**Written Evidence from the Better Government Initiative to**

**the Independent Commission on Freedom of Information**

1. The Better Government Initiative (BGI) is an informal body made up of people with practical experience in government at a very senior level who have no links to particular political parties ([www.bettergovernmentinitiative.co.uk](http://www.bettergovernmentinitiative.co.uk)). In the light of the background and experience of our members we would like to focus our evidence principally on civil service advice to ministers, in particular in relation to Questions 1 and 3 in the call for evidence (on deliberative space and protection for information on assessment of risk).
2. The purpose of the BGI is to promote high standards in the processes of government. We lay stress on the need for:

* robust policy-making procedures based firmly on evidence;
* full disclosure of the factual information on which policy decisions are based.

The BGI is accordingly strongly in favour of arrangements such as those in the Freedom of Information Act that will enable the facts that were taken into account and the conclusions reached in formulating a policy decision to be thoroughly scrutinized by parliament and public.

1. It is sometimes argued that the risk of having such information made public will severely limit the preparedness of civil servants to give frank advice to ministers and to provide a clear record of the process of deliberation and the decisions taken. Although we recognise that such problems could arise, we believe that the dangers are overstated. Well before the introduction of the Freedom of Information Act there were occasional “leaks” of sensitive information and civil servants have long been accustomed to framing their advice in terms that would not be open to misrepresentation if made public. Similarly they are fully seized of the need to ensure that there is an effective audit trail when government decisions, particularly those with financial consequences, are taken.
2. There are however practical limitations on the speed and detail of the release of information. Any decision-making process is necessarily iterative as the facts are assembled and examined, alternatives are considered and whittled down, and a final choice is refined and developed. Publication at any of these intermediate stages might give a wholly false impression and result in a political outcry that would cause what might otherwise have been a sensible and beneficial policy to be blown off course.
3. The problem is perhaps particularly acute when risk analysis is involved. Comprehensive assessment of risk necessarily involves consideration of a wide range of possibilities. At the extremes some of them will have a very low probability of occurring but very serious consequences if they do occur. If these are misrepresented as a likely outcome the whole risk/reward balance of the policy will be undermined.
4. A further concern of the BGI is that the civil service should continue to be able to provide a source of expert disinterested and impartial advice to governments of different political persuasions. This too has implications for the timing of the release of information. The civil service works assiduously to support the policies of a governing party until shortly before the next general election. If recent advice provided to a previous administration were immediately available to a new government of another party it would perhaps give a false impression of the willingness of the civil service to support a different policy direction. The problem would be much reduced when time had passed and they were able to make their own judgement of the capacity of their civil servants.
5. For all these reasons the drafting of the original Freedom of Information Act sought to provide a “safe space” within which advice to ministers from their civil servants could remain confidential until an appropriate period of time had passed. Experience has shown, however, that this has not been achieved. Judicial examination has revealed that the “safe space” is far more limited that was originally intended.
6. The reasons for seeking to provide a “safe space” remain valid, however, and the Act should be amended to restore the pattern of protection of information originally envisaged. But in the interests of transparency the degree of protection should be limited to what is strictly necessary to preserve the functioning of the “safe space”.
7. We recommend that all factual information, including the obligatory regulatory impact assessments and other relevant benefit/cost analysis, that has played a part in the development of policy should be made available as soon as the policy is announced. Material relating to the deliberative process itself should remain protected for longer but a period of twenty years seems excessive, going far beyond the duration of a single Parliament. We would invite the Commission to consider whether a period of five or perhaps six years would be sufficient.
8. On a somewhat different topic, we are aware that there have been cases where the Act’s provisions have been exploited with no clear public interest justification in an endeavour to acquire a commercial advantage by seeking market and competitor information. The Commission may wish to seek further information on the extent and seriousness of this practice.

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