

IFLA/FAIFE World Report: Libraries and Intellectual Freedom



United Kingdom

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The UK is a mature parliamentary democracy with, in principle at least, a history of tolerance and respect for the personal and intellectual rights of its citizens. Journalists, writers and librarians would, in general terms, consider themselves free to pursue their intellectual and professional lives without state interference. In practice, however, this picture is tempered by a long standing, paternalistic culture of secrecy on the part of government in its dealings with the public. This culture of secrecy is deeply ingrained across all public bodies and UK citizens accept limitations to their rights to information which would be quite unacceptable to some of our European neighbours.

Population:	59.200.000 (2000)
GNP per capita:	\$ 19,960 (2000)
Government / Constitution:	Monarchy
Main languages:	English
Main religions:	Multi-faith (Anglican 45%)
Literacy:	80% (2000)
Online:	32.72% (July 2000)

Legislation

Over the past 20 years there have been attempts to redress this position and during the 1980s a number of laws were passed which gave the public limited rights of access to some information held by public bodies. The most significant of these laws was the 1984 Data Protection Act which gives individuals the right to see and correct any personal data held about them. This act established a Data Protection Commissioner charged with protecting the interests of the general public from 'big government'. This successful "ombudsman" model has now become widespread in British legislation.

A number of laws extending the individuals rights of access to personal information followed the Data Protection Act : The Access to Personal Files Act 1987 giving the right to see social, housing and schools files; the Access to Medical Reports Act (1988); Environment & Safety Information Act (1988) and the Access to Health Records Act (1990). The Local Government (Access to Information) Act 1984 obliges local authorities to make agendas, minutes and papers of public meetings available three days in advance. Such papers are usually placed in the public library and, increasingly, on the council's website. This limited right of access is critical for journalists wishing to monitor the activities of their local council.

In 1994 a voluntary code of practice on access to central government information was introduced. This provides access to some government records but it is characterised by very broad exemptions.

Freedom of Information law

This piecemeal approach is no substitute for a full freedom of information law. None of these laws enshrine the principle of the citizen's right to access public information and they do not challenge the tradition of secrecy which provides information only under pressure and on a need to know basis.

A freedom of information bill was finally introduced by the present government in May 1999 and is still working its way through the legislative process. The new law will give a right of access to information held by a range of public bodies and will create an Information Commissioner (also to be the Data Protection Commissioner) to oversee the act. The draft bill has been very heavily criticised in both Houses of Parliament and by lobby groups such as The Library Association. Its most important shortcomings are the sweeping list of classes of information which are exempt, combined with the lack of an overriding public interest test. In effect, this means that the government can decide to exclude any information it wishes from the provisions of the act and the courts will have no grounds on which to challenge these exemptions. The bill is currently stalled in Parliament and is unlikely to receive Royal Assent this side of the general election in 2001.

Legal Constraints

Even when it does become law the Freedom of Information bill will only go part way to redress the balance in favour of a right to know. It will not remove the legal constraints on FoI which already exist.

Of these the Official Secrets Act (1911) is the most repressive and is frequently used against journalists and public servants who try reveal matters which they think the public has a right to know. Section one of the Official Secrets Act does not allow "the public interest", or the fact that no damage has been caused by disclosure, as a defence in law. This makes the law very difficult to challenge through the courts. Interestingly, The Human Rights Act 1999, which enforces the European Convention on Human Rights with UK law, may provide the first real challenge to the OSA. A case is currently

being brought by David Shayler on M15 (Secret Service) officer arrested in August 2000 for disclosing alleged malpractice in breach of the OSA. Shayler will mount a defence under Article 10 of the Human Rights Convention - the right to freedom of expression - which includes the right to impart information and ideas without interference by a public authority.

Almost as restrictive as the Official Secrets Act are the UK libel laws which are some of the strictest in the world and are used frequently by politicians and business leaders. Over the years the libel laws have had a damaging effect on media freedom, because many Editors now impose effective self-censorship to avoid the massive costs involved in mounting a legal defence.

The Obscene Publications Act 1959, which covers all publications including material available on the Internet, defines as obscene any article which, in the view of the courts, has 'a tendency to deprave and corrupt' those likely to see it. This legislation has occasionally been used to restrict intellectual freedom, most recently in October 1997 where the police confiscated a book of photographs by artist Robert Mapplethorpe from the library of the University of Central England. The University took a firm and unequivocal stand in defence of its intellectual freedom and after a good deal of protest, led by The Library Association, the Crown Prosecution Service decided not to pursue the case. Incidents such as this, even when they do not result in prosecutions, have a tendency to make library authorities over cautious and may eventually lead to an unacknowledged self-censorship by public bodies.

Section 28 of the Local Government Act, introduced in 1988, is designed to prevent local authorities from 'promoting homosexuality'. Public libraries have been in the front line of this hugely controversial legislation and, although no prosecutions have ever been brought under this law, many libraries have been forced to change their selection and display policies. The present Government is committed to the repeal of Section 28 which it believes 'creates a climate that may encourage discrimination...' However repealing the law has proved unexpectedly difficult and the government has been blocked by a coalition of Conservatives and church leaders in the (unelected) House of Lords. Over 30% of teachers claim that they have censored their sex education as a result of Section 28.

Yet the law does not, in fact, apply to schools because they are not run by local authorities. This illustrates the pernicious way in which such laws can restrict freedoms without a single prosecution ever being brought.

The Public Records Acts provide for all government documents to be stored in secret for 30 years, with provision for exemptions to be kept secret for longer still. This automatic assumption of secrecy will be challenged by the proposed Fol law although the provisions for designating exemptions under both sets of legislation could severely limit its real effectiveness.

The recent constitutional changes which have begun to devolve power to Scotland, Wales and Northern Ireland will have interesting implications for Fol. The Scottish Parliament and the Welsh Assembly both intend to enact Freedom of Information legislation which will be broader and stronger than the Westminster legislation. In the meantime the Welsh assembly has announced a series of voluntary measures intended to create a culture of openness, with a presumption in favour of disclosure. Minutes of Welsh Assembly Cabinet meetings will be published on the Internet.

Section 28 was bitterly debated in the Scottish Assembly but was eventually repealed there. Campaigners will watch with interest to see how the UK courts cope with European, UK-wide and national Fol laws which conflict and contradict each other.

Libraries and Freedom of Information

UK libraries, particularly public libraries and those in schools and higher education, have long recognised their critical role in enabling access to information. 60% of UK adults use the public library service and public libraries are perceived as politically neutral, trustworthy places owned by all sectors of the community. This unique position gives public libraries a particular responsibility in safeguarding intellectual freedom. As more information is published electronically access to the Internet becomes essential for all citizens. Public libraries will need to bridge the digital divide between the information haves and have-nots.

In recognition of this the Government is investing £70m to enable free public access to the Internet in all public libraries, some 4,500 outlets across the country. The UK Library Association has a longstanding commitment to freedom of access to information enshrined in its Code of Professional Conduct, and in its Policy Statements on Intellectual Freedom and Censorship and on The Use of Filtering Software in Libraries. The Library Association does not endorse the use of filtering software in public libraries believing that the use of such software is inconsistent with the duty of a library to provide all publicly available information in which its users claim a legitimate interest. The Association's policy and guidance notes are available on www.la-hq.org.uk/ -- <http://www.la-hq.org.uk/> -- .