



2-4 Cockspur Street
London SW1Y 5DH
Telephone [REDACTED]
Facsimile: 0171-211 6249

From the Secretary of State for National Heritage

The Rt Hon. Virginia Bottomley JP MP

C95/14313

The Rt Hon Antony Newton OBE MP
Lord President of the Council
68 Whitehall
London
SW1A 2AT

12/2
21 File
12 February 1996

PRIVATE MEMBER'S BILL : PROTECTION OF PRIVACY

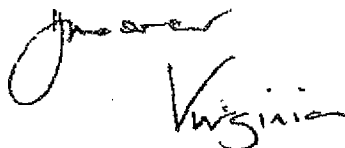
Sir Patrick Cormack's Protection of Privacy Bill is down for Second Reading on Friday, 16 February.

The Bill would criminalise buying and selling of tapes or transcripts of private conversations other than with the consent of both parties. It is no doubt prompted by the eavesdropping on a private conversation of HRH The Duke of Edinburgh.

As with the first part of Quentin Davies's Ten Minute Rule Bill, this Bill goes much too far and would be a serious blow to the freedom of the press. Buying of information is an essential part of journalism, and some of it may be fairly innocuous. The Bill might also hamper legitimate activities of, for example, private detectives and others. Until we see the fine print of the Bill, we will not know whether there are any public interest or other defences, but, by itself, the omission of defences from the long title renders the Bill unacceptable. Furthermore, the Government could not even contemplate the Bill unless it were limited to cases causing substantial distress to the person involved (or some such test).

More importantly, the Bill would cut across our policy on press regulation. It would be strongly resisted by the media, and would undermine the position of John Wakeham, whose authority as chairman of the Press Complaints Commission is predicated on the Government's assurance that it will not introduce legislation provided that he can make self-regulation work. For this reason alone, I think that the Bill should be blocked at Second reading.

- > I am copying this to other members of LG, the Prime Minister, First Parliamentary Counsel, the Secretaries to LG Committee and to Sir Robin Butler.

A handwritten signature in black ink, appearing to read "The over Virginia". The signature is written in a cursive, somewhat stylized hand.

VIRGINIA BOTTOMLEY



ccp
1

2-4 Cockspur Street,
London SW1Y 5DH
Telephone: [redacted]
Facsimile: 0171-211 6249

From the Private Secretary

RESTRICTED - POLICY

C95/8308/13822

[redacted]
Private Secretary to the Deputy Prime Minister
70 Whitehall
LONDON SW1A 2AS

9 October 1995

Dear [redacted]

Thank you for your letter of 29 September, enclosing clauses, drafted by Mr Tim Castles QC, which would criminalise certain infringements of privacy. The Deputy Prime Minister sought my Secretary of State's reactions to his suggestion that this might contribute to consideration of the way forward.

My Secretary of State is keen not to re-open the issue of privacy and the press. The enormous difficulties of principle and of definition which attended the Government's lengthy consideration of legislation proscribing journalistic intrusions, and which ended with EDH unwillingness to agree to any legislation, suggest great caution.

She also feels that it would not be helpful to Lord Wakeham if word got out that the Government were re-examining legislation, however tentatively. The understanding is that the Government will not revisit legislative proposals provided that self-regulation works. The Government's response, which she published on 17 July, made it clear that the Government expects Lord Wakeham to deliver. There is no evidence that (as some feared) the press is treating the response as a licence to return to old ways, or that the Press Complaints Commission is sitting back.

If, however, the press does begin to relax standards, or the Press Complaints Commission shows itself unwilling or unable to curb serious abuses, there may well be a case for reconsidering legislation. The response did not, of course, rule out legislation in principle but referred only to the difficulties of formulating properly balanced offences. My Secretary of State feels that if the Government were to reconsider the offences, the correct starting point would be the offences drafted by Parliamentary Counsel. She feels that Mr Castles's draft, though it might be useful for discussion purposes, is too vague and lacking in necessary detail, and would not provide the proper balance between freedom of the press and privacy.

