

Day 4 – Thursday, 29 November 2007
Parallel Sessions – Session 2D 9.00am-10.30am

Speaker: Nils-Olof Berggren

Position: Parliamentary Ombudsman, Sweden

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Position: Head of Staff

Organisation: Parliamentary Ombudsman, Sweden

Presentation Title: The Swedish model after 240 years – safe and sound or threatened by a thousand cuts?

1. A brief historical survey of the Freedom of Information (FOI) system, created through the implementation of the Freedom of the Press Act of 1766. The development over the 241 years since then.

2. The constitutional FOI and secrecy rules. The extremely detailed regulation on a constitutional level in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

A few words about the actual public debate concerning a reform of the constitution to make it more similar to the systems in other democracies, i.a. in the European Union.

3. Basic principles of the legislation concerning right to access to public documents and exceptions from this fundamental right. Right to insight and to obtain information is the main rule. Exceptions should, due to the constitution, be necessary for protection of a vital private or public interest.

A few words about the procedure for handling cases concerning access to documents, the court procedure after an appeal and the supervision by the Parliamentary Ombudsmen and the Chancellor of Justice.

4. Tendencies in recent legislation.

4.1 Is the FOI threatened by a thousand cuts?

Several new exceptions have been decided by Parliament in good democratic order in the shape of amendments to the Secrecy act. Such new provisions of secrecy have been considered necessary to protect a very important interest, e.g. the integrity of individuals or the security of the country; one single new provision of secrecy causes a very limited curtailment of the FOI. This may be true, regarding each single curtailment, but what will be the effect of numerous steps in the same direction? Are there counter powers enough strong within the political system to guard the general interest of greatest possible FOI?

4.2 The encounter with a different culture and tradition in the European Union.

Since Sweden joined the European Union (EU) in 1995, the country has worked for more of openness in the work of the EU, to some extent in cooperation with other countries in Northern

Europe such as Finland and the Netherlands. In 2001, when Sweden chaired the Council of Ministers, the EU decided an act concerning access to documents kept by the institutions of the union. Although there are many limitations and exceptions in the regulation, it meant a considerable step forward for FOI in the Union.

On the other hand, as a member of the EU Sweden has had to implement in its domestic legislation EG regulations with a stronger protection of privacy, especially personal data, than has earlier been part of Swedish law.

4.3 The rapid development of information technology

Over the latest decades, the development of information technology has meant a tough challenge for the legislator to adapt, currently, the FOI regulation to new realities in the media landscape. Especially, to change the definition of the conception of "public document" has been of significant importance.

4.4 The ambition to simplify the Secrecy Act

The Secrecy Act came into force in 1981. Already then, it was comprehensive and very detailed. Over the passed 27 years, it has been changed and amended more than 200 times. It is frequently criticized for being complicated and difficult to grasp and to apply. The legislator makes efforts to solve these problems. Two years ago, a draft new secrecy act was presented by a committee of parliamentarians and experts.

5. Does extreme openness to some extent counteract its own purpose?

In the public debate it has been argued that, due to the very far going openness, many civil servants are reluctant to document sensitive information, as they know that the document may be disclosed and even published and in any case filed. Is there a danger that one consequence of very far going FOI will be that citizens, journalists and scientists certainly have the right to inspect the archives but will find not much of real interest there?