Executive Secrecy and Access to Policy: Lessons from the Past in Irish Legal and Political History

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Abstract:

Earlier this year, the veil of secrecy that surrounded Brian Lenihan's bank bailout decision in 2008 was heavily criticised. The administrative culture, which appeared obsessed with secrecy, was linked to ideas of political reform – one of the main platforms upon which the current government ran its 2011 election campaign. In this paper, Jennifer Kavanagh argues that the workings of executive secrecy undermine a citizen's right to engage with government policy. Some restrictions may be deemed permissible in order to protect the workings of government. In the Irish context, these restrictions are found in cabinet confidentiality, Official Secrets Act and the retrenchment of the Freedom of Information Acts. The paper highlights the extent of executive secrecy as it exists and the extent to which the executive seeks to keep the policy making process behind closed doors. This is contrasted with the implications of such secrecy on those that seek to peer behind the veil of executive secrecy by examining the Kennedy and Hamilton cases. This paper offers an insight into some of the lessons that can be learned from a closed-door policy making process and its implications for the nature of the democracy which it seeks to protect.

Introduction

The current economic crisis has renewed interest in the imbalance between the citizens and the executive in accessing information. For example, the controversy surrounding the bank bailout decision and the leaking of the budget to the German Bundestag last year which placed the Irish people at the bottom of the priority list in terms of information highlight this problem. However, an examination of the rules surrounding executive secrecy in Ireland, examples of where the executive has been made to answer for its secrecy and incidents where the executive has gone too far in its pursuit of secrecy will all be examined here to illustrate just how low the citizens are in the priorities of policy making in this representative democracy.

Freedom of Expression

Freedom of Expression is accepted as an important democratic right both in Ireland and internationally. It allows for full and frank discussions on national policy which should inform the representative nature of Irish politics. The exercise of political speech rights needs to be fuelled by adequate policy information from the State. However, the access to such information

is restricted by, amongst others, the often cited exercise of secrecy by the executive. This executive secrecy, relied upon by the cabinet, is claimed to be necessary for the effective running of the business of government.

Freedom of expression, as a political right, is a cornerstone of a representative democracy. In some international documents the right to receive information is also explicitly covered.[1] Bunreacht na hÉireann lays out the constitutional framework in the context of political speech rights in Article 40.6.1(i) which firstly states thatcitizens have the right to 'express freely their convictions and opinions' and emphasis that: :

> The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The disparity between the citizens and the executive in the area of policy development strikes at the heart the democratic process. If policy development is carried out in a secretive manner, the credibility of such policy becomes questionable. As stated by Mason J. in *Commonwealth of Australia v. John Fairfax and Sons Ltd,*[2] 'it is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticise government action.'[3]

What is meant by Executive Secrecy?

Executive secrecy derives from constitutional and legislative provisions that restrict information regarding the workings of government. The provisions regarding the confidentiality of meetings of government are found in Article 28.4.3. However, the cumulative action of the doctrine of cabinet confidentially, Official Secrets Act and Freedom of Information Acts reinforces executive secrecy.

[1] For example, the United Nations Charter of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights all place equal importance on the right to expression and the right to seek and receive information.
[2] (1980) 147 Common Law Reports (CLR) 39 cited by Carroll J. in *Attorney General for England and Wales v. Brandon Books* [1987] Irish Law Reports Monthly (ILRM) 135, [1986] 1 Irish Reports (IR) 597
[3] [1986] 1 IR 597, 601

The reason for executive secrecy can be attributed to the desire of the executive to retain power and control over information regarding the running of the state. The concept of executive secrecy also shapes the democratic dynamic which should, in theory, allow for the parliament to hold the executive to account. Yet how can these relationships create an efficient form of representative democracy? The concept of executive secrecy not only affects the ability of citizens to seek out policy information but it also jeopardises the workings of parliament. Brian Farrell has observed that:

> …it is this tradition of executive secrecy, buttressed by the doctrine of collective responsibility, which has done much to reduce the role of parliament from the powerful body envisaged in the Constitution. Indeed, it could be argued, the excessive reticence of the Irish governmental system infringes Article 40.6.1's guarantee of freedom to express convictions and opinions.[4]

Cabinet confidentiality

Cabinet confidentiality seeks to preserve the confidentiality of cabinet discussions. The central claim behind the need for cabinet confidentiality is that the executive needs the ability to act in a collective manner and this collective manner is predicated on the ability to preserve the confidentiality of meetings. Cabinet confidentiality means that discussion of cabinet meetings is deemed as confidential and minutes of such meetings are kept confidential for a period of 30 years under the National Archives Act 1986. Therefore, deliberations on topical issues at cabinet – for instance the bank bailout – are kept hidden from the general public for 30 years.

