

Prem 19/2509



PART 10

SECRET

CONFIDENTIAL FILING

SECURITY OF THE SECRET SERVICES /  
CHAPMAN PINCHER'S BOOK 'THEIR TRADE IS TREACHERY'  
AND RELATED PAPERS INCLUDING SIR ROGER HOLLIS, /  
THE WRIGHT CASE, / THE JOAN MILLER BOOK 'ONE  
GIRLS' WAR.  
ANTHONY CAVENDISH "INSIDE INTELLIGENCE"

SECURITY

PART 1: MAY 1979

PART 10: NOVEMBER 1987.

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
<del>4.11.87</del>		2.2.88					
5.11.87		<del>4/2/88</del>					
6.11.87		10.2.88					
10.11.87		11.2.88					
12.11.87		16.2.88					
18.11.87		19.2.88					
19.11.87		26.2.88					
25.11.87		25.3.88					
26.11.87		31.3.88					
1.12.87							
2.12.87							
3.12.87		PT 10					
9.12.87		GNOS					
15.12.87							
17.12.87							
18.12.87							
21.12.87							
23.12.87							
27.12.87							
30.12.87							
31.12.87							
4.1.88							
31.12.87							
18.1.88							
27.1.88							
25.1.88							
25.1.88							

Material used by  
Official Historian  
DO NOT DESTROY

PREM 19/2509



PART 10. ends:-

NW to PM 31.3.88

PART 11 begins:-

PC ~~NW~~ to PM. 7.4.88



PRIME MINISTER

c. Sir Percy Cradock

## SECURITY SERVICE LEGISLATION

We have pencilled in a meeting on 13 April to discuss the Home Secretary's minute below about legislation for the Security Service. The Home Secretary, Defence Secretary and the Foreign Secretary, Sir Robin Butler and Sir Percy Cradock will attend.

The Home Secretary's minute raises major issues, which might be summarised as follows:

(1) Need for Legislation:

The Home Secretary argues for legislation on two grounds

(a) the effectiveness of the Security Service requires it; and

(b) loss of the Strasbourg cases (on which see the note flagged) would face us with an obligation to legislate.

You will want to probe the case for legislation under both headings. On (a), we need to judge whether the risk to the Security Service brought about by legislation is more than compensated because of the greater cooperation, expected after legislation, from the people on whom the Service relies for information and help and because of the greater readiness to undertake certain operations. The Director General is a powerful witness in favour of legislation. You may want to seek an occasion to talk to senior officials in the Service to canvass their views directly.

On (b), you will want to ask what would happen if we lost the European cases and did not enact legislation? (Since the Attorney General will not be at the meeting, I shall ask Robin Butler to come to the meeting briefed on this point.)

(2) Timing

The choice here, if there is to be legislation, is between

FERB's  
office  
asked.



SECRET

(a) anticipating a defeat in the Strasbourg judgment, and introducing legislation say in either of the next two sessions, (with, according to the Home Secretary a possible announcement in the context of the forthcoming Official Secrets Bill); or

(b) delaying legislation until after any defeat in the Strasbourg judgment so that it would be clear that we had to act.

(3) Scope for Legislation

The draft bill attached to the Home Secretary's minute (on which I have marked some particular points) looks much better than I had expected. But it would certainly raise many difficult questions. In particular, clause 4(3)(a) and paragraph 1 of schedule 1 give the Commissioner and the Tribunal oversight over the entire operations of the Service. We need to consider whether the responsibilities of the Commissioner and the Tribunal should be made more restrictive - for example, by confining their remit to considering the proper exercise of the Secretary of State's powers to issue the warrants specified in clause 3 of the Bill. The Home Secretary may argue that this restricted remit would be insufficient to satisfy the Strasbourg judgement; this may call for an effective remedy for citizens who believe their rights to have been infringed by the activities of the Service. Even so, our general aim should surely be to limit the Commissioner's and the Tribunal's responsibilities as narrowly as possible.

(4) Parliamentary Reception

The key question here is whether the Government's backbenchers would support the Government in fighting off unwelcome amendments. (The long title is very wide; if it can be narrowed so much the better.)

(5) Presentation

If there is to be legislation, its presentation must avoid any suggestion of any Government "defeat" or change of tack. We



would need to emphasise that legislation would make the Service more effective and that the Government's policy on pursuing unauthorised publication will continue.

(6) A Revised Directive

The Home Secretary concludes against publishing a revised Directive. I agree: publication of a revision without legislation would stir matters up while legislation would make a new Directive unnecessary.

The Home Secretary has offered to come to discuss this with you before the meeting of Ministers. Would you like such a discussion if the diary allows?

N.L.W.

(N. L. WICKS)  
31 March 1988





PRIME MINISTER

SECURITY SERVICE LEGISLATION

*at flap A8*  
 When we met last July, we agreed to consider again the case for legislating for the Security Service once we had a draft Bill and once we had seen what the alternative of a fresh Directive might look like.

.... 2. I enclose a draft Bill with explanatory note and a revised Directive. Their terms have been agreed with the Director-General of the Security Service. I enclose also a note on the current cases at Strasbourg.

3. The Security Service has remained a constant target for public comment and speculation over recent months. Public sniping at the Service has continued, as have debates in Parliament and the press about its control and oversight. The continuing court cases have provided further opportunities for argument and analysis. This is not a passing phase. It is a symptom of the breakdown in consensus about security matters which we identified last July.

*It is conducted by a few people who want to break down the Security Service.*  
 4. I have considered with the Director-General whether all this really matters for the work of the Service. The answer is "yes". The publicity has started to make it harder for the Service to get co-operation from people on whom they rely for information and help. Because in the present sensitive climate the Security Service cannot afford to be caught on the wrong side of the law, some operations are beginning to be affected with the result that valuable information has been lost.



5. In the longer term, the Director-General is also concerned that public criticism could eventually reduce the willingness of our allies to share their secrets with us.

6. It is anyway not right to expect the Security Service to act outside the law as a necessary part of their work when we have the option of introducing legislation to regularise their position. I am convinced that early legislation is needed in the interests of the Security Service to enable it to operate effectively and well.

7. Legislation would also form part of an effective response to Wright. We are considering the options separately in OD(DIS) and will need to await the denouement of the current actions before all the pieces can be brought together. But a Security Service Act could be helpful in sustaining the confidence of the Service and in taking away any possible case for going public. Alongside the special offence provision in the Official Secrets Bill, it could be as useful in persuading the courts here and abroad that there was now no justification for publication.

8. There is also the Strasbourg dimension. We are very likely to lose the current cases and, even if we go through all the hoops, must expect in the next two years or so to be faced with an obligation to legislate. So, whatever we do now, we know that we are going to have to accept the case for legislation before the end of this Parliament. But if we wait until after Strasbourg, the initiative, and any credit for taking the initiative, will have been taken from us, and we shall find it harder to put through legislation in the form in which we and the Security Service want it. If, as I believe, it is in the national interest to legislate, then we are more likely to get legislation in an acceptable form if we take the initiative before we come under heavy pressure.



9. I believe, therefore, that we should take a decision now that legislation is needed. The attached Bill provides a sound basis. It is short and clear and it strikes a good balance between the detail needed to convince Parliament and the secrecy required about the way the Security Service works. It reflects the framework of the Interception of Communications Act 1985 while avoiding too loose an imitation where that would not be helpful.

10. The Bill firmly establishes the Security Service in statute, describes its functions, reaffirms Ministerial responsibility, and makes provision for the Secretary of State to issue a warrant to give indemnity for obtaining information from all types of property. It allows a limited avenue for complaints to a Tribunal and provides for review by a Commissioner who is clearly within the fence of confidentiality and reporting to Ministers.

11. More work would need to be done on the details. I have agreed with the Foreign Secretary to consider whether there are ways of relieving SIS and GCHQ of the duty under clause 4(4) to provide papers for the Commissioner; and to look at the wording of the warrant immunity in clause 3(1) to ensure that it clearly overrides the Diplomatic Privileges Act. We are agreed that both points can be resolved once we have decided on the substance of legislation. I should like to discuss with you whether the text of the Bill adequately reflects your own role in relation to the Security Service. I should want also to look carefully again at the overall balance, but the attached Bill gives a very good idea of what would be required. Our advice is that a Bill on these lines should also meet the requirements of the European Convention on Human Rights.



12. I do not underestimate the difficulties in such legislation. I have already discussed with the Foreign Secretary the central importance of refusing to be drawn into any discussion of the position of SIS; and we would have to face - as other countries have faced - the awkwardness of a warrant provision which did not appear to take account of the status of diplomatic premises. We are bound also to be pressed on the legality of previous Security Service operations, the definition of subversion, the references to vetting and to safeguarding economic well-being, the width of the warrant, the narrowness of the Tribunal's remit, the inability of the Tribunal or Commissioner to investigate old allegations, and the lack of Parliamentary oversight. Each of these presents difficulties which will need careful handling, but at least we should be arguing from strength, having staked out carefully our position.

13. I have considered whether the idea of publishing a revised Directive on the lines of the attached draft is likely to be of any help. I do not think so. Legislation would completely replace the Directive, so there is no point in trying to introduce it in advance of a Bill and doubling our Parliamentary difficulties. If we introduced it instead of legislation, it would fall between too many stools. It would fail to meet the Security Service's needs; it would suggest the Government recognised the public criticism while palpably failing to meet the concerns; it would risk the Government having to answer awkward questions about the existence of unpublished Directives to which Ministers have not previously referred; and all to no avail as it would soon be knocked down by Strasbourg. The Director-General has confirmed that he does not see a revised Directive as helpful for the Service at this time.



14. If we accept the case for legislation, there are important and difficult questions which we should need to address about its timing. The relevant factors include next session's Official Secrets Bill and the Wright cases.

15. At this stage I would simply add that if we decide to legislate I am sure we should make this known before we begin to argue for the "special offence" proposal in the Official Secrets Bill.

16. I am copying this minute to the Foreign Secretary, the Defence Secretary and to Sir Robin Butler.

*Dy' - Hms -*

30 March 1988



TOP SECRET

## Security Service Bill

---

---

### ARRANGEMENT OF CLAUSES

Clause

1. The Security Service.
2. The Director-General.
3. Warrants.
4. The Security Service Commissioner.
5. The Security Service Tribunal.
6. Expenses.
7. Short title, commencement and extent.

#### SCHEDULES:

- Schedule 1 — Investigation of Complaints.  
Schedule 2 — The Tribunal.

p280388

TOP SECRET



DRAFT

OF A

B I L L

TO

NB: Wide long title

Make statutory provision in respect of the Security Service.

A.D. 1988.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5 1.—(1) There shall continue to be a Security Service (in this Act referred to as "the Service") under the authority of the Secretary of State.

The Security Service. [j001]

10 (2) The function of the Service shall be the protection of national security and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.

Does this cover anti drugs work? curri?

15 (3) It shall also be the function of the Service to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions of persons outside the United Kingdom.

2.—(1) The operations of the Service shall continue to be under the control of a Director-General appointed by the Secretary of State.

The Director-General. [j002]

(2) The Director-General shall be responsible for the efficiency of the Service and it shall be his duty to ensure—

20 (a) that there are arrangements for securing that no information is obtained or disclosed by the Service except so far as necessary for the proper discharge of its functions; and

(b) that the Service does not take any action to further the interests of any political party.

25 (3) The arrangements mentioned in subsection (2)(a) above shall be such as to ensure that information in the possession of the Service as to the suitability of any person for employment, or for employment in any particular capacity, is not disclosed except where that person's employment or proposed employment is by the Crown, by a person 30 with whom the Crown has made or proposes to make a contract or by

← Personally we cannot insert "... or to damage..." because this is precisely what the Service does in respect of subversive parties



a person designated for the purposes of this subsection by the Secretary of State.

(4) The Director-General shall make an annual report to the Secretary of State on the work of the Service and may at any time report to him or to the Prime Minister on any matter relating to its work. 5

Warrants. [J003]

*This is the key clause  
NB: a fairly  
restrictive list.*

3.—(1) Nothing done for the purpose of obtaining information shall be unlawful by reason of any trespass to, or other interference with, property if it is authorised by a warrant issued by the Secretary of State under this section. 10

(2) The Secretary of State may issue a warrant under this section authorising the Service to take such action as is specified in the warrant in respect of any property so specified if the Secretary of State—

(a) thinks it necessary for the action to be taken in order to obtain 15 information which—

(i) is likely to be of substantial value in assisting the Service to discharge any of its functions; and

(ii) cannot reasonably be obtained by other means; and

(b) is satisfied that any information obtained will be subject to the 20 arrangements made as required by section 2(2)(a) above.

(3) A warrant shall not be issued under this section except—

(a) under the hand of the Secretary of State; or

(b) in an urgent case where the Secretary of State has expressly authorised its issue and a statement of that fact is endorsed 25 on it, under the hand of an official of his department of or above Grade 3.

(4) A warrant shall, unless renewed under subsection (5) below, cease to have effect at the end of the relevant period, that is to say—

(a) if the warrant was under the hand of the Secretary of State, 30 the period of six months beginning with the day on which it was issued;

(b) in any other case, the period ending with the second working day following that day.

(5) The Secretary of State may, at any time before the end of the 35 relevant period, by an instrument under his hand renew a warrant if he considers that it continues to be necessary for the purpose for which it was issued.

(6) The Secretary of State shall cancel a warrant if he is satisfied that the action authorised by it is no longer necessary. 40

(7) In this section "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

1971 c. 80



4.—(1) The Prime Minister shall appoint as a Commissioner for the purposes of this Act a person who holds or has held high judicial office within the meaning of the Appellate Jurisdiction Act 1876.

The Security Service Commissioner. [j004]

(2) The Commissioner shall hold office in accordance with the terms of his appointment and there shall be paid to him by the Secretary of State such allowances as the Treasury may determine.

1876 c.59.

(3) In addition to his functions under the subsequent provisions of this Act, the Commissioner shall—

10 (a) keep under review the discharge by the Service of its functions and report to the Secretary of State, either at his request or otherwise, on any matter relating to the discharge by Service of those functions; and

This gives him an oversight responsibility over all the Service's work. His functions could be combined to b.

(b) keep under review the exercise by the Secretary of State of his powers under section 3 above.

15 (4) For the purpose of enabling the Commissioner to discharge his functions under subsection (3) above the Secretary of State shall furnish him with a copy of each annual report made to him under section 2(4) above; and it shall be the duty of every person holding office under the Crown to disclose or give to the Commissioner such documents or information as he may require for the purpose of enabling him to discharge his functions.

He simply couldn't do it

(5) The Commissioner shall not less than once in every year make a report on the discharge of his functions to the Prime Minister.

25 (6) The Prime Minister shall lay before each House of Parliament a copy of each report made by the Commissioner under subsection (5) above together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7) below.

30 (7) If it appears to the Prime Minister, after consultation with the Commissioner, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of the Service, the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.

35 (8) The Secretary of State may, after consultation with the Commissioner and with the approval of the Treasury as to numbers, provide the Commissioner with such staff as the Secretary of State thinks necessary for the discharge of his functions.

5.—(1) There shall be a Tribunal for the purpose of investigating complaints about the Service in the manner specified in Schedule 1 to this Act.

The Security Service Tribunal. [j005]

40 (2) Schedule 2 to this Act shall have effect with respect to the constitution, procedure and other matters relating to the Tribunal.

(3) The Commissioner shall give the Tribunal all such assistance as they may require for enabling them to discharge their functions.

45 (4) The decisions of the Tribunal (including any decisions as to their jurisdiction) shall not be subject to appeal or liable to be questioned in any court.

M



Expenses. [j006]

6. Any expenses incurred by the Secretary of State under this Act shall be defrayed out of money provided by Parliament.

Short title,  
commencement  
and extent. [j007]

7.—(1) This Act may be cited as the Security Service Act 1988.

(2) This Act shall come into force on such a day as the Secretary of State may by an order made by statutory instrument appoint, and different days may be appointed for different provisions or different purposes. 5

(3) This Act extends to Northern Ireland.

(4) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order shall extend to the Isle of Man or any of the Channel Islands with such exceptions, adaptations and modifications as may be so specified. 10



SCHEDULES

SCHEDULE 1

INVESTIGATION OF COMPLAINTS [J101]

Preliminary

The Tribunal could be confined simply to complaints regarding

Section 5(1)

The proper exercise of warrants issued under clause 3.

5 1. Any person may complain to the Tribunal if he is aggrieved by anything which he believes the Service has done in relation to him or to any property of his; and, unless the Tribunal consider that the complaint is frivolous or vexatious, they shall investigate it in accordance with this Schedule.

10 Investigations and determinations

2.—(1) The Tribunal shall investigate whether the complainant has been the subject of inquiries by the Service.

15 (2) If the Tribunal find that the Service has made inquiries about the complainant but that those inquiries had ceased at the time when the complaint was made, they shall determine whether, at the time when the inquiries were instituted, the Service had reasonable grounds for deciding to institute them in the discharge of its functions.

20 (3) If the Tribunal find that inquiries by the Service about the complainant were continuing at the time when the complaint was made, they shall determine whether, at that time, the Service had reasonable grounds for deciding to continue the inquiries in the discharge of its functions.

25 (4) Where it appears to the Tribunal that the inquiries had been or were being made about the complainant on the ground of his membership of a class of persons regarded by the Service as meriting investigation in the discharge of its functions, the Tribunal shall regard the Service as having reasonable grounds for deciding to institute or continue the inquiries if the Tribunal consider that the Service had reasonable grounds for believing the complainant to be a member of that class.

35 3. If and so far as the complainant alleges that a specified person has refused to employ or continue to employ him, or that he has been prejudiced in his employment by a specified person, as a result of the disclosure by the Service of information as to his suitability for employment by that person, or for his employment by that person in any particular capacity, the Tribunal shall investigate whether the Service has disclosed such information and, if the Tribunal find that it has done so, they shall determine—

- 40 (a) whether the disclosure complied with the arrangements required to be made under section 2(3) of this Act; and (b) whether the Service had reasonable grounds for believing the information to be true.

4.—(1) If and so far as the complainant alleges that anything has been done by the Service in relation to any property of his, the



SCH. 1

Tribunal shall refer the complaint to the Commissioner who shall investigate whether a warrant has been issued under section 3 of this Act in respect of that property and if he finds that such a warrant has been issued he shall, applying the principles applied by a court on an application for judicial review, determine whether the Secretary of State was acting properly in issuing or renewing the warrant. 5

(2) The Commissioner shall inform the Tribunal of his conclusion on any complaint so far as referred to him under this paragraph.

*Report of conclusions*

5.—(1) Where the Tribunal determine under paragraph 2 or 3 above that the Service did not have reasonable grounds for the decision or belief in question or under paragraph 3 above that the disclosure did not comply with the arrangements there mentioned, they shall— 10

(a) give notice to the complainant that they have made a determination in his favour under that paragraph; and 15

(b) make a report of their findings to the Secretary of State and to the Commissioner.

(2) The Tribunal shall also give notice to the complainant of any determination in his favour by the Commissioner under paragraph 4 above. 20

(3) Where in the case of any complaint no such determination as is mentioned in sub-paragraph (1) or (2) above is made by the Tribunal or the Commissioner the Tribunal shall give notice to the complainant that no determination in his favour has been made on his complaint.

*Remedies* 25

6. Where the Tribunal give a complainant notice of any such determination as is mentioned in paragraph 5(1) or (2) above the Tribunal may do one or more of the following—

(a) order any inquiries about the complainant which the Tribunal have found to be improper to be ended and any records relating to those inquiries to be destroyed; 30

(b) quash any warrant in respect of any property of the complainant which the Commissioner has found to have been improperly issued or renewed and which he considers should be quashed; 35

(c) direct the Secretary of State to pay to the complainant such sum by way of compensation as may be specified by the Tribunal.

*References to the Commissioner*

7.—(1) The Tribunal may refer to the Commissioner any matter arising out of a complaint made to the Tribunal. 40

(2) If in a case investigated by the Tribunal under paragraph 2 above they consider that the Service is not justified in regarding all members of a particular class as meriting investigation they shall refer that matter to the Commissioner. 45



(3) The Commissioner may report any matter referred to him under this paragraph to the Secretary of State who may take such action in the light of the report as he thinks fit, including any action which the Tribunal have power to take or direct under paragraph 6 above.

SCH. 1

5

*Supplementary*

8.—(1) The persons who may complain to the Tribunal under this Schedule include any organisation and any association or combination of persons.

(2) References in this Schedule to a complainant's property include references to any place where the complainant resides or works.

9.—(1) No complaint shall be entertained under this Schedule if and so far as it relates to anything done before the date on which this Schedule comes into force.

(2) Where any inquiries about a person were instituted before that date and no decision had been taken before that date to discontinue them, paragraph 2 above shall have effect as if they had been instituted on that date.

## SCHEDULE 2

Section 5(2)

## THE TRIBUNAL [J102]

20

*Constitution of the Tribunal*

1.—(1) The Tribunal shall consist of five members each of whom shall be a barrister, advocate or solicitor of not less than ten years standing.

(2) The members of the Tribunal shall be appointed by Her Majesty by Royal Warrant.

(3) A member of the Tribunal shall vacate office at the end of the period of five years beginning with the day of his appointment but shall be eligible for re-appointment.

(4) A member of the Tribunal may be relieved of office by her Majesty at his own request.

(5) A member of the Tribunal may be removed from office by Her Majesty on an Address presented to Her by both Houses of Parliament.

*President and Vice-President*

2.—(1) Her Majesty may by Royal Warrant appoint as President or Vice-President of the Tribunal a person who is, or by virtue of that Warrant will be, a member of the Tribunal.

(2) If at any time the President of the Tribunal is temporarily unable to carry out the functions of the President under this Schedule, the Vice-President shall carry out those functions.

(3) A person shall cease to be President or Vice-President of the Tribunal if he ceases to be a member of the Tribunal.



SCH. 2

*Procedure*

3. The functions of the Tribunal in relation to any complaint shall be capable of being carried out, in any place in the United Kingdom, by any two or more members of the Tribunal designated for the purpose by their President; and different members of the Tribunal may carry out functions in relation to different complaints at the same time. 5

4.—(1) It shall be the duty of every person holding office under the Crown to disclose or give to the Tribunal such documents or information as they may require for the purpose of enabling them to carry out their functions under this Act. 10

(2) Subject to paragraph 6(2) below, the Tribunal shall carry out their functions under this Act in such a way as to secure that no document or information which is disclosed or given to the Tribunal is disclosed or given to any person (including a complainant or a person holding office under the Crown) without the consent of the person who disclosed or gave it to the Tribunal; and accordingly the Tribunal shall not except in reports under paragraph 5(1)(b) of Schedule 1 to this Act, give any reasons for a determination notified by them to a complainant. 20

(3) Subject to sub-paragraph (2) above, the Tribunal may determine their own procedure.

*Salaries and expenses*

5.—(1) The Secretary of State shall pay to the members of the Tribunal such remuneration and allowances as he may with the approval of the Treasury determine. 25

(2) The Secretary of State shall defray such expenses of the Tribunal as he may with the approval of the Treasury determine.

*Officers*

6.—(1) The Secretary of State may, after consultation with the Tribunal and with the approval of the Treasury as to numbers, provide the Tribunal with such officers as he thinks necessary for the proper discharge of their functions. 30

(2) The Tribunal may authorise any officer provided under this paragraph to obtain any documents or information on the Tribunal's behalf. 35

*Parliamentary disqualification*

1975 c. 24

7.—(1) In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies whose members are disqualified) there shall be inserted at the appropriate place— 40

“The Tribunal established under the Security Service Act 1988”.

1975 c. 25

(2) The same amendment shall be made in Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.



SECURITY SERVICE BILL : EXPLANATORY NOTE

Introduction

The Bill provides for the continuation of the Security Service under Ministerial authority. It establishes the functions of the Service, and provides for the appointment of the Director-General, for warrants to be issued by the Secretary of State to make lawful the obtaining of information from property, the appointment of a Commissioner to review the work of the Service and of a Tribunal to consider complaints.

2. The Bill would apply only to the Security Service and not to other security and intelligence agencies of the country. It would create no new offences. It would stand alongside the arrangements in the Interception of Communications Act 1985 and, for the Security Service alone, would complement those arrangements.

3. The Bill would follow legislation which has already been introduced for analogous civilian Security Services in other countries including Australia, New Zealand, Canada, Holland and West Germany, but would take account of the different circumstances in the United Kingdom and the lessons learned in other countries. It would have no EC implications.

4. The costs of a Commissioner and of a Tribunal, and of the necessary small staff, would be met from the Home Office Vote and might be in the region of £140K each year. There would be extra costs for the Security Service and the Home Office in the administration of property warrants and some extra administrative costs for the Service in dealing with inquiries from the Commissioner and the Tribunal which might be in the region of £80K a year for the Security Service and £40K for the Home Office. The Security Service would also incur some additional expense in revising internal procedures in the light of the Bill's requirements.

5. The Bill would not affect the financing of the Security Service through the present open and secret funds structure administered by the Committee of Permanent Secretaries on Intelligence Services (PSIS) and chaired by the Cabinet Secretary.



6. As a result of the provisions in clause 1 (and clause 2) the Bill would be seen to replace the published 1952 Directive from the Home Secretary to the Director-General of the Security Service and to make any such Directive obsolete. A revised Directive has been prepared however, as an alternative to legislation and as a possible replacement to the published and other unpublished Directives.

Clause 1 - The Security Service

7. Clause 1 provides for the continuation of the Security Service and establishes its functions.

8. The clause establishes that the Security Service shall continue under the authority of the Secretary of State, thus giving statutory authority to the arrangements established by the 1952 Directive.

9. The functions of the Security Service are to protect national security, in particular against threats from espionage, terrorism, sabotage, subversion and the agents of foreign powers. Subversion is described by reference to terms used by successive Governments since 1975.

10. The clause provides that a function of the Service is also to safeguard the economic well-being of the United Kingdom but only against the acts or intentions of persons outside the United Kingdom. The requirement is essential to support the Government's foreign policy interests which cannot be covered solely by the national security justification. The form follows closely that used and accepted by Parliament in the Interception of Communications Act 1985.

11. The description of functions is intended to include all the activities of the Security Service and to allow it to continue to work with others in the United Kingdom as well as foreign agencies. The functions are not presented as exclusive to the Security Service and the respective roles and interests of the police, army and other security and intelligence agencies need not therefore be identified. Nor is it desirable or necessary to identify the methods by which the Security Service discharge their functions.



12. The clause does not make specific statutory provision for the appointment, pay, conditions and pensions of Security Service staff, or for the Security Service to enter into contracts with others. The current view is that these are not necessary since the Bill makes clear that the Security Service will continue as a part of the Crown Service and is not to be reconstituted as a separate Commission or corporation. This makes for brevity and avoids awkward Parliamentary explanation of the Service's organisation and management.