> I am copying this to [redacted] at No 10 and to [redacted] Private Secretary to the Home Secretary.

Yours sincerely

[redacted]
Private Secretary



cc PLY
MA
V Press

2-4 Cockspur Street,
London SW1Y 5DH
Telephone [REDACTED]
Facsimile: 0171-211 6249

From the Private Secretary

C95/4692

[REDACTED]
Private Secretary to the Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

17 July 1995

Dear [REDACTED]

PRIVACY AND MEDIA INTRUSION

I attach for your and colleagues' information:

- a copy of the oral statement my Secretary of State will make to the House this afternoon;
- the Government's response to the National Heritage Select Committee; and
- lines to take.

I am copying this letter to [REDACTED] at No 10 and Private Secretaries to members of the Cabinet.

Yours,

[REDACTED]
[REDACTED]

PRIVACY AND MEDIA INTRUSION

KEY POINTS

General

- * The Government believes strongly in the freedom of the press and would be extremely reluctant to introduce statutory controls. There is a thin dividing line between controls on the press and censorship. The Government is pleased that the Select Committee rejects idea of a statutory complaints tribunal.
- * Improvements to the system of self-regulation have taken place. Under the Chairmanship of Lord Wakeham, the Press Complaints Council is now more independent and effective:
 - Lord Wakeham has acted to improve the procedures and authority of the PCC;
 - the newspaper industry's Code of Practice has been strengthened - for example to cover obtaining information by underhand surveillance practices;
 - the press is taking steps to put own house in order, in line with recommendations of the Select Committee - for example incorporating compliance with the Code of Practice into the contracts of journalists and editors;
- * The Government shares the House's anger at underhand measures used by the press to violate privacy where there is no conceivable public interest. Such practices are outlawed by the Code of Practice. To legislate against them would be much more difficult: the Government is not prepared to bring forward laws which would not work in practice and which could cause more problems than they solve.
- * Legislation can be a blunt and clumsy instrument. Proper self-regulation provides a swift, effective and accessible means of redress for individuals.

Improving Self-Regulation

- * The Government has put forward a number of proposals to toughen self-regulation still further. These include:
 - a compensation fund, paid for by the industry, for victims of intrusion;
 - tougher wording in the Code of Practice to provide greater protection for individuals;
 - proposals for greater lay involvement in revising and strengthening the Code;
 - swifter procedures for the PCC to head off abuses of the Code where it has reason to believe such abuses are about to occur.
- * Parliament will expect the industry to respond positively to these proposals.

Problems with Criminal Offences

- * Difficulties of definition. What is "private property"? What is a "surveillance device"? No public consensus where to draw lines between private and public life.
- * Public interest defence would be likely to drive a coach and horses through any legislation.
- * Could give unscrupulous journalists a platform to make accusations, which could be slanderous, under the cloak of the court. This would bring the law into disrepute and end up doing more harm to individuals.

Problems with a Civil Remedy

- * It would be a major step along path towards statutory controls of the press. The Government is extremely reluctant to go down this road - could lead to censorship;
- * There is no clear consensus of view behind such a move. Fewer than half of those who responded to Lord Chancellor's/Scottish Secretary's consultation supported civil remedy;
- * There would be a danger that a civil remedy would be accessible to the wealthy, or those who could get legal aid, but not to the majority.

The Way Forward

- * The Government's approach offers the best opportunity of maintaining the balance between the rights of individuals to their own privacy and the freedom of the press:
 - self-regulation is the most practical approach. It also accords with the Government's (and the Select Committee's) instincts and the 300-year history of our free press;
 - the Government believes that self-regulation could be made more effective and has put forward measures for doing this;
 - there is enough reason and evidence - especially with the appointment of Lord Wakeham as Chairman of the PCC, to give the press the opportunity to build on progress;
- * The Government has not ruled out legislation for ever. Parliament will want to continue to monitor and debate this complex and difficult subject.