The case *of Murphy v. Corporation of Dublin*[5] established that where a conflict arose between the protection of executive privilege and the release of information in the public interest, the judiciary must decide the best course of action. Walsh J. stated that the judicial power had the right to decide which public interest shall prevail,[6] adding that it was impossible for any other power or body to decide whether or not a document should be disclosed or produced.[7] Even in circumstances where the security of the state was in question, the court should and could make its own decision. However, it would be open to being guided by the circumstances of the case and 'the division of powers does not give paramountcy in all circumstances to any one of the organs of state.'[8] In *Ambiorix Ltd. v. Minister for the Environment*[9] the argument of the

[4] Brian Farrell, 'The Constitution and the Institutions of Government: Constitutional Theory and Political Practice', *Administration* 35, 4 (1987) p. 169.
[5] [1972] IR 215
[6] [1972] IR 215, 233
[7] [1972] IR 215, 234
[8] [1972] IR 215, 234

Taoiseach and ministers of the day was rejected. Their argument that the disclosure of documents would tend to hinder the free communications necessary for government and the running of the public service was not persuasive.

However, *Attorney General v. Hamilton*[10] swung the established precedents towards undue deference of the Government. The judgment and subsequent political fallout was to act as the catalyst for the 1997 referendum on cabinet confidentiality. The key issue was the legitimacy of the claim of absolute privilege which was asserted over documents relating to the beef industry of the day, therefore pertaining to the consequent tribunal. In the High Court, O'Hanlon J. held that a proper balance had to be maintained between the public interest of confidentiality, the public interest in obtaining full disclosure and the rights of the individual as guaranteed by the Constitution. Having regard to the absence of any express words providing for such confidentiality in the Constitution itself, the public interest did not require the upholding of such a claim of absolute confidentiality. Therefore, there were legitimate reasons for the tribunal to seek, and be granted, the documentation surrounding the cabinet meeting of 8 June 1988.

In the Supreme Court, McCarthy J. and Egan J. dissented from the majority on the cabinet confidentiality issue. The correct test was applied in the High Court when the requirements of a parliamentary inquiry were balanced with the requirements of confidential communications at government level. But the majority decision of the Court in *Hamilton* created an absolute privilege for the decisions of cabinet. As stated by Finlay CJ:

> …claim for confidentiality of the contents and details of discussions at meetings of the government ... is a valid claim. It extends to discussions and to their contents, but it does not, of course, extend to the decisions made and the documentary evidence of them, whether they are classified as formal or informal decisions. It is a constitutional right [that] goes to the fundamental machinery of government, and is ... not capable of being waived by any individual member of a government, nor ... are the details and contents of discussions at meetings of the government capable of being made public ... by a decision of any succeeding government.[11]

The effect of the Hamilton judgment was to throw any system of oversight on the running of Government into disarray.[12] It meant that no judicial body in the land could scrutinise a claim

[9] [1992] 1 IR 277
[10] [1993] ILRM 81
[11] [1993] ILRM 81, 100
[12] One of the first impediments of the judgment was the release of government papers under the thirty year rule of the National Archives Act. The Taoiseach of the day, Charles Haughey, had to personally sign off on the release of the

from the executive that the release of essential documents for the administration of justice could not be entertained. Not only were the documents protected by a 30 year rule for general release, where they were required by a body established in the public interest they could not be accessed when said documents referred to a policy decision of the day. A referendum to modify the decision was promised by the Rainbow Coalition in their Programme for Government, stating that 'relaxation of absolute confidence in all circumstances will be put to the people'.[13] This provision was passed and Article 28.4.3 was inserted to the Constitution to provide for safeguards to override cabinet confidentiality on application to the High Court either in the interests of the administration of justice or where there is an overriding public interest[14].

