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Michael Bimmler

Our Ref: FOI|33|09

Date: 11 June 2009

FREEDOM OF INFORMATION REQUEST

Thank you your email of 11 May 2008 where you requested information under the Freedom of Information Act 2000 relating to "a preliminary investigation into allegations of possible criminal wrongdoing against Mr Binyam Mohamed". Specifically you asked for:

- Final submission by the Director of Public Prosecutions;
- Other correspondence received from the DPP;
- Submissions, notes and correspondence sent to the AG by the CPS, especially the Counter-Terrorism Division. I explicitly include here the "copies of relevant papers" referred to in the letter from the AG to the Commissioner of the MPS, if they have been submitted either by the CPS or any other source to the Attorney General;
- Final summary of the preliminary investigation prepared by the AG's office for the AG. With this generic term, I mean to cover all documents that could be described as "briefing documents" prepared for the use of the Attorney General as she was making her decision on what next steps to take in this case after the end of the investigation.

The department no longer holds the "copies of the relevant papers" referred to in the letter from the Attorney General to the Metropolitan Police Commissioner. All these papers have been sent to the Crown Prosecution Service. I understand you have made requests to other government departments who may hold this information.

However, I can confirm that the department does hold some of the information requested. In particular, we hold advice provided by the Director of Public Prosecutions and a number of internal briefing documents prepared for the Attorney General. This information is exempt under a number of exemptions in the Freedom of Information Act 2000: (a) section 31(1)(c) as its disclosure would, or would likely to, prejudice the administration of justice; (b) section 35(1)(c) as it relates to the provision of advice by any of the Law Officers or any request for the provision of

such advice; and (c) section 42(1) as a claim to legal professional privilege could be maintained in legal proceedings in respect of some of the information.

These exemptions are qualified and subject to the public interest test. The public interest in the administration of justice is very high. It is moreover a public interest which is explicitly recognised by the courts as fundamental to their work. Not only, therefore, is this a public interest which the courts will expect government to respect highly, it is a public interest which the courts will expect government to acknowledge to be the courts' particular domain. We consider that the disclosure of the information requested would prejudice the ongoing police investigation and any criminal proceedings that may result and therefore there is a very strong public interest against disclosure.

The public interest in maintaining the section 42 exemption is also very strong because it is fundamentally important to ensure that public decisions are reached on the basis of full, frank and uninhibited legal advice which is also fully recorded. In particular, it is fundamentally important that public decisions are made on the basis of complete legal advice about the potential risks of adopting particular courses of action in order to ensure effective conduct of public business. It is also manifestly in the public interest that decisions taken by Government are taken in a fully informed legal context. Without such advice, the quality of Government's decision making would be significantly reduced. There is also a serious risk that the disclosure of such advice may result in lawyers and clients avoiding making a permanent record of the advice that is given with the result that it may not be properly or completely understood or followed and with the further result that it will not be available to those who have given such advice in the future.

The High Court has recognised the in-built weight that must be given to legal professional privilege and the strength of the public interest in-built in to legal professional privilege itself: *BERR v O'Brien* [2009] EWHC 164. In addition to the in-built weight, we consider that there is a strong public interest that legal advice falling within the scope of this request is not disclosed. The alleged criminal wrongdoings against Mr Mohamed is an important matter and it is clearly in the public interest for Government to be able to receive legal advice about such matters in confidence to enable fully informed decisions to be made.

Section 35 is statutory recognition of the public interest in allowing government to have a clear space, immune from exposure to public view, in which it can debate matters internally with candour and free from the pressures of public political debate. We consider that the public interest considerations that apply to section 42 apply similarly to section 35(1)(c).

We recognise that there is a public interest in the public being aware about how the Attorney General carried out her consideration of the allegations in relation to Mr Mohamed. However, we consider that, in the circumstances of this case, the public interest in withholding the information clearly outweighs the public interest in disclosure. The department's decision is therefore to withhold the information.

If you believe that any of the decisions made in relation to your requests to us are incorrect, you may ask for an internal review. You should address a request for an internal review to Jonathan Jones, Director General, to 20 Victoria Street, London, SW1H 0NF or alternatively you can send an email to foi@attorneygeneral.gsi.gov.uk.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

If you have any further queries about this matter please contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'TAS', followed by a long horizontal flourish.

TIM STREVENS
Freedom of Information Officer