PRIVACY AND MEDIA INTRUSION

ORAL STATEMENT

With permission Madam Speaker I shall make a statement about the press and privacy.

I am today publishing the Government's response to the Report of the National Heritage Select Committee on *Privacy and Media Intrusion*. Copies are available in the Library and Vote Office.

I pay tribute to the Select Committee for their report. The Government very much appreciates the Committee's patience in their long wait for this response. The issues in this area go to the heart of our democracy and the Government has thought about them long and hard. In every democracy there is a balance to be struck between the rights of individuals to personal privacy and the freedom of the press. As the Select Committee recognise, this is not always easy to achieve.

It is a proud feature of our free nation that for 300 years, other than as a necessity in times of war, the United Kingdom press has been at liberty to write whatever it chooses, subject to the constraints of the law as it applies equally to all citizens. Such freedoms are jealously guarded, by the press itself and by this House. The surest means of protecting these freedoms is to ensure they are used responsibly.

Overall, the quality and standards of our local, regional and national press are high. However, some newspapers have ridden roughshod over people's privacy when there was no possible justification for doing so. Cases concern not just those in public life but private citizens who become the subject of media scrutiny through circumstances not of their choosing. People are entitled to privacy for themselves and their families.

In response to these concerns the industry has taken a number of steps. An independent, non-statutory Press Complaints Commission was set up at the beginning of 1991. Lord Wakeham was appointed as Chairman of the Commission at the beginning of this year.

He has considerably strengthened it. The majority of its members are now independent of the press and bring robust common sense to the cases before them. Lord Wakeham set out the steps he has taken in a recent letter to my predecessor. It is published today as an annex to the Government's response.

The development of a national Code of Practice for the press is a significant improvement on what has gone before. The Code, and how it is applied, is being shown to have effect. The House will be aware, for example, of a recent instance where the editor of a Sunday tabloid was publicly reprimanded by the newspaper's proprietor for breaching the Code. More needs to be done. I am glad to note that, as the Select Committee recommended, increasingly compliance with the Code is being written in to the employment contracts of editors and journalists.

Lord Wakeham is bringing forward proposals for discussion on how both the public and the PCC can contribute to revising and further toughening the Code of Practice. This is welcome as are his proposals for performance targets against which to measure the Commission's efficiency and responsiveness.

Madam Speaker, it is essential that self-regulation is both effective and seen to be effective. There have been improvements to the PCC. Lord Wakeham is committed to doing more.

I have written to him setting out further improvements the Government wishes to see both in the procedures of the PCC and in the Code of Practice itself. My letter is published as an annex to the Government's response to the Select Committee.

We recommend that the PCC pays out compensation to those whom its judges have had their privacy violated by the press. Such awards would be paid from a fund set up by the industry. This would be a collective recognition from the industry that one of its members had wronged a member of the public.

We have proposed several ways in which the Code of Practice might be further tightened up. In particular, there are several points where the language of the Code should be more precise, or the emphasis changed, to place greater weight on the protection of individual privacy.

We support the Select Committee's call for a direct and rapid line of communication between the Chairman of the PCC and newspaper editors. This would be used to warn them where, in the Chairman's judgement on the basis of evidence submitted to him, the Code was about to be breached. This could be used to head off abuses. It is also important that the public have rapid and direct access to the PCC. This facility should be well publicised in the press so the public are aware of it.

Madam Speaker, the Government has considered carefully whether legislative options should be pursued, rather than the self-regulatory alternative. We have decided for the present to allow Lord Wakeham's Commission, and the press, to demonstrate that self-regulation can be made to work. Let me say something though about each of the legislative alternatives.

The Heritage Select Committee and Sir David Calcutt's 1993 Report before it both took the view that legislation was needed to prevent abuses by the press. However, there is disagreement about the best remedies to apply. Sir David Calcutt recommended a statutory Press Complaints Tribunal, but this was rejected by the Select Committee.

