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25 February 2009

Andrew Tyrie Esq, MP
House of Commons
London
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Foreign &
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Dear Mr Tyrie,

Your Freedom of Information Request: 0863-08 – Questions 6-13

Thank you for your request for information.

We have addressed questions 6-13 contained in your letter of 20 May 2008. I can confirm that the Foreign and Commonwealth Office (FCO) does hold information relevant to these requests.

As agreed with your office this has entailed our working beyond the appropriate cost and time limit of £600 or 3.5 days for Freedom of Information requests on an exceptional basis and in order to reply to your questions. This standard limit has been specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

As agreed with Stuart McCracken, the co-ordinator of your Group, we will hold over your additional requests numbers 14 – 22 made in your letter of 20 May 2008 as it would not have been possible to accommodate these requests within this framework. We will, of course, attempt to respond to as many of your questions as possible with the framework provided by the Act. As you are aware, you are entitled to submit further questions once 60 days have elapsed from the date of your previous request.

Our responses to your request are as follows:

Questions 6, 7, 8, 9, 11, 12 and 13: The information to which you are entitled relating to these questions is contained in the digest attached to this letter.

Question 10: Subject to the exemption under Section 23 (5) (Information supplied by or relating to bodies listed in the Act of 2000) we can neither confirm nor deny whether the FCO holds information relevant to this question. This should not be taken as an indication that the information you have requested is or is not held by the FCO.

Exemptions

In relation to information held by the FCO which falls within the terms of your request, we have concluded that some of the information should not be disclosed under Sections 23, 27, 31, 32, 35, 40 and 42 of the Freedom of Information Act 2000. These exemptions are variously applicable across all the requests, questions 6 -13. Exemptions under Sections 27, 31, 35 and 42 are qualified exemptions and as such are subject to a public interest test. Sections 23, 32 and 40 are absolute exemptions and as such are not subject to the application of a public interest test.

Section 23 (Information Supplied By, Or Relating To, Bodies Dealing with Security Matters)

As outlined above, under Section 23(5) of the Freedom of Information Act we can neither confirm nor deny that the FCO holds information related to question 10 of your request.

With regard to questions 6,7,8,9, 11, 12 and 13, we can confirm that the FCO holds information which is exempt on the basis that it was directly or indirectly supplied by, or in other cases relates to, the bodies outlined in Section 23(3) of the Freedom on Information Act 2000. This information is exempt by virtue of section 23(1) of the FOI Act. Section 23 is an absolute exemption and is not subject to the application of a public interest test.

Section 27 (International Relations)

The FCO holds information which if released would be likely to prejudice relations with another State. Section 27 is subject to a public interest test.

Public interest considerations

The FCO considers that there is a general public interest in greater transparency in how Government engages with other countries, particularly in relation to human rights and the matters covered by this request.

However, with regard to Section 27(1)(a), the effective conduct of international relations depends upon maintaining trust and confidence between the United Kingdom and another state. If the United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered. The need for such confidence to be maintained is all the more important in the case of sensitive issues such as those related to your Freedom of Information requests. If we were to release such information this could affect our relationship with the United States. In the future they may be more reluctant to share sensitive information with the UK and may be less likely to respect the confidentiality of information supplied by the UK to them, to the detriment of UK interests. For these reasons we consider that the public interest in maintaining this exemption outweighs the public interest in disclosure.

Section 31 (Law Enforcement)

The FCO holds information which if released might prejudice the enforcement of the law. Section 31 is subject to a public interest test.

Public interest considerations

The FCO considers that there is general public interest in the greatest possible transparency in how the law is enforced.

However, with regard to Section 31(1)(a) and (b), the effective enforcement of the law depends upon the ability of the police to hold information in confidence that, if released, might undermine the chances of a crime being detected or prevented, or an apprehension or prosecution being successfully conducted. The public interest in maintaining the exemption therefore outweighs the public interest in disclosure.

Section 32 (Court Records)

The FCO holds information which is held by virtue of having been contained in court documents and therefore exempt under section 32(1) of the Freedom of Information Act. This exemption is absolute and does not require the application of a public interest test.

Section 35 (Formulation of Government Policy)

The FCO holds information relevant to your request which relates to the formulation and development of Government policy. If released, this material would be likely to prejudice the effective formulation of future government policy. Section 35 is subject to a public interest test.

Public interest considerations

The FCO considers that there is a general public interest in greater transparency in the decision-making process in order to ensure government is accountable to the public.

