

Mr Coulson

UNDER/ SEC

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-7 OCT 1988

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HEAD OF T

131/10

-7 OCT 1988

CIVIL SERVICE

2/6

Mr Wilson

7/7

Mr Spence

Pl. consider urgency while on my specific duties

in the light of this I suggest: all the time back papers against Mr Kennedy's enquiry. So we need to go round Ken Sec. Pl check with Mr Hamilton if he is aware of any further work. I will write a note. Mr Wilson

File

Murphy

rw 52/10

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OFFICIAL SECRETS BILL

I attach a copy of a letter from the Home Office, which some have already seen. It seeks, with due apologies, an early response from the NIO on three specific points concerning the forthcoming Official Secrets Bill. I should be grateful for assistance from you and from those to whom this minute is copied.

Information received in confidence from individuals etc

2 I cannot imagine that our position has changed since last October and subject to any views from others I propose telling the Home Office so.

Notification

3. I should be grateful to know whether there is anyone in the NIO likely to be a candidate for notification that he or she is to be treated for the purposes of the Bill in the same way as a member of the security and intelligence services. I understand that you are already considering this, together with the position of Mr Knight's people. It would also be helpful to know whether there are any candidates in the RUC (see my minute of 23 September to Mr Shannon - not to all). You will note that the Home Office are proposing very strict criteria and are seeking to keep the numbers as low as possible.

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Prescription

4. I attach the relevant clause from the latest draft of the Bill; it enables members or employees of bodies, and holders of offices or their employees to be prescribed as Crown servants for the purposes of the Bill. The main criterion for prescription is that a person should create information in one of the protected categories, which are, broadly speaking, security and intelligence, defence, international relations and prevention of crime. Government contractors need not be included. I should be grateful to know whether we have any candidates for this; members of the Police Authority spring to mind although there may be others.

Conclusion

5. I am sorry for the short notice, but it would be helpful to have responses and observations before the end of next week in order to be able to meet the Home Office's tight deadline. I should of course be happy to discuss any points further if necessary.

SAM

S A MARSH

SIL DIVISION

6 October 1988

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cc Pw (C) - M
Mr Pugh - M
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Mr Mervin
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I M Burns Esq
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Whitehall
LONDON
SW1A 2AZ

percept mm
2 A. 10/10

Your reference

(the same at 145)

On reference

Date

30 September 1983

Dear Mr Burns,

OFFICIAL SECRETS BILL

In the summer the Cabinet Office conducted on our behalf a trawl of Government Departments seeking information on three questions arising from the proposed new official secrets legislation. We have belatedly realised that, for reasons unknown, NIO were omitted from the circulation list and I am now writing to seek your views on these issues. I am afraid that, because of the lapse of time, I must ask for an early reply.

Information received in confidence from individuals at firms

2. As you know, the new Bill will no longer provide protection for information received by Crown servants in confidence from individuals, firms or other bodies. We need therefore to establish whether there are any areas where the civil law and disciplinary proceedings will not provide adequate protection and which will require the creation of specific new offences. You may recall that Cabinet Office conducted a preliminary trawl on this question last October (Rex Davie's letter of 13 October 1987). At that time NIO had no candidates for new offences and I should be grateful if you could confirm that that is still the position.

Notification

3. The Bill distinguishes between disclosures of information relating to security or intelligence when made by members or former members of the security and intelligence services and those made by others. It also provides for a Minister to notify non-members that they are to be subject to the same liability as members. We now need to identify likely candidates for notification. We expect the Home Secretary to be pressed on how this power will be used and he will have to be able at least to give a total figure of those likely to be notified.

4. The criteria we have suggested for the selection of candidates is that they should be working closely in support of or alongside the security and intelligence services and have such close and regular contact, direct or

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indirect, with one or more of the service that they have intimate knowledge, verging on that of some of its own members, of aspects of its structure and/or operations. It is not enough that the candidate has contact with the services and receipt of product alone is not a qualification.

5. I should be grateful if you could let me know of any candidates which NIO may have for notification. It would be helpful if you could indicate the nature of the work of the posts concerned and the numbers involved. The criteria should be rigorously applied. The notification power will be highly controversial and, quite simply, the higher the total number of candidates, the more difficult it is likely to be to secure the agreement of Parliament to the power.

Prescription

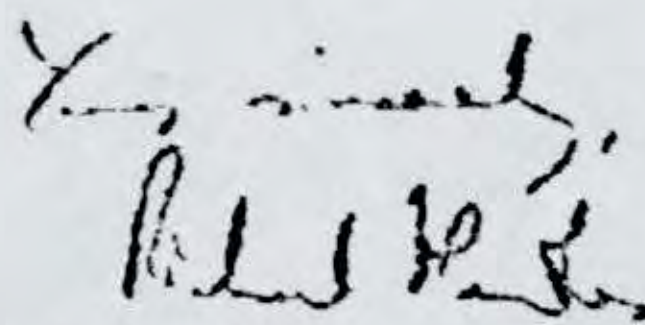
6. Although it is not referred to in the White Paper, you will have seen that the Bill includes a power for the Secretary of State to prescribe as Crown servants for the purposes of the legislation members or employees of bodies, holders of offices or their employees; classes of bodies, members or employees may also be prescribed. The Bill already penalises the disclosure of information entrusted to the discloser by a Crown servant or government contractor in confidence. There is no need therefore to prescribe a person who is only a recipient of protected material from official sources. The criteria we are applying for prescription is that the person to be prescribed should have some connection with the functions of the State or the administration of Government policies and that, in that capacity, he should create information in the protected categories.

7. We have established that secondaries out of and into the Crown service fall within the general definition of "Crown servant" in the Bill and that people such as consultants fall within the definition of "government contractor". The Lord Chancellor's Department has expressed the view that there should be no need to prescribe any person holding a judicial office.

8. I would be grateful if you could let me know whether you have any candidates for prescription. Once again it would be helpful to have a brief description of the nature of their work and the numbers involved.

Conclusion

9. I am sorry that the accidental omission of NIO from the earlier round means that you will not have as much time as other Departments to consider these matters. We shall in fact be writing again shortly to all those who responded to the first round of consultations to ask them for firm nominations for prescription, since we need to give the Home Secretary a clear picture of the expected use of the powers before the end of October. With that deadline in mind, I am afraid I must ask for a response as soon as possible and in any case not later than 14 October.



R E HAWKES
Official Secrets Bill Unit