Official Secrets Act

The introduction of this Act in 1963 was claimed to be as a result of exam papers being leaked,[15] although the true motivation may have been the resurgence in IRA activity in the 1950s. In fact, McGonagle contends that the true rationale is hard to identify.[16] The scope of the act is very broad and even though few prosecutions have been taken under the Act, the chilling effect and the culture which was created by the act has been 'no less real as a result'.[17]

The Official Secrets Act was envisaged to protect information which may affect national security or the authority of the state. This is a legitimate aim but the non reviewability of the operation of the act may lead to situations where the act is used purely for the restriction of policy information. At present, no court is able to review the invocation of the act, so the power granted to the Minister for Finance could be argued as far too broad in the interests of democracy.[18] For instance the definition of official information is vaguely constructed. Under section 3, the Minister for Finance is able to certify that information specified or indicated in the certificate as secret or confidential shall be conclusive evidence of the fact so certified.

documents at Christmas 1992. The Taoiseach claimed to exercise this power as this thirty year rule was not considered in the Hamilton Judgment.

[13] Programme for Government for the Fine Gael, Labour and Democratic Left [Rainbow coalition], *A Government for Renewal* (1994) p. 32.

[14] The article states that 'the confidentiality of discussions at meetings of the Government shall be respected in all circumstances save only where the High Court determines that disclosure should be made in respect of a particular manner in the interests of the administration of justice by a court, or by virtue of an overriding public interest, pursuant to an application in that behalf… to inquire into a matter stated by them to be of public importance'

[15] *Dáil Debates*, vol. 194, col. 600.

[16] Marie McGonagle, *Media Law*, 2nd ed., (Dublin, 2003) p. 353

[17] This chilling effect was one of first observations made by the select committee report on legislation and security, Report on Review of the Official Secrets Act 1963 (Dublin, 1997), McGonagle, *Media Law*, p.354, and Report on Review of the Official Secrets Act 1963.

[18] A point which was also made by McDonagh, 'Access to Official Information in Ireland: Part One: Legal Constraint on Disclosure of Information'.

The real issue arising from the provisions of the Official Secrets Act is the chilling effect on the release of government information in the public interest.[19] A chilling effect is regarded in law as an environment which is created when the fear of restrictions undermines the flow of information. When the matter is compared with decisions based on Common Law judgments in relation to confidential information – where there is a clash between the right to preserve a confidence and an overriding public interest in receiving the information[20] – the public interest is given precedence. This fact is not mirrored in the legislation in question.

The provisions of this act were highlighted in the Rainbow Coalition's programme for government.[21] It stated that the Official Secrets Act and all other statutory provisions which restrict access to information would be reviewed on a regular basis by the legislation and security committee in order to bring them in line with best international standards of public information provisions.[22] The government also pledged to act on these reports. No reform of the Act took place and no Statutory Instruments were past to modify the effect of the Act during the lifetime of the Rainbow Coalition. However, the committee did report on the provisions of the Act. In fact the select committee report on legislation and security in its 'Report on the Review of the Official Secrets Act, 1963' reiterated that there should be 'maximum possible freedom of access to public information' and that the existing act is inconsistent with this principal and should be 'repealed at the earliest possible date' [23].

Freedom of Information Acts

Freedom of Information is concerned with the release of information about government business in the public interest. This could be information that is held regarding a person and may not come under the provisions of the Data Protection Acts and general information about the government. The concept of the public interest is, however, a difficult concept to accurately define. Freedom of Information has to strike a delicate balance between the ability of the individual to access the information that they seek and the ability of governments to restrict access to such information in order to protect the privacy of other citizens and issues of a sensitive nature. Generally it is an international trend that sensitive information will remain