#### Clause 2 - The Director-General

13. Clause 2 provides for the appointment and establishes the responsibilities of the Director-General.

14. The Director-General would continue to be appointed by the Secretary of State. The clause establishes his operational responsibility for the Service and in particular for ensuring that no information is obtained or divulged by the Security Service unless necessary for its functions and that its political neutrality is preserved. This latter provision gives statutory effect to a similar injunction in the 1952 Directive.

15. The clause imposes an obligation upon the Director-General to ensure that information for vetting is not disclosed except where the person is employed or to be employed by the Crown or by someone under contract to the Crown (eg. a defence contractor) or by someone designated by the Secretary of State. The designation provision would replace the present secret Directive to the Security Service listing non-governmental public authorities. The designated organisations are not named in the legislation, but it is proposed that the list should be published.

*NB: See list attached to draft directive at end. It is better if we can avoid publishing.*

16. The Director General would be entitled to report direct to the Prime Minister as well as to the Secretary of State on any matter relating to the work of the Service. This would provide statutory authority for the analogous reference in the 1952 Directive. He would also be required to make an annual report to the Secretary of State on the work of the Service.

#### Clause 3 - Warrants

17. Clause 3 provides for the Secretary of State to issue warrants authorising the Security Service to obtain information from property.



18. Under the clause, the Security Service would be able - and in practice would be expected - to seek a warrant when they planned an operation to obtain information from property through such actions as, for example, the placing of eavesdropping devices in premises or tracking devices on vehicles or personal property or the copying of documents. Such operations could, as now, be undertaken on behalf of others, including the other security and intelligence agencies of the country or the security forces in Northern Ireland.

19. Trespass and other interference with property under the authority of the warrant would not be unlawful. The indemnity would cover all those acting under the authority of the warrant.

20. The clause provides that before issuing the warrant the Secretary of State should satisfy himself as to the value of information to be obtained and that it cannot be obtained by other means. He must also satisfy himself that proper arrangements exist to ensure that the information will not be divulged except in pursuit of the Service's functions.

21. The clause provides for the warrant to be issued personally by the Secretary of State or in urgent cases by a senior official on the Secretary of State's personal authority. Apart from urgent warrants signed by officials, which would last two working days after issue, the warrant would last six months and could be renewed. The Secretary of State would cancel any warrants which he was satisfied were no longer needed. The provisions are based on those of the interception warrants in the Interception of Communications Act 1985.

22. The Bill would not specify which Secretary of State would sign warrants, but this would need to be made clear in presenting the measure. The present proposal is that the Home Secretary should sign all warrants in Great Britain, with the prior approval of the Foreign Secretary or the Scottish Secretary for matters affecting their responsibilities, and that the Northern Ireland Secretary should sign all Northern Ireland warrants.

23. The clause would provide a formal statutory procedure to ensure that the Secretary of State gave his personal authorisation for some of the Security Service's most sensitive operations. Such operations require a careful balance to be made between respect for people's privacy and the requirements of national security and it is right that the Secretary of State should be responsible for striking that balance. But the provision also offers the



Security Service and those acting on its behalf the assurance that the necessary interference with a person's property does not put them in peril of the civil or criminal law.

Clause 4 - The Security Service Commissioner

24. Clause 4 would provide for a Commissioner to keep under review the work of the Security Service.

25. The Commissioner would be appointed by the Prime Minister and would be, or have been, a senior judge. He would have the general function of keeping under review the discharge by the Security Service of its statutory functions and the exercise by the Secretary of State of his warrant powers. He would also (under Schedule 1) consider complaints from individuals that their property had been interfered with (by establishing whether a warrant existed and, if so, by reviewing the Secretary of State's decision to authorise it). He would (also under Schedule 1) receive reports from the Tribunal of substantiated complaints, and a copy of the Director-General's annual report to the Secretary of State. Neither the Commissioner (nor the Tribunal) would be empowered to investigate complaints or allegations about the activities of the Security Service prior to the Bill's enactment.

26. The Commissioner would be able to submit ad hoc reports to the Secretary of State on matters relating to the discharge of the Security Service's functions and would make an annual report to the Prime Minister. The annual report would be laid before Parliament, subject to security excisions.

27. The Commissioner would be able to call for any papers and information required for the discharge of his functions from any Crown Servant and would be able to be provided with a small staff.

28. The Commissioner is modelled closely on the provisions for the Interception Commissioner under the Interception of Communications Act 1985. He would need to be as carefully chosen. He would be clearly within the fence of confidentiality and would report only to the Secretary of State and the Prime Minister. He would have no executive powers or public or Parliamentary functions. He would be seen, however, as a means of providing an assurance that the Security Service were reasonably interpreting their statutory



functions and were meeting the statutory safeguards. His annual report as published would not reveal secrets but would provide a means of giving public expression to that assurance.

Clause 5 and Schedules 1 and 2 - The Security Service Tribunal

29. Clause 5 provides for a Tribunal to consider complaints against the Security Service. Schedule 1 sets out the extent of the Tribunal's powers and Schedule 2 the constitution and procedure of the Tribunal.

30. Clause 5 paves the way for the Schedule. It also provides explicitly that the Tribunal's decisions may not be subject to appeal or to be questioned by a court. This follows the Interception Act precedent and is intended to avoid a challenge to the Tribunal's decisions providing an avenue for disclosure to the court and to the complainant of evidence about the Security Service's operations.

31. Schedule 1 requires the Tribunal to investigate complaints:

- (i) which allege that the complainant is the subject of Security Service inquiries;
- (ii) which allege that the Security Service has given vetting-type information to a specified employer;

and to pass on to the Commissioner complaints:

- (iii) which allege that the Security Service has tampered with the complainant's property.

32. For complaints about inquiries, the Tribunal would find out whether inquiries had been made and, if so, whether the Security Service had reasonable grounds for their inquiries at the time of the complaint or, if the inquiries had been closed, at the time they were instituted. For inquiries started before commencement of the Act and subsequently closed, the relevant time would be commencement. The provision is necessary to provide a fixed date for justifying the Security Service's decisions and to avoid the Tribunal assessing the conduct of the investigation or its justification throughout the whole period.



33. The schedule provides that the Tribunal should not consider the way investigations are carried out (any such cases would be a matter for the Commissioner) and where the Security Service had established a class of persons who should be subject to investigation (eg. because of their membership of a particular organisation) the Tribunal would consider only whether the Security Service were reasonable in believing that the complainant fitted the description. This would prevent the Tribunal establishing its own policy on the interpretation of what represents a threat to national security. If however, the Tribunal were concerned about the Security Service's judgement in establishing a particular class of people for investigation; they would be empowered to put that concern to the Commissioner after the resolution of the complaint, who would make any recommendations to the Secretary of State.

34. For vetting complaints, the Tribunal would investigate whether the Security Service had disclosed information about the complainant's suitability for employment and, if so, whether that employment was employment by the Crown, a Government contractor or by an organisation designated by the Secretary of State; and whether the Security Service had reasonable grounds for believing that the information they disclosed was true.

35. For warrant complaints, the Commissioner would judicially review, following the precedent of the Interception of Communications Act 1985, only whether the Secretary of State had acted properly in issuing or renewing a warrant. He would not therefore be able to consider as part of the complaint operational questions about the work of the Service, including allegations about the way a warrant had been implemented.

36. The Schedule provides that the Tribunal should inform the complainant of the outcome of their investigations. If the complaint is not substantiated, the complainant must be told that no determination has been made in respect of his complaint. If it is substantiated, the complainant must be told that the Tribunal have determined in his favour in a matter relating to Security Service inquiries, vetting information or a warrant, but (by virtue of Schedule 2, paragraph 4(2)) no further reason or explanation could be given. The Tribunal could however order redress in the form of ending inquiries and destroying records relating to those inquiries, quashing warrants and ordering compensation. Schedule 1 provides also that the Secretary of State may separately order redress if he thinks fit in the light of a report from the Commissioner arising from a reference by the Tribunal.



37. Schedule 2 provides that the Tribunal should comprise persons of at least ten years legal standing, appointed by Royal Warrant for periods of five years. There would be a provision for staff and Crown Servants would be under a duty to give the Tribunal such documents and information as was relevant to the Tribunal's functions. The Schedule follows closely the analogous Schedule in the Interception of Communications Act 1985.

38. The effect of the provision is to provide a means by which complaints would be considered by a quasi-judicial body within clearly set and narrowly defined terms which did not conflict with the responsibility of the Service under the Secretary of State to interpret its functions and to establish its operational policy in the light of that interpretation. Complainants would however have the assurance of an independent review and redress in areas which could particularly affect a person's privacy and prospects; that other matters could be referred to the Commissioner, and that such other matters could lead to the Secretary of State taking action including himself ordering redress.

Clause 6 - Expenses

39. Clause 6 provides for any expenses incurred by the Secretary of State to be met from money provided by Parliament. This is a formal provision. Since the Security Service is to continue under the Crown no separate statutory provision is required for its financing.

Clause 7 - Short title, Commencement and Extent

40. Clause 7 provides for different parts of the Bill to come into force at different times by an appointed day order: for its extension to Northern Ireland; and provides also for it to be extended by Order in Council to the Isle of Man and the Channel Islands.

F4/A Division  
28 March 1988



DRAFT DIRECTIVE TO THE DIRECTOR-GENERAL OF THE SECURITY SERVICE

This is to direct you as Director-General of the Security Service about the responsibilities of the Security Service and about the way in which you and your staff should exercise those responsibilities.

2. As Director-General, you are responsible to the Home Secretary personally: the Security Service is not a part of the Home Office. On appropriate occasions you will have the right of direct access to the Prime Minister.

3. The Security Service is part of the Defence Forces of the country. Its tasks are:

- (i) to contribute to the protection of the national security of the United Kingdom, in particular against:
  - (a) threats from espionage, terrorism and sabotage;
  - (b) actions which threaten the safety and well-being of the State and which are intended to undermine or overthrow Parliamentary democracy by political, industrial or violent means;
  - (c) actions of the servants or agents of any country or territory outside the United Kingdom which threaten national security;
- (ii) to assist any person holding office under the Crown where this is in the interests of protecting the national security of the United Kingdom or of safeguarding its economic well-being, but only in so far as all assistance to safeguard the economic well-being of the United Kingdom relates only to the acts or intentions of persons outside the British Islands;
- (iii) to assist any person in the service of any country or territory outside the United Kingdom and any person in service under any international organisation where this is in the interests of protecting the national security of the United Kingdom;



- (iv) to provide information and advice about an individual's suitability for employment, to any person holding office under the Crown or to any other person authorised by the Home Secretary where such information and advice is in the interests of protecting the national security of the United Kingdom.

... 4. I attach to this Directive and as a constituent part of it the names of those non-governmental organisations to which the Security Service is authorised by me to provide information and advice under the terms of the task at paragraph 3(iv) above.

5. As Director-General you will ensure that your staff know and understand what the tasks of the Security Service are; and that the work of the Service is restricted to what is necessary for the purpose of fulfilling them. It is essential that the Security Service should be kept absolutely free from any political bias or influence. You will therefore ensure that the Service does not take any action to further the interests of any political party or any particular section of the community, or any action that could be so misconstrued.

6. The well-established convention will be maintained whereby Ministers do not concern themselves with detailed information which may be obtained by the Security Service in particular cases. You will therefore ensure that Ministers are provided only with such information relating to your tasks as may be necessary for the determination of any issue.

7. You and your successors as Director-General will continue to act under the terms of this Directive until such time as the Home Secretary directs otherwise.

FEBRUARY 1988

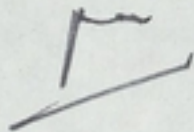




DEPARTMENT/SERIES PREM 19 ..... PIECE/ITEM ..... 2509 (one piece/item number)	Date and sign
Extract details: Minute dated 30th March 1988	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	 22/03/23
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



**CONFIDENTIAL**



HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

25 March 1988

*Dear Michael,*

**PETER WRIGHT CASE: NEW ZEALAND**

*Heq*  
The Attorney General copied to the Home Secretary his minute of 23 March to the Prime Minister about the question whether we should appeal to the Privy Council against the judgment of the New Zealand Court of Appeal in our case against the Dominion newspaper. The Home Secretary agrees with the Attorney General's recommendation that we should seek leave to appeal.

Copies of this letter go to Nigel Wicks (No 10), the Private Secretaries to the other members of OD(DIS), Alan Maxwell (Lord Advocate's Department), and Trevor Woolley (Cabinet Office).

*Yours sincerely,*

P J C MAWER

Michael Saunders, Esq

**CONFIDENTIAL**



SECURITY: P Wiggles pt 10







CONFIDENTIAL

PRIME MINISTER

INSIDE INTELLIGENCE

The hearing of the appeal in this case has now been completed, and judgments are expected on about 7 April.

In the event of the Government losing, I will report further to colleagues with advice on the prospects of appealing to the House of Lords.

I am copying this minute to the other members of OD(DIS) and to Sir Robin Butler.

*Ale Maxwell (Private Secretary)*

CAMERON OF LOCHBROOM

(approved by the Lord Advocate and signed in his absence)

25 MARCH 1988





*me SUHATV*

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Principal Private Secretary*

24 March 1988

*Dear Michael,*

**PETER WRIGHT CASE: NEW ZEALAND**

The Prime Minister has seen the Attorney General's minute of 23 March in which he seeks colleagues' agreement that HMG should seek leave to appeal to the Privy Council in this case.

The Prime Minister agrees that leave to appeal should be sought.

I am copying this letter to the Private Secretaries to members of OD(DIS), Alan Maxwell (Lord Advocate's Department), and Trevor Woolley (Cabinet Office).

*Yours truly*

*Nigel Wicks*

**N. L. WICKS**

Michael Saunders, Esq.,  
Law Officers' Department

*mm*



CONFIDENTIAL

Prime Minister



Agree that we should seek leave to appeal to the Privy Council?

Yes not N.C.W. 23.3

PRIME MINISTER

PETER WRIGHT CASE : NEW ZEALAND

We have now received advice from our New Zealand lawyers on the question whether we should appeal to the Privy Council against the judgment of the New Zealand Court of Appeal in our case against The Dominion newspaper. The advice is that it is sensible for us to seek leave to appeal.

2. We gained substantial ground before the New Zealand Court of Appeal. In particular, the Court reversed the Chief Justice sitting at first instance by holding that it should exercise its jurisdiction to entertain our claim. I trust that this aspect of the judgment will be carefully studied by the High Court of Australia. The Court also confirmed the existence of a lifelong duty of confidence and said that Wright was prima facie in breach when he published Spycatcher. We lost, however, because The Dominion had established two defences, each in itself a complete defence: first, that prior publication - largely in other countries - had destroyed confidentiality; second, that in any event the New Zealand public interest justified the publication in The Dominion.

3. Our New Zealand lawyers have identified a number of points which might profitably be taken on any appeal, the most significant of which in my opinion is that the Court failed to regard The Dominion - which had purchased serialisation rights to Spycatcher from Wright's publisher, Heinemann of Australia - as the licensee or agent of Wright or Heinemanns. Had the newspaper been treated as a licensee or agent,

CONFIDENTIAL



CONFIDENTIAL



the two defences of prior publication and public interest ought to have been viewed in a different light. It is this very point - the position of a newspaper which has purchased serialisation rights - which is in issue in our appeal against The Sunday Times, to be heard with our appeal against The Guardian and The Observer by the House of Lords in June.

4. I consider that we should seek leave to appeal to the Privy Council against The Dominion, In view of the identity of issues with The Sunday Times case it would look curious if we did not. If colleagues agree, this would involve an application to the New Zealand Court of Appeal for leave to appeal (with a possible application to the Privy Council if leave was refused). If leave was granted, an appeal would be lodged, but it could be expected to come on some time after our appeal to the House of Lords. We would therefore have the opportunity of considering whether we needed to press ahead with the appeal in the New Zealand case in the light of the judgments of the Lords on the position of the Sunday Times.

5. I would be grateful to know whether you and colleagues agree that we should seek leave to appeal in this case. In view of the need to instruct our New Zealand lawyers it would be helpful to have comments by close of play on Friday, 25 March.

6. I am copying this to the other members of OD(DIS), to the Lord Privy Seal and Lord Advocate and to Sir Robin Butler.

AM

23 March 1988

CONFIDENTIAL



CONFIDENTIAL



*file* (47)  
*WTS*

10 DOWNING STREET

*From the Principal Private Secretary*

2 March 1988

PETER WRIGHT CASE: THE CO-AUTHOR  
PAUL GREENGRASS - OD(DIS)(88)21

The Prime Minister has seen this OD(DIS) paper and agrees with the recommendation of officials that the letter annexed to the paper should be sent to Greengrass' solicitors.

I am sending a copy of this minute to the Private Secretaries to members of OD(DIS), the Lord Advocate and to Sir Robin Butler.

*N.C.U.*

N L WICKS

B. H. Dinwiddy, Esq.  
Cabinet Office

CONFIDENTIAL

*WTS*



Seen by MEA

MANAGEMENT  CONFIDENCE  
**CABINET OFFICE**  
**OFFICE of the MINISTER**  
**for the CIVIL SERVICE**

ME,   
An interesting article  
from which I learned a  
lot. N. C. U  
2-3.

M Addison Esq  
No. 10 Downing Street  
London SW1

Horse Guards Road  
London SW1P 3AL  
Telephone: 01-270  
1 March 1988

See Mark

**SECURITY SERVICES: CIVIL SERVICE STATUS**

Following the PQ from Mr Dale Campbell-Savours answered on 22 January, I promised background briefing on whether members of the security services are to be regarded as civil servants. I apologise for the delay in replying. I have discussed the following with the Treasury Solicitor's Office and with the legal advisers to the security services.

2. There is no all-embracing definition of the term "civil service". Although the term is used in various statutes, it is either not defined, or is defined by reference to specific civil services. In the absence of a general definition, a number of factors have been used to determine its scope.

Crown servants

3. There is no doubt that those serving in ministerially headed departments, or in departments headed by a Crown servant, are Crown servants. Otherwise, in the absence of a declaratory provision in legislation establishing its status, the courts have employed a number of tests for determining whether a body has Crown status, including the extent that its functions are "governmental", whether these functions were historically part of "the Crown" as narrowly defined, and the relationship of the body with the Sovereign and Ministers.

Civil servants

4. One of the working definitions of a civil servant is a Crown servant, working in a civil capacity, who is not (i) the holder of judicial or political office; (ii) the holder of certain other offices in respect of whose tenure of office special provision has been made e.g. the Parliamentary Commissioner for Administration; or (iii) a servant of the Crown in a personal capacity, paid from the Civil List. A number of civil services have been identified including the Home Civil Service, the Diplomatic Service, the Northern Ireland Civil Service and the Overseas Civil Service, together with a number of



MANAGEMENT IN CONFIDENCE

groups such as the Forestry Commission and the Royal Hospital, Chelsea, which are regarded as separate civil services.

Crown employee

5. The question of whether civil servants have a contract of employment was considered in the "Bruce" case. The Divisional Court considered that Mr Bruce was not employed on a contract of employment although it accepted that the Crown could enter into such a relationship. The case is due to be heard by the Court of Appeal towards the summer where it will again be argued that current civil servants have contracts of employment. However for the purposes of many legislative provisions in the employment field civil servants are already treated in the same way as other employees.

Security Services

6. On the basis of these tests, members of the Security and Intelligence Services are servants of the Crown in a civil capacity although they are not members of the Home Civil Service. Staff at the Government Communications Headquarters (GCHQ) are however part of the Home Civil Service.

Conclusion

7. The terms Civil servant, Crown servant and Crown employee are often used interchangeably. Since their coverage is not necessarily identical, it may avoid confusion in future if the term "Crown servant" were used as the standard form in this context in cases of doubt.

8. I am copying to John Collins (Treasury Solicitor), to Sue Marsh (Security Services), to Jonathan Spencer and Rex Davie here, and to Walters (Home Office).

Your sincerely  
Robin MacLachlan.

R W MACLACHLAN





DEPARTMENT/SERIES ..... <i>PREM 19</i> ..... PIECE/ITEM ..... <i>2509/1</i> ..... (one piece/item number)	Date and sign
Extract details:  <i>Canberra Tel. no. 122 dated  26 February 1988</i>	
CLOSED UNDER FOI EXEMPTION ..... <i>b1</i> .....	<i>24/10/2023  Wayland</i>
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



From: The Rt. Hon. Sir Patrick Mayhew, Q.C., M.P.



HOUSE OF COMMONS  
LONDON SW1A 0AA

Duty Clerk

pl cc to B.I

*Mr. Weeks*  
*You may have seen.*  
*MGT 2/3*

*A good summary of the position showing that we have gained some useful ground in these actions.*

23 February 1988

*Dear Colleagues:*

*N.L.U.*  
*3.3*

PETER WRIGHT CASE

Following the recent decision in the Court of Appeal in the case involving the Observer, Guardian and Sunday Times newspapers the Home Secretary and I considered that you might welcome a situation report, especially since we are now approaching the last lap here and in Australia. It was always plain that we would face serious presentational difficulties. Nevertheless, we are emerging from this series of cases more strongly equipped by judicial pronouncements to defend in future the principle of the life-long duty of confidentiality owed to the Crown by present and former members of the security and intelligence services.

England and Wales

At the recent Court of Appeal hearing we failed to obtain permanent injunctions against the Observer and Guardian to prevent their publishing material attributed to Wright (we are not of course seeking to restrain the publication of material which has already come out in open court). We also failed, by a majority, the Master of the Rolls dissenting in our favour, to obtain an injunction to restrain the Sunday Times, who have bought from Wright's Australian publishers the serialisation rights to Spycatcher, from publishing extracts from the book.

The Court did, however, uphold by a majority, Lord Justice Bingham dissenting, Mr Justice Scott's award of an account of profits against the Sunday Times in respect of the first instalment of their intended serialisation of Spycatcher in July of last year.





We have come a long way, and by no means without advantage. All the judges who have considered this case are agreed that Peter Wright as a former member of the Security Service owes a life-long duty of confidentiality to the Crown; that in publishing Spycatcher abroad he was in flagrant breach of his duty, and that he would never be permitted to publish it here. It is now of high importance that the circumstances, if any, which may deny the Crown a remedy for the breach of that duty should be considered by the House of Lords, especially in the light of the Government's declared intention of introducing legislation next session to reform section 2 of the Official Secrets Act 1911.

Work is already in hand in preparation for the Government's appeal to the House of Lords, which is likely to be heard in May of this year.

#### Australia

As I indicated my last letter, we are approaching the hearing of our appeal to the High Court of Australia. This will begin on 8 March. There is no further appeal from that Court. We go into the appeal with reasonable prospects of success. Although we lost before the New South Wales Court of Appeal last year, the Court was divided. The Chief Justice found for us on the principle of the duty of confidentiality. He would have ordered the defendants - Wright, and Heinemann of Australia - to account to us for their profits arising from publication of the book. He considered, too, that the trial judge, Mr Justice Powell, was wrong in not ordering an injunction to restrain publication of the book.

But, as you know, the book has now been published in Australia and we face an up-hill struggle in seeking an injunction to restrain further publication there. If, however, we obtain a declaration of right on the principle of confidentiality, and an account of the profits made by Wright and Heinemann, then this would be a signal victory. It would make it clear to publishers and authors alike that profits were not to be made from breaches of confidentiality of this kind.





### New Zealand and Hong Kong

The issues raised in the proceedings in New Zealand and Hong Kong - which involve newspapers who have obtained serialisation rights to the book - are similar to those which arise here in the proceedings against the Sunday Times. In New Zealand, where our claim is for an account of profits and damages, the Court of Appeal has reserved judgment on our appeal. In Hong Kong the case remains at the interim stage and has not yet been set down for trial.

### Conclusion

The recent rash of further proposals to publish material in this category illustrates the harm that will flow if the law is finally held to be powerless in the face of the stratagem adopted by Wright. In any event, however, the Spycatcher litigation - and those recent cases involving the same principle which have called for legal action, including the Cavendish book "Inside Intelligence", and the BBC Radio 4 Series "My Country Right or Wrong" - have already confirmed on high authority the existence of the life-long duty of confidentiality owed to the Crown by present and former members of the security and intelligence services, and underlined the seriousness with which breaches of that duty are regarded. In commenting on the actions instituted by the Government the Master of the Rolls stated:

"In truth the Crown's relentless defence of its right to confidentiality has probably done more than anything else which has been done or can be done to limit the damage which has been done."

*Concursively,*

*Lawrence*

---



Classified  
Secret  
on this file



6  
aco  
AH

10 DOWNING STREET  
LONDON SW1A 2AA

THE PRIME MINISTER

19 February 1988

Dear Mr. Hattersley,

Thank you for your letter of 29 January, on behalf of the Parliamentary Committee of the Labour Party, about two paragraphs in the book 'Inside Intelligence' by Mr. Anthony Cavendish.

I do not propose to comment on the contents of Mr Cavendish's book beyond reminding you that, to the extent that the passages you quote repeat allegations made by Captain (Retd.) Holroyd and Mr. Colin Wallace about the conduct of the security forces in Northern Ireland, government spokesmen have said on several occasions that these allegations have been fully and carefully investigated since Captain Holroyd and Mr. Wallace left the Province in 1975 and no evidence has been discovered to substantiate any of their allegations.

Yours sincerely  
Margaret Thatcher

The Right Honourable Roy Hattersley, M.P.



Ref. A088/580

MR ADDISON

CR pl type

Letter to the Prime Minister from Mr Roy Hattersley MP  
Allegations by Anthony Cavendish in Respect of Northern Ireland

--- In response to your minute of 1 <sup>attached</sup> February, I attach a draft reply to a letter addressed to the Prime Minister on 29 January by Mr Roy Hattersley.

2.

--- whose allegations, over the years (together with those of ex-Captain Holroyd) have been firmly dismissed by Ministers, eg in the Attorney General's Written Answer to Mr Ken Livingstone on 8 February (Official Report Col 41, attached).

--- 3. The Home Secretary, in a letter of 25 January to Mr Tam Dalyell MP (also attached), made clear that he would not discuss the contents of Mr Cavendish's book.

4. I am sending a copy of this minute to the Private Secretaries to the Home Secretary, the Foreign and Commonwealth Secretary and the Northern Ireland Secretary.

*Timor Woolley*

T A WOOLLEY

17 February 1988

THIS IS A COPY. THE ORIGINAL IS  
 RETAINED UNDER SECTION 3 (4)  
 OF THE PUBLIC RECORDS ACT



DRAFT LETTER FROM THE PRIME MINISTER TO  
THE RT HON ROY HATTERSLEY MP

Thank you for your letter of 29 January, on behalf of the Parliamentary Committee of the Labour Party, about two paragraphs in the book 'Inside Intelligence' by Mr Anthony Cavendish.

I do not propose to comment on the contents of Mr Cavendish's book beyond reminding you that, to the extent that the passages you quote repeat allegations made by Captain (Retd.) Holroyd and Mr Colin Wallace about the conduct of the security forces in Northern Ireland, Government spokesmen have said on several occasions that these allegations have been fully and carefully investigated since Captain Holroyd and Mr Wallace left the Province in 1975 and no evidence has been discovered to substantiate any of their allegations.

