



All Party Parliamentary Group on Extraordinary Rendition

House of Commons

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The Upper Tribunal has now upheld part of the APPG's appeal against the refusal of the Foreign and Commonwealth Office (FCO) to disclose further information regarding the UK's role in extraordinary rendition, concluding that the APPG was subject to "avoidable substantive and procedural unfairness" in the pursuit of its Freedom of Information requests.

According to the Tribunal, the unfairness resulted from the manner in which the closed session, from which the APPG was excluded, had been conducted by the First Tier Tribunal (FTT). It found that the FTT and the FCO failed to make clear to the APPG the substance of the FCO's case, namely that the assertion that the disclosure of one type of information (diplomatic) could affect the future sharing by the US of a different type of information (secret intelligence). As far as the APPG is aware, this is the first time such a claim has been made by the FCO.

When this failure came to be apparent to the APPG upon publication of the FTT's judgment, the APPG requested that the Tribunal reopen the hearing, but it declined to do so. The Upper Tribunal ruled that the failure of the FTT to reopen the hearing at the APPG's request, which could have remedied the unfairness, constituted an error of law.

Andrew Tyrie MP said: “The finding of the Upper Tribunal substantiates my concerns about the inherent unreasonableness of being shut out of your case once it is heard in closed session. I gave evidence in this case. I was at a great disadvantage because I was excluded from parts of the hearing. Neither my lawyer nor I could hear claims made by the FCO, nor were they disclosed to us, even in general terms. This is why the Justice and Security Act, far from being a step towards justice, is a step away from it.”

The APPG is currently considering its options in light of the Upper Tribunal’s judgment, but is likely to seek a rehearing for reconsideration of the FCO’s refusal to disclose certain information and, in particular, the FCO’s claims regarding the impact of disclosure of diplomatic material on intelligence sharing.

Notes to Editors

The APPG on Extraordinary Rendition submitted three FOI requests to the FCO in May 2008. These related to: the alleged rendition of Bisher al-Rawi and Jamil el-Banna in 2002; allegations, first reported in the media, that the British Government had solicited the ‘Bellinger letter’ from the US Department of State in 2008 stating that disclosure of documents relevant to the Binyam Mohamed case would threaten the intelligence-sharing relationship between the US and the UK; and the UK’s involvement in the extraordinary rendition and torture of Binyam Mohamed, information passed to the British Government by the US authorities following the waterboarding of three detainees and information received from the US authorities about claimed or reported foiled attacks on the UK.

The FCO claimed a variety of exemptions from the obligation to disclose the bulk of the relevant documents. This refusal was largely upheld by the Information Commissioner in three Decision Notices issued on 24 January 2011, although the Commissioner did require the FCO to release some documents. The APPG appealed to the First Tier Tribunal against all three Decision Notices, and these appeals were held together before the Tribunal in hearings held in November 2011 and February 2012. The First Tier Tribunal issued its decision in April 2012.

It found that there was a “very strong public interest in transparency and accountability” concerning the extent to which the government and security services had carried out the stated policy of opposition to rendition, especially given that “Ministers have had to correct statements made to Parliament” on the issue. It also acknowledged a “particular weighty public interest” in the possible involvement of the government in the detention and rendition of British nationals, and that there was a “strong public interest” in disclosure concerning the Bellinger letter.

However, the Tribunal concluded that considerations of national security and international relations which it held to be at issue were of still greater weight and therefore it largely dismissed the APPG’s appeal. However, it ordered the full or partial disclosure of four documents.

In June 2012, the First Tier Tribunal granted the APPG permission to appeal to the Upper Tribunal. The APPG appealed the First Tier Tribunal’s decision on five grounds. Grounds 1 and 2 were stayed by the Upper Tribunal pending an imminent Supreme Court judgment.

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