[19] The issue of whistleblower protection in the Irish jurisdiction is another issue which has often been discussed in successive general election campaigns but has never been acted upon to date..
[20] This point is apparent from the judgments in Cogley v RTÉ [2005] 2 ILRM 529, (The Leas Cross Nursing Home Cases), National Irish Bank v. RTÉ [1998] 2 I.R. 465, Attorney General v. Guardian Newspapers Ltd. [1987] 3 All England Reports (E.R.) 316, Attorney General v. Times Newspapers [1992] 1 Appeal Cases (A.C.) 191, The Observer and Guardian v. U.K. (1991) 14 European Human Rights Reports (E.H.R.R.) 153, Collectively known as the Spycatcher Cases
[21] The Programme for Government for the Fine Gael, Labour and Democratic Left [Rainbow Coalition] in 1994
[22] A Government for Renewal, p. 35.
[23] Report on Review of the Official Secrets Act 1963, pp 35-37.

outside the remit of Freedom of Information. Also, the aim of freedom of information legislation is to create a more open culture in national administration.[24]

Under section 19 of the Freedom of Information Act 1997 there was a possibility for cabinet records to be released after five years subject to the general exclusions in the act itself. However, under the Freedom of Information (Amendment) Act 2003 this time limit was pushed to ten years. Even the legislative procedure surrounding the amendment was secretive. The general feeling is summed up well by McGonagle stating that 'the irony was that the freedom of information act, the epitome of openness and transparency in government, was being curtailed by government in process shrouded in secrecy.'[25]

However, in the summer of 2012, Heads of Bill for a new Freedom of Information Bill, were released by Minister Brendan Howlin. In this revised act, a 'harm test' is to be introduced where the material sought for access may have national security implications. The objective of this reform is to 'achieve a more proportionate approach balancing the public interest in promoting appropriate access to official information and safeguarding essential national interests.'[26] Therefore the level of national security protection created in the Official Secrets Act, which was stated to be comparable to that of a NATO member state,[27] may be ameliorated to a degree.

The Pursuit of Secrecy

On 18 December 1982, a story was broken by the *Irish Times* that would highlight the lengths to which cabinet confidentiality was being pursued and, probably unintentionally, this kick-started a series of events that would provide citizens with a right to privacy. [28] It was revealed that the telephones of Bruce Arnold and Geraldine Kennedy were being tapped in order to ascertain whether there was a leak from cabinet. The tapping of telephones was permitted under the provisions of the Post Office Act 1908[29] in instances where the security of the State was in jeopardy.

In an interview with the *Irish Times* on the same day the story broke, the then Minister for Justice stated that, 'it was my function and duty to ensure that the security of the State and the

[24] Maeve McDonagh 'Access to Official Information in Ireland: Part Two: Freedom of Information'
[25] Marie McGonagle, *Media Law*, p. 359.
[26] Briefing Note from Minister Brendan Howlin on the Freedom of Information Bill 2012
[27] Cook, 'Why we need open government in Ireland', Seirbhís Phoibli, Vol 6. No.3 Mean Fomhair 1985, p. 23
[28] Peter Murtagh, 'Journalists' Telephones were tapped', *The Irish Times*, 18 December 1982.
[29] The Act in question does not state that there is a power to tap telephones as they were not a common means of communication in 1908 but in probability the power to take such action would be inferred into the Act if the constitutionality of the section was to be judicially reviewed.

confidentiality of the Cabinet is maintained'.[30] However, it is rather large leap in logic to suggest that the threat of invasion to the state was equivalent to ascertaining the source of information from the Cabinet. This was also highlighted in a column by Conor Cruise O'Brien in the same newspaper stating that 'Under the Doherty Doctrine of the security of the State, it is clearly justifiable to tap the telephones of political journalists, because this is a handy way of getting information which might be of advantage to the governing party and of its leader, and hence the State.'[31]

The protection of the discussions of government was as legitimate an aim to pursue as the territorial integrity of the state in the eyes of the government of the day. The communication of policy information to the citizens, being the final arbiters of national policy, was, in the eyes of those involved as grave an offence as treason, thereby worthy of the suspension of the natural rights of the citizen.