B20



### London City Airport

**Mr. Tony Banks:** To ask the Secretary of State for the Home Department pursuant to the answer of 28 January, *Official Report*, column 307, why it is not possible to identify police costs associated with London City airport; and if he will make a statement.

**Mr. Douglas Hogg:** The costs of the attendance of police officers in response to particular incidents as required and in order to direct traffic in the vicinity cannot be separately identified from the costs of policing the surrounding area.

### Prevention of Terrorism

**Mr. Thorne:** To ask the Secretary of State for the Home Department whether he will seek the renewal of the Prevention of Terrorism (Temporary Provisions) Act 1984; and if he will make a statement.

**Mr. Hurd:** A draft order was laid on 25 January under section 14(10) of the Prevention of Terrorism (Temporary Provisions) Act 1984. If the draft order is approved by Parliament, the Act will continue in force for a further 12 months. I have received the report from Viscount Colville of Culross on the operation of the Act in 1987 and copies have been placed in the Library. The report is supplementary to his review of the Act as a whole, publication of which was announced to the House on 9 December at column 167.

## ATTORNEY-GENERAL

### File (Disappearance)

**Mr. Livingstone:** To ask the Attorney-General if a report was made to the Director of Public Prosecutions following the disappearance of a file belonging to Mr. Colin Wallace from the office of the hon. Member for Southend, East (Mr. Taylor) in March 1986.

**The Attorney-General:** I understand that no report has been received by the Director of Public Prosecutions relating to any such event.

### Mr. Holroyd and Mr. Wallace

**Mr. Livingstone:** To ask the Attorney-General what was the outcome of the active consideration given to certain reports that appeared about Mr. Holroyd and Mr. Wallace, referred to in the *Official Report*, 23 February 1987, column 16.

**The Attorney-General:** I refer the hon. Member to the Answer given on 3 March 1987 to my hon. Friend the Member for Southend, East (Mr. Taylor) by the Parliamentary Under-Secretary of State for the Armed Services in which he said that the various allegations made by Captain (Retd.) Holroyd and Mr. Colin Wallace over many years about the conduct of the security forces in Northern Ireland had been fully and carefully investigated since they left the Province in 1975; no evidence had been discovered as a result of these investigations to substantiate any of their allegations.

### Unification Church

**Mr. Wilshire:** To ask the Attorney-General which religious organisations were approached for assistance

when preparing the now abandoned appeal against the decision not to remove charity status from the Unification Church.

**The Attorney-General:** Such an approach was made to the Church of England. I also received representations from the following organisations:

The Churches Main Committee  
The Council of Christians and Jews  
The General Assembly of Unitarian and Free Christian Churches  
The Ayra Samaj in London  
the Ethiopian Orthodox Church

**Mr. Wilshire:** To ask the Attorney-General which of the Christian religious organisations, approached for assistance when preparing the appeal against the decision not to remove charity from the Unification Church, were prepared to state that the Unification Church was not a bona fide Christian organisation.

**The Attorney-General:** The Church of England expressed no view on whether or not the Unification Church is a bona fide Christian organisation. It did, however, declare doubts about the wisdom of attempting to prove in secular court proceedings that the Unification Church is not an organisation of Christian character. It expressed the view that the issues were very far from simple, requiring as they did the making of theological distinctions between orthodoxy, heresy and Christian deviations. Similar views have also been expressed by other Christian Churches and Church organisations.

### Herald of Free Enterprise

**Mr. Wilson:** To ask the Attorney-General if any proceedings are to be initiated against Townsend Thoreson Ltd. in respect of alleged illegal carriage of toxic chemical wastes aboard the Herald of Free Enterprise.

**The Attorney-General:** The capsizing of the Herald of Free Enterprise and matters relating to it are under investigation by the police. When that investigation is complete, the Director of Public Prosecutions will consider the question of any criminal proceedings.

### Crown Prosecution Service

**Mr. Bermingham:** To ask the Attorney-General how many persons are employed in the Crown court sections of the Crown prosecution service, area by area; and how many in each area are legally qualified as either solicitor or barrister-at-law.

**The Attorney-General:** Crown court sections within the Crown prosecution service are staffed by law clerks supported by administrative staff. The function of law clerks is to prepare papers for counsel, liaise with the police, and to represent the Crown prosecution service in court. It is not a requirement that they should hold legal qualifications. The numbers of law clerks employed in the Crown court sections are detailed on the attached schedule.

CPS Area	Numbers of Staff Employed in the Crown Court Section	
	Law Clerks	Administration Staff
Avon/Somerset	15	3
Beds/Herts	13	5





QUEEN ANNE'S GATE  
LONDON SW1H 9AT

25 January 1988

Dear Tam,

Thank you for your letter of 3 January about "Inside Intelligence".

You are aware of the action which the Government has taken in respect of this book and you will not really expect me to start discussing its contents. You will have read what Willie Whitelaw said in the House of Lords about the allegations involving Lord Glenamara on 6 May last year; and Roger Freeman dealt in the Commons on 3 March last with the allegations of Mr Wallace. I rest on these two statements.

Yours,  
Dalyell

Tam Dalyell, Esq., MP.





HOUSE OF COMMONS  
LONDON SW1A 0AA

*cc Press*

01- 219 6479  
01- 219 6378 (Constituency Calls)

16th February 1988

*John Paul Thorne*

I wrote to you on 29th January on behalf of the Parliamentary Committee of the Labour Party concerning pages 154 and 155 of Mr Arthur Cavendish's book "Inside Intelligence". I enclose a copy of that letter.

To date, despite assurances from your Private Office of a full answer, I have received no more than an acknowledgement. I really do think that 18 days is sufficient time for a reply.

In the light of this discourtesy I shall be releasing this letter to the press.

*Roy Hattersley*

ROY HATTERSLEY MP

The Prime Minister  
Rt Hon Margaret Thatcher MP  
10 Downing Street  
London  
SW1



29th January, 1988

Dear Prime Minister,

I am instructed by the Parliamentary Committee of the Labour Party to write to you concerning the book "Inside Intelligence" which Mr Arthur Cavendish wrote and, after government intervention with his publishers, published privately. I have twice, in the House of Commons, drawn the Home Secretary's attention to passages from pages 154 & 155 viz -

M15 were bitterly jealous of M16's move into Ulster, since they believed that Northern Ireland was clearly their territory as part of the United Kingdom, and information which is now emerging seems to confirm that M15 took active steps to sabotage the work of SIS.

Smear campaigns were being organised against anybody of consequence who appeared to be sympathetic to the position of the Catholic minority in Ulster or who showed that he believed in a settlement based on radical changes in the Northern-Southern Irish relationship. Among those targeted were Edward Heath, Harold Wilson, Edward Short, roughly twenty other MPs and also the first Catholic Chief Constable of the RUC (from 1973 to 1976) James Flanagan.

On neither occasion did the Home Secretary reply. The accusations which Mr Cavendish makes are so serious that the Parliamentary Committee have no doubt that an enquiry ought to be held into the matter. We would welcome your comments.



From: THE PRIVATE SECRETARY

**CONFIDENTIAL**



HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

16 February 1988

*me Minister*

*I will ask*

*that our spokesman make the point  
at x.*

*Dear Sir Christopher,*

*attached*

*N.L.U.*

*16.2*

OD(DIS)(88)17: "MY COUNTRY RIGHT OR WRONG"

The Home Secretary has seen this note by officials recommending that the Government should consent to the injunction against the BBC in respect of the first programme in this series being lifted, and should indicate to the Court that it would be willing to do the same in respect of the second and third programmes in the series once it has seen that the contents do not require restraint. The Home Secretary is content with this recommendation and with the line which it is suggested Government spokesmen should take to explain the Government's decision.

The Home Secretary notes that there will be a propaganda battle to be fought over the decision. The BBC will wish to present it as a victory and to treat the Government's action as evidence of a continuing obsession about secrecy. The Home Secretary hopes that the Government spokesmen will be able to build on the proposed line to make a robust defence of the Government faced with the refusal of the BBC to reveal what the members or former members of the Security and Intelligence Services had said when interviewed. The BBC has throughout represented that the Government is trying to see the transcript of the programme as a whole before it is broadcast - this is quite untrue, since all that we have asked for is a transcript of the contributions of the 9 interviewees.

Copies of this letter go to Nigel Wicks (No 10), the Private Secretaries to the other members of OD(DIS), the Attorney General, the Lord Advocate and Sir Robin Butler.

*Yours sincerely*

P J C MAWER

Sir Christopher Mallaby, KCMG

**CONFIDENTIAL**



*free DTJ*

MR INGHAM

OD(DIS)(88)17: "MY COUNTRY RIGHT OR WRONG"

You should see the Home Office's letter of 16 February attached advocating a robust defence of the Government's decision to consent to the lifting of the injunction against the BBC in respect of the first programme in this series.

I entirely agree with the Home Office that we need to ensure that the Government's line is put across in a strong fashion. Please could we have an urgent word on how this might be done.

N L WICKS

16 February 1988



FILE  
D



10 DOWNING STREET

*From the Principal Private Secretary*

SIR ROBIN BUTLER

**SUNDAY EXPRESS ARTICLE ABOUT LORD DIAMOND**

I have shown the Prime Minister your minute of 15 February about your call on Lord Diamond.

The Prime Minister agrees with your advice. She thinks that she should follow her usual practice of not making a statement on a matter of this nature and that the story should now be left to die.

(N.L. WICKS)

16 February 1988

CONFIDENTIAL AND PERSONAL



pa →

One Minute

Best, I am sure,

to let the matter die.

Ref. A088/548

MR WICKS

No statement  
Our usual stance

I agree

N.L.W.

Sunday Express Story About Lord Diamond

15:2

I called on Lord Diamond at his request this afternoon.

2. Lord Diamond said that he had made clear to the Sunday Express that he is not prepared to answer a single question about security matters during his period in office and proposed to hold to that line. Lord Diamond said that the photograph which appeared in yesterday's Sunday Express was an old one: it had first been shown to him nearly 25 years ago, shortly after it was taken. He knew for certain that it had not been taken by any agency of the British Government. In fact, as he told me later in our conversation, it had been taken by private investigators hired by his first wife whom he had subsequently divorced in an undefended petition.

3. Lord Diamond was not certain that the man in the photograph was himself or what was the identity of the two women. But it was possible that they were indeed two Yugoslav friends who had stayed with him and his wife with their husbands, and who had also given them hospitality in Yugoslavia.

4. Lord Diamond felt that he owed it to the Prime Minister to explain the circumstances of the photograph and that he also owed it to himself, since he had been greatly pestered by the press since the story appeared. He therefore handed me a statement which he had it in mind to issue to PA. This is --- attached. Lord Diamond made clear that he was not asking me to clear it and that, if he issued it, it would be solely on his



own authority. He was showing it to me as a matter of courtesy and to see if I thought that it would cause any difficulty for the Government.

5. I said that the statement might be even more watertight if he were to include the words "or any Government agency" at the end of the first paragraph: Lord Diamond readily agreed to do this. But I continued that I wondered whether it was right to put any fuel on the flames of this story by issuing a statement at all. The careful phrasing of the Sunday Express story - in which they referred to "a British surveillance picture" - suggested that they knew that the picture had not been taken by an official agency - Lord Diamond confirmed that in his view they knew this. I also noted that in his statement quoted in the Independent this morning Mr Merlyn Rees had indicated that there was "something funny" about this story. It seemed very likely therefore that the story would simply die and it might be better to ignore it. But if Lord Diamond found himself being intolerably harrassed, I felt sure that the Government would not want to dissuade him from issuing the statement.

6. Lord Diamond said that in these circumstances he was inclined to let the matter rest. But he would gladly issue the statement if the Prime Minister thought it useful and, if the Prime Minister wished to make a statement on the lines of the first paragraph with his authority, he was agreeable to that also. I said that I would let him know if either the Prime Minister would like him to make the statement or if she wanted to use its contents claiming his authority.

7. In view of the Prime Minister's stance on not confirming or denying security allegations, I recommend that she should not herself make a statement on Lord Diamond's authority. I suggest that the story is now left to die - I do not think that either Fleet Street or the Opposition will run with it, although I suppose that it is possible that some Labour Backbencher may



*Made*  
raise it at Prime Minister's Questions tomorrow. If the Prime Minister would like Lord Diamond to make his statement, this can easily be arranged but my preference would be to leave it in the expectation that the story will fail to run. If the pack does go after this story, they will finish up looking very silly.

--- 8. I also attach a copy of a letter from the Director of the Security Service about the Sunday Express story.

*FR.B.*

ROBIN BUTLER

15 February 1988



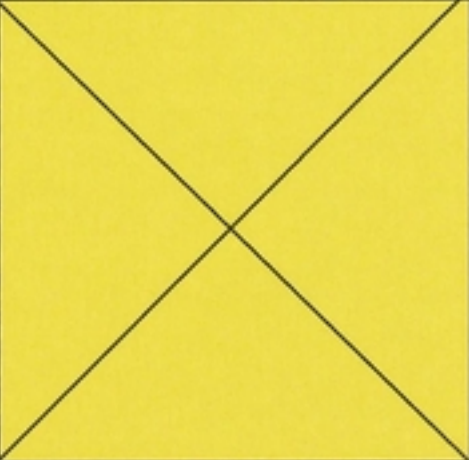
I have now seen the article, with accompanying photograph, in yesterday's Sunday Express ~~and~~ alleging that "Wilson's men were watched." I am able to say from my own knowledge that the gathering of the information for the article and the taking of the photograph had nothing whatever to do with "Britain's intelligence services" or any government agency.

Even the Sunday Express cautiously describes the photograph, which first surfaced nearly a quarter of a century ago, as no more than "a British surveillance picture", I hope they did not pay the private seller too high a price for it.

I can think of no reason why "British Intelligence Services" should think it worth while to open a file, long before anyone knew there might be a General Election, on a middle-of-the-road Labour backbench M.P. who was as likely to be engaged in exciting cloak-and-dagger activities as is the average prosaic Chartered Accountant.





DEPARTMENT/SERIES ..... <i>PREM 19</i> ..... PIECE/ITEM ..... <i>2509</i> ..... (one piece/item number)	Date and sign
Extract details: <i>minute dated 15th February 1988</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>ASYS</i> <i>23/05/23</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



From: THE PRIVATE SECRETARY



HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

11 February 1988

Dear Michael,

AG v GUARDIAN, OBSERVER AND SUNDAY TIMES

WITH NUW?

The Home Secretary has seen a copy of the Attorney General's minute to the Prime Minister about the outcome of the Court of Appeal hearing of this case. The Home Secretary agrees in principle with the Attorney's conclusion that the Government should appeal to the House of Lords.

Copies of this letter go to Nigel Wicks (No 10), the Private Secretaries of other members of OD(DIS), the Lord Privy Seal, the Lord Advocate and Sir Robin Butler.

Yours sincerely,

P J C MAWER

Michael Saunders, Esq



pe  
050  
2  
You will want to see; I have told the AG's Office -



Prime Minister  
Agree appeal to House of Lords?

PRIME MINISTER

we appeal.

D. H. G. M.

N. C. W 10.2

Yes

N. C. W

10.2

AG -v- GUARDIAN, OBSERVER AND SUNDAY TIMES

Earlier this morning the Court of Appeal delivered their judgments in our appeal in the above case.

Overall we have done no better - and no worse - before the Court of Appeal than at first instance before Mr Justice Scott. Despite the fact that we have gained no ground, the Court's judgments are in several respects helpful to us, in particular that of the senior judge, Lord Donaldson, the Master of the Rolls.

As regards material deriving from, or attributed to, Peter Wright, the Court refused to grant us permanent injunctions against the Guardian and Observer and, by a majority, Lord Donaldson dissenting, against the Sunday Times, who have the serialisation rights to Spycatcher.

The Court upheld by a majority, Lord Justice Bingham dissenting, Mr Justice Scott's award of an account of profits against the Sunday Times in respect of the first instalment of their intended serialisation of Spycatcher on 12 July 1987.

All three members of the Court considered that it would not be right to grant an injunction against the three newspapers to prevent their publishing breach of confidence material generally if obtained from present or former members of the security and intelligence services other than Peter Wright. As Lord Donaldson put it:

"The injunction would be aimed at enforcing the legal duty not to include conduct which would constitute a breach of confidentiality. So far so good. But the courts should not make orders whose scope depends upon first determining disputable issues of fact or law. A person who is the





subject of an injunction must know precisely where he stands... This is too uncertain to permit of such an injunctive order."

At the conclusion of the hearing our Counsel took the necessary steps to keep open our option of appealing to the House of Lords. Leave to appeal was granted, and we requested and obtained the continuation of the present injunctions pending appeal.

We have come a long way, and by no means without advantage. As Lord Donaldson at one point recognised:

"In truth the Crown's relentless defence of its right to confidentiality has probably done more than anything else which has been done or can be done to limit the damage which has been done."

All the judgments have acknowledged the public importance of the issues. All have emphasised that these have to be resolved by a weighing of the proper concerns of Government against the proper concerns of the press. We have already established the life-long duty of confidentiality. It is of high importance that the circumstances, if any, which may deny the Crown a remedy for the breach of that duty should be considered by the House of Lords. I am entirely confident as to the propriety of appealing: there is ample justification. I additionally believe that the need for a settlement of the law by the ultimate appellate court requires us to appeal. Bearing in mind the fierce division of opinion in the interlocutory proceedings in the House of Lords last July, there is plenty to play for.

A brief summary of the Court of Appeal's judgment will be circulated by officials later today. The judgments will have to be studied. When this has been done we will be able to see more clearly what our detailed grounds of appeal should be.

I would be grateful to know at this stage whether you and colleagues agree in principle that we should appeal to the House of Lords. There is clearly





advantage in making an early announcement. Any appeal would be likely to be heard in late May or June.

I am copying this to the other members of OD(DIS), to the Lord Privy Seal and the Lord Advocate and to Sir Robin Butler.

A.M.

10 February 1988





Lue SH

10 DOWNING STREET

From the Principal Private Secretary

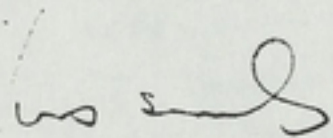
10 February 1988

Dear Anthony,

AG v GUARDIAN, OBSERVER AND SUNDAY TIMES

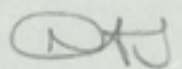
This is to confirm my telephone call with you this afternoon in which I said that the Prime Minister was firmly of the view that we should appeal to the House of Lords in this case.

I am sending a copy of this letter to the Private Secretaries to members of OD(DIS), Alan Maxwell (Lord Advocate's Department) and Trevor Woolley (Cabinet Office).

  
Nigel Wicks

N. L. WICKS

A. M. C. Inglese, Esq.,  
Law Officers' Department





Mr Wicks



REA  
K

# CABINET OFFICE

With the compliments of

C. L. G. MALLABY

70 Whitehall, London SW1A 2AS

Telephone 01 ~~233~~ 270 0360



RESTRICTED

B.045

MR INGHAM

Peter Wright Case: Judgment of the Court of Appeal

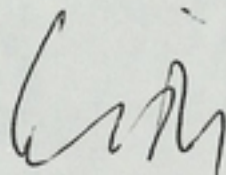
Line to take

The press will no doubt present the Court of Appeal's judgment today as a setback for the Government, on the grounds that we were not granted a permanent injunction against the Guardian or the Observer or the Sunday Times.

2. We should not, however, allow that fact to obscure the acceptance of the Appeal Court, and the High Court before it, of our central contention of Wright's duty of confidentiality.

3. The attached line to take has been agreed by Nigel Wicks, the Attorney General's office and the Treasury Solicitor's Department. The second paragraph is important: it warns editors and others not to think that they are now free to publish material from Wright. The third paragraph is the key one: it is designed to show that we are winning on the principle, even if we have not so far obtained the remedies we seek. This third paragraph could form the basis of our general public position if we appeal to the House of Lords (as is likely) but the judgment there is similar to today's. The final paragraph is designed simply to show that on one of the remedies we are seeking (though not one of the more important) the Appeal Court, like the High Court, agrees with us.

4. I am sending copies of this minute to Nigel Wicks and Trevor Woolley; to Anthony Inglese in the Law Officers' Department; to the Treasury Solicitor; and to Philip Mawer in the Home Office and Tony Galsworthy in the FCO.



C L G Mallaby

10 February 1988

BEA  
to sec.  
nw.



Draft Line to Take

Court of Appeal Judgment in the Peter Wright Case

The Government is considering whether to appeal to the House of Lords.

2. The Court of Appeal has meanwhile extended the injunctions restraining disclosure of material from Peter Wright.

3. The judgments of the three Judges in the Court of Appeal, like the High Court judgment, agree with the Government on the central principle that Peter Wright owes a lifelong duty of confidentiality to the Crown and breached it by writing "Spycatcher".

4. A majority of the Judges in the Court of Appeal found that the Government is entitled to an account of the profits made by the Sunday Times from publication of an instalment from Wright's book.



CONFIDENTIAL

ale JA



10 DOWNING STREET

*From the Principal Private Secretary*

SIR ROBIN BUTLER

"C" - THE SECRET LIFE OF SIR STEWART MENZIES"  
BY ANTHONY CAVE BROWN

I have shown the Prime Minister this paper which sets out, in paragraph 6, officials' recommendation for dealing with this book.

The Prime Minister is content with the line suggested in paragraph 6.

I am sending copies of this minute to Private Secretaries to members of OD(DIS) and to Mr. Mallaby.

N.L.W.

N. L. WICKS

4 February 1988

CONFIDENTIAL

hr



CONFIDENTIAL

*Kim*  
035767  
MDLIAN 7399

CONFIDENTIAL  
FM CANBERRA  
TO ROUTINE FCO  
TELNO 72  
OF 040152Z FEBRUARY 88

PETER WRIGHT CASE

1. WE HAVE HEARD FROM SIMOS THAT THE HIGH COURT APPEAL WILL COMMENCE ON TUESDAY 8 MARCH AND IS EXPECTED TO LAST THREE DAYS. IT IS ALSO EXPECTED THAT THE FINDINGS WILL BE ANNOUNCED LATER. I WOULD BE GRATEFUL FOR SUITABLE BRIEFING, INCLUDING IN PARTICULAR THE LINE TO TAKE WITH THE PRESS, IN DUE COURSE. GRATEFUL ALSO FOR EARLIEST POSSIBLE INDICATIONS OF WHO WILL BE COMING FROM LONDON FOR THE HEARING AND WHEN, AND OF WHAT ADMINISTRATIVE ARRANGEMENTS WILL BE REQUIRED.

LEAHY

YYYY

DISTRIBUTION

40

MAIN 25

PETER WRIGHT CASE  
LIMITED  
DEP.HD/PUSD  
MR LITTLEFIELD PUSD  
PUSD (E206)  
HD/PUSD  
HD/SPD  
HD/NEWS

HD/INFO  
PS  
PS/PUS  
MR BOYD  
MR MCLAREN  
MR DARWIN LEGAL ADVISERS  
MR GILLMORE

ADDITIONAL 15

PS/SIR R BUTLER CAB OFF  
SIR C FIGURES CAB OFF  
MR WESTON CAB OFF  
MR DINWIDDY CAB OFF  
SIR J BAILEY TSY SOLICITOR

MR CHILCOTT HOME OFF  
MR NURSAW HOME OFF  
MR MOWER HOME OFF  
LEGAL ADVISERS (SEC. SERVC)  
DIR.GENERAL (SEC. SERVC - )



CONFIDENTIAL

035767  
MDLIAN 7399

MR INGLESE LAW OFFICER DEPT  
PS/HOME SECRETARY  
SIR B CUBBON PUS, HOME OFF

(- BOTH VIA PUSD E2U3)  
MR WICKS NO.10 DOWNING ST  
PRESS OFFICE NO.10 DOWNING ST

NNNN



From: THE PRIVATE SECRETARY  
**CONFIDENTIAL**



HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

3 February 1988

Dear Alan,

"INSIDE INTELLIGENCE"

Thank you for your letter of 1 February with a further report on developments in the case before the Court of Session. The Home Secretary was grateful for this account of events.

Copies of this letter go to the recipients of yours.

*at flog*  
Yours sincerely,  
*P J C Mawer*

P J C MAWER

Alan Maxwell, Esq

**CONFIDENTIAL**

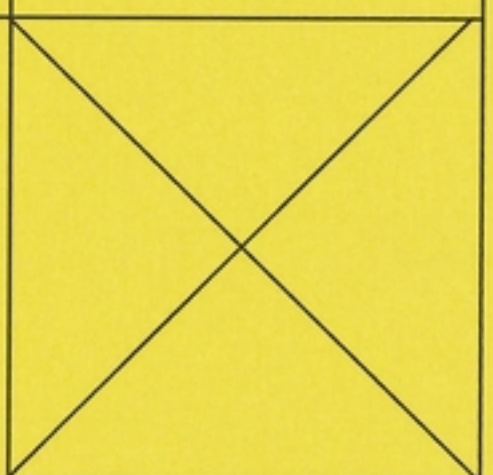
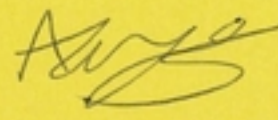


SECURITY : Secret Summi P10 .





THE	
NATIONAL	
ARCHIVES	

DEPARTMENT/SERIES PREM 19 ..... PIECE/ITEM ..... 2509 (one piece/item number)	Date and sign
Extract details: Note dated 2nd February 1988	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	 22/05/23
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	





Lord Advocate's Chambers  
Fielden House  
10 Great College Street  
London SW1P 3SL

Telephone Direct Line 01-212 0100  
Switchboard 01-212 7676

CONFIDENTIAL

Philip Mawer Esq  
Private Secretary to the  
Secretary of State for the Home Department  
Home Office  
50 Queen Anne's Gate  
LONDON SW1H 9AT

*Pme Ninte<sup>2</sup>*

*to note  
NCLW  
1.2*

1 February 1988

*Dear Philip,*

INSIDE INTELLIGENCE

This letter is to report on what has occurred since my letter of 29<sup>th</sup> January.

On Friday evening the Inner House of the Court of Session referred the matter back to the Outer House (a single Judge) for further proceedings. The court recalled the interdicts originally granted, but on an undertaking from the Scotsman, the Glasgow Herald and Scottish Television that nothing from the book would be published pending those further proceedings. In relation to possible publication by other media organs, the court indicated that any such publication might well be in contempt of court. Since the original proceedings are still in progress, the matter remains *sub judice*.

While it would have been more satisfactory had the court simply affirmed the order we already had, the present position is that the media in Scotland cannot comment even to the same extent as the media in England and Wales. The court's indication of its view as to contempt of court is also useful to us.

It is thought that a further hearing will take place in the week beginning 15th February. If the opinions of the Court of Appeal in the Spycatcher case are issued in the *interim*, Ministers will be able to take decisions as to the Cavendish proceedings (in both jurisdictions) in the light of that judgment.