The Government agrees with the Committee that a statutory Press Complaints Tribunal would not be right. We believe in a free press. Like the Committee, we are reluctant to see statutory controls. A statutory tribunal would be a very significant step on a path we have no wish to travel. For the same reason we cannot accept the Committee's recommendation for a statutory ombudsman.

I come next to the Heritage Committee's recommendation for a Protection of Privacy Bill with both civil and criminal elements. The criminal elements would be similar to the intrusion offences proposed in the Calcutt Report. However, the Select Committee, unlike Calcutt, would extend the offences to cover intrusion for any purpose and not just for publication.

The Government has made it clear that it sees attractions in principle in the use of the criminal law to prevent and penalise blatant and unjustified intrusions into the privacy of individuals. Nor could the owners or editors of most newspapers, we believe, legitimately object to sensible laws in this area.

The Government has therefore given the most painstaking consideration to how the necessary legislation might be drawn up. In particular, it examined from every angle how the Calcutt offences might work in practice. This work is described in detail in Chapter Three of the Government's response.

We have been guided by the principle that the law must be both clear and enforceable. It must have a good chance of catching those who are abusing their powers while not inhibiting legitimate journalistic investigation. Any legislation would have to establish a balance which protects privacy while allowing responsible journalism and without creating defences that were so wide as to render the offences meaningless.

We have been forced to conclude that the difficulties of scope and definition of the proposed offences, and the necessary defences, are formidable. The Government would prefer to see a self-regulatory process than to introduce a law which could create more problems than it is designed to solve. The Government therefore has no immediate plans to legislate in this area.

The Select Committee also recommended a civil remedy for infringement of privacy. This would give victims of infringements of privacy a right to damages and to seek injunctions. My noble and learned friend the Lord Chancellor and the then Secretary of State for Scotland consulted on a new civil remedy in 1993.

The consultation did not generate the clear support which the Government looks for when considering major measures of law reform. The Government is not yet persuaded that there is sufficient consensus on which to base statutory intervention in this area. Moreover the Government strongly prefers the principle of self-regulation.

On balance, therefore, the Government has decided not to legislate for a new civil remedy, at least for the present. We do believe, however, that the right to privacy should be more explicitly spelt out in the industry's Code of Practice. For this reason we are publishing, as an annex to our response, what a civil remedy might look like with the recommendation that elements of it should be incorporated into the Code.

Madam Speaker, the whole House will look to the industry to respond positively to the recommendations set out in my letter to Lord Wakeham. Self-regulation still has a case to prove. Despite the serious practical difficulties, legislative measures should not be ruled out.

The fact is, however, that self-regulation is the most practical way forward. The appointment of Lord Wakeham and the approach he is taking offer the best opportunity for some time that self-regulation will be made to work in a way which commands public confidence. There are signs of a growing recognition among editors, including past miscreants, that the right of individual privacy is not to be casually cast aside.

The industry now has to back the PCC and to make self-regulation fully effective. This is an issue which the Government and this House will and should continue to monitor and debate.



7th
Press

2-4 Cockspur Street,
London SW1Y 5DH
Telephone: [REDACTED]
Facsimile: 0171-211 6249

From the Private Secretary

095/4362

CONFIDENTIAL

[REDACTED]
Private Secretary (Home Affairs)
10 Downing Street
London SW1

10 July 1995

Dear [REDACTED]

PRIVACY

There has as you know been some debate over the timing of the forthcoming oral statement on this subject. My Secretary of State discussed this with the Lord President this evening and agreed a way forward, subject of course to any views the Prime Minister may have.