However, with regard to section 35(1)(a) and (b), for the effective formulation of government policy, the Government requires a clear space, immune from public view in which it can debate matters internally free from the pressures of public political debate. It is vital that Ministers and civil servants have the ability to properly consider and discuss policy options, to ensure the best possible response is achieved. In the case of sensitive issues such as that addressed in your request this imperative is all the more pressing. The candour of contributions to this process will be affected by officials' assessment of whether the content of such a discussion will be disclosed in the near future. This would have a negative impact on the quality of decision making, which is clearly not in the public interest, and therefore the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 40 (Personal Information)

Some of the withheld information is personal data relating to third parties. It is our view that disclosure of this information would breach the first data protection principle, which states that personal data should be processed fairly and lawfully. Section 40(2) and (3) of the FOIA therefore apply. It is the fairness aspect of this principle which we think would be breached by disclosure in this case. In such circumstances s.40 confers an absolute exemption on disclosure. We do not therefore have to apply the public interest test.

Section 42 (Legal Professional Privilege)

The FCO holds information in respect of which a claim to legal professional privilege to confidentiality of communications could be maintained in legal proceedings. Section 42 is subject to a public interest test.

Public interest considerations

The FCO considers that there is a general public interest in greater transparency. However, with regard to section 42(1), the principle of legal professional privilege is engaged to ensure that legal professionals can work as effectively as possible. In the present case, this includes the work undertaken with regard to the legal questions arising from the prior detention of individuals in the Guantanamo Bay detention facility. The ability of these professionals to do so would be negatively impacted were the content of their work to be disclosed in the near future. This would not be in the public interest, and therefore the public interest in maintaining the exemption outweighs the public interest in disclosure.

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In keeping with the spirit and effect of the Freedom of Information Act, all information is assumed to be releasable to the public unless exempt. The information we have supplied to you may now be published on our website together with any related information that will provide a key to its wider context.

I hope that the above information is of some assistance. If you have any further questions related to your request please feel free to contact me. In addition, if you are unhappy with the way the Department has handled your request you may complain within 40 days of the date of this letter by writing to me at the above address.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by The Foreign and Commonwealth Office. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely,

Olaf Henricson-Bell

Olaf Henricson-Bell

Counter-Terrorism Department
Foreign and Commonwealth Office

Digest of Information

Q6: Date on which the purpose of the modified battery charger, that was discovered during the detention of Bisher al-Rawi at Gatwick airport and noted in the telegrams of 1 November 2002 and 11 November, was first known.

The FCO holds no information in relation to this question. However, you may find the following useful.

Extract from Briefing Note, 3 November 2002

7. On Sunday 3rd November 2002 AL-RAWI was interviewed...He added that he purchased a battery charger from Dixon's and adapted it to improve it's water proofing.

Q7: All information relating to the decision to detain the group including Bisher al-Rawi and Jamil el-Banna at Gatwick airport on 1 November 2002.

Extract from Briefing Note, 3 November 2002

1. At 12:35pm on Friday 1st November 2002 the following individuals were examined under Schedule 7 Terrorism Act 2000 at Gatwick Airport after attempting to board a flight to Gambia; Bisher AL RAWI of...[address withheld] Jamil EL-BANNA of...[address withheld]....

2. At the time of booking in the men had with them a black rucksack. The bag was searched, resulting in the discovery of various items which gave rise to the suspicion that they were engaged in terrorist activity.

3. ...As a result of the items found in the rucksack they were all arrested under section 41 TACT 2000 and conveyed to DP.

Q8: All information relating to the threat to the security of Britain or any other nation posed by Bisher al-Rawi and Jamil el-Banna; the work allegedly carried out for the intelligence services by Bisher al-Rawi; and the location of Abu Qatada, between 11 September 2001 and 1 November 2002.

Extract from Telegram, 25 October 2002

1. Abu Qatada detained under Anti-Terrorism, Crime and Security Act (ACTSA) on 23 October.
2. Abu Qatada was detained at an address in London on the evening of 23 October and is being held in a high security prison in the UK.

Extract from FCO Telegram, 26 November 2002

6. Abu Qatada was detained in London on 23 October under the Anti-Terrorism, Crime and Security Act (ACTSA). He is currently held in a high security UK prison.

Q9: All information received from the Gambian authorities, including that received via the US authorities, regarding Bisher al-Rawi and Jamil el-Banna, between 1 November 2002 and 6 December 2002.

Extract from FCO Document, 2006 [Exact date unclear from document]

b) Four individuals (Bisher Al Rawi, Jamil El Banna, Wahab Al Rawi and Abdallah Ghazi El Janoudi) were detained in Banjul by the Gambian authorities on 8 November. The FCO was informed of their detention...on 13 November 2002.