I should add that the statement in some newspaper reports that the Crown has changed the basis of its case, and is now arguing that the material in Inside Intelligence is itself damaging to national security, is incorrect: the Lord Advocate has all along maintained a line consistent with that which has been argued before the High Court in London.

I am copying this letter to the Private Secretaries of the other members of OD(DIS) and to Trevor Woolley (Cabinet Office).

*Yours sincerely,  
Alb Maxwell.*

ALAN MAXWELL  
PRIVATE SECRETARY



SECRET: Secret Service P110







*pa*

Lord Advocate's Chambers  
Fielden House  
10 Great College Street  
London SW1P 3SL

Telephone Direct Line 01-212 ...0100  
Switchboard 01-212 7676

CONFIDENTIAL

Philip Mawer Esq  
Private Secretary to the  
Secretary of State for the Home Department  
Home Office  
50 Queen Anne's Gate  
LONDON SW1H 9AT

*One Minute*

*to see*

*NW*

*29.1*

*Z*

29 January 1988

*Dear Philip,*

*Cavendish's hand*

INSIDE INTELLIGENCE

The Lord Advocate has asked me to keep you informed as to the progress of the action before the Inner House of the Court of Session.

The present position is that the court appears unreceptive to our arguments, and it may be that they will find against us to a greater or lesser extent. It is even possible that they will refuse to continue the interdict even limited in accordance with the injunction presently in force in England. If that were to happen, and the court were unanimous in its decision, the Lord Advocate would apply for leave to appeal to the House of Lords.

I am copying this letter to the Private Secretaries of the other members of OD(DIS) and to Trevor Woolley (Cabinet Office).

*Yours sincerely,  
Alan Maxwell.*

*[Handwritten signature]*

ALAN MAXWELL  
PRIVATE SECRETARY





10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

**MR. WOOLLEY**  
**Cabinet Office**

I attach a copy of a letter the Prime Minister has received from the Rt. Hon. Roy Hattersley MP.

I should be grateful if you could provide a draft reply for the Prime Minister's signature, to reach me by Monday 15 February please.


Please could you coordinate your reply with the Home Office, Foreign and Commonwealth Office and Northern Ireland Office, to whom I am copying this correspondence.

MARK ADDISON

1 February 1988

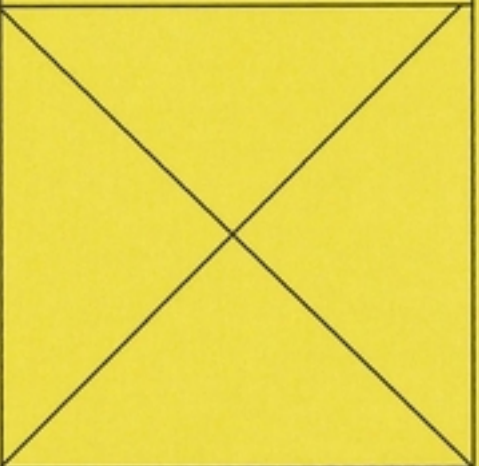




DEPARTMENT/SERIES ..... <i>PREM 19</i> ..... PIECE/ITEM ..... <i>2509</i> ..... (one piece/item number)	Date and sign
Extract details:  <i>letter dated 29 January 1988</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>26/9/2023</i> <i>Wayland</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	





DEPARTMENT/SERIES <i>PREM 19</i> ..... PIECE/ITEM ..... <i>2509</i> (one piece/item number)	Date and sign
Extract details: <i>Letter dated 29th January 1988</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>Amys</i> <i>23/03/23</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



THE	
NATIONAL	
ARCHIVES	

DEPARTMENT/SERIES PREM 19 PIECE/ITEM ..... 2509 ..... (one piece/item number)	Date and sign
Extract details: Note dated 28th January 1988	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	Alays 22/05/23
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	





*Prime Minister*

*We will need  
an OD(DIS) discussion  
to review the position  
reached in the various  
cases before too long.*

FCS/88/017

ATTORNEY GENERAL

Spycatcher Case

*N.C.U.*

*29.1*

*Alquinta*

*attached*

1. I have seen your minute of 22 January, and the Home Secretary's minute of 26 January. We discussed your proposal on the telephone over the weekend, and I made it clear that I was content to accept your judgement on it. However I also reflected to you my wider concerns about this question, which are very close to those expressed by Douglas Hurd in his minute. I agree that a collective discussion among Ministers before long would be extremely useful.

2. I am copying this minute to the Prime Minister, members of OD(DIS), the Lord Privy Seal, the Lord Advocate and Sir Robin Butler.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

28 January 1988



BF  
replyAttorney General

Thank you for your minute of 22 January, which we discussed on the telephone yesterday morning.

2. Your proposal was endorsed by the Prime Minister and our Counsel quite properly went ahead with the Court on the lines which you proposed. Nevertheless, I would like to record briefly the unease which I feel and which I explained on the telephone.

3. Our objectives go wider than victory before the Court of Appeal, important though that is. We need to establish a position on confidentiality which the House of Lords is likely to sustain, which will not oblige us to take constant legal action even on trivial stories, which is relatively free of risk from the European Court of Human Rights, and which is compatible with our recent commitment to make a genuine effort to find an acceptable reform of Section 2 of the Official Secrets Act. We had no opportunity to discuss the implications for these objectives of the tactical proposal which reached Ministers on Saturday and required a decision on Monday morning. I understand the attractiveness and the urgency of the proposal, but the episode strengthens my feeling that Ministers need to meet again before long to consider the position as a whole.

4. I am copying this to the Prime Minister, to the other members of OD(DIS), to the Lord Privy Seal, the Lord Advocate and Sir Robin Butler.

Douglas Hurd.

26 January 1988

ml

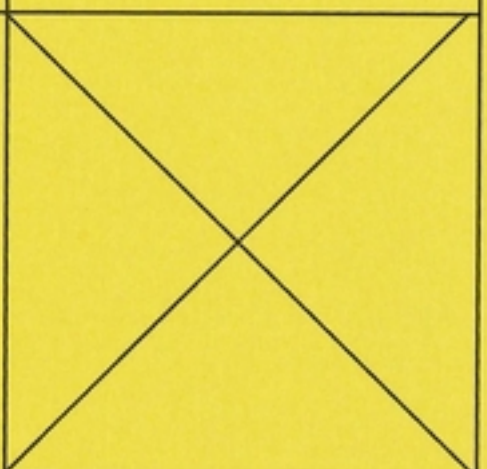


SECURITY: Secret Service

PT 10



THE	
NATIONAL	
ARCHIVES	

DEPARTMENT/SERIES PREM 1098 PIECE/ITEM ..... 2509 (one piece/item number)	Date and sign
Extract details: Letter dated 25 January 1988	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	AMS 22/05/23
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	





10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*

SIR ROBIN BUTLER

"THE FRIENDS - BRITISH SECRET INTELLIGENCE SERVICE OPERATIONS IN THE POST WAR ERA" BY NIGEL WEST (OD(DIS)(88)8)

The Prime Minister has seen this OD(DIS) paper about the forthcoming book by Mr. Nigel West (Mr. Rupert Allason MP).

SF. The Prime Minister has noted the discussions now taking place on the DPBC network. She is most disturbed to see that there is a real risk that West's new book might be published. She does not believe that we can stand by and let the book appear, bearing in mind its clear damage to national security. The Government's duty is to act to stop that damage. The Prime Minister has therefore not ruled out the possibility of using information attained on the DPBC net for the purposes of seeking an injunction, even though this use of DPBC material could well break the DPBC system. Against this possibility, she would like an urgent assessment which weighs the disadvantages of letting the book be published (including its damage to national security) against the risks and disadvantages of breaking the DPBC system. The question that needs to be answered is whether the damage to national security in this case would be so great that it is worth the risk of breaking the DPBC system.

You should also know that the Prime Minister wonders whether Mr. Allason's question to her in the House last Tuesday (copy of which is attached for ease of reference) might be relevant to his plans in the matter of this book.

I am sending a copy of this minute to the Private Secretaries to members of OD(DIS), Michael Saunders (Law Officers' Department), Alan Maxwell (Lord Advocate's Department) and Sir Christopher Mallaby.

N.L.W.

N. L. WICKS

25 January 1988



**Dr. Thomas:** Will the Prime Minister take time today to study the representations made to the Government by the Irish Government and the European Commission about a proposal by the CEGB to undertake a test in Trawsfynydd power station in my constituency on 12 February, which will include operating the reactor without the normal cooling procedures? Will she respond to those representations and clearly tell the Secretary of State for Energy and the CEGB that such a test does not pass the test of community acceptability in the community that surrounds the power station? If she or the Government allow that test to go ahead, would she, because of her great commitment to nuclear power, like to attend the test and supervise it in person?

**The Prime Minister:** Much better than that, as I am sure the hon. Gentleman will agree, the test will take place only with the full approval of the independent nuclear installations inspectorate, and will be monitored by it. It will be carried out only after the reactor has been fully shut down for its statutory inspection. All automatic safety systems will be operating normally; no safety systems will be cut off. I understand that there have been two similar tests in the past.

**Mr. Hayes:** Will my right hon. Friend cause strong representations to be made to the American Government for allowing Seamus Twomey, a former chief of staff of the IRA, to be fêted at a banquet in New York for raising funds for Noraid?

**The Prime Minister:** I am aware of my hon. Friend's strong views. I think we all feel strongly about this, but the American Administration and President have been forthright in condemning anyone who pursues violence as a way of achieving a political objective. The President has done everything possible to make it clear that that is wholly unacceptable.

**Mr. Steel:** It is—[*Interruption.*] It is always good to see enthusiasm. Is the Prime Minister aware that, tomorrow, a delegation of Scottish local authorities is coming to this House to protest at the sheer cost of introducing the poll tax north of the border? Is she aware that the £12 million that the Government have given in no way meets the £25 million of the cost of the administration? Would not that money be better spent on the Health Service in Scotland?

**The Prime Minister:** The community charge is a way of paying for local government which properly distributes the payment over a wider number of people. In fact, it meets only about a quarter of local expenditure. As the right hon. Gentleman is aware, the other three quarters is met by industry and the taxpayer.

The enthusiasm that the right hon. Gentleman heard expressed was because we thought he might be asking, or telling us, about his policy.

**Mr. Allason:** When my right hon. Friend considers the Government's much-awaited reform of section 2 of the Official Secrets Act, will she give serious consideration to formalising the role of the D-Notice Committee and, in particular, consider introducing a publications review board along the lines of the one that has worked so well in America?

**The Prime Minister:** My hon. Friend had best wait until the White Paper comes out; we expect it to be out in about June.

**Q5. Mr. Bill Michie:** To ask the Prime Minister if she will list her official engagements for Tuesday 19 January.

**The Prime Minister:** I refer the hon. Gentleman to the reply that I gave some moments ago.

**Mr. Michie:** Is the Prime Minister aware of early-day motion 310, bearing 142 signatures, in which it is claimed that 25,000 signatures have been collected to fight to keep open the Wetheredge maternity unit in Sheffield? How can she justify her statement that the Health Service is safe in her hands, when, in spite of all the pressures and arguments, the unit will still be closed? Will she personally meet a delegation from Sheffield and deal with the situation?

**The Prime Minister:** That is a matter for my right hon. Friend the Minister for Health and for my right hon. Friend the Secretary of State for Social Services, who deal with such matters. However, the hon. Gentleman will be pleased because I understand that a new children's hospital will be opening in Sheffield next year.

**Mr. Marlow:** Unlike the leader of the Labour party Conservative Members are not worried about elections, but supposing that at the next general election the electorate should make a slight mistake and not give us a overall majority, what lessons would my right hon. Friend learn from last week about trying to form a coalition with the Social and Liberal Democrats?

**The Prime Minister:** That is a mistake that the Conservative party will not make.

**Q6. Mr. Wall:** To ask the Prime Minister if she will list her official engagements for Tuesday 19 January.

**The Prime Minister:** I refer the hon. Gentleman to the reply that I gave some moments ago.

**Mr. Wall:** Is the Prime Minister aware that only six out of 12 intensive care beds are in use for heart operations in the Yorkshire regional cardiothoracic centre at Killingbeck hospital in Leeds? Will she join the vast majority of senior medical staff at that hospital in requesting from the regional health authority three extra intensive care units, or will she tell the staff at that hospital who, in the vast and lengthening queue of patients, young and old, will have to wait for surgery?

**The Prime Minister:** The number of cardiac operations, the amount of resources and the number of doctors and nurses have greatly increased. We are looking carefully at why some regional and district health authorities are able to manage much better than others on their allocations of money, and why in some surgery wards in some hospitals the beds are left empty between patient treatment for one day while in others they are left for up to three days. We are now getting a great deal of interesting information, trying to make the best use of the facilities available and taking lessons from those who have been most successful in that.



CONFIDENTIAL

*Cite* *SH*



10 DOWNING STREET  
LONDON SW1A 2AA

*From the Principal Private Secretary*

25 January 1988

*Dear Michael*

ATTORNEY GENERAL V OBSERVER, GUARDIAN AND SUNDAY TIMES

The Prime Minister has seen the Attorney General's minute of 22 January in which he proposes that he should seek a significant extension of the injunction in this case. A draft text of the revised injunction was attached to the Attorney's minute.

The Prime Minister agrees with the Attorney's proposal.

I am sending a copy of this letter to the private secretaries to members of OD(DIS), Mike Eland (Lord Privy Seal's Office), Alan Maxwell (Lord Advocate's Department) and Trevor Woolley (Cabinet Office).

*Yours truly*

*Nigel Wicks*

N. L. WICKS

Michael Saunders, Esq.,  
Law Officers' Department

CONFIDENTIAL

*SH*



PRIME MINISTER

ATTORNEY GENERAL V OBSERVER, GUARDIAN AND SUNDAY TIMES

There is a very important minute from the Attorney General below. He argues that we should seek to broaden the injunction so that it prevents the Observer etc (and through the criminal contempt procedure, the rest of the media) from publishing information not only from Peter Wright, but from any members or former members of the British Security or Intelligence Services, obtained in an official capacity; and attributing such information to Wright or any members or former members of the Services. The effect would be, I think, if the order was granted, to stop the media from publishing any views or facts from any members or former members of the Services obtained in an official capacity.

I believe that in view of the Attorney's firm advice we should agree to what he says. He is certainly right in saying that we would be execrated in the media - there would be the most almighty row. But the logic of our approach in the Wright and other cases points clearly to the Attorney's proposal.

Agree the Attorney's proposal?

N.L.W.

N. L. WICKS

22 January 1988

Yes





C&BI

HOME SECRETARY

ATTORNEY GENERAL v OBSERVER, GUARDIAN AND SUNDAY TIMES

The Court of Appeal hearing in the above case is likely to finish early next week. During this week the Master of the Rolls and Lord Justice Dillon have expressed themselves concerned at the likelihood that, however the narrow "Spycatcher" issue is resolved, the Press will continue to seek to publish material from members and former members of the Security and Intelligence Services. Mr Justice Scott considered as much himself during the trial, when he said that on the evidence of the newspapers it would be open "open season" for publication of such material.

The two Appeal Court judges have said enough about the need to prevent such further publication to make it clear to our Counsel that we should ask the Court to consider granting an injunction to restrain not only the publication of material from Peter Wright but also the publication of material from any other member or former member of the security and intelligence services. I attach a draft, prepared by our Counsel, of the sort of injunction which we would in that event be asking the Court of Appeal to make. The words underlined in the draft are those suggested for insertion by Counsel in addition to what we have already been seeking all along against the defendant newspapers.

Since this would be an extension in the presentation of our case, I feel it right to inform colleagues of the position. If we fail to ask for it, the Court is likely to wonder aloud how serious we are about upholding the duty of confidentiality. I would not wish to give colleagues the impression that we are confident of victory in this case. As they well know, during litigation the bench frequently puts out a number of suggestions from which it later resiles. In this case, however, I have no doubt that we cannot leave the Court without a response.





If we succeeded in obtaining an injunction to prevent the newspapers from publishing material in the future in breach of the duty of confidentiality it would clearly be easier for us to enforce that duty. At the same time, however, it is certain that we would be execrated in the media, but I believe we can afford to bear that.

I believe that we must tell the court that we are now asking for a wider injunction in the terms of the draft attached, with appropriate provisos still to be drafted. (To have done this at the outset of the Appeal would have been a forensic blunder.)

I accordingly propose to instruct our Counsel to put the resulting draft forward to the Court and to the other side unless I hear to the contrary by 9.30am on 25 January.

I am copying this to the Prime Minister, to the other members of OD(DIS), to the Lord Privy Seal, the Lord Advocate and Sir Robin Butler.

*Patrick Mayhew*

22 January 1988



FORM OF ORDER SOUGHT

An order whereby the Defendants, and each of them by themselves their servants or agents or any of them or otherwise howsoever be restrained from:

- (a) disclosing or publishing or causing or permitting to be disclosed or published to any person any information obtained by Peter Maurice Wright in his capacity as a member of the British Security Service or any information obtained by any member or former member of the British Security and Intelligence Services in his capacity as a member thereof and which they know, or have reasonable grounds to believe, to have come or been obtained, whether directly or indirectly, from the said Peter Maurice Wright or such other member or former member of the said Services;
- (b) attributing, in any disclosure or publication made by them to any person, any information concerning the British Security and Intelligence Services to the said Peter Maurice Wright or to any member or former member of the British Security and Intelligence Services whether by name or otherwise ;



PRIME MINISTER

THIS IS A COPY. THE ORIGINAL IS  
RETAINED UNDER SECTION 3 (4)  
OF THE PUBLIC RECORDS ACT

"THE FRIENDS - BRITISH SECRET INTELLIGENCE SERVICE OPERATIONS  
IN THE POST WAR ERA" BY NIGEL WEST (OD(DIS)(88)8)

You will want to study this paper with particular care.

The basic issue is that West has told the D Notice Committee of his intention to publish a book which clearly damages national security. As you know from the recent discussions on the letter to the D Notice Vice-Chairman, the practice has been not to use information obtained on the D Notice net for other purposes, such as obtaining injunctions, unless the Government obtains that information on other channels.

We are now trying to find the information on another channel. But the point may come when we conclude that it is not possible to find the information from alternative channels. We would then be faced with the choice:

1. Allow the book to be published, despite the clear damage to national security; or

*We cannot do this. Our duty is to stop damage.*

2. Use the information obtained on the D Notice net for the purpose of an injunction, in the knowledge that this use of D Notice material could well break the D Notice system.

I suggest that you ought to raise a marker at this stage that, notwithstanding the risk to the D Notice system, whose advantages you recognise, you do not rule out the second course above. You want an assessment prepared which weighs the disadvantages of letting the book be published (i.e. the damage to national security) against the risk of breaking the D Notice system. In short, is the damage to national security in this case so great that it is worth the risk of breaking the D Notice system? Agree this approach?

*Order - see above.*

*Yes - but we must*

*be guided by this*

*Must be done in the House could be...*



You will also want to consider whether the information in the paper alters your view about the value of a political approach; e.g., by the Lord President or the Home Secretary, to impress upon West the damage to the Government if he ignores the D Notice Committee's advice. Would you want a Minister to make such an approach?

*Not as at present  
advised, we must decide  
other matters first.  
not*

*N.L.W.*

NLW

22 January, 1988.





10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*

SIR CHRISTOPHER MALLABY

MR. NIGEL WEST'S (MR. RUPERT ALLASON MP'S) FORTHCOMING BOOK

You asked me this morning whether the Prime Minister would wish the Lord President, or some other Minister, to intercede with Mr. West to try to prevail upon him not to publish his book, or failing that to publish it in acceptable form.

I have discussed this with the Prime Minister. She is firmly of the view that there should be no political approach by a Minister to Mr. West on this matter. She believes that his position as an MP rules out the sort of political approach which was made on the previous occasion. She considers that Mr. West's tactic is to try to obtain the DPBC Committee's assent to the publication of his book as a pretext for claiming that the Government has no objection to the publication of its contents. She would like Mr. West to be treated in an "arms length" way. The Secretary of the DPBC should reply to Mr. West in writing. The reply should explain why the authorities take the view that names of former members of the Service concerned, and of operations, should not be disclosed. Such publication can put at risk the members of the Service or their families if they are no longer alive. The Attorney General should be kept in close touch with the discussions with Mr. West. He should clear all written communications with Mr. West.

The Prime Minister has noted that Mr. West's book includes a chapter on Gordievsky. She would like to know what this chapter says and where ~~he~~ <sup>he</sup> obtained the material for it.

*BF.*  
*in*  
*OO(AS)*  
*8.*

N.L.W.

Nigel Wicks

20 January 1988



*C/F  
Can you keep?  
JR 18/1*



*de MJ  
cc CO.  
AH*

10 DOWNING STREET  
LONDON SW1A 2AA

THE PRIME MINISTER

18 January 1988

*Dear Mr. Campbell-Savours*

Thank you for your letter of 4 January about allegations reportedly made by Mr. Anthony Cavendish.

As you are aware, it has been the practice of successive Governments not to comment on matters concerning the security services.

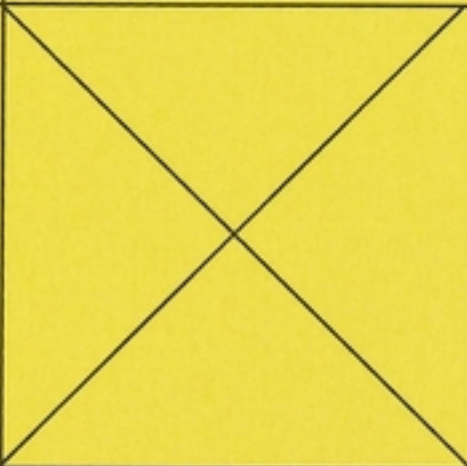

*Yours sincerely  
Margaret Thatcher*

Dale Campbell-Savours, Esq., M.P.

*man*



THE	
NATIONAL	
ARCHIVES	

DEPARTMENT/SERIES PREM 19 ..... PIECE/ITEM ..... 2309 (one piece/item number)	Date and sign
Extract details: Note dated 14 January 1988	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	 22/03/23
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



DRAFT LETTER

FROM: THE PRIME MINISTER

TO DALE CAMPBELL-SAVOURS ESQ MP

Thank you for your letter of 4 January about allegations reportedly made by Mr Anthony Cavendish.

2. As you are aware, it has been the practice of successive Governments not to comment in detail on matters concerning the security services.



Dale Campbell-SAVOURS MP

12/11



file

ML

cc Press  
AH  
NLW

ack/

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

5 January 1988

I attach a copy of a letter the Prime Minister has received from Dale Campbell-Savours MP.

I should be grateful if you could provide a draft reply for the Prime Minister's signature, to reach me by 12 January.

I am copying this letter to Alison Smith (Lord Privy Seal's Office).

MARK ADDISON

Trevor Woolley, Esq.,  
Cabinet Office

Sh





HOUSE OF COMMONS  
LONDON SW1A 0AA

The Rt Hon Margaret Thatcher MP  
10 Downing Street  
Whitehall  
London SW1

25/1

4th January 1988

Dear Prime Minister,

You will have noted the reports over last weekend on the injunction sought by the Government to prevent both the Observer and the Sunday Times publishing material contained in Anthony Cavendish's book 'Inside Intelligence'. According to reports Cavendish alleges that the security services "planted" journalists in Fleet Street sometimes with the help of proprietors including the late Lord Kemsley, a former owner of the Sunday Times. It is alleged that the justification for this included the need to provide cover for overseas operations.

Having consulted with journalist friends of mine I am informed that this must mean that journalists on national newspapers have been appointed accredited staff and freelance foreign correspondents at the request of the security services. These allegations which have been raised on a number of occasions on Fleet Street have never before been authoritatively sourced.

The question is to what extent are the security services infiltrating Fleet Street, the broadcasting corporations and publishing houses today?

Peter Wright has mentioned on a number of occasions that the security services have placed people in every part of the media and to some extent this is now confirmed by Cavendish. The Country which you yourself maintained in your New Year Statement is "crying out for a set of rules and standards" would never countenance infiltration by the security services of the Press in today's Britain.

THIS IS A COPY. THE ORIGINAL IS  
RETAINED UNDER SECTION 3 (4)  
OF THE PUBLIC RECORDS ACT





The infiltration of Fleet Street by the security services is not only unhealthy but endangers democracy itself. It completely undermines professional journalistic ethics and raises the whole issue of conflict between the interests of the establishment and the public interest which may not always be the same. The duty of objectivity imposed on the journalist is as important to the public as the duty of confidentiality which the Government wishes to impose on former security officers.

Can I ask you what comments you wish to make as to the allegations made by Cavendish, Wright and others on the question of this infiltration of the media? Would you now make a statement to Parliament announcing the withdrawal of all security service placemen in newspapers, publishing houses and from broadcasting?

Yours sincerely,

David Caplan  
MP



B. R.  
PRIME MINISTER

You should know that on Friday 14 January Mr. Winnick has an Adjournment Debate on the Staff Counsellor for the Security and Intelligence Services.

A Home Office Minister (probably Mr. Renton) will be replying for the Government.

N. L. W.

(N. L. WICKS)

7 January 1988





CONFIDENTIAL

2  
One Minute  
to note.

N. L. W.

7.1

PRIME MINISTER

"INSIDE INTELLIGENCE" 

At the time when action was being considered against Cavendish, the Sunday Times and the Observer last week there was no reason to suppose that any other newspaper had a copy of Cavendish's book, and it was agreed that no action be taken in the courts to make Cavendish supply a list of those to whom he had sent copies of the book.

Yesterday, "the Scotsman" published extracts from the book in its Scottish (but deliberately not in its English) editions. I accordingly asked for an undertaking from the paper that nothing further would be published which would, if published in England, be in breach of the orders granted against the Sunday Times and Observer. Since such an undertaking was not given, I sought and obtained an interdict against the paper and its editor last night. I attach a copy of the Court's interlocutor. It appears to me to provide in Scotland for restrictions on publication equivalent to the restrictions for which injunctions were sought and obtained in England. In particular, it binds, as did the interlocutor granted in the Duncan Campbell case, others having notice of the order.

In the article yesterday no indication was given that the Scotsman had a copy of the book, and I understand from the Treasury Solicitor that Cavendish denies having sent a copy to the paper. However, at the hearing, counsel for the paper had a copy of the book in his possession. (It seems reasonable to assume that it was provided by Tam Dalyell). It also appeared during the hearing that the paper had been proposing to publish a further extract from the book in this morning's edition.

I understand that the paper's editor has said that he will be considering what further extracts from the book he might still be able to publish without breaching the interlocutor: if anything further is published I will consider what action, if any, is appropriate.

I am copying this minute to the other members of OD(DIS) and to Sir Robin Butler.

