



HOUSE OF COMMONS

LONDON SW1A 0AA

Rt. Hon. David Miliband MP
Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
King Charles Street
London
SW1A 2AH

20 July 2009

Dear David,

FREEDOM OF INFORMATION REQUEST YOUR REFERENCE 0286-09

1. I am writing further to your letter of 2 June 2009, which I understand constitutes a "Refusal Notice" in respect of the information I requested under the Freedom of Information Act 2000 ("FOIA") in my letter to you of 20 May 2008 (and renewed in a letter dated 2 April 2009). In light of your letter I am now writing to ask for an internal review of the FCO's decision to withhold the information I requested.
2. I consider that the FCO may have erred in applying the exemptions under FOIA in its response of 2 June 2009 and would ask that you reconsider the disclosure of information within the scope of the requests numbered 14 to 22 in my letter dated 20 May 2008. I set out the reasons for this below.

Requests 14 and 15: Binyam Mohamed Al-Habashi

3. Without limiting the generality of the internal review, I would like to make the following brief comments about the application of the section 23 and 24 exemptions.
 - (a) In relation to Requests 14 and 15, I would ask you to consider whether it is appropriate for the FCO neither to confirm nor deny whether the information requested is held, given the high public profile held by Mr Mohamed's case and, in particular, the public debate generated by the action in the High Court in 2008 and 2009 over access to information held by the FCO relating to Mr Mohamed's case. Whilst section 23 FOIA does create an exemption which is not subject to the public interest test, it does not impose an obligation on the authority in question to withhold

all information supplied by the security bodies listed in section 23(3). Indeed, the Information Commissioner's guidance on this exemption states that the fact that section 23 FOIA creates an absolute exemption "*does not mean that information supplied by or relating to one of the security bodies can never be released*".

(b) In relation to Request 15, the FCO has applied section 23(5) FOIA in conjunction with section 24(2) FOIA. It is important to note that the section 24 FOIA exemption can only be claimed for information that is not exempt by virtue of section 23 FOIA. In other words, it does not apply to information which has been supplied by or relates to the security bodies specified in section 23 FOIA. I am concerned that because the FCO has applied section 23 FOIA in respect of some of the information requested, section 24 FOIA has then been applied to the remainder of the request in a "blanket fashion". It is not clear to me that any real and specific threat to national security would arise in this instance, particularly in the case of Mr Mohamed where significant information regarding Britain's involvement has already come to light through the highly publicised court proceedings. The Refusal Notice states that inferences, which may be drawn from the FCO's disclosure of the requested information (or confirming it is held), "*could be exploited by those individuals who may seek to damage national security*". The tone of this phrase appears to acknowledge that the relevant prejudice in this case cannot be said to be more than a mere possibility, which in my view is insufficient to engage this exemption.

(c) Whilst there may be national security considerations in this case, section 24 is a qualified exemption. In relation to Request 15, I am concerned that the FCO does not appear to have fully considered the strong public interest in favour of disclosing the information requested. In August last year the High Court acknowledged that, in relation to the allegations of torture and unlawful treatment made by Mr Mohamed, the UK's involvement "*was far beyond that of a bystander or witness to the alleged wrongdoing*". The case of Mr Mohamed has generated a great deal of speculation over the extent of Britain's alleged involvement in practices such as extraordinary rendition – involvement which was potentially wrongful and/or unlawful. This has also led to demands for greater transparency as to the

government's policy on the use by the State of information which may have been obtained through torture or coercion. The information of which I have sought disclosure would inform this important debate and, in accordance with the Information Commissioner's guidance on this subject, there is clearly a compelling case for its release.

Requests 16 to 22 – US interrogation practices

4. I would like to request that the internal review should consider:
 - (a) Whether it is appropriate for the FCO to neither confirm nor deny whether the requested information is held, particularly given the public debate generated by the various allegations of UK involvement in US interrogation practices and on transparency in this area, set out above.
 - (b) Whether the public interest test in respect of the qualified exemption under section 24(2) FOIA has been correctly applied in relation to that information which is not covered by section 23 FOIA. Given the importance of the information to an informed public debate and to greater policy transparency, I should be grateful if you would reconsider this.
5. I am putting a copy of this letter in the public domain.

*Yours etc,
Andrew*

ANDREW TYRIE