

PRIME MINISTER

I sent you a message earlier today about the case of Mr. J.B. Wagstaff. The Attorney General telephoned to inform you that he has decided to drop proceedings under the Official Secrets Act. He has been forced to this decision because of problems with evidence. You may know that crucial tapes have been wiped. The Attorney had established that, through MOD registers, the original contents of the tapes could be established. The Ministry of Defence have now at the eleventh hour advised him that there is no guarantee of accurate reconstruction. He therefore has no firm evidence to produce in court.

Proceedings were due to begin next Thursday. Mr. Wagstaff's lawyers must therefore be informed quickly. The Attorney reports that they are pretty tough operators, and appear to be in close touch with the Time Out/Guardian journalists who take an interest in such matters. This means that there may well be some press interest in the dropping of charges, and the Attorney has asked whether the DPP might take the line that there will be no prosecution because the case is being investigated by the Security Commission.

The Security Commission reference was being kept secret because of the impending trial. There is no particular reason why it need be kept secret any longer and Sir Ian Bancroft's office are attempting to locate Lord Diplock to consult him about the possibility of making the Inquiry known.

If Lord Diplock is content that his Inquiry should no longer be secret, do you agree that the Law Officers may, if necessary, use this in response to press enquiries about the dropping of the prosecution; and subject to the Security Commission aspect being clarified, are you content for the DPP to make the dropping of proceedings known to Mr. Wagstaff's lawyers tomorrow? (If need be, it should be possible to hold this until Monday.)

*We had further discussion from which I understand Lord Diplock would not be content.*

*MD*

28 August 1980