C of L  
6th January 1988

CONFIDENTIAL



COURT OF SESSION, SCOTLAND

CERTIFIED COPY INTERLOCUTOR

in

PETITION

of

THE RIGHT HONOURABLE THE LORD  
CAMERON OF LOCHBROOM QC,  
THE LORD ADVOCATE, Crown Office  
5/7 Regent Road, Edinburgh

PETITIONER

against

(First) THE SCOTSMAN  
PUBLICATIONS LIMITED, a company  
incorporated under the Companies  
Acts and having a place of business  
at 20 North Bridge, Edinburgh

(Second) MAGNUS LINKLATER,  
having a place of business at 20  
North Bridge, Edinburgh

RESPONDENTS

for

Interdict and interdict  
ad interim

5 JANUARY 1988

Act: Davidson

The Lord Ordinary appoints the Petition, as amended, to be intimated on the Walls and in the Minute Book in common form and to be served as craved together with a copy of this interlocutor; allows all parties claiming an interest to lodge Answers thereto, if so advised, within 21 days after such intimation and service; further having heard Counsel for the petitioner and respondents, ad interim interdicts the respondents or either of them or their agents, servants or anyone acting

LORD COULSFIELD

Alt: Nimmo-Smith QC



on their behalf or any person having notice of said interlocutor from disclosing or publishing or causing or permitting to be disclosed or published to any person all or any material or information obtained by Anthony Cavendish in the course of his employment with the British Security and Intelligence Services or obtained by other officers of those services in the course of their employment with them and given by such officers to Anthony Cavendish being information concerning the British Security and Intelligence Services or their activities or any other British Security organisation or its activities or any other security service or its activities and supplied to the respondents whether by direct or indirect means by Anthony Cavendish provided that there shall not be prohibited publication of information contained in articles previously published by the Sunday Times save in respect of the allegation relating to Northern Ireland referred to in the third column of the article entitled "Secret of the old MI6 Man's Christmas Card" published on page one of the issue of the Sunday Times dated 27 December 1987.

"JOHN T CAMERON"





HOME SECRETARY

Prime Minutes  
to see.

N.L.U.

7.1

PETER WRIGHT CASE : NORTH AMERICA

1. In my minute of 5 November I reported that, following the receipt of further advice, officials were re-examining the position relating to claims for accounts of profits in the United States and Canada. The re-examination has tended to confirm the advice we received in the summer. For ease of reference I am summarising the position below and bringing it up-to-date.

United States

2. We are advised by our American lawyers that it is open to us to claim an account of profits against Viking Penguin in respect of money which they are obliged to pay to Heinemann of Australia and Mr. Wright. However, an attempt to take Viking Penguin's own profits would fail.

3. Our latest advice confirms that before bringing an action in the United States we should wait for a favourable judgment on the principle of our case in Australia. For a judgment to be "favourable" it would not need to include an injunction. Action in the United States would then take the form of ancillary proceedings against Wright and Heinemann to enforce the Australian judgment. A favourable judgment in any other jurisdiction - here, New Zealand or Hong Kong - would be of no avail in the United States, because it is only in the Australian action that Wright and Heinemann of Australia are parties.

4. Should we proceed in the United States we may find that Vikings have already paid some of the profits to Heinemann and Wright. If so, we would then have to seek from Vikings payment of an equivalent sum on the strength of a letter which was sent to them last July putting them on notice that we were considering claiming an account of profits.





5. The latest advice also confirms the earlier advice that without a favourable judgment in Australia any action by us in the United States would have to be brought de novo. We would have to prove our case against Wright and Heinemanns with witnesses having first-hand knowledge and after extensive discovery. Such an action would be particularly difficult for us, not least in view of the First Amendment to the United States' Constitution. The likelihood of our succeeding would be "very slight".

6. Our advice from Canada is that it is open to us to seek an account of profits against Stoddarts, the publishers, and Wright, Heinemann of Australia and Viking Penguin for their profits arising out of the Canadian publication. As in the United States we sent a letter in July to Stoddarts warning them that such a claim was under consideration, which, we will have to argue, put them on notice that we would claim against them for any profits they may have paid to the other three defendants in the meantime.

7. Action in Canada will not, however, be easy, and, in contrast to the position in other common law countries, we are likely to have to face issues relating to discovery and evidence quite soon after bringing the proceedings. Whilst it would not be essential in Canada for us to have a previously favourable judgment elsewhere, the Canadian courts will regard as persuasive any judgments relating to Spycatcher in other jurisdictions, in particular on the question of account of profits. In this connection the remarks of Mr. Justice Scott concerning the position of Wright - that he would in principle be liable to account to us for any profit he has made out of Spycatcher - will be of assistance to us in countering the refusal so far of the Australian and New Zealand courts to award us an account of profits. I would like our Canadian counsel to consider Mr. Justice Scott's judgment and whatever comes out the Court of Appeal hearing starting on 18 January and advise us again formally on our prospects of success. I know that he is urging us to take proceedings in Canada as soon as possible to enable us to rebut the defence that we have slept on our rights since last summer. When we receive his advice we will need to decide quickly whether we wish to proceed in Canada for an account of profits.



CONFIDENTIAL



8. I am copying this to the Prime Minister, to the other members of OD(DIS) to the Lord Advocate and to Sir Robin Butler.

*John Mayhew*

4 January 1988

CONFIDENTIAL



SECURITY: Secret  
Service

Pt 10







*With the Compliments  
of*

PRIVATE SECRETARY

.....31...DECEMBER..... 19 87

LORD ADVOCATE'S CHAMBERS  
FIELDEN HOUSE  
10 GREAT COLLEGE STREET  
LONDON SW1P 3SL

Telephone: Direct Line 01-212 0800  
Switchboard 01-212 7676  
Fax 01-212 6057



Lord Advocate's Chambers  
Fielden House  
10 Great College Street  
London SW1P 3SL

Telephone Direct Line 01-212 0100  
Switchboard 01-212 7676

B Dinwiddy Esq  
Cabinet Office  
70 Whitehall  
LONDON SW1A 2AS

31 December 1987

*Dear Bruce,*

*Mr. [unclear] - [unclear]*  
*m*

"INSIDE INTELLIGENCE"

The Lord Advocate has been advised of the Note by Officials (OD(DIS)(87) 103. *- attached*

He has advised that, if proceedings are taken in England only against the Sunday Times and Observer, no proceedings against those papers should be taken in Scotland, since the injunction (if granted) in England will, on past experience, prohibit publication anywhere.

If proceedings are taken in England, and an injunction is granted, against Mr Cavendish himself and those having notice of the order, then auxiliary proceedings should also be taken against him in Scotland. This would be on the basis that if Mr Cavendish is unwilling to give undertakings as to his conduct as regards England, it would be unwise to assume that he will not take steps to publish in Scotland. Such an interdict, if granted in the same terms as that obtained against Mr Duncan Campbell, and subject to what may be decided in the Inner House in the Campbell appeal next week, would also be effective against others having notice of it.

*Yours sincerely*  
*Paul Dykeman*

PRIVATE SECRETARY



NB: Attached to OD (DLS) (87) 103 Copy

NW 13 No 2



see ov.

CM

10 DOWNING STREET

Prime Minister

This is the paper  
which I mentioned to  
you on the telephone  

---

this morning.

The recommendations are  
generally agreed by  
your colleagues except  
that it is thought  
better not to resort to  
an injunction to compel  
Mr. Arundell to furnish  
a list of those who



have received the  
book. It probably  
cannot provide a  
complete one: e it  
would anyway open  
up a new legal  
dimension, <sup>on</sup> which others are  
reluctant to embark.

CDD

3/1/12.

mf





DEPARTMENT/SERIES ..... <i>PREM 19</i> ..... PIECE/ITEM ..... <i>2509</i> ..... (one piece/item number)	Date and sign
Extract details: <u><i>Folio 13</i></u> <i>Letter dated 31 December 1987</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>26/9/2023</i> <i>Wayland</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



PRIME MINISTER

SUNDAY TIMES' STORY ABOUT THE CIRCULATION OF ANTHONY CAVENDISH'S MEMOIRS

You may wish to know what action is being taken today regarding the report in today's Sunday Times that Cavendish, has sent copies of his memoirs, as a "Christmas card", to certain senior Parliamentarians, judges, etc.

You may recall that we learned that Cavendish's publishers were not going ahead with the publication of his memoirs. It now seems as if he has published them as a private venture. The Treasury Solicitor sent him a letter today asking him certain questions regarding the Sunday Times' report, eg has he in fact circulated his memoirs to certain people? Who were they? What are his future intentions? Can we see a copy of the text? Etc.

The next step will begin at his response. It may well be a further letter from the Treasury Solicitor asking about future conduct and circulation of the book. But, in the event of unsatisfactory replies, an injunction may well have to be sought.

The Law Officers have been consulted and agree the course of action. It is being reported to the Foreign Secretary.

No action for us. But I will keep you in touch as necessary.

*P Main*

PP N. L. WICKS

27 December 1987

THIS IS A COPY. THE ORIGINAL IS  
RETAINED UNDER SECTION 3 (4)  
OF THE PUBLIC RECORDS ACT





# RISERS AND FALLERS OF '87

PAGE 37

MAGAZINE

THE YEAR IN PIC

THE WIND



PLUS ● QUIZ OF THE YEAR p25 ● THE WORLD: STIRRERS & SHAKERS p28-29 ● THE CITY: WINNERS & LOSERS p17 ● TELEVISION: THE

## Secret of the old MI6 man's Christmas

A FORMER MI6 officer has entered into the seasonal spirit by privately publishing his memoirs and sending the book to friends as a Christmas card, risking the wrath of the government's law officers.

Anthony Cavendish, 60, decided to publish the book himself after Cassell, his intended publisher, abandoned its two-year publication battle with government law officers. Cassell said last month it faced the same problems over "secrecy" as Peter Wright's Spycatcher, but could not afford the mounting legal costs of trying to publish.

Cavendish's book, at 160 pages, cannot remotely be compared

with Wright's, either in length or in sensitivity. He left MI6 after a row with his superiors in 1953, so any secrets he might have been willing to divulge are out of date. Even so the government's law officers would have stopped him publishing at all, if he had not been a man of resourcefulness.

Earlier this month Cavendish, now a City banker, set up his own publishing company, printing several hundred copies of the book and last week began distributing them to senior figures in parliament, the judiciary and the intelligence services.

Yesterday, the former MI6 officer, who lives in Hampshire, was reluctant to discuss it: "I've sim-

ply produced the book as a Christmas card and my lawyers tell me I have broken no law."

The book is not entirely without interest. Cavendish remained a close friend of Sir Maurice Oldfield, Mrs Thatcher's former security supremo in Northern Ireland and a former MI6 director-general, until his death last year. The book says that Oldfield was behind a strategy in Northern Ireland to recruit Catholic priests to persuade IRA men to become "supergrasses". Last night the claim seemed more likely to provoke a furor in Catholic circles in Ireland than in Whitehall.

Several priests contacted yesterday were furious at the revela-

By Barrie Penrose

tion: "People like myself would have to take a very strong stand," said Father Des Wilson of west Belfast. "This is an abuse of all the most sacred things in our community. A lot of people will be furious."

Other priests confirmed that contacts between intelligence officers and the clergy had taken place. One priest recalled that colleagues had been invited to lunches with Oldfield through the US consul in Belfast.

Cavendish's battle to publish his memoirs began in November 1985 when The Sunday Times re-

vealed he was writing a book about his MI6 exploits behind the Iron Curtain in the late 1940s and early 1950s. Cavendish said at the time he had no wish to damage national security and would submit his book for vetting.

However, after sending his manuscript to Sir Christopher Curwen, MI6's current director-general, government law officers made clear they viewed his case in much the same light as Wright's Spycatcher.

According to Sir John Bailey, the Treasury solicitor, Cavendish was likely to be in breach of an MI6 officer's "obligation of confidentiality" and any references to his intelligence work

would have to be "blue-pencilled". Cavendish, who joined the secret service in 1948 after a spell in MI5, argued that because officers entering British intelligence before the mid-1960s were not required to sign any document agreeing to confidentiality he could not consequently be in breach of any obligation.

● George Foulkes, a Labour foreign affairs spokesman, last night challenged Thatcher to prosecute Cavendish over his memoirs. If she failed to do so, her actions against Wright would be exposed as a vindictive vendetta, he said.

Additional reporting by Liam Clarke

Treasury 'on the rampage' over house prices

# Ministers back home loans plan

PLANS to cut mortgage payments for tens of thousands of nurses, teachers and other

by David Hughes and Christopher

reduced by as much as 500,000 if the problem of lab-

## The eyes that ask: where's daddy?



## Sun sp for the

by Christine Toome

BRITISH skiers flying to Alps this weekend with chance of snow would be advised to make for the desert in Tucson, Arizona, which had its first white Christmas on record.

Blizzard conditions and bitterly cold air have been sweeping across the south and west of the United States during past three days. San Diego, California, reported its first snow flurries in 20 years in Tennessee and Arkansas more than 10 inches of



pa

From: THE PRIVATE SECRETARY



CONFIDENTIAL

HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

23 December 1987

Dear Trevor,

BBC RADIO 4 SERIES:  
"MY COUNTRY RIGHT OR WRONG"

The Home Secretary was grateful for Sir Robert Armstrong's minutes of 21 and 22 December recording his conversations with the Chairman of the BBC about this radio series. The Home Secretary has noted the disappointing outcome of our approach to Mr Hussey but believes that the fact that the approach was made can only have strengthened our position when the matter is considered substantively in the courts.

Copies of this letter go to the Private Secretaries to the Prime Minister, the Foreign and Commonwealth Secretary, the Secretary of State for Defence and the Attorney General.

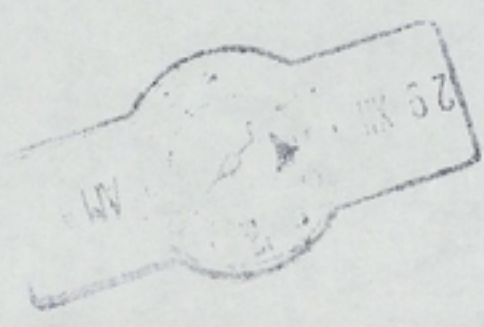
Yours sincerely,  
*P J C Mawer*  
P J C MAWER

Trevor Woolley, Esq.,

CONFIDENTIAL



SECURITY: SECRET SERVICE PTIO











*File Room*

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

MR. WOOLLEY  
CABINET OFFICE  
SPYCATCHER

For what it is worth, I pass to you the attached slip of paper which was handed in here today by an unknown hand. Charles Powell tells me that a similar piece of paper was put through his letterbox about a month ago.

I leave it to you to decide what action to take.

N. L. WICKS

23 December 1987

*VC*



# SPYCATCHER

by  
Peter Wright

phone 289-7360

ANYTIME

£20

Will Deliver

Robert

---



This was passed  
through letter boxes in  
Langthorne Street,  
S.W. 6. !



CONFIDENTIAL



**CABINET OFFICE**  
70 Whitehall London SW1A 2AS  
01-270 0101

Prime Minister

Prime Minister  
A further  
report.

N. C. U.

22.12.

*From the Secretary of the Cabinet and Head of the Home Civil Service*

Sir Robert Armstrong GCB CVO

Ref. A087/3674

HOME SECRETARY

BBC Radio 4 Series: 'My Country Right or Wrong'

Following my conversation with Mr Hussey on 21 December (reported in my minute of that date), Mr Hussey rang back at 4.00 pm this afternoon.

2. Mr Hussey said that he had to report, after a long discussion with the Director General and Deputy Director General and with one of the Governors, that the BBC did not see a way forward on the lines of the approach which I had put to him in our telephone conversation the previous day.

3. There was this time no reference to the "potential for censorship". Mr Hussey said that, so far as the BBC could see, there were two possible ways forward: either through the D Notice system, or through the courts. The BBC were anxious to preserve the D Notice system, which they thought was useful; and it was, as a result of recent events, under some threat. The Government had chosen to proceed by way of an injunction. It was of course perfectly entitled to do so. If, however, the BBC adopted an approach of showing the transcripts to or clearing the contents with a third party, whether that was a Government official or some independent person like a judge, that could



only serve to bring the D Notice system into further disrepute. Since the matter was likely to come to trial sooner rather than later, and a judge would at that stage read the transcripts and have an opportunity to consider the position, there did not seem to be much point in adopting a "third party" approach.

4. I reminded Mr Hussey that the Government was not pressing the BBC to show the transcripts to a judge: that was an idea that had come from the BBC. I had already made it clear to him that the Government was not prepared to hand over its responsibility for judging on matters of national security to an outside body, even to a judge. The point of the approach which I had suggested would be that it might conceivably enable the matter to be settled in a manner satisfactory to both parties, and the programmes to be transmitted, without the need to proceed with the process of injunction. Mr Hussey said that they recognised that, and had considered the matter in that light, but still did not wish to take up the approach which I had offered.

5. I said that I would report accordingly to Ministers.

6. I am sending copies of this minute to the Prime Minister, the Foreign and Commonwealth Secretary, the Secretary of State for Defence and the Attorney General.

Robert Armstrong

22 December 1987



15.13  
m

PRIME MINISTER

THE WRIGHT CASE

I understand from Christopher Mallaby that the Foreign Secretary may, somewhat unseasonably, suggest to you when you see him on Boxing Day that there should be a meeting of OD(DIS) early in the New Year to discuss the Wright case.

In fact there are no decisions outstanding which need Ministerial discussion. An OD(DIS) meeting would simply be to take stock. The next important decisions will concern what we say after the various cases, including appeals, are concluded. But Christopher Mallaby has work in hand on that. An early meeting is not needed.

I suggest that if the Foreign Secretary raises this with you, you might say that because of your absence in Africa your diary in the New Year would not permit you to take a meeting. But if he and the Home Secretary believe that one would be useful, the Home Secretary should chair a meeting of OD(DIS), as he has in the past, and report its conclusions to you.

mf

N. L. W.

N. L. Wicks

22 December 1987



From: THE PRIVATE SECRETARY



CONFIDENTIAL

HOME OFFICE  
QUEEN ANNE'S GATE,  
LONDON SW1H 9AT

21 December 1987

*Dear Bruce,*

OD(DIS)(87)101: BBC RADIO 4 SERIES  
"MY COUNTRY, RIGHT OR WRONG"

The Home Secretary has seen this paper *with new?* attaching a note by officials suggesting that we should repeat to the BBC that we are willing to consider whether the three programmes in this BBC Radio 4 series, perhaps after amendment, could avoid breaches of the duty of confidentiality. The Home Secretary supports this further approach to the BBC, which cannot he believes in any sense disadvantage us.

Copies of this letter go to the Private Secretaries to the Prime Minister, other members of OD(DIS), the Attorney General, the Lord Advocate and Sir Robert Armstrong.

*Yours sincerely,*

*P J C Mawer*

P J C MAWER

Bruce Dinwiddy, Esq.,

CONFIDENTIAL





Pre Minutes  
to note .

N. L. W.

21.12

PRIME MINISTER

AG -v- GUARDIAN, OBSERVER AND SUNDAY TIMES

Mr Justice Scott has now finished delivering his Judgment in the above case. He has refused to grant us permanent injunctions against the three newspapers, on the ground that "the publication and world-wide dissemination of Spycatcher and the information therein contained which has taken place since July 1987 has had the result that there is no longer any duty of confidence lying on newspapers or other third parties in relation to the information contained in the book". He has, however, granted us an account of profits against the Sunday Times in respect of the first instalment of its intended serialisation of Spycatcher on 12 July 1987.

The Judge ordered that the Government pay all of the costs in the action of the Guardian and Observer. As regards the Sunday Times, the Judge's order was that we pay all their costs in the action but that they pay 25% of ours.

The Judge granted our application that the present injunctions should remain in place until 18 January 1988, a date which was put to him as the likeliest one for the start of any appeal.

You agreed during lunchtime, while the Judge was still reading his Judgment, that if it became necessary to do so we should announce to the Judge, or to the Court of Appeal later in the afternoon, that we were going to appeal against his Judgment. In the event it did not become necessary, because he continued the present injunctions until next year. It is clear to me, now that I have had a chance to study the Judgment in more depth and discuss it with Counsel, that it is eminently appealable: the Notice of Appeal is even now being prepared.

Tomorrow officials will circulate a summary of the Judgment, identifying the principal findings.





I am copying this to the other members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

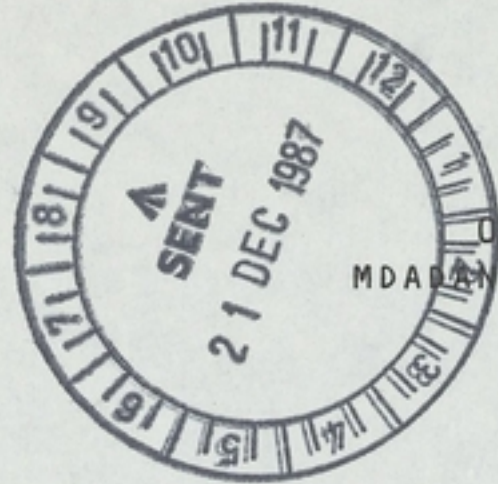
Neil MacNeil

21 December 1987



fu

UNCLASSIFIED



070071  
MDADA 9956

UNCLASSIFIED  
FM WELLINGTON  
TO DESKBY 210930Z FCO  
TELNO 546  
OF 210220Z DECEMBER 87

**ADVANCE COPY**

SPYCATCHER

1. FOLLOWING TODAY'S JUDGEMENT IN THE COURT OF APPEAL, WE HAVE BEEN TAKING THE LINE THAT THE REFUSAL OF AN INJUNCTION TO RESTRAIN FURTHER PUBLICATION OF MATERIAL FROM SPYCATCHER DOES NOT INVOLVE ANY DETERMINATION IN RESPECT OF OTHER ASPECTS OF THE CASE SEMI COLON THESE MATTERS CAN BE CONSIDERED AT A RESUMED HEARING IN THE NEW YEAR SEMI COLON OUR COUNSEL HAS ASKED THAT DATES FOR THIS BE SET AS SOON AS POSSIBLE. ON THE QUESTION OF APPEAL TO THE PRIVY COUNCIL, WE HAVE, AS INSTRUCTED (TELECON CABINET OFFICE DUTY OFFICER/DHC), TAKEN THE LINE THAT OUR LEGAL ADVICE, ON THE SPECIFIC MATTER OF THE INJUNCTION, WAS THAT AN APPLICATION FOR LEAVE TO APPEAL WAS UNLIKELY TO SUCCEED.

BYATT

YYYY

DISTRIBUTION

20

ADVANCE 20

PETER WRIGHT CASE  
PS/PUS  
MR BOYD  
DEP.HD/PUSD  
MR POWELL PUSD  
NEWS  
RESIDENT CLERK  
MR DINWIDDY CAB OFF  
PS/SIR R ARMSTRONG CAB OFF  
SIR C FIGURES CAB OFF

MR MALLABY CAB OFF  
MR INGLESE LAW OFFICERS DEPT  
MR NURSAW HOME OFF  
MR MOWER HOME OFF  
SIR B CUBBON, PUS HOME OFF  
LEGAL ADVS (SECURITY SERVICE-)  
DIRECTOR GENERAL (-VIA PUSD)  
MR HOGG TREASURY SOLICITORS  
PS/NO.10 DOWNING ST  
PRESS OFFICE NO/10 DOWNING ST

NNNN



PRIME MINISTER

PETER WRIGHT CASE IN NEW ZEALAND (OD(DIS))87 100

The Attorney General agrees with the advice in the OD(DIS) paper below that we should not appeal to the Privy Council if the Appeal Court rules against continuation of our injunction in New Zealand, but defers consideration of other aspects of the case. The Attorney makes this subject to the sensible proviso that our New Zealand lawyers should have the discretion to appeal for continuation of the injunction if their scrutiny of the text of the judgment suggests that this is worthwhile.

Agree with the official's advice below subject to Attorney's proviso?

*Yes*  
N.L.W.

N.L. Wicks

18 December 1987

*If you disagree, with the officials' advice, could you please let the Duty Clerk know and we can then discuss.*



CONFIDENTIAL  
FM WELLINGTON  
TO DESKBY 180800Z FCO  
TELNO 541  
OF 180200Z DECEMBER 87

2  
Prime Minister  
Understandly from P.W. Lange.  
N.C.U  
18.12 MB

YOUR TELNO 327: SPYCATCHER

1. THE VIEW IN PARAGRAPH 2 OF TUR PERHAPS DOES NOT TAKE ACCOUNT OF THE FACT THAT THE NZ GOVERNMENT ARE COMMITTED TO ABOLISHING THE RIGHT OF APPEAL TO THE PRIVY COUNCIL AS SOON AS A PRACTICAL ALTERNATIVE CAN BE FOUND. THE ISSUE IS THE SUBJECT OF ACTIVE DISCUSSION IN LEGAL CIRCLES. THE PRESIDENT OF THE APPEAL COURT, SIR ROBIN COOK, IS SAID TO BE AMONG THE ADVOCATES OF ABOLITION, DESPITE BEING PERSONALLY FAVOURABLE TO LINKS WITH BRITAIN IN GENERAL. AN APPEAL BY US TO THE PRIVY COUNCIL IN THE SPYCATCHER CASE WOULD THEREFORE SEEM LIKELY TO BE CONTROVERSIAL BOTH IN LEGAL AND POLITICAL TERMS HERE. SYMPATHY FOR OUR CASE HAS TENDED TO COME FROM THE PRIME MINISTER PERSONALLY RATHER THAN HIS GOVERNMENT AS A WHOLE.

2. YOUR TUR WAS FOLLOWED BY A TELEPHONE CALL FROM DINWIDDY (CABINET OFFICE) TO MISS SPITTLES, SAYING THAT IF THE APPEAL COURT DECISION IS ADVERSE COUNSEL WILL APPLY FOR LEAVE TO APPEAL TO THE PRIVY COUNCIL TO KEEP THE OPTION OPEN. IN THE LIGHT OF THE BACKGROUND IN PARAGRAPH 1 ABOVE I THOUGHT IT RIGHT TO FOREWARN PRIME MINISTER LANGE WHEN I PAID MY INTRODUCTORY CALL THIS MORNING. LANGE SAID THAT DECISIONS ON HANDLING THE CASE MUST OF COURSE BE FOR US SEMI COLON THE PRIVY COUNCIL APPEAL WOULD ACCORD WITH THE LOGIC OF OUR APPROACH SEMI COLON HIS VIEW ALL ALONG HAD BEEN THAT NEW ZEALAND'S INTEREST LAY IN DISCOURAGING DISCLOSURES SUCH AS THOSE OF WRIGHT SEMI COLON BUT THE 'INJUNCTION ROUTE' WAS AN UNCERTAIN ONE, AND HE WOULD RATHER HAVE SEEN WRIGHT SUED 'FOR MORE THAN TASMANIA IS WORTH' SEMI COLON THE SPECTACLE OF HER MAJESTY'S BRITANNIC GOVERNMENT PURSUING A NEW ZEALAND DEFENDANT FROM A NEW ZEALAND COURT TO AN APPARENTLY BRITISH ONE WOULD LOOK ODD PUBLICLY HERE. HE CONCLUDED BY SAYING THAT HE DID NOT FEEL HE COULD URGE ANY COURSE UPON US BUT VERY MUCH HOPED THAT WE WOULD WIN IN THE NEW ZEALAND APPEAL COURT TODAY 'SO THAT THE PROBLEM WILL NOT ARISE'.

