

Ref. A085/2986

MR FLESHER

I understand that you have asked for up-to-date background briefing on GCHQ, in the light of recent remarks by the General Secretary of the TUC about the consequences of dismissals.

2. The position remains unchanged since before the Summer Recess. There are about 40 members of GCHQ who accepted the Government's offer and resigned from unions, and then rejoined after Mr Justice Glidewell's judgment. The matter stands on my letter of 9 August 1985 to the Council of Civil Service Unions, which said that these people should now re-resign from their unions, and would face disciplinary sanctions if they did not do so. No action has in fact been taken to put this into effect.

3. There is also a number of GCHQ staff who did not accept the Government's offer, and who have either not accepted voluntary redundancy (no suitable alternative job being available) or have not yet been offered suitable alternative jobs (because it is thought likely that they may refuse them). These cases too could end in dismissal, but no action has yet been taken on them.

4. I understand that the Foreign and Commonwealth Secretary is about to send a submission to the Prime Minister on the subject of further action.

5. In the meantime I offer the attached answers for questions.

MS

for

ROBERT ARMSTRONG

19 November 1985

FROM: R G Short, PUSD
 DATE: 26 November 1985
 cc: PS/Mr Renton
 Mr Goodall
 Mr O'Neill

GCHQ.

Parliamentary Unit

GCHQ : ARTICLE IN THE DAILY EXPRESS

- A 1. An article in today's 'Daily Express' claims that 'a worker' at GCHQ is prepared to give evidence to the European Commission of Human Rights on the GCHQ case in defiance of the Official Secrets Act. If this is raised at PM's Question Time, I recommend that the Prime Minister take the following line:

"The European Commission has not yet considered whether the union's application on GCHQ is admissable or not. The Government has been asked for its Observations and these will be submitted in due course. There has been no request for any confidential information and the question of immunity from prosecution under the OSA for information which the applicants may wish to submit does not arise at this time."

BACKGROUND

- B 2. Lawfords, the Solicitors acting for the unions, wrote to Treasury Solicitors on 9 May seeking immunity from prosecution under the OSA for any information their clients might wish to submit to the ECHR. Treasury Solicitors replied on 31 July:
- C "If the question of provision of such specific information as would, prima facie, be a breach of the Official Secrets Act were to arise during the course of the proceedings commenced by your clients' application, the Government would then consider the question of immunity from prosecution in the light of its obligation under the Agreement on Persons Taking Part in Proceedings before the Commission and Court."

3. The European Commission have requested UK's Observations on the admissability of the application by the Civil Service Unions concerning GCHQ. We are asked to submit Observations by 20 December. FCO Legal Advisers are coordinating our response in concert with Treasury Solicitors and the Coordinating Committee on GCHQ.

4. A press line was prepared in anticipation of questions about the ECHR proceedings. This is attached.

Roger Short

R G Short
PUSD

26 November 1985

DAILY EXPRESS

cutting dated 26 NOV 1995 19

GM

POD
PPD

~~PLSD~~
Security

**GCHQ staff
set to defy
secrets law**

A WORKER at GCHQ the secret Government communications centre — intends to defy the Official Secrets Act over the ban on unions there.

He plans to risk prosecution by giving evidence at the European Commission on Human Rights, where a bid to have the ban lifted is being made.

Other workers at the centre in Cheltenham, Gloucestershire, may follow his lead.

But John Randall of the Civil Service Union said: "Anyone giving evidence will be inviting prosecution under the Official Secrets Act."

The unnamed worker said: "I will follow my conscience in attempting to get a dreadful wrong undone."

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Our Ref. BH/TW/SRS
Your Ref. L84/121E/RJP

The Treasury Solicitor,
Queen Anne's Chambers,
28 Broadway,
LONDON.
SW1H 9JS

9th May 1985

Dear Sir,

Government Communications Headquarters, Cheltenham

We enclose, for your information, a copy of an application which we have sent today to the Secretary General of the Council of Europe. Please acknowledge receipt.

You will note that the seven applicants are the same as the applicants who applied for judicial review of the Minister's decision to alter the terms and conditions of employment of those employed at GCHQ. They now allege that the decision to do so and the issuing of certificates under section 121(4) of the Employment Protection Act 1975 and section 138(4) of the Employment Protection (Consolidation) Act 1978 amounted to a breach of their rights (and the rights of others employed at GCHQ) as guaranteed by Article 11, and Article 13 read with Article 11, of the European Convention for the Protection of Human Rights.

You will note that there are a number of appendices to the application. We enclose a copy of the appendix setting out a brief statement of the facts and argument. We have not sent copies of the judgements of the Courts, the speeches of the House of Lords, the bundles of evidence available before the House of Lords or the two Acts of Parliament since you have these already.