The judgment in the case, which transpired from the events, was to expand the interpretation of the personal rights of the citizen to include the right to privacy. In *Kennedy & Arnold v. Attorney General* the 'deliberate, conscious and unjustified intrusion by the servants of the State' to protect executive secrecy was to create the right to privacy in an enforceable fashion for the citizens.[32] Moreover, the action was 'without any lawful justification … constituted an attack on their dignity and freedom as individuals and journalists and cannot be tolerated in a democratic society such as ours….(and) has been done by an organ of the state which is under a constitutional obligation to respect, vindicate and defend their rights.'[33]

The effect of executive secrecy on citizen rights

The problem that is addressed in this paper is the means by which an executive, by privileging its own information and restricting access to it, can subvert this democratic information dynamic. This democratic information dynamic refers to the level of communication on areas of policy which must be responsive to the wishes of the citizens which are being represented by government. This, in turn, distorts the ability of the citizen to access information regarding the activities of the executive, restricts the true level of accountability and democratic oversight that can be legitimately claimed by the Parliament. Moreover, this affects the very nature of

[30] Peter Murtagh, 'Duty to tap phones – Doherty', *The Irish Times*, 24 March 1984.
[31] Conor Cruise O'Brien, 'A whole new tap-dance', *The Irish Times*, 27 March 1984
[32] [1987] IR 587
[33] [1987] IR 587, 594

representative democracy envisaged for the citizens as 'deciding all questions of national policy' in 'final appeal'.[34]

Under Article 6.1 of the Constitution, the citizens are regarded as the final arbiters of government policy and, as previously mentioned, under Article 40.6.1 the state is not permitted to restrict freedom of expression on the grounds that the expression itself is critiquing government policy. On the face of it, this should amount to sufficient protection to allow for freedom of expression to be used in a manner to foster a democratic relationship between the governed and the government.

The Constitution states that the people are the source of power and that they are the final arbiters of national policy decisions. Article 6.1 of the Constitution states that:

> All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.

Executive secrecy stops the citizens from achieving the access to policy which should logically flow from the provisions of Article 6.1. The concept of executive secrecy is a combination of constitutional provisions and legislative measures which has created a wide gap between the government and the governed.

Proposals for Change

Constitutional and Legislative Reform

As can be seen from the discussion of the grounds creating executive secrecy, many means of reform have been mentioned with some carried out and some not acted upon. Cabinet confidentiality has been reformed by means of referendum allowing for some reviewability by the courts. The new coalition government of Fine Gael and Labour has, so far, kept to their Programme for Government promise and sought to undo the damage levied on the Freedom of Information Acts by previous administrations. This move is commended though it is hoped that the reality of change will outpace the rhetoric of political reform. However, the situation regarding the Official Secrets Act is not as positive. Yes, there will probably be knock on reform from the new Freedom of Information Act However, a piece of powerful legislation with

[34] Article 6.1 Bunreacht na hÉireann

dangerous scope may still be left intact on the statue books. This is in spite of an Oireachtas Committee report questioning the constitutionality of such legislation. At the time of writing,[35] no visible moves have been made to reform this legislation bar any amendments which may be contained in related legislation.

Programmes for Government

The first Programme for Government to list Open Government and transparency as an objective was the Fianna Fáil and Labour Programme for a Partnership Government under the category of 'Broadening our Democracy'. The pursuit of Open Government was a 'commitment to Open Government and transparency in all government transactions' and the introduction of Freedom of Information Legislation was to be considered.[36] Following the collapse of the Fianna Fail/Labour Government in 1994, a new Government was formed between Fine Gael, Labour and Democratic Left, which in turn was to result in a new programme for Government. This document made direct mention of a 'clearer need for greater openness and accountability in Irish life'[37] and to that end the implications of the Hamilton Judgement, reform of the Official Secrets Act and Freedom of Information are mentioned.

The Programme for Government between Fianna Fáil and the Progressive Democrats of 1997 was silent on the issue of openness and transparency with regard to institutional reform and modernising for the millennium. In 2002, the outgoing government coalition was returned and a new Programme for Government was agreed. Again, there was not outright mention of the concepts of transparency and open government. However, under the headings of 'Supporting Civic Life' and 'Good Government', eGovernment is mentioned as a means to expand 'the range and quality of online services' which relates to the provision of online policy information.[38]

In 2007, Programme for Government between Fianna Fáil, the Progressive Democrats and the Green Party made no reference to open government or transparency. On the demise of the Progressive Democrats as a party and coalition partner, a revised programme for Government was drafted between Fianna Fáil and the Green Party in 2009. Chapter Eight of this document was focused on enhancing democracy in Ireland. However, this was to mark the return of the concepts of open government to the political agenda. The programme specifically mentioned the:

