforming ambition on the part of the new Labour Government, contained a preface by Tony Blair, accompanied by a photograph of the young prime minister wearing a shirt which symbolically still displayed the creases of the box from which it had just been unpacked: 'The traditional culture of secrecy' he wrote, 'will only be broken down by giving people in the United Kingdom the legal right to know.'<sup>15</sup> His successor has followed in his rhetorical footsteps. In one of his first speeches as Prime Minister, Gordon Brown told Liberty last October that 'FoI is the right course because government belongs to the people....There is more we can do to change the culture and workings of government to make it more open....We should have the freest possible flow of information between government and the people.'<sup>16</sup> The Information Commissioner himself says that he is 'the first to acknowledge that FoI does amount to a major challenge to a culture of unnecessary official secrecy and our job involves tackling that need for cultural change head on.'<sup>17</sup>

The nature and outcome of this head-on challenge remain deeply unclear. Nick Rose has written that the 'links between the political apparatus and the activities of governing are less stable and durable than often suggested: they are tenuous reversible, heterogeneous.'<sup>18</sup> After a prolonged period of decline in the nineteenth century settlement, what is now being attempted is a kind of reversal. Rather than the values and traditions of a governing elite standing in for formal regulation and justifying its absence, now a complex formal bureaucracy is attempting to create the conditions within which a new or revived set of ethical standards can flourish. At the time of the debate over the 1997 White Paper and the drafting of an apparently much weaker Freedom of Information Bill, critics were greatly exercised about particular

exemptions being written into the legislation. What they missed was the construction of a new kind of administrative infrastructure to police the flow of information. The Information Commissioner now runs an office of 270 staff which oversees no less than 115,000 public bodies covering not only central government but also schools, universities, health trusts, local councils and the police. Each of these bodies in turn has had to appoint and train its own specialised freedom of information officers to comply with the Act. These staff are required not only to ensure observance of the law but positively to promote its purposes by drawing up schemes of publication and actively advising and assisting those seeking information.<sup>19</sup>

‘There is now’, claims the Commissioner, ‘a recognition that legislation is irreversible and a determination on the vast majority of politicians and public servants to make the best of the law and to take it seriously.’<sup>20</sup> An opinion poll has been taken for each of the last four years asking respondents to assess the ‘benefits of being able to access information held by public authorities.’ The response to the question of whether it ‘increases trust in public authorities’ has risen consistently from 51% in 2004 to 72% in 2007.<sup>21</sup> So rapid a change in so fundamental an issue is to be treated with some caution. It may suggest that public perceptions of trustworthy behaviour are more volatile than the values and instincts of the public officials themselves.

The apparent transformation perhaps also reflects the sheer scope of the public sector, which is so much more extensive and heterogeneous than it was when the Victorian culture of secrecy was constructed. Citizens may believe that their local school or hospital is behaving more ethically because of the increased transparency of their deliberations, and in terms of the quality of their daily lives this can be the crucial change. There is scant evidence, however, that such generosity of sentiment is being extended to central government. At one level it can be argued that Labour is suffering from a kind of injustice. If we stand back from the current debates, the record of New Labour contrasts favourably with the first majority Labour Government under Attlee, which managed to launch a nuclear weapons programme without consulting Parliament or informing the electorate, or the Wilson and Callaghan Governments which passed up golden opportunities to reform the already indefensible 1911 Official Secrets Act. It may be that Labour is now paying the price for its initial indecision between 1997 and 2000, when having set out a vision of reform it then panicked and

had to be dragged back towards its original intention by means of fierce lobbying inside and outside Government. It gave the impression of reforming in spite of not because of its core values and instincts, leaving the freedom of information lobby deeply sceptical of government intent. In the history of secrecy, Labour deserves not to receive the credit it deserves.

Its problems are compounded by the invasion of Iraq which took place in the interim between the passage and the implementation of the Freedom of Information Act. It may be that the wholesale misuse of secret information that led to war was the last throw of the Suez era rather than the formative event of the new century, but its impact on the confidence in and within Government is profound. Had the first Blair administration succeeded in its attempts in redrafting the Bill to remove permanently large areas of policy making from external scrutiny, the Government might now be in less short-term difficulty, although the long-term prospects of restoring public trust might be correspondingly bleaker. As it was, vigorous lobbying of the draft Bill succeeded in moving the legislation at least part of the way back to the vision of the White Paper. Exemption categories remained, covering defence, international relations, law enforcement, commercial interests, the economy or the frankness of internal discussions or the 'effective conduct of public affairs',<sup>22</sup> however the capacity of government to block information without judgment or appeal was curtailed. Maurice Frankel summarised the key achievement of his lobbying campaign: 'I think the critical thing was, they agreed to make the public interest test mandatory. Although they retained the ministerial veto, that fundamentally shifted the organisation of the bill, so, what was then a gigantic class exemption to do with policy formulation, for example, became subject to a statutory test of whether on balance disclosure was in the public interest or not.'<sup>23</sup>