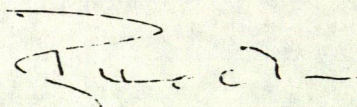
You will appreciate that, unlike proceedings before the domestic Courts, proceedings before the European Commission will involve investigation and consideration of the reasons for the Minister's decision, rather than merely the method by which that decision was taken. Our clients contemplate, therefore, that the Commission may wish to have available information the collection and communication of which would constitute an offence under the Official Secrets Act 1911; in particular, we suggest that information on the numbers and grades of those employed at GCHQ and other positively vetted positions in the Civil Service, and information on the nature and extent of industrial action taken by GCHQ staff in the past will have to be made available to the Commission if they are to

come to any conclusion on whether or not there has been a violation of the two Articles which we mention above.

Our clients are able to provide some of this information, although we have not requested it as yet since we, and they, are aware of the nature and effect of sections 2 and 3 of the Official Secrets Act 1911. We should be grateful if you would let us have your view on the procedure which should be adopted to enable this application to be dealt with as expeditiously as possible, with the minimum risk to national security. In particular, we invite you to consider the terms of the European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights (Treaty series no 44 (1971)) and to offer an immunity from prosecution to our clients for steps which they may take in submitting further information to the Commission. If you do not feel able to grant this immunity, we shall invite the Commission to make its own enquiries and investigations direct.

We should be grateful if you would also take instructions on the possibility of maintaining the status quo pending adjudication of this application. You will remember that the Director of GCHQ agreed to do so, and the terms of the agreement which was reached were set out in your letter of 9th August 1984. We suggest that this will be a suitable basis for the renewed maintenance of the status quo, and we look forward to hearing from you with your client's observations.

Yours faithfully,



LAWFORD & CO

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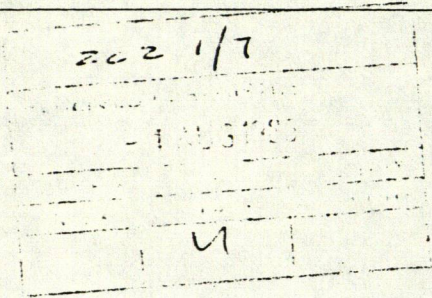
THE TREASURY SOLICITOR

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Grays Inn
London WC1R 5EJ

Please quote L84/1215/RJP
Your reference BH/IW/SAS
Date 31 July 1985



Dear Sirs,

RE: GOVERNMENT COMMUNICATIONS HEADQUARTERS CHELTENHAM

I refer to your letter dated 9 May on which I have been taking instructions.

With regard to the possibility of maintaining the status quo pending determination of your clients' application to the European Commission, the letter of 9 August 1984 to which you refer governed the position in relation to the transfer or dismissal of staff at GCHQ who were unwilling to accept the conditions of service contained in General Notice 100/84 until determination of your clients' appeal to the House of Lords. The judgment of the House of Lords of 22 November 1984 concluded the domestic legal process, and the conditions of service now governing employment at GCHQ are those announced in GN 100/84. The Government is advised that there is no obligation on the Government either in domestic law or under the Convention to refrain from taking action pending determination of an application to the European Commission. In those circumstances, I am instructed that the Government is not prepared to comply with your suggestion.

Your request relating to immunity from prosecution under the Official Secrets Act following provision of information to the Commission is hypothetical at this stage because, as I understand it, the application has not yet been referred to the Government by the Commission, nor has there been a request from the Commission for such information, nor any occasion for it to be volunteered.

I am instructed that it is not possible for the Government to give an undertaking in this regard in advance of a request for information, still less to give blanket immunity from prosecution.

If the question of provision of such specific information as would, prima facie be a breach of the Official Secrets Act were to arise during the course of the proceedings commenced by your clients' application, the Government would then consider the question of immunity from prosecution in the light of its obligation under the Agreement on Persons Taking Part in Proceedings before the Commission and Court.

Yours faithfully,

for the Treasury Solicitor

ECHR REQUEST FOR OBSERVATIONS

European Commission have asked for the Government's observations on the admissability of the union's application concerning the revised terms and conditions of service at GCHQ.

This is a normal part of the process whereby the Commission considers an application to decide whether it is admissable or not. The request for Observations does not imply that the Commission have accepted that there is a case to answer.

The European Convention recognises and makes provision for a restriction on the right to form or join unions where matter of national security are involved. In taking the action it did at GCHQ the Government was clearly acting in the interests of national security.

There has been no request for any confidential information and the question of immunity from prosecution under the OSA for information which the applicants may wish to submit does not arise.

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GCHQ

1. No question of dismissal has yet arisen; the hon Gentleman's question is therefore hypothetical.

2. These matters rest on the House of Lords' judgment of 22 November 1984, which validated the decisions announced by my Rt Hon Friend the Foreign and Commonwealth Secretary on 25 January 1984, and on the letter which the Head of the Home Civil Service sent to the Council of Civil Service Unions on 9 August 1985. I have nothing to add to this at present [, but I have noted the hon Gentleman's comments].

3. The experimental scheme for testing the validity of the polygraph for security vetting purposes, which was recommended by the Security Commission in their Report on the Prime case, continues. Until the experiment has been completed and evaluated, it will not be possible to take a decision on whether the polygraph should have a permanent place in security vetting arrangements in the security and intelligence agencies.