3. IN THE LIGHT OF THE ABOVE IT WOULD CLEARLY BE STRONGLY PREFERABLE, IN TERMS OF ANGLO-NEW ZEALAND RELATIONS, IF WE CAN



REST UPON THE DECISION OF THE NEW ZEALAND COURT OF APPEAL.  
IF THE PRIVY COUNCIL WERE TO OVERRULE THE NEW ZEALAND COURTS  
IN FAVOUR OF THE BRITISH GOVERNMENT, PUBLIC REACTION HERE MIGHT  
BE BRISK. BUT I APPRECIATE THAT THERE MAY BE LEGAL ARGUMENTS  
IN FAVOUR OF THE APPEAL EVEN IF IT MEANS ACCELERATING THE DEMISE  
OF NEW ZEALAND RECOURSE TO THE PRIVY COUNCIL.

BYATT

YYYY

DISTRIBUTION 40MAIN 25

PETER WRIGHT CASE  
LIMITED  
DEP. HD/PUSD  
MR LITTLEFIELD PUSD  
PUSD (E206)  
HD/PUSD  
HD/SPD  
HD/NEWS

HD/INFO  
PS  
PS/PUS  
MR BOYD  
MR MCLAREN  
MR DARWIN LEGAL ADVISERS  
MR GILLMORE

ADDITIONAL 15

PS/SIR R ARMSTRONG CAB OFF  
SIR C FIGURES CAB OFF  
MR MALLABY CAB OFF  
MR DINWIDDY CAB OFF  
MR J BAILEY TRESY SOLICITORS  
MR INGLESE LAW OFFICER DEPT  
PS/HOME SECRETARY  
SIR B CUBBON PUS, HOME OFF

MR CHILCOTT HOME OFF  
MR NURSAW HOME OFF  
MR MOWER HOME OFF  
LEGAL ADVISERS (SEC. SERVCS)  
DIR. GENERAL (SEC. SERVCS - )  
(- BOTH VIA PUSD E203)  
MR WICKS NO.10 DOWNING ST  
PRESS OFFICE NO.10 DOWNING ST

NNNN



CONFIDENTIAL

*NBPN - no*

062574  
MDLIAN 7147

CONFIDENTIAL  
FM CANBERRA  
TO PRIORITY FCO  
TELNO 797  
OF 170600Z DECEMBER 87

*Done Minutes*

*You will remember that  
it was decided to stick  
with Simos.*

*N.C.U*

*10.12.*

PERSONAL FOR CHRISTOPHER BATTISCOMBE, PUSD  
FROM HIGH COMMISSIONER

PETER WRIGHT CASE

1. I HAVE JUST BEEN TOLD BY GAVAN GRIFFITH THAT MALCOLM TURNBULL  
WILL BE CONDUCTING THE DEFENCE CASE IN THE HIGH COURT AFTER ALL. IT  
HAD BEEN SUGGESTED EARLIER THAT HIS FATHER-IN-LAW, TOM HUGHES,  
WOULD BE DOING IT. I NEED HARDLY ADD THAT GRIFFITH WENT ON TO REPEAT  
MANY OF THE SAME POINTS HE HAS MADE TO ME BEFORE ABOUT OUR COUNSEL.  
I SENT YOU A COPY OF A MINUTE RECORDING MY LAST CONVERSATION  
WITH HIM ABOUT THIS ON 15 OCTOBER. I DO NOT THINK THERE IS ANYTHING  
I CAN ADD EXCEPT THAT GRIFFITH CONTINUES TO FEEL STRONGLY THAT WE  
ARE MAKING A MISTAKE IN STICKING TO SIMOS.

LEAHY

*The Australian  
had office*

YYYY

DISTRIBUTION

40

MAIN

25

PETER WRIGHT CASE  
LIMITED  
DEP.HD/PUSD  
MR LITTLEFIELD PUSD  
PUSD (E206)  
HD/PUSD  
HD/SPD  
HD/NEWS

HD/INFO  
PS  
PS/PUS  
MR BOYD  
MR MCLAREN  
MR DARWIN LEGAL ADVISERS  
MR GILLMORE

ADDITIONAL

15

PS/3IR R ARMSTRONG CAB OFF

MR CHILCOTT HOME OFF

PAGE 1  
CONFIDENTIAL



REST UPON THE DECISION OF THE NEW ZEALAND COURT OF APPEAL.  
IF THE PRIVY COUNCIL WERE TO OVERRULE THE NEW ZEALAND COURTS  
IN FAVOUR OF THE BRITISH GOVERNMENT, PUBLIC REACTION HERE MIGHT  
BE BRISK. BUT I APPRECIATE THAT THERE MAY BE LEGAL ARGUMENTS  
IN FAVOUR OF THE APPEAL EVEN IF IT MEANS ACCELERATING THE DEMISE  
OF NEW ZEALAND RECOURSE TO THE PRIVY COUNCIL.

BYATT

YYYY

DISTRIBUTION

40

MAIN 25

PETER WRIGHT CASE  
LIMITED  
DEP.HD/PUSD  
MR LITTLEFIELD PUSD  
PUSD (E206)  
HD/PUSD  
HD/SPD  
HD/NEWS

HD/INFO  
PS  
PS/PUS  
MR BOYD  
MR MCLAREN  
MR DARWIN LEGAL ADVISERS  
MR GILLMORE

ADDITIONAL 15

PS/SIR R ARMSTRONG CAB OFF  
SIR C FIGURES CAB OFF  
MR MALLABY CAB OFF  
MR DINWIDDY CAB OFF  
MR J BAILEY TRESY SOLICITORS  
MR INGLESE LAW OFFICER DEPT  
PS/HOME SECRETARY  
SIR B CUBBON PUS, HOME OFF

MR CHILCOTT HOME OFF  
MR NURSAW HOME OFF  
MR MOWER HOME OFF  
LEGAL ADVISERS (SEC. SERVCS)  
DIR.GENERAL (SEC. SERVCS - )  
(- BOTH VIA PUSD E203)  
MR WICKS NO.10 DOWNING ST  
PRESS OFFICE NO.10 DOWNING ST

NNNN



CONFIDENTIAL



*File  
VC4 ASA*

10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*

17 December 1987

*Dear Michael,*

SPYCATCHER - NEW ZEALAND

The Prime Minister saw this evening the Attorney General's minute of 17 December about a possible appeal to the Privy Council in this case.

As I reported to you on the telephone, the Prime Minister appreciates the considerations which have led the Attorney General to suggest that we should not appeal immediately on the conclusion of the Appeal Court judgement, should that judgement not go in our favour. But she believes that the issues at stake are so grave as to warrant an immediate application to obtain the leave of the New Zealand Court of Appeal to appeal to the Privy Council, in the way outlined in paragraph 3 of the Attorney General's minute. She takes this view for two main reasons. First, it is important, in her view, to use every legitimate legal avenue to prevent publication of "Spycatcher" in order to deter others who might be tempted to publish similar memoirs. Second, one of the questions at issue, that of jurisdiction, is so important, both in this particular security context and more generally, that the Prime Minister believes that we should pursue the point to the highest court should we be unsuccessful in the lower courts. A further reason for immediate appeal is that it would increase our chances of keeping the present injunction in place.

You reported the Prime Minister's conclusions to the Attorney General. You later told me that he was quite content that if we lose the case in the New Zealand Court of Appeal, we should seek leave to appeal to the Privy Council immediately on the conclusion of the judgement. He would send instructions accordingly to our New Zealand lawyers.

I am sending a copy of this letter to the Private Secretaries to members of OD(DIS), the Lord Advocate and to Sir Robert Armstrong.

*Nigel Wicks*

N.L. WICKS

Michael Saunders, Esq.,  
Law Officers' Department.

CONFIDENTIAL





PRIME MINISTER

SPYCATCHER - NEW ZEALAND

1. The New Zealand Court of Appeal begins to hear our appeal in the Spycatcher case on 18 December. I understand it is just about possible that the Court of Appeal will give judgment as early as the end of that day (i.e. during tonight our time). On the assumption that we lose, we need now to consider urgently some aspects relating to the question whether we should appeal to the Privy Council.
2. I am worried by some of the implications of any appeal to the Privy Council in this particular case. The New Zealand Government is already proposing to withdraw the right of appeal to the Privy Council within the next few years. Any appeal in this case could increase the pressure for withdrawal in New Zealand. And it would look as though we were seeking to secure a favourable judgment from our own Judges on matters essentially relating to the New Zealand public interest. At the very least we should not announce an appeal until we have had the opportunity of carefully considering the New Zealand Court of Appeal's judgment and then taking our New Zealand lawyers' advice on the chances of success on any appeal. I would want to see very good reason indeed before advising you to appeal.
3. If, however, we handle matters in this way, there are repercussions for our chances of success on any appeal for the following reason. To appeal to the Privy Council we need to obtain the leave of the New Zealand Court of Appeal. We can seek such leave immediately on the conclusion of the judgment, i.e. without having considered the contents of the judgment. In these circumstances it is possible that the New Zealand Court of Appeal would not only give leave to appeal but would also make an order which had the effect of keeping the present injunction in place.





4. As an alternative to applying for leave to appeal immediately on the conclusion of judgment, we might do so any time within 21 days of judgment. If our application were contested by the other side in New Zealand, the New Zealand Court of Appeal would probably not hear it until February 1988. If we waited, we would have the opportunity first of considering the contents of the judgment before deciding on any appeal. The drawback, however, would be that the Court of Appeal in New Zealand would be very unlikely to make an order which kept the injunction in place. To lose the injunction would adversely affect our chances on any appeal to the Privy Council. We would almost certainly not get the Privy Council to re-impose the injunction; nor would there be any point, as the Dominion Newspaper would have concluded its serialisation of extracts from Spycatcher in the meantime.

5. The course I favour is at paragraph 4 above, despite the drawback. My own assessment is that if the New Zealand Court of Appeal's judgment is similar to that of the Chief Justice at first instance we will have little chance on appeal to the Privy Council.

6. We need to send instructions to our New Zealand lawyers on this matter by close of play today in case the New Zealand Court of Appeal gives judgment over night. May I therefore ask for any comments by 6.30 p.m. this afternoon. I will assume that colleagues are content with my proposal at paragraph 5 above unless I hear to the contrary.

7. I am copying this to the members of OD(DIS) to the Lord Advocate and to Sir Robert Armstrong.

*David Maxwell*

---

17 December 1987



From: THE PRIVATE SECRETARY



CONFIDENTIAL

HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

15 December 1987

Dear Michael,

"SPYCATCHER" - NEW ZEALAND

*ATTACHED*

The Home Secretary has seen a copy of the Attorney General's minute to the Prime Minister of today recommending an appeal against the dismissal by the Chief Justice of New Zealand of our claim for a permanent injunction and an account of profits against Wellington newspapers. The Home Secretary concurs with the Attorney General's view that we should appeal.

Copies of this letter go to the Private Secretaries to the Prime Minister, other members of OD(DIS), the Lord Advocate and Sir Robert Armstrong.

*Yours sincerely,*  
*P J C Mawer*

P J C MAWER

Michael Saunders, Esq.,

CONFIDENTIAL



CONFIDENTIAL



MT2BRU  
- file

10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*

15 December 1987

*Dear Anthony,*

This is to confirm my conversation with you this afternoon in which I said that the Prime Minister agreed with the advice of the Attorney General, set out in his minute of today, that the New Zealand High Court's judgment in the Spycatcher case should be appealed.

I am sending a copy of this letter to the Private Secretaries to the other members of OD(DIS), and to Alan Maxwell (Lord Advocate's Department) and Trevor Woolley (Cabinet Office).

*Yours sincerely  
Nigel Wicks*

N.L. Wicks

Anthony Inglese, Esq.,  
Law Officers' Department.

DTJ

CONFIDENTIAL



Discussed

CONFIDENTIAL

See by PM.

Prime Minister

Agree to  
appeal. 7

N.L.U

15.12

010



PRIME MINISTER

SPYCATCHER - NEW ZEALAND

Last night, the Chief Justice of New Zealand, sitting in the High Court, dismissed our claims for a permanent injunction and an account of profits against Wellington Newspapers. He later agreed to renew the interim injunction until 10 p.m. (our time) today. I understand that it may be possible for an appeal against this decision to be heard on Thursday and Friday of this week, possibly running into the beginning of next week. If the appeal is heard then, there is some prospect that the Chief Justice would be willing to extend the interim injunction to cover the period of the appeal. If, however, the appeal cannot be heard at that time, the Chief Justice will not be willing to extend the interim injunction. We would then have to appeal to the Court of Appeal against his refusal to extend it.

We need to take a decision today on whether we are going to pursue an appeal so that instructions can be given to our lawyers in New Zealand by 8 p.m. They will then be in a position to seek a further extension of the interim injunction beyond 10 p.m. this evening.

I have no doubt that the Judgment should be appealed. Our lawyers advise that there are a number of appealable points. They are reasonably confident that the Court of Appeal will take a different view on at least some of these points and they put the prospects of this at fifty-fifty. The Judgment is very disappointing. We have lost on nearly all our principal contentions. The Chief Justice appears to have followed many of the views of Kirby P. in the New South Wales Court of Appeal and has, in certain respects, gone beyond his views to our disadvantage

The Chief Justice found that there was no contract between Wright and the Crown. He had no doubt that Wright acquired or was entrusted with information in his capacity as an officer of the Security Service, that the

CONFIDENTIAL





information had the necessary quality of confidence about it and that the information was acquired by him in circumstances importing an obligation of confidence. He did, however, find that for our claim in relation to an equitable or fiduciary duty of confidence to succeed, we had to establish (i) that publication would be a breach of confidence, (ii) that the public interest requires publication to be restrained and (iii) that there were no other contradictory facts more compelling in the public interest. He found that (i) and (ii) were satisfied. In particular he said, as to (ii), that Sir Robert Armstrong's evidence had established a strong case in favour of our claim. He indicated, however, that he would have probably found that there were compelling arguments which militated in favour of publication in the UK public interest, although he concluded that he did not need to decide this issue. He noted that the real decision as to whether or not the Attorney General can succeed in a UK court under English law will be made in the UK courts and not in the courts in New Zealand.

The Chief Justice unfortunately followed two of the three Judges in the Court of Appeal in New South Wales who found that the UK in seeking to enforce the duty of confidentiality alleged against Wright was doing so in the exercise of its sovereign powers to ensure the security of the realm and not in some collateral private law capacity. It was therefore seeking to enforce a foreign public law. The New Zealand courts would not permit such enforcement. The Chief Justice referred to the evidence given by Mr Hensley for the New Zealand Government. He concluded that Mr Hensley's evidence did not in any way assist the case against Wellington Newspapers. Mr Hensley had specifically stated that the publication of Spycatcher material in New Zealand would not do further damage to New Zealand security and intelligence interests.

Finally the Judge concluded that Wellington Newspapers did not have the requisite knowledge of the duty owed by Wright to render it liable for publication of the article in "The Dominion" newspaper. He added that in any event he would have exercised his discretion against the granting of an injunction on the grounds that the whole matter was now in the public domain,





that it had not been proved that publication would pose any threat to New Zealand security interest, that there should be given little weight to the suggested deterrent nature of an injunction to warn possible disaffected Service personnel in New Zealand from future disclosures and that having regard to the extent of publication and availability of Spycatcher at present, it was in the public interest that the material be allowed to be published in New Zealand.

Similar findings are being appealed in the Australian High Court. Failure to appeal in New Zealand might well prejudice our case in Australia. I recommend that instructions be given to our lawyers to pursue an appeal as soon as possible and to take whatever steps are necessary to secure an extension of the interim injunction.

I am copying this minute to other members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

*Arthur Mayhew*

---

15 December 1987





DEPARTMENT/SERIES <i>PREM 19</i> ..... PIECE/ITEM ..... (one piece/item number)	Date and sign
Extract details: <i>Report dated 14 December              1987</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>ADY</i> <i>22/03/23</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



CONFIDENTIAL



Lee v6

10 DOWNING STREET

*From the Principal Private Secretary*

SIR ROBERT ARMSTRONG

Thank you for your minute of 8 December with the defensive briefing about the matter referred to in your minute of 30 November (AO 87/3354).

It was helpful to have this as background, but I am sure that any briefing done on this matter should be done by either the Home Office or the Ministry of Defence. If No.10 were to take a too active part in the briefing, it would be assumed there had been a very serious breach in security.

N.L. Wicks

9 December 1987

CONFIDENTIAL

2



THE	
NATIONAL	
ARCHIVES	

DEPARTMENT/SERIES PREM 19 ..... PIECE/ITEM ..... 2309 (one piece/item number)	Date and sign
Extract details: Report dated 8 December 1987	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>Asper</i> 22/05/23
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



File copy for MLW

SLW



10 DOWNING STREET

*From the Principal Private Secretary*

7 December 1987

Here is the envelope containing the Sunday Times story which we received on Saturday evening.

(N. L. WICKS)

Michael Saunders, Esq.,  
Law Officers Department.

*BM*



CONFIDENTIAL

*file SA*



10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*

3 December 1987

*Dear Ian,*

**BBC RADIO 4 SERIES ON THE SECURITY AND INTELLIGENCE SERVICES**

I have shown the Prime Minister your letter to me of 2 December in which you record the Defence Secretary's views on the Foreign Secretary's suggestion in his Private Secretary's letter of 2 December that political representations should be made to the BBC about their failure to take steps to check that their forthcoming radio programmes do not infringe national security.

The Prime Minister agrees with the Defence Secretary's proposal that Sir Clive Whitmore, as Chairman of the DPBC, should approach the BBC to express disappointment that they were not prepared to co-operate more fully with the Secretary of the Committee and should attempt to promote a greater degree of dialogue and co-operation with the Corporation in future cases.

I am sending a copy of this letter to the Private Secretaries of other members of OD(DIS) and to Trevor Woolley (Cabinet Office).

*Yours sincerely  
Nigel Wicks*

N. L. WICKS

Ian Andrews, Esq.,  
Ministry of Defence

CONFIDENTIAL

*SA*





MINISTRY OF DEFENCE  
 MAIN BUILDING WHITEHALL LONDON SW1  
 Telephone 01-9307022XXXX 01-218 2111/3

MO 23/1L

Prime Minister

2nd December 1987

X looks the right course.

Agree?

N. L. W  
2.12

Yes not

D. Nigel

BBC RADIO 4 SERIES ON THE SECURITY AND INTELLIGENCE SERVICES

*Below*

The Defence Secretary has seen the Foreign Secretary's suggestion in Tony Galsworthy's letter of 2nd December that political representations should be made to the BBC about their failure to take steps to check that their forthcoming radio programmes do not infringe national security.

While Mr Younger agrees that it is unsatisfactory that the BBC have not provided the Secretary of the DPBC with a transcript, he would counsel against making a political approach. The effectiveness of the DPBC system, which is a voluntary one, depends on its continuing credibility with the media: that would be likely to be seriously undermined if it became apparent that a direct link existed between the DPBC Secretary and Ministers.

X In the present case the BBC have, short of providing a transcript, given the DPBC Secretary a substantial amount of information about the content of the first programme (and it is clearly desirable that similar information is forthcoming in relation to the succeeding programmes). The Defence Secretary has, however, asked Sir Clive Whitmore as Chairman of the DPBC to approach the BBC to express his disappointment that they were not prepared to co-operate more fully with the Secretary and in an attempt to promote a greater degree of dialogue and co-operation in future cases. Beyond this, Mr Younger considers it would be imprudent to go.

I am sending copies of this letter to the Private Secretaries of other members of OD(DIS) and to Sir Robert Armstrong.

*(I C F ANDREWS)*  
 Private Secretary

Nigel Wicks Esq  
 10 Downing Street





Foreign and Commonwealth Office  
London SW1A 2AH

2 December 1987

*Jean Christymer,*

BBC Radio 4 Series on the Security and Intelligence Services

The Foreign Secretary has seen a copy of OD(DIS)(87)91. He agrees with the action proposed. However he wonders whether, in view of the BBC's refusal to provide a transcript to the D Notices Committee, it would not be advisable for representations to be made to them at a political level that it is irresponsible to proceed with the programmes without an effort being made to check whether they infringe national security. *WITHHOLD*

I am copying this letter to Nigel Wicks (No 10) and to the Private Secretaries to Members of OD(DIS) and Sir Robert Armstrong.

*Yours ever,  
A C Galsworthy*

(A C Galsworthy)  
Private Secretary

C L G Mallaby Esq CMG  
Cabinet Office





RLG

ECU

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Principal Private Secretary*

SIR ROBERT ARMSTRONG

BBC RADIO 4 SERIES ON THE SECURITY AND INTELLIGENCE  
SERVICES  
OD(DIS)(87)91

The Prime Minister has seen this note by officials which recommends certain action in respect of the forthcoming BBC Radio 4 series on the security and intelligence services entitled "My Country Right or Wrong".

The Prime Minister agrees the course of action recommended in paragraphs 10, 11 and 12 of this paper.

I am sending a copy of this minute to the Private Secretaries to members of OD(DIS), the Lord Advocate and Mr. Mallaby.

N.L. WICKS

2 December 1987

RLG





File 175

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Principal Private Secretary*

SIR ROBERT ARMSTRONG

PETER WRIGHT CASE: SALES OF "SPYCATCHER" IN HONG KONG (OD(DIS)(87)90)

The Prime Minister has seen this OD(DIS) paper covering a note by officials about the two bookshops in Hong Kong that have recently been selling "Spycatcher".

The Prime Minister agrees with the conclusions in paragraph 4 of the officials' note.

I am sending copies of this minute to the Private Secretaries to members of OD(DIS) and the Lord Advocate and Mr Mallaby.

N.L.W.

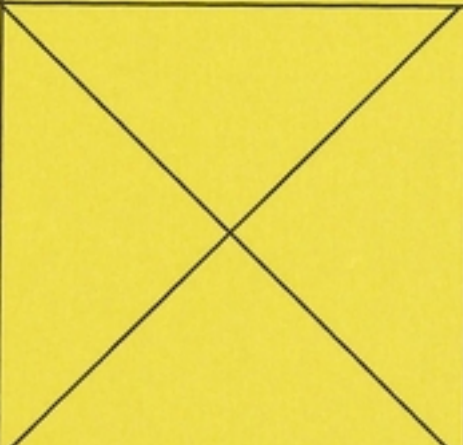
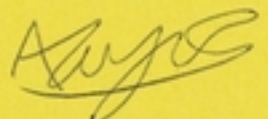
N.L. Wicks

1 December 1987

LB



THE	
NATIONAL	
ARCHIVES	

DEPARTMENT/SERIES PREM 19 ..... PIECE/ITEM ..... 2309 (one piece/item number)	Date and sign
Extract details: Note dated 30th November 1987	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	 22/05/23
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	





DEPARTMENT/SERIES PREM 19 ..... PIECE/ITEM ..... 2509 (one piece/item number)	Date and sign
Extract details: Note dated 27 November 1987	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	Amps 22/05/23
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



NIGEL: MESSAGE FROM MR MALLABY THROUGH BRUCE DINWOODY

PETER WRIGHT CASE

SIR ROBERT ARMSTRONG HAS NOT YET COMPLETED HIS CROSS EXAMINATION.  
HE WILL GO BACK AND DO IT AT 2.00 PM.

REINFORCES THE ARGUMENT THAT THE PRIME MINISTER NOT BE DRAWN  
ON WHETHER A FORMER MEMBER OF THE SECURITY OR INTELLIGENCE  
SERVICES SHOULD HAVE ULTIMATE RECOURSE TO THE MEDIA.

SIR ROBERT ARMSTRONG WAS FURTHER QUESTIONED ON THIS THIS  
MORNING AND TOOK THE "ARROGANT" LINE.

KAY

26/11/87



CONFIDENTIAL

ra

174247  
MDADAN 6664

## ADVANCE COPY

CONFIDENTIAL  
FM PRETORIA  
TO DESKBY 251530Z FCO  
TELNO 251  
OF 251405Z NOVEMBER 87  
INFO PRIORITY JOHANNESBURG

TELECON JAMES/LITTLEFIELD: SPYCATCHER

### SUMMARY

-----  
1. SPYCATCHER HAS APPEARED ON SALE HERE. PROSPECTS OF INTERIM INJUNCTION TO PREVENT SALES DOUBTFUL. CHANCE OF FINAL INTERDICT IN OUR FAVOUR REMOTE.

### DETAIL

-----  
2. THE AUSTRALIAN EDITION OF SPYCATCHER HAS NOW APPEARED ON SALE IN AT LEAST ONE SHOP IN JOHANNESBURG. OTHER SHOPS ARE EXPECTING DELIVERIES SOON. THE BOOK IS BEING DISTRIBUTED BY HEINEMANN SOUTH AFRICA LTD.

3. OUR LEGAL ADVISER'S VIEWS ON THE PROSPECTS FOR LEGAL ACTION TO PREVENT DISTRIBUTION WERE SET OUT IN THE ENCLOSURE TO JAMES' LETTER OF 20 NOVEMBER TO BATTISCOMBE. WE HAVE CONSULTED PETTY AGAIN ON THE PROCEDURE AND PROSPECTS FOR ACTION TO PREVENT FURTHER SALES.

4. PETTY SAID THAT IT WOULD FIRST BE NECESSARY TO SERVE NOTICE ON HEINEMANN, AND BOOKSHOPS WHERE SPYCATCHER WAS ON SALE, SEEKING ITS WITHDRAWAL. THEY WOULD REQUIRE SOME TIME TO REPLY. IF NEGATIVE, WE WOULD THEN HAVE TO SEEK AN INTERIM INTERDICT FROM THE COURT TO PREVENT FURTHER SALES PENDING DETERMINATION ON A FINAL INTERDICT. IT WOULD TAKE A WEEK TO 10 DAYS FROM NOW TO BRING THE CASE TO COURT. THE COURTS BEGIN VACATION ON 27 NOVEMBER UNTIL FEBRUARY. THE COURT WOULD THEREFORE NEED TO DETERMINE URGENCY BEFORE HEARING THE CASE FOR AN INTERIM INTERDICT. AN APPLICATION TO THE COURT WOULD REQUIRE EITHER MYSELF OR A MEMBER OF THE EMBASSY STAFF BEING GIVEN AUTHORITY FROM HMG.

5. AGAINST THIS BACKGROUND, PETTY GAVE THE FOLLOWING ASSESSMENT:  
I) THERE WAS A GOOD CHANCE THAT THE COURT WOULD DETERMINE THAT THE CASE WAS URGENT AND SHOULD BE HEARD IMMEDIATELY, ON THE GROUNDS THAT THERE WAS POTENTIAL HARM TO HMG WHILE THE BOOK



CONFIDENTIAL

174247  
MDADAN 66

REMAINED ON SALE.