The attempt to force the release of Cabinet minutes relating to the Attorney General's legal advice is the ultimate test of the lobby's success. It may well be that little is revealed thereby given that much of the advice has already been leaked and that the Cabinet minutes themselves are generally too terse to disclose detailed arguments. But there is no doubt that the release would constitute a crucial precedent, indicating that now no part of political process is immune from the requirement of transparency. Whether in fact the minutes will be released, O best beloveds, we will have to wait

and see. The Government has thirty-five days in which to lodge an appeal against the Information Commissioner's judgement. That period expires next Tuesday.

Shrawardine. 27 March 2008.

David Vincent  
The Open University  
Walton Hall  
Milton Keynes MK7 6AA  
UK  
d.m.vincent@open.ac.uk

---

<sup>1</sup> Specifically Clause 35(1) a and b.

<sup>2</sup> Information Commissioner's Office, *Freedom of Information Act 2000 (Section 50). Decision Notice 19 February 2008*, p. 2.

<sup>3</sup> Presumably in response to this information, the Commissioner ruled that sensitive material in the Cabinet record could be 'redacted', or blacked out, from the publicly released material.

<sup>4</sup> Richard Thomas, 'Freedom of Information and Privacy. The Regulatory Role of the Information Commissioner'. Speech to the Centre for Regulated Industry 9 January, 2008 (Information Commissioner's Office 2008), pp. 11-12.

<sup>5</sup> ICO, *Decision Notice 19 February 2008*, p. 9.

<sup>6</sup> ICO, *Decision Notice 19 February 2008*, p. 9.

<sup>7</sup> David Vincent, *The Culture of Secrecy. Britain 1832-1998* (Oxford: Oxford University Press, 1998), p. 4.

<sup>8</sup> Hansard, 3rd Series, LXXV, June 14, 1844, col. 892. For an example of what he was talking about, see the account of contemporary practice in Russia: R. Hingley, The Russian Secret Service (London, 1970), pp. 33-5.

<sup>9</sup> Hansard, 3rd Series, LXXV, June 24, 1844, col. 1264.

<sup>10</sup> Taylor, The Statesman, p. 89.

<sup>11</sup> Papers on the Re-Organisation of the Civil Service (1855), PP 1854-5, XX, p. 116.

<sup>12</sup> Papers on the Re-Organisation of the Civil Service (1855), PP 1854-5, XX, p. 116.

<sup>13</sup> A. Barry, T. Osborne and N. Rose, 'Introduction' in Foucault and Political Reason: Liberalism, NeoLiberalism and Rationalities of Government (London, 1996), p. 8.

<sup>14</sup> The phrase was used by Lord Tenterden, Permanent Secretary at the Foreign Office following the leak of a secret treaty in 1878 by a temporary copyist. PRO FO/363/3. Tenterden Papers. Tenterden to Salisbury, 15 June 1878.

<sup>15</sup> Your Right to Know. Freedom of Information (December 1997) Cm 3818. Preface.

<sup>16</sup> Cited by Richard Thomas, 'Freedom of Information and Privacy – the Regulatory Role of the Information Commissioner', Speech to the Centre for Regulated Industries, 9 January 2008 (Information Commissioners' Office, 2008), p. 9.

<sup>17</sup> Thomas, 'Freedom of Information and Privacy', pp. 7-8.

<sup>18</sup> Nikolas Rose, *Powers of Freedom. Reframing Political Thought* (Cambridge, Cambridge University Press, 1999), p. 18.

<sup>19</sup> Department for Constitutional Affairs, *The Freedom of Information Act 2000*.

<http://www.dca.gov.uk/foi/foiact2000.htm>; The Campaign for Freedom of Information, *A Short Guide to the Freedom of Information Act and Other New Access Rights*, 28 January, 2005.

<sup>20</sup> Thomas, 'Freedom of Information and Privacy', p. 10.

<sup>21</sup> Thomas, 'Freedom of Information and Privacy', p. 15.

<sup>22</sup> Maurice Frankel, 'In the public eye', *The Guardian*, 14 December, 2004

<sup>23</sup> 'Interview with Maurice Frankel, Director of the Campaign for the Freedom of Information' *Freedom of Information* (?date). <http://freedomofinformation.co.uk>.