The statement is unlikely to be well-received on the Government backbenches, where there is strong pressure for action. My Secretary of State and the Lord President conclude that publication this week would be particularly unfortunate:

- it could not be done before Thursday (the document is not yet printed);
- adverse reaction on the backbenches on that day is unlikely to be welcome to the Prime Minister, who I understand is due to see the 1922 Committee late that afternoon;
- reports of that reaction in the following day's press (Friday) would form an unfortunate backdrop to the sport announcement that day.

Moreover there is a serious possibility that publication on Thursday might not prove possible, either because pressure on HMSO fails to yield results, or because Lord Wakeham creates difficulty over some drafting amendments which my Secretary of State has suggested to the exchange of correspondence with him, and which have been put to him today.

CONFIDENTIAL

On the other hand, the Response to the National Heritage Select Committee is, as you know, well over two years overdue. Pressure from the Select Committee, and from the Liason Committee, effectively rules out any further significant delay.

My Secretary of State and the Lord President conclude, therefore, that we really have no choice but to publish the Response, with an oral statement, next week. I understand that there is suitable covering fire (in the form of a statement from the Chancellor on Barings) on the Tuesday.

There is one difficulty with this proposal. Gerald Kaufman MP, Chairman of the Select Committee, is abroad that week. He is unlikely to take kindly, especially given the long delay, to publication in his absence.

My Secretary of State considers however that this is very much the lesser of two evils. The Lord President agrees with this assessment.

It would be helpful to know whether the Prime Minister is content with this proposal. I am afraid that, if we were to have any chance of retaining the Thursday option, we should need to know first thing tomorrow.

- > I am sending copies of this letter to Paul Cohen (Lord President's Office), Murdo Maclean (No 12) and to Dominic Morris.

Yours,



Private Secretary

From: [REDACTED]
Media Division

Tel: 211 6432

Date: 10 January 1997

c [REDACTED]
[REDACTED]

[REDACTED]

SECOND REVIEW OF PRESS SELF-REGULATION

I attach a draft review of press self-regulation for the period May - December 1996. I am most grateful to [REDACTED] for her work on it.

2. I wonder whether it would be suitable as a supporting document for the advice and draft letter to Lord Wakeham - which [REDACTED] has asked to see in draft by the morning of Thursday, 16 January.

3. I would, in any case, like to discuss briefly with you and [REDACTED] the passage on treatment of children. I am afraid that it is very difficult to make much out of this, for the purposes of the letter to Lord Wakeham, because:

- i. only half a percent of complaints come under clause 12 and they are not, frankly, particularly serious abuses,
- ii. Commission failures on these cases are illustrative of, rather than additional to, those on (adult) privacy; the main difference, I suppose, is that people are less likely to complain in privacy cases, and
- iii. the Commission has implemented the Secretary of State's recommendation on clause 12 (basically ironing out a drafting error) and any suggestion that it needs further amendment would amount to a new démarche which Lord Wakeham might see as special pleading.

4. We could not, I think, attack the Commission's adjudications on clause 12 since that would be purporting to give ourselves an appellate function; we could say only that the existing Code provision - clause 12 - gives inadequate protection. But do we really believe that, privacy aside, article 12 is inadequate if properly interpreted?

[REDACTED]
[REDACTED]

**12 Interviewing or
photographing children**

- i) Journalists should not normally interview or photograph children under the age of 16 on subjects involving the personal welfare of the child or of any other child, in the absence of or without the consent of a parent or other adult who is responsible for the children.
- ii) Children should not be approached or photographed while at school without the permission of the school authorities.

T. MA
2 RR



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

19 FEB 1996

Jan Virginia,

PRIVATE MEMBER'S BILL: PROTECTION OF PRIVACY

Thank you for your letter of 12 February on the handling of Sir Patrick Cormack's Private Member's Bill. The purpose of the Bill was to criminalise buying and selling tapes or transcripts of private conversations other than with the consent of both parties. The Bill was down for second reading on 16 February.