- II) THERE WAS A MUCH POORER CHANCE, LESS THAN 50%, THAT THE COURT WOULD GRANT AN INTERIM INTERDICT. THE FACT THAT COMPANIES HAD APPARENTLY ALREADY ENTERED INTO CONTRACTS WOULD AFFECT JUDGEMENT ON THE BALANCE OF PREJUDICE.
- III) EVEN IF AN INTERIM INTERDICT WERE GRANTED, THE CHANCE OF OBTAINING A FINAL INTERDICT WAS REMOTE. THE CRUCIAL ARGUMENT WOULD BE WHETHER HMG WOULD SUFFER IRREPARABLE HARM FROM SALE OF THE BOOK. GIVEN ITS AVAILABILITY ELSEWHERE, AND THE ABILITY OF PRIVATE INDIVIDUALS TO BRING COPIES INTO SOUTH AFRICA, THE COURT WOULD BE MOST UNLIKELY TO CONCLUDE IN HMG'S FAVOUR.

RENWICK

YYYY

DISTRIBUTION

20

ADVANCE 20

PETER WRIGHT CASE  
PS/PUS  
MR BOYD  
DEP.HD/PUSD  
MR POWELL PUSD  
NEWS  
RESIDENT CLERK  
MR DINWIDDY CAB OFF  
PS/SIR R ARMSTRONG CAB OFF  
SIR C FIGURES CAB OFF

MR MALLABY CAB OFF  
MR INGLESE LAW OFFICERS DEPT  
MR NURSAW HOME OFF  
MR MOWER HOME OFF  
SIR B CUBBON, PUS HOME OFF  
LEGAL ADVS (SECURITY SERVICE-)  
DIRECTOR GENERAL (-VIA PUSD)  
MR HOGG TREASURY SOLICITORS  
PS/NO.10 DOWNING ST  
PRESS OFFICE NO/10 DOWNING ST

NNNN



PAGE 2  
CONFIDENTIAL



022CKC

File



10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*

SIR ROBERT ARMSTRONG

The Prime Minister has seen your minute of 20 November about the approach to the Staff Counsellor, Sir Philip Woodfield, from three Labour MPs.

She believes that Sir Philip should reply briefly to the MPs simply saying that he is advised that it would not be appropriate for him to discuss these matters as they are involved with the security services.

The Prime Minister believes that any other reply would fly in the face of all conventions on these matters.

I am sending a copy of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary and the Home Secretary.

N. L. Wicks

24 November 1987

GA



*I suggest that he  
reply briefly that he is advised*

*Prime Minister  
Agree to write  
about Annex C?*

Ref. A087/3269

MR WICKS

*that it would not  
be appropriate for  
him to discuss these  
matters as they are  
involved with the security services*

*letter attached for  
signature  
N. C. W.*

*N.I. To do any  
other would be  
to try in the  
face of all  
concerns  
on these  
matters*

Sir Philip Woodfield has received a letter from three Members of Parliament, inviting him to attend a meeting of Labour MPs at the Commons to discuss the way in which it is intended that his work as Staff Counsellor in the security and intelligence services should be carried out. I attach a copy of the letter herewith.

20.11

2. All are agreed that this invitation should not be accepted. The question is how, and by whom, it should be rejected.

--- 3. Sir Philip Woodfield has himself suggested a reply (Annex A attached), which I think is open to the criticism that it leaves open the possibility that Sir Philip Woodfield might accept such an invitation later on, when the procedures are fully worked out. That would in my judgment be misleading, since I do not think that it is likely ever to be appropriate for the Staff Counsellor to attend a meeting of Members of Parliament on the basis suggested.

--- 4. I have therefore prepared an alternative draft (Annex B), on the basis of which Sir Philip Woodfield would decline the invitation definitively.

5. I think, however, that any such reply is likely to attract adverse public comment from the Members of Parliament concerned, which may not be helpful to Sir Philip Woodfield as he starts his work. It might therefore be preferable for the Prime Minister herself to write to the MPs, to make it crystal clear that the rejection of the invitation is a matter of Ministerial decision.

--- 6. I attach a draft letter which the Prime Minister might send on this basis, as Annex C.

*RA*





HOUSE OF COMMONS  
LONDON SW1A 0AA

3 November 1987

Sir Philip Woodfield  
Staff Counsellor to the  
Security and Intelligence Services  
c/o The Private Office to the Home Secretary  
The Home Office  
Queen Anne's Gate  
London  
SW1H 9AT

Dear Sir Philip

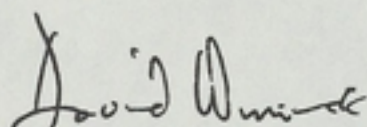
We have read of your new appointment as Staff Counsellor to the Security and Intelligence Services, and we are taking this opportunity to invite you to a meeting of Labour MPs at the Commons to discuss the way in which it is intended for your work to be carried out.

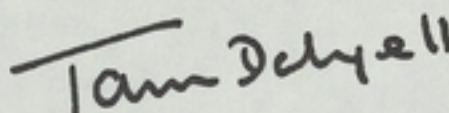
It is not our purpose to discuss at the proposed meeting the wider issues of the security services, since we appreciate this would be a matter for Ministers or the Director-General. However, our colleagues and ourselves would like to discuss at the earliest opportunity the procedures whereby personnel in the security services will be able to take up complaints with you, and how such complaints will be duly pursued.

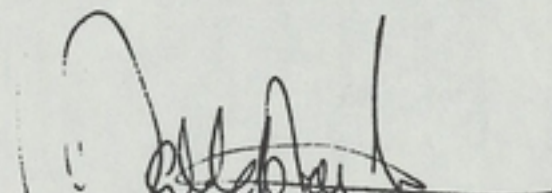
I think you will accept that your appointment is of considerable parliamentary and public interest, and our request for a meeting is not, we trust, to be viewed as unreasonable.

If you are therefore willing to attend a meeting at the House, we can then arrange a date and time convenient to yourself, and we will let our colleagues know accordingly.

Yours sincerely

  
David Winnick

  
Tam Dalyell

  
Dale Campbell-Savours



ANNEX A

DRAFT LETTER FROM SIR PHILIP WOODFIELD TO  
DAVID WINNICK ESQ MP, HOUSE OF COMMONS

Thank you for your letter of 3 November about my appointment as Staff Counsellor to the security and intelligence services.

This, as I know you recognise, is a new appointment with nothing going before to build on and I feel that my first task is to do my best to ascertain what procedures the staff would find helpful. This is bound to take some time if it is to be done sensitively and not give the impression that I have a pre-conceived idea which will be imposed on the staff.

I would therefore not think it appropriate for me to accept your suggestion that I should discuss procedures with a meeting of Labour MPs at the Commons.

If individual Members have points they wish to make to me at a later stage I would be glad to discuss this, but I have to bear in mind that I am required by the terms of reference of my appointment to report to the Prime Minister and the Secretaries of State.

POMAAY



DRAFT LETTER FROM SIR PHILIP WOODFIELD KCB CBE TO  
DAVID WINNICK ESQ MP, HOUSE OF COMMONS

Thank you for the letter which you, Mr Dalyell and Mr Campbell-Savours sent me on 3 November.

I am afraid that I am not able to accept your invitation to attend a meeting of Labour MPs to discuss the way in which it is intended for my work as Staff Counsellor for the security and intelligence services to be carried out. My terms of reference require me to report to the heads of the services concerned, to the Secretary of the Cabinet and ultimately to the Prime Minister and the Secretaries of State concerned. It will be for Ministers to decide what information should be given to Parliament about the Staff Counsellor's functions and activities.



DRAFT LETTER FROM THE PRIME MINISTER TO  
DAVID WINNICK ESQ MP, HOUSE OF COMMONS

I understand that you have invited Sir Philip Woodfield to a meeting of Labour MPs to discuss the way in which it is intended that his work as Staff Counsellor for the security and intelligence services should be carried out.

The Staff Counsellor is ultimately accountable to me and to the Secretaries of State concerned for the way in which he discharges his functions. His procedures, like the matters with which he is concerned, will be confidential. I have advised him that in the circumstances it would not be appropriate for him to accept your invitation.



PRIME MINISTER

SUBMISSION OF COURT EVIDENCE CONCERNING INFORMATION FROM  
"INSIDERS"

*OD(DIS)(87)87*  
The OD(DIS) paper below reports work commissioned at your discussion last September with the relevant Ministers on Chapman Pincher's new book. The points at issue concern the possibilities of authenticating information in court about the Security Services; the pros and cons of members of the Security Service giving evidence; and the possibility of giving evidence in camera.

The paper does not call for decisions. It makes clear the Crown's difficulties in dealing with such matters, but suggests that there are possibilities of getting round the obstacles which the lawyers can explore in each particular case.

*N.L.W.*

N. L. Wicks

19 November 1987





10 DOWNING STREET  
LONDON SW1A 2AA

*From the Principal Private Secretary*

18 November, 1987.

The Prime Minister has asked me to thank you for your letter of 30 October. She greatly appreciates your kind remarks.

While it is true that Mr. Wright's allegations relate to a time stretching back many years before the present Government came to power, Ministers are determined to uphold the lifelong duty of confidentiality which Wright, like all past and present members of the security and intelligence services, owes to the Crown. The application of this principle is essential to the ability of those services to fulfil effectively their vital role in safeguarding national security.

I have also been asked to thank you for sending to the Prime Minister your recollections about Philby and Blake. I have passed these to the relevant authorities for their earnest consideration. I am sure you will understand that it would not be appropriate for me to comment on them. Further, it is clear that the Prime Minister could not authorise you to disseminate any part of them more widely, a decision that I know you will respect.

N.L. Wicks

Wing Commander D.E. Davies, DFC, AFC, (RAF Retd)

*File J03 BES*  
*cc. Co.*  
*GF*  
*You had better*  
*keep this.*  
*JP 19/11*

*JP*





DEPARTMENT/SERIES <i>PREM 19</i> ..... PIECE/ITEM ..... <i>2509</i> (one piece/item number)	Date and sign
Extract details: <i>Minute dated 17 November 1987, with attachments</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>26/9/2023 Wayland</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



HOME SECRETARY

## PETER WRIGHT CASE : NEW ZEALAND

The proceedings in New Zealand against the Dominion newspaper are due to start on 16 November. As colleagues know, this is the same day as the English proceedings, against the Guardian, the Observer and the Sunday Times, were due to begin. When last week the Vice-Chancellor and the Court of Appeal here refused to give us more than a 7 day adjournment of the English proceedings, to 23 November, we urgently considered whether to seek an adjournment of the New Zealand proceedings until next year. The reasons for doing so were plain. We were mindful of the possibility that Sir Robert Armstrong could be placed under intolerable strain if he had to give evidence in New Zealand and then immediately fly back to enter the witness box here shortly afterwards. Moreover, Sir Robert's absence in New Zealand could have an adverse effect on the preparation of our case here (although we could not use this argument in court).

We were, however, strongly advised by our New Zealand lawyers that the very act of seeking an adjournment in New Zealand at this stage would be extremely counter-productive to our chances of success in the case there, not only for an injunction but also for an account of profits. It might also have some effect on the support we are enjoying from the New Zealand Government. The New Zealand court was likely to take a very poor view of an application for an adjournment, especially since the date of 16 November was fixed in New Zealand first, and within the last two weeks an attempt to have an interlocutory injunction relating to "Spycatcher" discharged was defeated because the court took the view that there was no harm done in waiting for the result of the trial of 16 November. Moreover, there were no further reasons for applying for an adjournment which had not been considered and rejected by the English courts.



CONFIDENTIAL



On the basis of the advice received I considered that we would be taking an unjustifiable risk to seek an adjournment in New Zealand. In the circumstances, Sir Robert Armstrong has, with understandable reluctance, accepted the very considerable burden of testifying in New Zealand on 16 November and in England in the week commencing 23 November. It would appear that the other side in New Zealand are prepared to cooperate so that Sir Robert can be released after the third day of the trial, i.e. after 18 November. We are taking steps to remind them of this commitment. We must also take any step open to us here, by way if necessary of seeking an adjournment from the trial judge, to ensure that Sir Robert, with whom I have great sympathy, is properly refreshed before he has to give evidence in the English proceedings.

I am copying this to the Prime Minister, to the other members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

P. M.

10 November 1987

CONFIDENTIAL





Foreign and Commonwealth Office

London SW1A 2AH

12 November 1987

Sir Percy Cradock GCMG  
CABINET OFFICE

*Jean in Percy,*

## DITCHLEY CONFERENCE ON INTELLIGENCE

David Gore-Booth attended the Programme Committee at Ditchley on 10 November, suitably prepared. As you will see he did better on some aspects than others: Ditchley were unhelpful on the dates of the proposed conference and Gore-Booth put them firmly on notice about the risks of their going ahead in May.\*

I enclose a copy of Gore-Booth's report. You will no doubt wish to consider this. It may well be that the next step is for Sir Robert Armstrong to speak to John Graham. I am copying this letter to Philip Mawer in the Home Office, John Howe in the MOD, Michael Saunders in the Law Officers' Department, Nigel Wicks at No 10 and Tony Galsworthy.

*am am*  
*Philip Mawer*

*P.P.*  
J D I Boyd

\* But see also the POS's minutes of 12 November recording a subsequent mtg with Sir J. Graham, attached.

*u.*





Mr Boyd

From: D A Gore-Booth  
Policy Planning Staff

Date: 10 November 1987

cc: PS  
PS/PUS  
Mr Battiscombe, PUSD  
Mr Torry, PUSD

#### DITCHLEY CONFERENCE ON INTELLIGENCE

1. I duly attended the meeting of the Ditchley Programme Committee this afternoon armed mentally with the advice in Mr Wicks' minute of 9 November to Sir R Armstrong. I am afraid that I cannot report total success. Lord Windlesham was in the chair.

2. When this item was reached, I said that it continued to give me difficulty. I felt that this difficulty might be eased somewhat if the Conference could be postponed into the second half of the year so as not to get caught in the wake of Spycatcher shenanigans. Since the dates of 7-9 October 1988 had just come free as a result of the advancement of another item (on space as it happens - more problems for HMG?!), I wondered whether the Conference on Intelligence might not be inserted there. There was a good deal of resistance to this, led by the Lords Windlesham and Hunt. Both reported that the American Programme Committee (Ditchley being an Anglo-American foundation) had been very keen on an early conference on this subject at its last meeting on 29 September. The former thought that a Spycatcher ambience would add topicality while the latter thought that the Spycatcher row was unlikely to have died by October and that the same argument would be adduced then.

3. Lord Hunt said, rather more helpfully, that the Conference should not address intelligence techniques or operations. / But he thought that there should nevertheless be a few participants who were in or close to the Intelligence Services. I supported this. but Lord Windlesham suggested that since the focus would be on public policy, ex-practitioners were not essential. Lord Hunt and I differed: if there were no cognoscenti, the open government/oversight lobby would have the field to themselves without being made aware of the reason for intelligence gathering (ie the threat), the inhibitions on practitioners and the implications of Ministerial control.

4. Lord Windlesham was unconvinced and Lord Hunt repeated that he was not in favour of postponement. I said that if the decision was taken to go ahead on the date planned, Ditchley would have to be conscious of the dangers that:

/(a)





(a) there would be no ex-practitioners (Lord Windlesham had mentioned the names of Sir A Duff and Sir B Cubbon);

(b) the Foundation might lose some of the respect in which it was held if, as a result of their absence, the discussion was completely one-sided.

5. Sir J Graham said that there was no question of a one-sided discussion. He agreed that it would be essential to be careful about participation and he intended firmly to invite people who were against open government and not just people who were in favour of it.

6. Lord Windlesham concluded that Sir J Graham should hold his fire for the moment and put out feelers.

7. I spoke to Sir J Graham privately afterwards to discover what his intentions were. He said he might have a word with the PUS. Knowing that Sir R Armstrong was in any case intending to speak to him, I suggested that he might best direct himself to that quarter. Sir J Graham responded positively to this suggestion and said that he had in any case been intending to try to have lunch with Sir R Armstrong in the next week or two.

8. Although, as the above record shows, I was pretty well isolated, I think that this exchange will have done no harm. My guess is that the Conference will go ahead from 13-15 May but that Sir J Graham will be very careful indeed about invitations. Of course he does not have the same degree of control over the American invitations but that is not our problem.

A handwritten signature in black ink, appearing to read 'D A Gore-Booth', with a long horizontal flourish extending to the right.

D A Gore-Booth





SECRET

From: Sir Patrick Wright  
Date: 12 November 1987

Mr Gore-Booth,  
Policy Planning Staff

cc: Private Secretary  
Mr Boyd  
Mr Battiscombe, PUSD  
~~Mr Torry, PUSD.~~

#### DITCHLEY CONFERENCE ON INTELLIGENCE

1. Following your minute of 10 November about the meeting of the Ditchley Programme Committee, I had an opportunity for a word at dinner last night with Sir John Graham.
2. I started by emphasising to Sir John the interest which Ministers "at the highest level" were taking in this proposal, and our hope that the Ditchley Conference on Intelligence would be held as late as possible, in order to distance it from the current Spycatcher affair. Sir John asked whether I thought the dates proposed for early October would be suitable, and seemed surprised when I said that I thought they would be. (I am in turn rather surprised, in the light of your para 8, to find that Sir John was talking about October as virtually agreed.)
3. On participation, I also emphasised strongly to Sir John that there was no question of current practitioners, or recently retired practitioners, being allowed to take part. Sir John expressed predictable disappointment about this, and said that he had hoped that at least Sir Brian Cubbon would be able to accept an invitation. I said that this would not be possible, and that we would want to look at the list of other invitees before considering whether some less recently retired officials might be allowed to take part. Speaking very personally, I mentioned the names of Lord Greenhill and Sir Anthony Parsons, but again emphasised that the question of whether they would be encouraged to take part would depend very much on the sort of invitation list drawn up by Ditchley. Sir John said that he took the point, and would look at invitation lists with great care.

Patrick Wright

SECRET

JR1AET



SUBJECT CC MASTER.

NOTE FOR THE RECORD

DISCUSSION BETWEEN THE PRIME MINISTER AND LORD CALLAGHAN IN  
THE PRIME MINISTER'S ROOM IN THE HOUSE OF COMMONS ON  
10 NOVEMBER 1987 ABOUT THE OVERSIGHT OF THE SECURITY AND  
INTELLIGENCE SERVICES

After the Prime Minister had welcomed Lord Callaghan, he said that there were four relevant issues:

1. Arrangements for authorising publication of memoirs by former members of the security and intelligence services.
2. Reform of Section 2 of the Official Secrets Act
3. The accountability of the security and intelligence services.
4. The control of the security and intelligence services.

He wanted to discuss only the last two items, though he commented on (1) that arrangements should be devised for authorising publications of former members of the services.

Accountability

Lord Callaghan believed that a recurring theme would be Parliament's wish to have greater satisfaction about arrangements for the accountability of the services. He believed that this could be achieved by the creation of a Commission of Privy Counsellors and others reporting to the Prime Minister and publishing in a report as much information as could be made available to Parliament. The Commission should travel overseas to draw lessons from the arrangements whereby other intelligence services were made accountable.



Its terms of reference should include the management of the services, personnel policies (on which the Security Commission had criticised the Security Service) and recruitment (on which he recognised that improvements had been made since his time).

Control

Lord Callaghan believed that it was difficult for a Prime Minister to know what the services were doing. In his time, the Security Service had changed its priorities from concentrating solely on targeting the Soviet threat to including within its remit internal subversion. He had not been informed of this change. The creation of some kind of Inspector General, who would report to the Security Commission or to the Prime Minister or to both, could help ensure that Ministers of the day were adequately aware of the activities of the services. The establishment of such an Inspector would help satisfy legitimate concerns in Parliament. Parliament might be reassured about the Services if one or two Privy Counsellors with Parliamentary experience were included in the membership of the Security Commission.

Lord Callaghan commented that he would not regard either of the innovations which he had described as undermining the authority of either Ministers or the heads of the agencies. Indeed, the reverse would be true in that confidence in the agencies would be increased. There was a need for some such arrangements in view of the somewhat secretive and cloistered existence which members of the agencies inevitably lived.

He recognised that the Prime Minister had great experience in dealing with the security and intelligence services and that Sir Antony Duff was the best Director-General of the Security Service for a long time. But the innovations which he proposed, and particularly the Inspector General, would, he felt, be of great value to any new Prime Minister. Concluding his remarks, Lord Callaghan said that the



sentiments which he had expressed were shared by many who had practical experience in the intelligence world.

The Prime Minister replied that changes in the managing of the agencies in recent years met many of the concerns raised by Lord Callaghan. Security Service targeting was looked at regularly and reported to her. There had been improvements in personnel practices. She had gone out of her way to shield the services from restraints on public expenditure. She agreed that the Bettaney case was disturbing and hoped that the Staff Counsellor might help to deal with such cases in the future. She would have liked to announce the appointment of the Staff Counsellor earlier, but there had been difficulty in finding exactly the right person. The Interception Act 1985 had introduced important reforms. For the longer term, she would not rule out changes in the Security Service's constitution following the cases now going through the European Court, which might result in a need to put the Security Service on a statutory basis. She believed that the proposals suggested by Lord Callaghan would undermine Ministers and the heads of the agencies. They might help those on the opposite benches who wanted to hamper the work of the services. The key was to ensure that the heads of the agencies were first class men. She doubted whether Privy Counsellors could be found to accept the responsibility of membership of the Commission which Lord Callaghan had in mind.

Section 2 of the Official Secrets Act

The Prime Minister then referred to the difficulty of devising a replacement for Section 2 of the Official Secrets Act. The Government had been studying this for some time and was considering proposals. Lord Callaghan thought that the Shepherd Bill could work, but he agreed when the Prime Minister commented that Official Secrets Act matters could not be the subject of Private Members' legislation.



CONFIDENTIAL

- 4 -

The meeting concluded after a further exchange of courtesies.

N. L. W.

N L WICKS

10 November 1987

DASADN

CONFIDENTIAL



CONFIDENTIAL



*ate* *SH*

10 DOWNING STREET

*From the Principal Private Secretary*

**MR. WOOLLEY**  
**CABINET OFFICE**

**OVERSIGHT OF THE SECURITY SERVICES:  
MEETING WITH LORD CALLAGHAN**

Since the Prime Minister told Lord Callaghan during her discussion with him on 10 November that his views would not 'go outside this room', I am not circulating a note of their discussion. But I have kept a note of the discussion here in No. 10.

If Sir Robert would like to see it, please let me know. It does not contain any surprises.

**N. L. WICKS**

**10 November 1987**

CONFIDENTIAL

*SH*



RESTRICTED

121766  
MDHIAN 4993

RESTRICTED  
FM WELLINGTON  
TO DESKBY 100930Z FCO  
TELNO 497  
OF 100230Z NOVEMBER 87

FOR RESIDENT CLERK: GRATEFUL YOU PASS FOLLOWING TO  
SIR R ARMSTRONG BEFORE HIS DEPARTURE FOR WELLINGTON, AM  
10 NOVEMBER LONDON TIME.

WELLINGTON TELNO 488 (PARA 5): SIR R ARMSTRONG'S CALL ON  
MR LANGE

1. THE PRIME MINISTER'S OFFICE HAVE ARRANGED FOR SIR ROBERT ARMSTRONG TO MEET WITH MR LANGE IN A VIP LOUNGE AT AUCKLAND AIRPORT INTERNATIONAL TERMINAL AT 10.30AM ON THURSDAY 12 NOVEMBER. I REALISE THAT THIS WILL BE LESS THAN IDEAL TIMING FROM SIR ROBERT'S POINT OF VIEW, BUT THE PRIME MINISTER IS FLYING OUT OF AUCKLAND AT 11.40AM THE SAME DAY TO VISIT AUSTRALIA (PRIVATELY). HE WILL NOT RETURN TO WELLINGTON UNTIL 17 NOVEMBER, AFTER THE WELLINGTON PROCEEDINGS HAVE STARTED.
2. IN ADDITION TO THE CONSUL-GENERAL IN AUCKLAND, MISS FRANCES MUMFORD, OF THE AUCKLAND OFFICE OF THE DISTINGUISHED VISITORS BRANCH OF THE MINISTRY OF INTERNAL AFFAIRS, WILL MEET SIR ROBERT TO ENSURE SMOOTH PASSAGE THROUGH THE IMMIGRATION FORMALITIES, TO CONDUCT HIM TO THE MEETING WITH MR LANGE, AND TO SEE HIM ON HIS WAY TO WELLINGTON.
3. TO ALLOW SIR ROBERT TO MAKE THE MOST OF HIS MEETING WITH THE PRIME MINISTER, I HAVE TAKEN THE LIBERTY OF RE-BOOKING HIM ON AIR NEW ZEALAND FLIGHT 437, LEAVING AUCKLAND AT 12.30, ARRIVING WELLINGTON 1.20. TICKET WILL BE AVAILABLE ON ARRIVAL IN AUCKLAND.

SOUTAR

YYYY

PAGE 1  
RESTRICTED



RESTRICTED

121766  
MDHIAN 4993

DISTRIBUTION

40

MAIN 25

PETER WRIGHT CASE  
LIMITED  
DEP.HD/PUSD  
MR LITTLEFIELD PUSD  
PUSD (E206)  
HD/PUSD  
HD/SPD  
HD/NEWS

HD/INFO  
PS  
PS/PUS  
MR BOYD  
MR MCLAREN  
MR DARWIN LEGAL ADVISERS  
MR GILLMORE

ADDITIONAL 15

PS/SIR R.ARMSTRONG CAB OFF  
SIR C FIGURES CAB OFF  
MR MALLABY CAB OFF  
MR DINWIDDY CAB OFF  
MR J BAILEY TRESY SOLICITORS  
MR INGLESE LAW OFFICER DEPT  
PS/HOME SECRETARY  
SIR B CUBBON PUS, HOME OFF

MR CHILCOTT HOME OFF  
MR NURSAW HOME OFF  
MR MOWER HOME OFF  
LEGAL ADVISERS(SEC. SERVCS)  
DIR.GENERAL (SEC. SERVCS - )  
(- BOTH VIA PUSD E203)  
MR WICKS NO.10 DOWNING ST  
PRESS OFFICE NO.10 DOWNING ST

NNNN



SECRET



10 DOWNING STREET  
LONDON SW1A 2AA

*From the Principal Private Secretary*

**MR. WOOLLEY**  
Cabinet Office

**DITCHLEY CONFERENCE ON INTELLIGENCE**

I think that I ought to emphasise that the Prime Minister wishes that the advice set out in my note of 9 November should be made strictly to apply.

I am copying this minute to Mr. Galsworthy (Foreign and Commonwealth Office), Mr. Mawer (Home Office), Mr. Howe (Ministry of Defence) and to Mr. Saunders (Law Officers' Department).

