

Rt Hon Ben Gummer MP
Minister for the Cabinet Office
70 Whitehall,
London
SW1A 2AS

21st February 2017

Dear Mr Gummer

The News Media Association is the voice of national, regional and local news media organisations in the UK – a £5 billion sector read by 48 million adults every month in print and online. I am writing to you in my capacity as Chairman of its Legal Policy and Regulatory Affairs Committee.

Press freedom, freedom of information and freedom of expression are core concerns of the NMA and its members. We have been surprised and deeply concerned by Cabinet Office reviews aimed at strengthening the government's control over information and restricting the public's right to know. First the Independent Commission on review of the Freedom of Information Act 2000, now the Law Commission's project on Protection of Official Data, charging the Law Commission to consider how to strengthen the criminal law's controls and sanctions for unauthorised obtaining and disclosure of government information. This is hugely threatening to publishers, journalists and their sources. Its wide-ranging terms of reference, encompass everything from the official secrets acts 1911-1989 to data protection, to scores of miscellaneous statutes. The Law Commission also subsumed its review of the offence of misconduct in public office into the project at a late stage.

The past pursuit of journalists and their sources under all these laws are well documented. The NMA has previously advocated reforms that would respect freedom of expression and enable public interest investigations and disclosures. Instead, the Law Commission, as charged by the Cabinet Office, proposes yet more efficient tools for government prosecution, criminal sanctions and suppression of public interest investigation and disclosures by the media. It is important that the Cabinet Office does not advocate the adoption of its restrictive criminal law proposals.

The Law Commission's consultative proposals, if adopted, would have deeply disturbing consequences for press freedom. The Commission's approach would indeed make it easier for the government to prosecute, convict and imprison anyone involved in obtaining, gathering and disclosing information, even if no damage were caused, and irrespective of the public interest, which might indeed outweigh any such damage. However, a new legislative framework setting limits on the right to obtain, impart and receive of information should not be predicated upon the ease with which Government, police, prosecution can despatch those involved in any unauthorised disclosure to prison. The proposed new regime threatens to be both retrograde and repressive. It would extend and then entrench official secrecy. It would be conducive to official cover up. It would deter, prevent and punish investigation and disclosure of wrongdoing and matters of legitimate public interest.

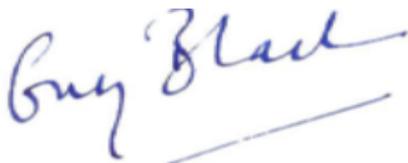
Under the Law Commission's proposals there would be no limits on who could be accused of certain wrongdoing, official secrets offences would be broadened, protected information widened, requirements that disclosure be damaging dropped, territorial ambit and citizenship rendered irrelevant and draconian indiscriminate prison sentences imposed. A public interest defence is

rejected. The proposed prior publication defence could not be relied upon, even if all the world was already aware of the material disclosed and its disclosure had done no harm. Further jeopardy to media organisations, journalists and their sources could arise from its combination with investigation, prosecution and enforcement power. For example, they would allow bypass of the intended journalistic and source protections in the Investigatory Powers Act 2016. The proposals for review of the Data Protection Act 1998 section 55 and prison sanctions of 14 years ignore countervailing press freedom concerns. Indeed, the report apparently favours removal of the existing public interest requirements, so important to investigation and journalism, be it an explicit defence (data protection) or implicit element of the offence, where this requires proof of damage caused by the disclosure (official secrets, misconduct in public office). The proposal for a further review of other unauthorised disclosure offences, under the same terms of reference and from the same perspective, could result in even greater criminalisation of journalism and restrictions on the public right to know.

The Government has stated that it will never be its policy to restrict the freedom of investigative journalism or public service whistleblowing. We appreciate that this project predates your appointment to the Cabinet Office. The NMA and its members would therefore find it helpful to discuss with you their specific concerns on the proposals' implications for publishers, their journalists, sources and the public's ability to know. This includes the Report's recommendations that impact upon open justice. We would also wish to consider the proposals' potential effect upon the voluntary media/government arrangements, of which it makes no mention, to which the NMA and its members are party, such as the Defence Security and Media Advisory Committee or the MoD Green Book operational arrangements for the media and armed forces. I attach a selection of some of our members' editorial comment to date.

