

Any reform to Official Secrets laws must protect public interest disclosures and open justice

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With the election now in the past, the wheels of government are beginning to grind again. While most eyes are on Brussels, it is important that the bright lights of Brexit do not draw attention away from other work that is resuming and ongoing. Among it, the Law Commission will [continue its project](#) that considers the revision of the laws on Official Secrets, with its final proposals expected later this year.

The initiative to consider existing law on the 'Protection of Official Data' - primarily the Official Secrets Acts 1911-1989 - began with the Cabinet Office when it referred the project to the Commission in 2015. A [315-page consultation paper](#) with provisional recommendations was published by the Commission in spring 2017. It will be the Government that will decide how to proceed, and whether to introduce new draft legislation, once the final recommendations are made. (No reference to Official Data or Official Secrets was made in the Queen's Speech).

The Law Commission, which came under - perhaps unanticipated - fire from the media and NGOs for the nature of the proposed reform plans and a perceived lack of consultation before the first report was published, has since been engaging with a wider range of groups and individuals through in-person meetings. It has also published [a 'myth-buster' on Twitter](#) in response to some of the reports, and shared more [explanatory material](#) ahead of meetings.

However, this has not assuaged concerns, with strong reservations about the proposals expressed in a range of written industry and third sector written submissions, [a number of which are available online](#).

We are among those who have met with the Law Commission since publication of its report, and in our written submission we focus on aspects of the consultation that relate to freedom of expression and the public interest: the public interest defence; the Independent Statutory Commissioner model; and access to court proceedings. We also address the related issue of the conduct of trials.

In important respects our position on these issues is often substantially at odds with the Law Commission's provisional views.

In summary:

- We reject the Commission's view that the difficulties surrounding a public interest defence outweigh its benefits. We recommend that there should be a public interest defence in official secrets offences for all those engaged in journalism in the

public interest, including sources;

- We recommend that any reformed system should not rely solely on an independent Statutory Commissioner (as the Commission suggests). It should instead adopt the Canadian model of an Independent Commissioner in addition to a public interest defence for official secrets offences;
- We agree that the Commission's proposed test of necessity for closing public access to proceedings is an improvement on the current law, but we argue that the proposed change alone falls short of what is required to adhere to the rule of law;
- We disagree with the Commission's tentative suggestion that the availability of closed material procedures in civil cases, now permitted under the Justice and Security Act 2013, should prompt a wider review of the ways that fair trial rights and safeguarding of secrets is balanced in criminal cases. On the contrary, there is no good reason at this point in time to embark on a wider review of criminal process and national security issues.

Our [full submission](#) is available online.

URL: <https://binghamcentre.biicl.org/comments/23/any-reform-to-official-secrets-laws-must-protect-public-interest-disclosures-and-open-justice>