



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

27 July 2009

Dear David,

YOUR REFERENCE: 0863-08 - QUESTIONS 6-13

I write further to a letter from Emily Maltman, one of your officials, dated 2 June 2009 (the "**Internal Review Response**") regarding your department's internal review of the refusal notice dated 25 February 2009 (the "**Refusal Notice**") in relation to the request for information originally made in my letter dated 20 May 2008 (with regard to requests 6-13), and subsequently renewed by my letter dated 15 October 2008 (the "**Requests**").

I appreciate the time your department has spent considering the requests, although remain concerned by the manner in which the exemptions from disclosure provided by the Freedom of Information Act 2000 (the "**FOIA**") have been applied to the Requests, as well as the significant delay involved in providing both the Refusal Notice and the Internal Review Response. As a result of these concerns, I have decided to make a complaint to the Information Commissioner and attach a copy of the complaint for your reference. The principal purpose of this letter, however, is to invite you to exercise your discretion to disclose information subject to the exemption in s.23 of FOIA.

The s.23 exemption has been relied on by your officials to:

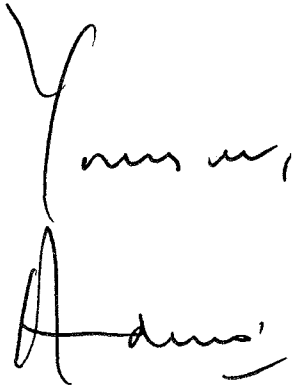
- (a) refuse to confirm or deny the existence of any information falling within Request 10, namely "*[a]ll records of communications between US and UK officials regarding the "operation" cited in the Loose Minute of 6 November 2002, Subject: Baggage Search of Abu ANAS, between 1 October 2002 and 6 November 2002*"; and

- (b) refuse to disclose some information within the scope of some of the remaining Requests (although it is impossible to know exactly to which of the remaining Requests the exemption is considered to apply).

While I am aware that the s.23 exemption is an absolute class-based exemption, it does not create an obligation to withhold information; rather it establishes a discretion to choose to disclose in appropriate circumstances (as recently elucidated by the Information Commissioner Office's Guidance note on the application of the s.23 exemption published in June 2009). Unfortunately there is no evidence on the face of the Refusal Notice or the Internal Review Response that your officials have considered the exercise of this discretion, and I therefore wanted to take this opportunity to invite you to consider its exercise now for the following reasons.

In relation to Request 10, the existence of information within its scope is confirmed by information already in the public domain. Furthermore, given the high public interest in disclosure of the remaining information subject to the Requests, the length of time that has passed since its creation and disclosure of similar and related information, I would contend that you should exercise your discretion to disclose some, if not all, of the information falling within the terms of this exemption.

I look forward to receiving your response shortly and would ask that you also copy such response to the Information Commissioner's Office. As you know, I will be placing a copy of this letter and your response in the public domain.

A handwritten signature in black ink, appearing to read 'Andrew Tyrie', written in a cursive style.

ANDREW TYRIE