



Foreign &
Commonwealth
Office

2 September 2008

Our reference: 0442/08

Andrew Tyrie Esq, MP
House of Commons
London
SW1A 0AA

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Dear Mr Tyrie,

Thank you for your request for information, which we received on 23 May. I wrote to you on 23 June, 21 July and again on 18 August informing you that we had not yet reached a decision on where the public interest lay in respect of qualified exemptions engaged on your request and that this would take some further time.

Having considered the public interest in relation to your request, we are now in a position to provide you with a full response without exemptions. I will address the points from your letter in turn.

On request number 1 in your letter, I can confirm that the UK Government has sought information from the US Government in respect of the two flights through Diego Garcia in 2002, in which a US plane with a single detainee on board refuelled at the US facility on the island. The flight you ask about specifically in your letter (which may not be one of these two) was included on the list of flights that was passed to US officials on 15 May, based upon which we sought their specific assurance that none of the flights had been used for the rendition of an individual. The US confirmed that, with the exception of the two cases related to Diego Garcia in 2002, there have been no other instances in which US intelligence flights landed in the United Kingdom, our Overseas Territories, or the Crown Dependencies, with a detainee on board since 11 September 2001.

There are no flight records relating to Diego Garcia that are still held covering the date mentioned in your request and there is also no record of permission being granted by the UK or sought by the US on this specific flight.

On numbers 2, 3 and 4 the information to which you are entitled is included in the attached digest. A further assurance regarding rendition through Diego Garcia was included in the Foreign Secretary's oral statement to the House of 21 February and is therefore already in the public domain.

On number 5, there have been no agreements of this nature entered in to between the UK and US governments since 11 September 2001.

However, you may wish to know that the Exchanges of Notes between the UK Government and the US Government from 1967 and 1976 are relevant to the holding of prisoners on the island. I enclose copies for your reference. The 1966 Exchange of Notes sets out the respective jurisdiction of the UK and US in Diego Garcia. In respect of criminal jurisdiction, and consequently the holding of prisoners, you will see it sets out the means by which the UK authorities exercise normal powers over any criminal activities, and permits the US military on the island to exercise jurisdiction over their own servicemen.

I can confirm that the Foreign & Commonwealth Office does not hold any further information that falls within the scope of request number 5 in your letter.

The Foreign and Commonwealth Office may hold information falling within the description specified in requests numbered 6 to 22 in your letter. However, we estimate that to locate, retrieve and extract such information would take this request above the appropriate limit of £600 or 3.5 days. This limit has been specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Section 12 of the Freedom of Information Act makes provisions for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit. We will not, therefore, be processing these questions further.

If you were to make a new request it may be that we could comply with that request within the appropriate limit. I have discussed this with Stuart McCracken, the co-ordinator of your Group, and I have explained that you may wish to submit the remaining requests as they stand and we will deal as many of them as possible within the appropriate limit, in the order of priority you have specified. You are entitled to submit these further questions once 60 days have elapsed from the date of this letter. I would be happy to discuss this further on the telephone if that would be helpful.

If you have any other queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint, or request a review of our decision you should write to me at the above address. You have 40 working days to do so.

If you are not content with the outcome of that internal review, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaint 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,

James Hooley

James Hooley
Counter Terrorism Department

FREEDOM OF INFORMATION REQUEST: ANDREW TYRIE ESQ, MP

Extract from the Minutes of the British Indian Ocean Territory US-UK Political-Military Talks 2003
Hawaii, 10-11 June 2003

[REDACTED] confirmed for the record that there had never been any detainees on Diego Garcia nor were any anti-personnel landmines stored on Diego Garcia.

Extract from an e-mail between an FCO Official in Washington and an FCO Official in London
21 November 2003

I spoke to [REDACTED] (Pol/Mil, State) on 21 November.

Detainees

I explained the contents of the letter from the Bar Human Rights Committee, and the press coverage. He said that he had no knowledge of any detainees being held on Diego Garcia. The policy remained that they "will not hold on Diego Garcia, or send through Diego Garcia, terrorist detainees or anybody of that nature".

Extract from a Telegram from the British Embassy in Washington to the FCO in London
18 May 2004

SUMMARY

1. State assure us (again) that the US have not, and will not hold, transit or transport detainees on or through Diego Garcia and its territorial waters.

DETAIL

2. We spoke to State ([REDACTED], International Security Office, Bureau of Political Military Affairs) on 17 May following the 16 May Sunday Express articles alleging that the US was holding detainees on Diego Garcia and "on board ships in the island's harbours". We passed State a copy of the Express articles.
3. State assured us, again, that the US have no (no) terrorist suspects on Diego Garcia or in Diego Garcia's territorial waters and have not (not) held terrorist suspects on Diego Garcia or in Diego Garcia's territorial waters. They have

not (not) transited or transported terrorist suspects through Diego Garcia or Diego Garcia's territorial waters. The US would not (not) hold, transit or transport terrorist suspects on or through Diego Garcia or Diego Garcia's territorial waters without the permission of the UK Government.

Extract from the Minutes of the British Indian Ocean Territory US-UK Political-Military Talks 2004
London, 26-27 May 2004

U.S. repeated its assurance that there are not now and never have been any detainees held in or in transit through Diego Garcia or its territorial waters.

Extract from the Minutes of the British Indian Ocean Territory US-UK Political-Military Talks 2005
Washington, 7-8 September 2005

[REDACTED] reemphasized that the U.S. had not and would not use DGAR in any detainee operations.

...

GWOT Detainees

The U.S. repeated its assurance to the UK that there are not now nor have there been any GWOT detainees held in or in transported through DGAR or its territorial waters.

Extract from the Minutes of the British Indian Ocean Territory US-UK Political-Military Talks 2006
London, 17-18 October 2006

Detainees

5. In response to the UK's enquiry, [REDACTED] assured the UK on behalf of the US Government that at no time had there been any detainees, prisoners of war or any other persons of that sort on Diego Garcia, or who had transited through the territorial seas or airspace surrounding Diego Garcia.

Extract from the Minutes of the British Indian Ocean Territory US-UK Political-Military Talks 2007
Washington, 12-13 September 2007

The U.S. Government has, at no time, held on the island or transited through the territorial seas or airspace surrounding Diego Garcia any detainees, prisoners of war or any other persons of that nature or status¹

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¹Although this is what was said at the time of the meeting, the issue has subsequently become subject to discussion