We hope that such a meeting is possible and we would be happy to liaise with your office on suitable dates.

Yours sincerely,

A handwritten signature in blue ink that reads "Guy Black". The signature is written in a cursive style and is positioned above a horizontal line.

Lord Black of Brentwood
Chair
Legal, Policy, Regulatory Affairs Committee
News Media Association

NMA contact: Santha Rasaiah santha@newsmediauk.org;

Selection of NMA members' comments

The Times

Spies, state secrets and whistleblowers -

<http://www.thetimes.co.uk/article/spies-state-secrets-and-whistleblowers-bvnc5g9hw?shareToken=162b49c0665d04dba10a3ca22ab999e0>

Official Nonsense-A proposal to expand the definition of espionage is worthy of the Stasi

<http://www.thetimes.co.uk/article/official-nonsense-gqz2t778l>

Secrets act will not harm press freedom, says No 10 - The Times

www.thetimes.co.uk/.../secrets-act-will-not-harm-press-freedom-says-no-..

Brexit leaks could put journalists in prison

<http://www.thetimes.co.uk/article/brexit-leaks-could-put-journalists-in-prison-0fvmv5gdm>

The Sun

Britain's free press under threat

<https://www.thesun.co.uk/news/2858305/britains-free-press-has-never-been-under-threat-like-it-is-today-as-a-tycoon-continues-its-campaign-to-muzzle-the-printed-press/>

The Guardian

Beware, whistleblowers: officials still love secrets more than freedom

<https://www.theguardian.com/law/2017/feb/19/whistleblowers-official-secrets-act-love-more-than-freedom>

Whistleblowers keep us safe. We can't allow them to be silenced

<https://www.theguardian.com/commentisfree/2017/feb/13/whistleblowers-official-secrets-act-law-commission>

No 10: Official Secrets Act proposals 'project of previous prime minister'- Downing Street vehemently denies claims it plans to outlaw investigative journalism and public interest whistleblowers

<https://www.theguardian.com/law/2017/feb/13/uk-government-law-commission-report-outlaw-whistleblowers-investigative-journalism>

Whistleblower protection and the public interest

<https://www.theguardian.com/world/2017/feb/13/whistleblower-protection-and-the-public-interest>

Government advisers accused of 'full-frontal attack' on whistleblowers - Outcry follows plans to radically increase prison terms for revealing state secrets and to prosecute journalists

<https://www.theguardian.com/uk-news/2017/feb/12/uk-government-accused-full-frontal-attack-prison-whistleblowers-media-journalists>

The Guardian view on official secrets: new proposals threaten democracy

<https://www.theguardian.com/commentisfree/2017/feb/12/the-guardian-view-on-official-secrets-new-proposals-threaten-democracy>

Ex-GCHQ whistleblower attacks plans to extend dragnet of secrecy law- Katharine Gun says expanded jail terms for leaking state secrets will deter people from revealing abuses of power

<https://www.theguardian.com/world/2017/feb/13/ex-gchq-whistleblower-attacks-plans-to-extend-dragnet-of-secrecy-act>

The Telegraph

[Journalists who obtain leaked official material could be sent to prison ...](#)
www.telegraph.co.uk > News

Another salvo has been fired at serious journalism – the government must stop these attacks. At first glance, the Law Commission's review of the legislation that covers espionage and the protection of state secrets looks like a sensible exercise. Many of the laws concerned are old, dating back to the early 20th Century and a time before email and mobile telephones, the internet and the almost-limitless and instantaneous exchange of information that characterises our age. <http://www.telegraph.co.uk/opinion/2017/02/12/another-salvo-has-fired-serious-journalism-government-must/>

Daily Mail

[Exposing official secrets could result in 14 years prison | Daily Mail ...](#)

[Whistleblowers and investigative journalists will not face jail, Downing ...](#)

<https://inews.co.uk/.../whistleblowers-investigative-journalists-will-not-fa>