pline, the various forms of discipline which are known to public services the world over, including the risk of discharge if the offence is of that serious a nature.

However, even if one accepts the Franks recommendations, they cover only a part of the subject of freedom of information. They cover the part which deals with unauthorized release of information, but they do not cover the more difficult question of authorized release, and what information should, and even must, be made available by the government to parliament, to the press and to the people.

With respect to this large problem, as hon. members are aware, there are two principal issues. First, granted the principle of openness, what should the exceptions be? I think there would be no disagreement anywhere in the House that there would have to be exceptions to the principle of openness because certain activities of government require confidentiality and even secrecy. Second, granted that the initial decision as to confidentiality should be made by the government, what should the review process be? I would like to take each of those questions in turn and deal with them, not as fully as I would wish, but as fully as time today will allow.

I suggest, with respect to the first question as to exemptions, that perhaps four principles should be operative, and perhaps we would wish to protect confidentiality in four categories. The first of those would be where the security of the state or the safety of the people is involved—this would involve matters of national security, so-called, and also matters of law enforcement; second, the ordinary confidentiality of the internal processes of government; third, the private affairs of people and business; and fourth, that private gains should not be allowed to be made as a result of the release of information.

● (1722)

The greatest difficulty, it seems to me, is with respect to the second of these principles. Obviously these are large principles, and certainly I would not maintain—and I suspect few would—that all the internal processes of government should enjoy confidentiality.

With respect to the exemption principles advanced by the government in the green paper, the most controversial would be No. 8 which deals with the area of ordinary confidentiality in the ordinary operations of the government. I suppose that there might also be some questions raised about No. 6 of those exemptions. It is obviously possible to raise questions on all of them, but it seems to me that those are probably the exemptions about which the largest number of questions might be raised.

What I would try to strive for in elaborating a theory on the basis of which we could distinguish between documents which should be released and those that should not be released to the public, is as follows. What I believe should be protected from disclosure is working documents, documents which are directly part of the process of governmental or ministerial consideration. Here I would go beyond the recommendations of the Canadian Bar Association, which, I believe, would restrict these to governmental consideration.

[Mr. MacGuigan.]

What I believe should not be protected and should not have exemptions to cover them are a number of categories which I would like to mention. I believe there are four of these categories. First of all, factual data, such things as surveys, environmental studies, feasibility studies or consumer test reports, should not be exempted. All of those documents are of a factual nature, or at least their factual aspect can be isolated to the extent that it is predominant. Second, I do not think we should protect from disclosure internal directives and administrative policies respecting matters which may affect the public, except for reasons such as security and safety. Third, I would not grant an exception to opinions of a general nature that are not directly and immediately concerned with decision making, and here I would exclude from exemption general legal opinions which are not directly related to actual or expected litigation. Fourth, I suggest that all documents, even those in the exempt categories, should be published after a lapse of time. Perhaps the ten-year period suggested by the Canadian Bar Association would be a good period in that case.

The distinction I am trying to draw is that if a document is part of something which is in process, if it cannot be isolated and is an integral part of the continuing operation of the government, it should not be subject to disclosure. But if it is something that is severable, which, even though it may have an indirect relationship—certainly everything has an indirect relationship to the processes of government—but is not directly related to the work of the government at the time, then that is a matter which should not be protected by an exemption and which should fall under the general principle of full disclosure. I would repeat that in all cases of doubt I adopt the presumption that disclosure should take place.

With respect to the second question as to the review mechanism, we come to a more difficult problem, one on which we will have perhaps less agreement with others in the House. What form of review is appropriate? Is it an external review, which I suppose would be considered to be a judicial review because it is certainly the most unbiased form of external review, or is it some form of internal review?

The argument for a judicial review is essentially that the rule of law in our system requires judicial determination, that in the protection of the judiciary they find, one might say, an essential characteristic of the rule of law. That is true in the traditional area of law, certainly in the private law, but it has not been generally considered to be true in the twentieth century in the area of administrative law. In the area of administrative law we have made distinctions, and we have said that some things are subject to judicial review and some things are not. Factual matters are not subject to judicial review and matters of law are, while questions of mixed law and fact can go either way, but we have found it necessary to make distinctions of that kind. Unless hon. members will maintain that this new tradition which we have evolved to deal with areas of administrative law is not a proper one, we can see there that the rule of law does not always mean judicial determination.