[35] 12 December 2012

[36] Fianna Fail and Labour Programme for a Partnership Government 1993 – 1997. p. 16
[37] A Government of Renewal: Policy Agreement between Fine Gael, Labour and Democratic Left 1994-1997 p. 35
[38] An Agreed Programme of Government between Fianna Fail and the Progressive Democrats 2002-2007 p.31

> Review of the current fee structure for FOI applications and put as much information as possible on appropriate Government websites to information the public…of the workings of Government and State institutions[39]

However, the Programme for Government of the current administration between Fine Gael and Labour places the issues of Freedom of Information, reform of cabinet confidentiality and amendment of the Official Secrets Act to limit its broad scope as part of its political reform programme.[40]

An Even Handed Justice?

A certain degree of information restriction could be argued for. A balance that must be sought between legitimate concerns of secrecy for national security issues but one which allows for an effective level of democratic oversight by the citizens. Executive secrecy has always been alleged to be more of a means almost to 'cover up' failures of government as opposed to giving a degree of flexibility to the government in order to conduct the business of government. This could be evidenced by the unwillingness of the executive to be subjected to the rules and procedures of another branch of government, the courts, to carry out its role as a check on the power of the executive.

From the Australian Freedom of Information Act an interesting compromise has been reached in that factual documents presented to cabinet are not subject to the common law system of cabinet confidentiality. This would mean, for example, that reports based on factual information used in consideration of the bank bailout in November 2008 would be open to public inspection, but the decisions of government using such documents would not be accessible. In the Australian Freedom of Information Act 1982, a distinction is made between certain types of cabinet documents.[41] Raw documents on which the decisions are made are not covered;[42] whereas, documents showing the dynamic of the meeting are covered.[43] Also documents presented at cabinet which only contain factual information are not exempt *per se* unless the documents in themselves would reveal a cabinet decision or deliberation if such decision or deliberation was not previously officially disclosed.

[39] Proposed Renewed Programme for Government p.33
[40] Programme for Government between Fine Gael and Labour 2011
[41] McDonagh, "Access to Official Information in Ireland: Part Two: Freedom of Information", p. 7
[42] Exempted under section 34.1
[43] Opened for release under section 34.2

Conclusion

Reducing the level of executive secrecy could help transform policy making in Ireland. It is argued here that allowing greater scrutiny and transparency in policy formation would have two positive results: greater citizen participation and better legislation. Allowing for greater access to the process of Cabinet and legislation should provide a channel for citizens with particular expertise and knowledge to criticise the work of government in a positive fashion. As stated in a report by the select committee of the House of Commons on modernisation and reform of the legislative process:

> A system which allows the individual or organisation who has spotted a way which a pending piece of legislation might affect them to bring this readily to the attention of the legislature is less likely to produce laws which are defective or redundant, or which lead to unintended (even unforseen) consequences.[44]

If the numerous programmes for government seeking increased transparency were to be acted upon then it could promote a new culture of openness in government and benefit citizens by involving them in the business of their own government and thereby promote the 'education of the public good'[45] as set out Article 40.6.1(i). As stated by Bernard Manin:

> In order that the governed may form their own opinions on political matters, it is necessary that they have access to political information, and this requires that government decisions are made public… if those in government make decisions in secret, the governed have only inadequate means of forming opinions on public matters.[46]

Therefore, if we are to learn from the past, the executive does not like being scrutinized by outsiders. The change to cabinet confidentiality was only to come from a change of government not the incumbents of the time. The executive, as demonstrated from the Kennedy and Arnold situation, could be said to have a morbid fear of information being released on its activities. The executive must realise that the power to govern is granted by the citizens and their role as the 'final arbiters of national policy' is enshrined in the very constitution which they seek to protect in their secrecy. However, their secrecy may yet undermine the very values which are central to the rights which Ireland's constitution seeks to protect.

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[44] Select Committee on Modernisation of the House of Commons, The Legislative Process, First Report of Session 2005-6, HC 1097, p. 5
[45] Article 40.6.1
[46] Bernard Manin cited in Rahuel Sagar, 'On Combating the Abuse of State Secrecy', *The Journal of Political Philosophy*, 15, 4, 2007, p 406.