Q11: All records of communications between US and UK officials regarding Bisher el-Rawi and Jamil el-Banna, between 8 November 2002 and 6 December 2002, including records of the telephone conversation of 8 November 2002, and records of the telephone conversation referred to in the 6 December 2002 telegram 'Islamists in Detention in Gambia'.

Extract from FCO Telegram, 27 November 2002

2. I spoke to the US Ambassador this morning (27 November)...He strongly believes that there are good grounds for the detention of the group.

Extract from FCO Document, 2006 [Exact date unclear from document]

e) On 22 November, the FCO instructed the High Commission in Banjul to seek immediate consular access to the British Nationals. The telegram instructed Banjul not to seek information on, or offer any assistance to, the foreign nationals who were believed to be part of the group. This is consistent with the consular policy towards foreign nationals.

h) On 26 November, the FCO instructed the Embassy in Washington to raise the issue immediately with the US authorities. The Embassy was instructed to seek clarification of the detainees' whereabouts and of US intentions, making clear that we would have strong objections to their transfer out of Gambia. The Embassy was also to notify the US that we were seeking consular access from the Gambian authorities to the British Nationals in the normal way.

i) The same instructions were sent to Banjul to take parallel action with the US Ambassador and Gambian authorities and to persist in trying to obtain consular access to the two British Nationals.

j) On 27 November, the Embassy in Washington reported that they had taken action as instructed with the US State Department and National Security Council.

k) On 27 November, Banjul also reported that they had spoken to the US Ambassador and the Gambian authorities. The US Ambassador confirmed that the detainees were being held in Gambia but did not disclose their precise location. The High Commission submitted a formal written request for Consular access to the two British Nationals.

m) On 4 December, Banjul reported further discussion with the US Ambassador. The High Commissioner stressed the importance of gaining consular access...

n) Further discussion took place between the High Commission in Banjul and the US Ambassador...on 4 December at which [a US official] confirmed that they would shortly be releasing the two British Nationals.

Q12: All information relating to any visits made by UK officials to Bisher al-Rawi or Jamil el-Banna, the progress of the US investigation into Bisher al-Rawi and Jamil el-Banna's activities, and the intention of the US authorities to render Bisher al-Rawi and Jamil el-Banna to Bagram Airbase, between 1 November 2002 and 8 December 2002.

Extract from Letter from Baroness Amos to MP, 17 January 2003

...We acted on behalf of the two British nationals who were detained at the same time as Mr Al-Rawi and sought consular access to them and information on their detention. The British nationals were released and have now returned to the United Kingdom. As you set out in your letter, we do not have the same rights of consular access or representation for non-British nationals.

Extract from FCO Document, 9 March 2006

The claimants [Mr al-Rawi and el-Banna] were subsequently transferred to Afghanistan and Guantanamo. The FCO was informed of this after the event.

Extract from Foreign Secretary Letter, 20 April 2006

...in relation to allegations about the circumstances of the detention of Mr al-Rawi and Mr el-Banna in The Gambia, we can confirm that the UK did not request the detention of either of the men in The Gambia and did not play any role in their transfer to Afghanistan and Guantanamo Bay.

Extract from Foreign Secretary Letter, 20 April 2006

...in relation to allegations about the circumstances of their detention, I can confirm that the UK did not request the detention of either of the men in The Gambia and did not play any role in their transfer to Afghanistan and Guantanamo Bay.

Extract from FCO Document, 14 June 2006

In answer to specific allegations about the circumstances of the detention of Mr Al-Rawi and Mr El-Banna in Gambia, we can confirm that the UK did not request the detention of either of the men in Gambia and did not play any role in their transfer to Afghanistan and Guantanamo Bay.

Extract from FCO Document, 2006 [Exact date unclear from document]

p) Bisher Al Rawi and Jamil El Banna were subsequently transferred to Afghanistan and then to Guantanamo Bay. The FCO was informed of this after the event.

Extract from FCO Document, 31 January 2007

UK did not request detention of Mr Al-Rawi (or Mr El-Banna who was with him) in Gambia and played no role in their transfer to Afghanistan or Guantanamo Bay.

Extract from Letter from Foreign Office Minister, May 2007 [Exact date unclear from document]

In answer to specific allegations about the circumstances of the detention of Mr al-Rawi and Mr el-Banna in Gambia, we can confirm that the UK did not request the detention of either of the men in the Gambia and did not play any role in their transfer to Afghanistan and Guantanamo Bay.

