



Foreign &  
Commonwealth  
Office

**Counter Terrorism Department**  
Foreign and Commonwealth Office  
King Charles Street  
London, SW1A 2AH

Tel: 0207 008 3859  
Fax: 0207 008 3460  
joanne.cappa@fco.gov.uk  
www.fco.gov.uk

Our reference: 0164-09

24 April 2009

Andrew Tyrie MP  
Chairman  
All-Party Parliamentary Group on Extraordinary Rendition  
House of Commons  
London  
SW1A 0AA

**FREEDOM OF INFORMATION REQUEST: REFERENCE 0164-09**

Further to my colleague Ben Prosser's letter of 25 March 2009, I am writing to confirm that the Foreign and Commonwealth Office has now completed its search for the information you requested under the Freedom of Information Act 2000 (FOIA) about the Binyam Mohamed case. Your request of 18 February 2009 asked:

*"The specific allegation is that the Foreign Office solicited a letter from the US Administration to substantiate its claim that the publication of a summary of Binyam Mohamed's treatment would lead to a reconsideration of the intelligence sharing relationship between the US and the UK.*

*... I am requesting a copy of all information relevant to the above allegation. This will include, but not be limited to, correspondence and any other communications (oral or written) with the US Administration, including notes and minutes of meetings; and any other information, such as internal departmental and cross-departmental communications (oral and written), notes and minutes of internal meetings and any other pertinent documents."*

The Foreign Secretary wrote to you on 10 March 2009 in response to your letter. His reply enclosed correspondence from the US State Department's Legal Adviser John Bellinger of 21 August setting out the US position on disclosure of documents relating to Mr Mohamed's case.

Under section 1(1) (a) you are entitled to be informed whether the FCO holds information of the description specified in your request, unless it can neither confirm nor deny (NCND) that. The FCO can confirm that it holds material of the description specified in your request.

Under section 1(1) (b) the FCO is obliged to provide information of the description specified in the request unless an exemption or exemptions apply. In relation to the material held by the FCO which falls within the terms of your request, it has been concluded that it should not be disclosed under sections 23, 27, 35, or 42 of the FOI Act. Sections 27, 35 and 42 are subject to the public interest test. The following deals with each section in turn.

### **Section 23 (Information supplied by, or relating to, bodies dealing with security matters)**

Some information is exempt under section 23(1) of the Freedom of Information Act. Section 23(1) relates to information supplied by, or relating to, bodies dealing with security matters. Section 23 is an absolute exemption and therefore we are not obliged to consider the public interest in disclosure.

### **Section 27 (International relations)**

The FCO holds information which if released would be likely to prejudice relations with another State, or which is confidential material obtained from another State other than the United Kingdom. Section 27(1) (a) and s.27 (2) are qualified exemptions and as such are 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 operates.

However, with regard to Sections 27(1) (a), the effective conduct of international relations depends upon maintaining trust and confidence between governments. 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 free and frank exchange of information and internal discussions within Government departments relating to this information is an integral part of this process and crucial to enable the correct decisions to be made. For these reasons, it is felt that the public interest in maintaining this exemption outweighs the public interest in disclosure.

Furthermore, with regard to Section 27(2), information within the scope of your request relates to confidential material received from the US Government in the course of discussions between it and the UK Government. Disclosure of that material is not in the public interest because it would be likely to prejudice relations between the two. The effective conduct of international relations depends upon the UK maintaining the trust and confidence of other States, which allows for the free and frank exchange of information on the understanding that it will be treated in confidence. If the UK does not respect such confidences, the protection and promotion of UK interests through international relations will be hampered. The US Government may be more reluctant to share sensitive information with the UK in future 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 disclosing the information.

### **Section 35 (Formulation of government policy)**

The FCO holds information relevant to your request which relates to the formulation and development of Government policy and is exempt under section 35(1) (a). If released, this material would be likely to prejudice the effective formulation of future government policy. This is a qualified exemption and as such 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 the UK Government is accountable to the public in matters relating to the UK's relationship with the US and as covered by your request.

However, with regards to section 35(1)(a), for the effective formulation of government policy, the Government requires a clear space, away 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. The candour of contributions to this process would be likely to be affected by officials' assessment of whether the content of such a discussion could be disclosed in the near future. This would be likely to have a negative impact on the quality of decision making, which is clearly not in the public interest. Therefore the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Section 42 (Legal Professional Privilege)**

Some of the information you have requested is exempt under section 42(1). Section 42(1) of the Act recognises the validity of withholding information that is subject to Legal Professional Privilege (LPP), which exists in order to encourage clients to be frank and open with their legal adviser, with the expectation that those communications will not be disclosed without their consent. It is important that the government is able to seek legal advice so that it can make its decisions in the correct legal context. The legal adviser must be in possession of all material facts in order to provide sound advice. The government must, therefore, feel confident that it can disclose *all* relevant facts to its legal adviser. It must be able to do so without fearing that this information will be disclosed to the public. In turn the legal adviser will consider the issues and the arguments and weigh up their relative merit. Section 42 is subject to the public interest test.

#### Public interest considerations

Transparency of decision making and knowing that decisions are taken in the correct legal context are two reasons why it might be argued that information subject to section 42(1) should be disclosed. However, the process of providing legal advice relies for its effectiveness on each side being open and candid with the other. Such candour is ensured by the operation of Legal Professional Privilege. For these reasons, it is felt that the public

interest in maintaining LPP under section 42(1) outweighs the public interest in favour of disclosure.

If you have any 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 within 40 working days of the date of our response.

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

Yours sincerely

**J Cappa**

Joanne Cappa  
Counter Terrorism Department



**Data Protection Act 1998**

We keep and use information in line with the Data Protection Act 1998. We may release this personal information to other UK government departments and public authorities.