You explained that the measures in the Bill were excessive and would be a serious blow to the freedom of the press. They might also hamper the activities of private detectives and others. You also explained that the Bill would cut across the Government's policy on press regulation. It would be strongly resisted by the media and would undermine the position of John Wakeham as chairman of the Press Complaints Commission, since his authority was predicated on the Government's assurance that it would not introduce legislation if he were able to make self-regulation work. You were therefore recommending that the Government oppose the Bill at second reading.

No other colleague commented and I am writing to record that there was agreement to proceed as you suggested. I understand that the Bill was withdrawn from the list of Bills for second reading on 16 February, but arrangements will be put in hand to ensure that the Bill does not receive a second reading when it is considered in due course.

I am sending a copy of this letter to the Prime Minister, to members of LG Committee, to Sir Robin Butler and to First Parliamentary Counsel.

TONY NEWTON

The Rt Hon Virginia Bottomley JP MP
Secretary of State for National Heritage



Deputy Prime Minister
and
First Secretary of State

70 Whitehall, London
SW1A 2AS

Tel: 0171-270 0076

Fax: 0171-270 1257

R

95/983

RESTRICTED - POLICY

[REDACTED]
Private Secretary to
The Rt Hon Mrs Virginia Bottomley JP MP
Secretary of State for National Heritage
2-4 Cockspur Street
LONDON SW1Y 5DH

29 September 1995

Dear [REDACTED]

PRIVACY AND MEDIA INTRUSION: LEGISLATION

Your Secretary of State's Statement to the House on 17 July made it clear that the Government had no immediate plans to introduce a Protection of Privacy Bill. One of the reasons for this was the difficulty of drawing up clear and enforceable legislation, and of establishing a balance protecting privacy while allowing responsible journalism.

The Deputy Prime Minister has, however, recently been passed for consideration a short, sharp draft law, prepared by Mr Tim Castles QC, which I enclose.

While not necessarily wishing immediately to re-open the issue of legislation, the Deputy Prime Minister believes that the draft may present a useful contribution to constructive consideration of the way forward. He would be very interested in the comments of your Department, and of the others to whom I am copying this letter, on the draft.

RESTRICTED - POLICY

RESTRICTED - POLICY

I am copying this letter to Rachael Reynolds at No.10 and to Chris Hudson,
Private Secretary to the Home Secretary.

Yus3,

[REDACTED]

[REDACTED]

PS/Deputy Prime Minister

RESTRICTED - POLICY

Privacy Law

Breach of Privacy

- S.1 If any person shall maliciously publish in permanent form any information or pictorial representation concerning any private activity of another without the express permission of the other, he shall be guilty of breach of privacy and liable to a fine or imprisonment or both as the court may award, such imprisonment not to exceed the term of
- s.2 Any person shall be entitled to institute proceedings for breach of privacy in order to
- i recover damages from any person who participates in any publication or
 - ii to prevent any publication of
- any material which is in contravention of section 1 above.
- s.3 For the purposes of sections 1 and 2 above, it shall be a defence to prove that the subject matter of the material was true and substantially affected the capability of the person aggrieved in the discharge of any public duty.
- s.4 If any person trespasses on the property of another for the purposes of obtaining any material the publication of which would amount to a breach of section 1 above he shall be guilty of an offence.
- s.5 If any person makes use of any photographic or telescopic equipment, recording device or similar equipment to record the private activities of another person without the express permission of that other person for the purposes of obtaining any material the publication of which would amount to a breach of section 1 above, he shall be guilty of an offence.
- s.6 Any person found guilty of an offence under sections 4 or 5 shall be liable to a term of imprisonment not exceeding years and such a fine as the Court shall award.

Interpretation

- s.7 In this Act, 'private activity' includes any social, domestic or sexual activity performed by a person outside the public domain. It does not include any activity performed in the exercise of any public appointment he may hold or may have held in the past or in the exercise of his

employment, trade or profession or in the course of any criminal offence committed by him or arising out of any litigation to which he is a party or any activity which is inconsistent with any views or opinions publicly expressed by him.