Extract from FCO Document, April 2007 [Exact date unclear from document]

The UK did not request the detention of Mr Al-Rawi, or Mr El-Banna, in Gambia. The UK did not play any role in their transfer to Afghanistan or Guantanamo Bay.

Q13: The 'matters' that enabled Jack Straw to approach the US authorities on Bisher al-Rawi's behalf.

Extract from Email Between FCO Officials, 20 March 2006

Foreign Secretary has had regard to the fact-specific claims made in relation to Mr Al Rawi and has decided that it is appropriate for him to make representations to the US Government for Mr Al Rawi's return to the UK.

Extract from Submission, 21 March 2006

6. ...the specific facts in his case enable us to approach the US on the basis of shared UK-US counter-terrorism objectives, rather than a consular or humanitarian basis, and...this offers a reasonable prospect of success encouraging the US to agree to his release.

Extract from FCO Document, 5 June 2006

...Mr Straw decided that he would make representations in the light of Mr al-Rawi's fact-specific claim...The request was made on the basis of shared CT objectives.

Extract from FCO Document, 19 June 2006

...the Foreign Secretary has investigated these matters and has concluded that there is a basis on which it would be possible to approach the US Government on Mr Al Rawi's behalf with some reasonable prospect of success...

The approach which the Foreign Secretary has decided should be made to the US authorities will not be a humanitarian request, of the kind sought by the claimants in their general claims to be heard in court over the next three days...Nor will the request be put forward on any kind of a consular or quasi-consular grounds. Rather, the Foreign Secretary considers that there are matters which would enable him to approach the US authorities on Mr Al Rawi's behalf on the basis of shared UK/US counter-terrorism objectives, and which would offer a reasonable prospect in Mr Al Rawi's case of affording grounds which might be acceptable to the US authorities to encourage them to allow his release.

Extract from FCO Documents, November 2006 [Exact date unclear from document]

- We decided in March to seek Mr Al Rawi's release and return to UK, having concluded that there was a basis on which it would be possible to approach the US Administration on Mr Al Rawi's behalf, but not on behalf of the other detainees formerly resident in the UK;
- We considered particular fact-specific circumstances in Mr Al Rawi's case.

Extract from FCO Document, 2006 [Exact date unclear from document]

- The FS [Foreign Secretary], in relation to Mr al-Rawi's fact-specific claim, concluded that there was a basis on which it would be possible to approach the US Government on Mr al-Rawi's behalf.
- The FS decided to make representations to the US Government for the release and return to the UK of Mr al-Rawi having considered his fact-specific claim.
- The FS decided in principle to approach the USG [US Government] on the basis of shared UK/US counter-terrorism objectives.
- There is no basis for making an approach on consular basis. AR [Mr al-Rawi] not a British national. Our judgement is that a request on humanitarian grounds would be ineffective and counterproductive. Clearly, we share CT [counter-terrorism] objectives with the US and, in the particular circumstances of AR's case, these provide a basis for making a request to the US. For obvious reasons, these are the subject of confidential exchanges between our governments.
- The FS made his request on the basis of shared CT objectives.

Extract from FCO Document, 31 January 2007

- In March 2006, the then Foreign Secretary agreed to request Mr Al-Rawi's release from Guantanamo and return to UK given particular circumstances in his case. Detailed discussions been continuing actively ever since.

Extract from FCO Document, April 2007 [Exact date unclear from document]

- In March 2006, the then Foreign Secretary, Jack Straw concluded that there was a basis on which it would be possible to approach the US Government to seek Mr Al-Rawi's release from Guantanamo and return to the UK. This was in relation to the particular circumstances in his case. The reasons for Mr Straw's decision were communicated to the Court and Mr Al-Rawi's lawyers in confidence before the hearing started on 22 March.
- There was no basis for making an approach on consular grounds as Mr Al-Rawi is not a British national. A long period of residence in the UK is not a substitute for British nationality.
- There were particular, exceptional circumstances in Mr Al-Rawi's case which provided a basis for seeking his release and return to the UK.

Extract from Letter from Foreign Office Minister, May 2007 [Exact date unclear from document]

[Name withheld] may be aware of the case of Mr Bisher al-Rawi, an Iraqi national formerly resident in the UK. In March 2006, the then Foreign Secretary agreed to make representations to seek his return from Guantanamo Bay. Following discussions with the US authorities, Mr al-Rawi was returned to the UK on 30 March 2007. The return of Mr Al-Rawi was based on the particular circumstances in his case, and does not in any way change our policy towards the other detainees at Guantanamo Bay who were formerly in the UK.