N.L. WICKS

10 November 1987

SECRET



CONFIDENTIAL

142055  
MDHIAN 6017

CONFIDENTIAL  
FM WELLINGTON  
TO DESKBY 090930Z FCO  
TELNO 495  
OF 090215Z NOVEMBER 87

AMENDED DISTRIBUTION/TELNO 16/11/87

FOR PUSD

SPYCATCHER

*Prime Minister*

*Mr Lange is being helpful. NCU*

1. THE NEW ZEALAND LABOUR PARTY CONFERENCE, MEETING IN AUCKLAND ON 6 NOVEMBER, ADOPTED AN AMENDMENT TO A REMIT (IE RESOLUTION) WHICH CALLED FOR (NEW ZEALAND) OFFICIAL SUPPORT FOR BRITISH ATTEMPTS TO SUPPRESS THE BOOK TO BE DISCONTINUED IMMEDIATELY. I INFORMED OUR LOCAL LEGAL ADVISERS WHO WILL HAVE REFERRED TO THE REMIT IN THEIR EXCHANGES WITH TREASURY SOLICITORS OVER THE WEEKEND, BUT HAVE REFRAINED FROM COMMENT UNTIL I HAD A CHANCE TO SPEAK TO GERALD HENSLEY. HENSLEY'S VIEW, WHICH I SHARE, IS THAT REMITS ARE NOT REPEAT NOT BINDING ON THE GOVERNMENT AND THE LATTER HAS BOTH IN THE PAST AND AT THE CURRENT CONFERENCE SHOWN READINESS TO DISREGARD REMITS CRITICAL OF EG ITS ECONOMIC POLICY. HENSLEY DOES NOT REPEAT NOT ANTICIPATE ANY CHANGE IN HIS CURRENT INSTRUCTIONS.

2. HOWEVER, THE PASSING OF THE REMIT CONFIRMS THE ADVICE BY THE FORMER HIGH COMMISSIONER AT THE OUTSET OF THE NEW ZEALAND PROCEEDINGS (SEE WELLINGTON TELNO 336) AND AGAIN IN SEPTEMBER (WELLINGTON TELNO 390) THAT THE QUESTION OF OFFICIAL SUPPORT FOR OUR CASE WOULD BE A MATTER OF SOME POLITICAL DELICACY. FURTHER EVIDENCE OF THIS LIES IN THE FACT THAT MR LANGE SEEMS TO HAVE TAKEN THE DECISION TO AUTHORISE HENSLEY TO SWEAR HIS AFIDAVIT WITHOUT CONSULTING CABINET COLLEAGUES (HENCE HENSLEY'S INSISTENCE ON STICKING TO THE FORMULA QUOTE I AM AUTHORISED BY THE PRIME MINISTER UNQUOTE). IT WAS NOT UNTIL THE PRESS RELEASE REFERRED TO IN WELLINGTON TELNO 475 WAS BEING PREPARED THAT THE DEPUTY PRIME MINISTER AND MINISTER OF JUSTICE, GEOFFREY PALMER, LEARNED OF THE PRIME MINISTER'S ACTION. I HAVE HEARD THROUGH OUR LAWYERS THAT HE WAS NOT BEST PLEASED. BUT AT LEAST FOR THE MOMENT, I HAVE NO REASON TO THINK THAT MR LANGE WILL NOT STICK TO HIS GUNS.

SOUTAR



CONFIDENTIAL

142055  
MDHIAN 6017

YYYY

DISTRIBUTION

39

MAIN 24

PETER WRIGHT CASE  
LIMITED  
DEP HD/PUSD  
MR LITTLEFIELD PUSD  
PUSD (E206)  
HD/PUSD  
HD/NEWS  
HD/SPD

HD/INFO  
PS  
PS/PUS  
MR BOYD  
MR MCLAREN  
MR DARWIN LEGAL ADVISERS  
MR GILLMORE

ADDITIONAL 15

PS/SIR R ARMSTRONG CAB OFF  
SIR C FIGURES CAB OFF  
MR MALLABY CAB OFF  
MR DINWIDDY CAB OFF  
MR J BAILEY TRESY SOLICITORS  
MR INGLESE LAW OFFICERS DEPT  
PS/HOME SECRETARY  
SIR B CUBBON PUS, HOME OFFICE

MR CHILCOTT HOME OFFICE  
MR NURSAW HOME OFFICE  
MR MOWER HOME OFFICE  
LEGAL ADVSRS SEC SERVICES  
DIR GENERAL SEC SERVICES  
(BOTH VIA PUSD E203)  
MR WICKS NO. 10 DOWNING ST  
~~PRESS OFFICE NO.10 DOWNING ST~~

NNNN





10 DOWNING STREET  
LONDON SW1A 2AA

THE PRIME MINISTER

I understand that you have invited Sir Philip Woodfield to a meeting of Labour MPs to discuss the way in which it is intended that his work as Staff Counsellor for the security and intelligence services should be carried out.

The Staff Counsellor is accountable to me and to the Secretaries of State concerned for the way in which he discharges his functions. His procedures, like the matters with which he is concerned, will be confidential. I have advised him that in the circumstances it would not be appropriate for him to accept your invitation.

David Winnick, Esq., M.P.





Ma

10 DOWNING STREET

Prime Minister

I would go  
further and suggest  
we should actively  
discourage participation  
by former officials  
with a significant  
connection with intelligence  
work.

~~\_\_\_\_\_~~  
C.D.





file

JATBNM  
bc PC  
4

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

Told Parker  
(FIO) there  
instructions to be  
followed strictly.

SIR ROBERT ARMSTRONG

DITCHLEY CONFERENCE ON INTELLIGENCE

NLU  
9.11

The Prime Minister has seen your minute of 5 November about participation in the Ditchley Foundation's forthcoming conference on intelligence.

The Prime Minister agrees that the Director should be asked to schedule the conference as late in 1988 as possible (to keep as clear as possible of the Spycatcher litigation). We should offer no official comment on the proposed terms of reference of the conference, but our representative at the Ditchley Planning Meeting should offer some personal comment on the terms of reference (which could, for example, be much improved if they ask questions such as "what is intelligence for?"). On the same basis, he could also suggest that it would be desirable to exclude from the conference clearly mischievous figures.

As for participation, we should make the point to the Ditchley Director that as is well known, Government policy is not to comment on intelligence matters. There can be no participation in the conference by serving officials. We cannot castigate others from talking about secret matters if we sanction talks from present officials.

Later when we know who has been asked to the conference, we could decide whether to advise retired officials to attend or not and whether to offer discreet briefing to selected figures. If retired officials were to attend, they would of course attend on a personal basis, though anything they said would, of course, continue to be governed by the provisions of the Official Secrets Act. The Prime Minister does not think that Sir Antony Duff or Sir Brian Cubbon should attend in view of their recent close involvement with security matters. Lord Greenhill and Sir Anthony Parsons are possibilities. But no view can be taken on their attendance until we see who is invited to the conference.

I am sending a copy of this minute to Tony Galsworthy (Foreign and Commonwealth Office), Philip Mawer (Home Office), John Howe (Ministry of Defence) and to Michael Saunders (Law Officers' Department).

N.L.W.

N. L. WICKS  
9 November 1987

SECRET



SECRET

3

Prime Minister

COPY NO 1.. OF 2..

Please see Robert Armstrong's note attached

MR WICKS

6 November 1987

Do you agree that I should reply in terms of Perry Craddock's 55 and 66 below?

DITCHLEY CONFERENCE ON INTELLIGENCE

1. We cannot prevent the conference being held. The question is whether we should try to inject some sense into it by encouraging attendance by knowledgeable retired senior officials, or whether we should boycott it.

N.C.U

G.11

2. The argument for involvement is that, though the subject is of great importance, the case for intelligence is rarely, if ever, made in public. The nature of the threats to which we are exposed, the need for organisations to counter them and to work in secrecy if they are to do so, the weaknesses and dangers of the fashionable proposals on surveillance - all this goes by default. For a retired official to set out this case on a personal basis in a discussion under Chatham House rules would mean no breach of security and might do something to correct the grosser misapprehensions. By no means all the journalists and academics are hopelessly prejudiced, but they are all in varying degrees uninformed. By refusing to say anything we leave the field to the ignorant and the ill-disposed. Sir Antony Duff would do the job well; but if it was felt that he was too high profile we could brief others like Lord Greenhill or Sir Anthony Parsons. By a limited degree of involvement we might also influence the timing, terms of reference and the list of participants.

3. The counter-argument is that once we break our convention of 'no comment on intelligence', we are on a slippery slope. By offering even a degree of official involvement we would weaken our position that officials who have been concerned with intelligence do not speak

SECRET



about their work and do not appear before Parliamentary Committees and the like. We would also make it harder for Ministers to hold the line of no comment under Parliamentary questioning. We could not expect to exclude all the ill-disposed. A retired senior official could find himself under immense pressure. The outcome of the conference would probably remain unsatisfactory despite his efforts. Better to distance ourselves entirely.

4. I am not best placed to adjudicate between these two cases since I was responsible for obtaining the views of the intelligence community on our best response to Ditchley. (All heads of agencies and officials were in favour of some degree of involvement.) Nevertheless, as I see it, there are weaknesses in each case. The involvement case (paragraph 2) probably over-estimates our capacity to influence timing and attendance. By attempting to do this we would appear to be giving some official sanction to an event we could not control. The boycott case (paragraph 3) overlooks the fact that even if we boycott, some retired officials are likely to be asked and to attend. We should not pass up the chance of giving them discreet briefing. Moreover as part of the normal process of consultation between Ditchley and the Planning Staff of the FCO we might have opportunities of encouraging a sensible agenda without breaching the rule of no official involvement.

5. There may be less of a clear division between the two courses than we suppose. I suggest we brief the Foreign Office representative at the Ditchley planning meeting on 10 November to speak as follows:

- a. As is known, Government policy is not to comment on intelligence matters. There can be no participation by serving officials.



b. If retired officials are asked, it will be up to them to decide whether to attend on a personal basis, though in anything they said they would, of course, continue to be governed by the provisions of the Official Secrets Act.

c. Though he could offer no official comment, he might offer some personal comment on the terms of reference (which could for example be much improved if they asked questions such as 'what is intelligence for'). On the same basis he could also suggest that it would be desirable to exclude clearly mischievous figures. He might also encourage inclusion of the category of retired officials on the invitation list.

6. Later when we know who had been asked we could decide whether to advise them to attend or not and whether to offer discreet briefing to selected figures. Sir Antony Duff has already been asked and will need advice. Although he will be retired at the time of the Conference his service will be so recent that he might appear as an official spokesman whatever precautions we take. Sir Brian Cubbon might be safer. Lord Greenhill and Sir Anthony Parsons should be quite safe.

*I am sure that both Duff and Cubbon should not go.*

*I am quite sure that no senior person can go. We cannot castigate others from letters if we sanction talks from present officials. With regard to retired officials I agree that the*

*U*  
PERCY CRADOCK

*3 advise close I should be made strictly to apply. not*



SECRET

HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

6 November 1987

Dear Nigel,

DITCHLEY FOUNDATION CONFERENCE  
ON INTELLIGENCE

The Home Secretary has seen a copy of Sir Robert Armstrong's minute to you of 5 November about this proposed conference. He endorses Sir Robert's view that the balance of advantage would lie in not boycotting the conference. At the same time, he agrees with Sir Robert that various unsuitables should be excluded (paragraph 3(iv) of Sir Robert's minute). The Home Secretary believes that it is right to learn to live with and profit from the existence on intelligence matters of a respectable body of interest outside the official machine.

Copies of this letter go to the Private Secretaries to the Foreign and Commonwealth Secretary, the Secretary of State for Defence and the Attorney General, and to Trevor Woolley.

Yours sincerely,  
*P J C Mawer*  
P J C MAWER

N L Wicks, Esq., CBE.

SECRET



PRIME MINISTER

THE WRIGHT CASE IN NEW ZEALAND

Developments overnight have overtaken the report which I gave you yesterday.

Our New Zealand lawyers' advice is that an attempt to postpone our case from 16 November could well result in the courts throwing out our entire action, account for profits and all. The present plan therefore is for Robert Armstrong to fly from Vancouver to New Zealand. We are assured that his evidence there would last no more than three days. He would then return to London in time for the beginning of the case here on 23 November. Our lawyers think that, in the event, the judge would, if necessary, give him a day or so's respite, using the first day or so of the trial for legal preliminaries in which Robert would not be involved.

Robert is content with all this.

N. L. W.

(N.L. WICKS)

6 November 1987





10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*

6 November 1987

*Dear Michael,*

## PETER WRIGHT CASE: GREENGRASS

The Prime Minister has seen the Attorney General's minute of 5 November about the possibility of bringing an action against Mr. Paul Greengrass, Wright's ghostwriter for *Spycatcher*, with a view to relieving him of his profits arising from his collaboration with Wright.

The Prime Minister agrees that an action for an account of profits should be brought against Greengrass, subject to the Attorney satisfying himself in the light of John Mummery's final Opinion; and that such proceedings should be combined with an action for an injunction against Greengrass to prevent him from disclosing material obtained by Wright or from attributing material to Wright.

Copies of this letter go to the Private Secretaries to members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

*Yours only*  
*Nigel Wicks*

N. L. Wicks

Michael Saunders, Esq.,  
Law Officers' Department.



010

NB: P 7

From: THE PRIVATE SECRETARY



**CONFIDENTIAL**

HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

6 November 1987

*Dear Michael,*

PETER WRIGHT CASE: GREENGRASS

The Home Secretary has seen the Attorney General's minute of 5 November and agrees that actions for an account of profits and for an injunction against Greengrass should be mounted.

Copies of this letter go to the Private Secretaries to the Prime Minister, to the other members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

*Yours sincerely,*  
*P J C Mawer*  
P J C MAWER

Michael Saunders, Esq.,

**CONFIDENTIAL**



Ref. A087/3156

MR WICKS

---

c: Sir Percy Cradock

The Ditchley Foundation has included in the Foundation's schedule of conferences for 1987-88 a conference on intelligence: the oversight of and limits on intelligence in a democracy. The participants to be invited would include people from universities, Parliament and the law, and similar people from the United States and Europe. We have to define the official attitude to this conference before a Ditchley planning meeting on 10 November, at which the Foreign and Commonwealth Office will be represented.

2. We cannot hope to stop this happening. It might be that the Government would have to boycott it and send no representatives. On the whole, however, we think that the balance of advantage lies in using the opportunity to get some sense into the discussion and doing what we can to influence the arrangements so as to limit the risk of damage.

3. Accordingly we propose to ask the Director:

i. to schedule the conference as late in 1988 as possible (to keep as clear as possible of the Spycatcher litigation);

ii. to ask for certain changes in the proposed terms of reference;

iii. to say that it would not be appropriate for serving officials or members of the security and intelligence



services to attend, but to encourage attendance by suitable retired senior officers: in particular, Sir Antony Duff and Sir Brian Cubbon. It may be better for me not to attend (even if I am invited to do so), given my involvement in the Spycatcher litigation, unless by the time of the conference all the litigation is concluded. Sir Antony Parsons would be good on the foreign intelligence side;

iv. to make it clear that attendance even by those people will be conditional upon the exclusion of unsuitables, such as Duncan Campbell, Barrie Penrose and David Leigh.

4. I hope that the Prime Minister will be content that we should proceed accordingly.

5. I am sending copies of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary, the Home Secretary, the Secretary of State for Defence and the Attorney-General.

RA

ROBERT ARMSTRONG

5 November 1987



Prime Minister



Agree, subject to  
colleagues' views,  
the action indicated  
at X and Y?  
N.L.U.

HOME SECRETARY

Yes no

PLAP P T 8 5.11

PETER WRIGHT CASE : GREENGRASS

Colleagues will recall that in my minute of 10 September I said that Counsel's advice was being sought on the possibility of bringing an action against Mr Paul Greengrass, Wright's ghostwriter for Spycatcher, with a view to relieving him of his profits arising from his collaboration with Wright.

Treasury Counsel, Mr John Mummery, has offered a provisional Opinion that we could proceed in this country for an account of profits against Greengrass. Obviously he will want to look at this matter in greater depth and I have asked him to produce a final Opinion as a matter of urgency.

The reason for the urgency is that I have to answer oral PQs on Monday, 9 November. If asked about Greengrass - which is likely - I will announce that I have decided that the public interest does not require his prosecution under the Official Secrets Act for his collaboration with Wright. At the same time I would like to announce, if possible, that we had started proceedings against him for an account of profits. If I cannot do so, I will have to stall on the question of civil proceedings.

I therefore invite colleagues to agree, subject to my satisfying myself in the light of John Mummery's final Opinion, that proceedings should be brought against Greengrass for an account of profits and that such proceedings should, if possible, be instituted before 3 p.m. on Monday, 9 November.

✓  
X  
Y

It would also be wise to combine with such proceedings an action for an injunction against Greengrass to prevent him from disclosing material obtained by Wright or from attributing material to Wright. Greengrass has said to us that he accepts he is bound by the same injunctions as apply to the Guardian and Observer. One would expect him to consent to an injunction in those



CONFIDENTIAL



terms. He is known to be writing a novel which may avowedly make use of his knowledge, gained from Wright, of the Security Service. An injunction, if obtained, might cover material he has obtained from Wright and would prevent him from making attributions to Wright.

I would be grateful for the agreement in principle of colleagues to the above course of action by midday tomorrow.

I should sound two notes of warning: first, a great deal of work will need to be done between now and Monday before the proceedings can be instituted and we will not be able to go ahead on that day unless we can guarantee to be able to serve Greengrass personally with the papers before 3 p.m. Second, whenever they are instituted such proceedings will raise the same issues and involve the same problems that we are facing in the Observer/Guardian case, although by the time the Greengrass action comes to trial much of the ground will have been covered in the Observer/Guardian action.

As regards the subject of accounts of profits generally, I can report that, following the receipt of further advice, officials are re-examining the position in the United States and Canada and will be communicating their recommendations as soon as possible.

I am copying this to the Prime Minister, to the other members of OD(DIS) to the Lord Advocate and to Sir Robert Armstrong.

P. M.

5 November 1987

CONFIDENTIAL



SECURITY

WRIGHT

PT 10





PRIME MINISTER

WRIGHT CASE

A report on this afternoon's developments.

We asked the Court of Appeal to agree to a longer postponement than one week of the Wright hearing in this country. Sir John Donaldson, whilst expressing sympathy, refused our application on the grounds that it was up to the High Court themselves to decide their timetable. He would not wish to interfere with their decision.

We are now seeking the postponement of the action in New Zealand, probably until the opening of the next legal term there, February. The lawyers think that we stand a good chance of securing this postponement (though the Chief Justice may no longer hear the case). The risk is that the New Zealand Court will refuse to renew the injunction against publication in New Zealand. This would effectively put us in New Zealand in the same position as we are in Australia. We will be going for an account for profits and a general declaration of principle.

N.L.W.

N.L. Wicks

5 November 1987





DEPARTMENT/SERIES ..... <i>PREM 19</i> ..... PIECE/ITEM ..... <i>2509</i> ..... (one piece/item number)	Date and sign
Extract details: <i>Letter dated 5th November 1987</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>AMB</i> <i>22/05/23</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



WJRM

From: THE PRIVATE SECRETARY

**CONFIDENTIAL**



HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

4 November 1987

*Dear Bruce,*  
*attached*

OD(DIS)(87)82: THE PETER WRIGHT CASE:  
SALE OF "SPYCATCHER" IN SINGAPORE

I am writing to confirm my telephone call to your office reporting that the Home Secretary is content with the course of action proposed in paragraph 5 of this paper.

Copies of this letter go to the Private Secretaries to the Prime Minister, other members of OD(DIS), the Attorney General, the Lord Advocate and Sir Robert Armstrong.

*Yours sincerely,*  
*P J C Mawer*  
P J C MAWER

Bruce Dinwoody, Esq.,

**CONFIDENTIAL**



File *SH*

10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary***MR. MALLABY  
CABINET OFFICE****THE PETER WRIGHT CASE: SALE OF 'SPYCATCHER' IN SINGAPORE  
(OD(DIS)(87)82) (Revise)**

The Prime Minister has seen this OD(DIS) paper. Subject to the agreement of the Attorney General and of the other Ministers concerned, she is content with the recommendation in paragraph 5 of the note. But she thinks that the legal adviser's letter should not draw attention to the prospective cost of legal action. That carries with it too much the undesirable connotation that HMG will use the power of its purse as a weapon in the action. Our stand should be on the principle of the matter.

I am sending a copy of this minute to the Private Secretaries to members of OD(DIS), Alan Maxwell (Lord Advocate's Department) and Trevor Woolley (Cabinet Office).

*N.L.W.***N. L. WICKS****4 November 1987**





✓  
1. C.F. Pl. cc R. England  
2. P. v. Minister<sup>2</sup>

to see.

N. L. U

4-11

*ms*

HOME SECRETARY

PETER WRIGHT CASE : NEW ZEALAND

Colleagues will wish to know that we have reached an agreement with Wellington Newspapers, which renders the truth or falsity of the entire contents of "Spycatcher" irrelevant. The formula is as follows:

"Primarily for reasons relating to security, the Plaintiff is precluded from addressing the accuracy or otherwise of alleged matters of fact in the book by Peter Wright entitled "Spycatcher". Accordingly the Plaintiff will not present any evidence in rebuttal of those matters, does not require the Defendant to prove those matters and accepts that the Court may act on the alleged matters of fact on the book as if the said matters of fact had been proved.

The Defendant will not give evidence nor call any witnesses to give evidence for the purpose of proving the truth or falsity of alleged matters of fact in the book, nor will it examine any witness for such purpose provided that the foregoing shall not prevent the Defendant from tendering the book in evidence."

2. The formula avoids our having to give discovery of our documents relating to the truth or falsity of the book. Wellington Newspapers have agreed not to call evidence or examine witnesses on the truth or falsity of the book.

3. The price we have to pay for securing this agreement, which involves the defendants' giving substantial ground, is that we record our acceptance that the Court may act on the alleged matters of fact in the book as if they had been proved.

4. The formula does not amount to an admission that alleged iniquities in the book are true.





5. There remains outstanding the issue of whether it is possible to achieve an agreed Statement of Facts with Wellington Newspapers in relation to the allegations that the Government acquiesced in the publication of insider-sourced material, including material from Mr Wright himself, such as "Their Trade is Treachery". It is unlikely that we will reach an agreement on this matter until our team arrive in New Zealand for the trial.
  
6. I am copying this to the Prime Minister, to the other members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

AM.

3 November 1987



01-936-6494

Communications on this subject should be addressed to

THE LEGAL SECRETARY  
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,  
LAW OFFICERS' DEPARTMENT,  
ROYAL COURTS OF JUSTICE,  
LONDON, W.C.2.

3 November 1987

E Bickham Esq  
Home Office  
Queen Anne's Gate  
LONDON S W 1

*One Minute 2*

*A good letter.*

*N.C.U*

*4.11*

*Dear Edward,*

"DEAR COLLEAGUE" LETTER

I enclose the Attorney General's "Dear Colleague" letter signed and dated today for sending out through Central Office.

I am copying this to Jim Nursaw, Bruce Dinwiddy, David Hogg,  
Torry, Nigel Wicks and Trevor Woolley.

Peter

*Yours sincerely,*

*Anthony Inglese*

A M C INGLESE

THIS IS A COPY. THE ORIGINAL IS  
RETAINED UNDER SECTION 3 (4)  
OF THE PUBLIC RECORDS ACT



From: The Rt. Hon. Sir Patrick Mayhew, Q.C., M.P.



HOUSE OF COMMONS  
LONDON SW1A 0AA

3 November 1987

*Dear Colleagues:*

PETER WRIGHT CASE

Further to our letters of August, the Home Secretary and I thought that colleagues might want to be kept up to date on what is happening on the Peter Wright case.

The Government remains committed to take action wherever it is sensibly open to it to enforce the duty of confidentiality owed by Mr Wright. The reason is clear. If the Government is found to have no effective remedy against him, then not only will this pave the way for "Spycatcher Mark II" but it will make it harder to deter other members or former members of the Security Service from seeking to publish accounts of their own work without authority.

Legal action is now pending in several countries.

#### England and Wales

The trial of the Government's action against the Observer, Guardian and Sunday Times newspapers will take place within the next few months. It had been fixed for 16 November but this will clash with the trial in New Zealand, which was fixed first, and an application will shortly be made to have the English date postponed. The trial will be the occasion for the parties to call evidence in support of their case. The Government will be seeking a declaration of right against the newspapers that they would be in breach of confidence if they published material attributed to Mr Wright. We shall also be seeking a continuation of the injunction, upheld last July by the House of Lords pending the trial. Further, we shall be seeking an account of all profits made by the Sunday Times, who have purchased the serialisation rights of Spycatcher, from the publication by them of material in breach of Mr Wright's duty of confidentiality.





Colleagues may have noted the application last month to the Chancery Division by Derbyshire County Council, who wanted to lend the book at their libraries. The Court held that this was at present prohibited by the injunction, and refused to grant an exemption for it.

#### Australia

In Australia we are now awaiting the hearing of our appeal before the High Court of Australia. There is no further appeal from that Court. The hearing is unlikely before March 1988. We go into the appeal with reasonable prospects of success. Although we lost before the New South Wales Court of Appeal, colleagues will have noted that the Court was divided. The Chief Justice found for us on the principle of the duty of confidentiality. He would have ordered the defendants - Wright, and Heinemann of Australia - to account to us for their profits arising from publication of the book. He considered, too, that the trial judge, Mr Justice Powell, was wrong in not ordering an injunction to restrain publication of the book.

But the book has now been published in Australia and we face an up-hill struggle in seeking an injunction to restrain further publication there. If, however, we obtain a declaration of right on the principle of confidentiality, and an account of the profits made by Wright and Heinemann, then this would be a signal victory. It would make it clear to publishers and authors alike that profits were not to be made from breaches of confidentiality of this kind.

#### Hong Kong and New Zealand

In August the Government obtained interlocutory injunctions to prevent the serialisation of "Spycatcher" in newspapers in Hong Kong and New Zealand. The action in New Zealand is due for trial on 16 November and raises the same issues as the English action. The Hong Kong newspaper, the South China Morning Post, recently sought from the Privy Council leave to appeal, but were turned down. The Hong Kong action has not yet been set down for trial.

More than ever, therefore, with all these various actions going on, it remains necessary to bear in mind the essential basis of the Government's case: members of the Security Service are under a duty not to speak or write about





their work without authority. The upholding of this duty - against Mr Wright and those others who would be encouraged by his example to breach it - is essential to the effectiveness of the Security Service in defending the realm against terrorism, espionage and subversion.

*Yours sincerely,*

*A. K. C.*

---









DEPARTMENT/SERIES ..... <i>PREM 19</i> ..... PIECE/ITEM ..... <i>2509</i> ..... (one piece/item number)	Date and sign
Extract details:  <i>Minute dated 2 November 1987</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>26/9/2023</i> <i>Wayland</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



PART 9. ends:-

Berne Tel. no. 30-10-87

PART 10 begins:-

NLW to PM 3-11-87.



