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MO 23/1

PRIME MINISTER

WAGSTAFF: OFFICIAL SECRETS ACT

Michael Havers sent me a copy of his minute to you of 28th August.

// 2. The decision to prosecute Wagstaff was entirely one for Michael Havers as is his decision not to do so and I would not, of course, wish to make any comment about that. Nor do I wish to engage in any controversy about the case. But I think that I am bound to comment on what Michael has said about the advice he has received from the Ministry of Defence on our damage assessment. I think it would be simplest if I were to send you the enclosed copies of two letters from Sir Frank Cooper to the latter of which Michael refers, and which is the substance of the issue. Both letters, that of 21st May and that of 21st August, make it clear that, although on the face of it the material on the tapes sounded extremely sensitive, the information thus provided was likely to be of limited value to an enemy. The error to which Sir Frank Cooper referred in his letter of 21st August is unfortunate but it did not materially affect the assessment the Ministry of Defence gave earlier to the Director of Public Prosecutions and which was confirmed in the letter of 21st August.

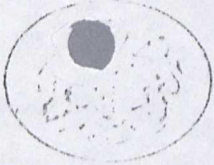
3. I am sending a copy of this minute to the Attorney General.

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Ministry of Defence

2nd September 1980

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MINISTRY OF DEFENCE

MAIN BUILDING WHITEHALL LONDON SW1A 2JG

Telephone 01-219 2119 (Days)

01-219 3000 (Evenings)

PERMANENT UNDER SECRETARY OF STATE

SIR FRANK COOPER GCB C MG

with

PUS/80/472

54/3

Sir Ian Bancroft GCB
Civil Service Department
Whitehall
LONDON SW1

21 May 1980

My dear Sir,

I thought I ought to pick up one point in the Attorney General's letter to you of 16 May.

2. In that letter he comments that, from the list of contents of four of the tapes, as supplied by the Ministry of Defence, there would seem to be certain items that would be of enormous value to an enemy. As you know, our damage assessment arrived at a different conclusion. I can quite see why, from the subject headings, the Attorney General has formed the view that he has: on the face of it the measure titles look extremely sensitive. The War Book pages themselves, however, are much less revealing than the titles alone suggest. Thus, in general, while they do provide a broad description of the measure concerned, it remains my view that that information is of itself likely to be of limited value, and come as no surprise, to an enemy. What the War Book pages do not contain is information about operational plans and capabilities - if they did then they would be as useful to an enemy as the Attorney General suggests.

3. It may be helpful actually to circulate the texts of those of the measures which were ticked in the attachment to the Attorney General's letter and about which he is, I think, particularly concerned. These are attached, together with brief notes about them where these seem useful. You will see from these that the limited information contained is in most cases further devalued by changes in code names and/or numbers as well as in the content of the measures themselves.

4. I am sending copies to the Attorney General and to Robert Armstrong, Brian Cubbon, and Howard Smith.

Yours sincerely
Frank Cooper
FRANK COOPER

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MINISTRY OF DEFENCE

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PERMANENT UNDER-SECRETARY OF STATE

SIR FRANK COOPER GCB CMG

PUS/80/828

54/3

21 August 1980

The Rt Hon Sir Michael Havers QC MP
Royal Courts of Justice
Strand
London WC2A 2LL

Dear Attorney General
MR J B WAGSTAFF

In my Secretary of State's absence on leave, I am enclosing our response to your letter to him of 25 June, in which you confirmed your request that the assessment of the damage that resulted or might have resulted from Wagstaff's alleged actions should be looked at again from the standpoint of the period between November 1977 and February 1978.

2. The enclosed assessment has been drafted in terms more closely linked to the standard classification system and its definitions than was the assessment which we circulated in April this year. I believe that it also brings out more clearly the extent to which it is legitimate to distinguish between the sensitivity of the War Book or the Book of Briefs as a whole and that of individual constituent items over a period of time. I do not believe, however, that the overall conclusions to be drawn differ materially from those of the earlier assessment.

3. The enclosed assessment also brings out (and you have had a copy of my separate letter to Sir Ian Bancroft about this) that we have now found that we cannot say whether or not the measures which I enclosed with my letter of 21 May to him were contained in the four erased tapes. The most we can say with confidence is that the texts which I then circulated were valid examples of the nature of War Book measures - as indeed are the measures, covered by the unerased tape, which I have enclosed with my latest letter to Sir Ian. I must ask you to accept my apologies for this error.

4. I am copying this letter and enclosure to Sir Ian Bancroft, Sir Robert Armstrong, Sir Thomas Hetherington, and Sir Howard Smith.

Yours sincerely
Frank Cooper
Also copy to
Treasury Solicitor (Mr Ellis)
Cdr G R G Middleton, Cabinet Office

FRANK COOPER

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J B WAGSTAFF - SECOND DAMAGE ASSESSMENT

Actual Damage

1. It is not known whether as a result of Wagstaff's activities there has been any actual disclosure of the classified official information to an unauthorised person. The following points are relevant in this connection:

- a. There is no evidence of espionage;
- b. the tapes are meaningless unless played back on the correct word processor; and
- c. Wagstaff is judged to be untidy, badly organised and irresponsible rather than disloyal.

Although the 5 tapes Wagstaff took to his home were left lying around unguarded there is no evidence that they ever left his custody and the material on 4 of them was erased. While therefore the possibility of compromise cannot be excluded, compromise is adjudged unlikely. The potential damage associated with compromise is discussed below.

Potential Damage

2. The definitions of the three security classifications referred to in the following paragraphs are:-

TOP SECRET - Information and material the unauthorised disclosure of which would cause exceptionally grave damage to the nation.

SECRET - Information and material the unauthorised disclosure of which would cause serious injury to the interests of the nation.

CONFIDENTIAL - Information and material the unauthorised disclosure of which would be prejudicial to the interests of the nation.

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3. The overall classification of the current Ministry of Defence War Books is confirmed as SECRET. There is no reason to doubt the correctness of the overall classification of SECRET when the tapes were made in 1975/early 1976. Although the War Book does not contain specific war plans, it describes in considerable detail the scope of defence planning in the event of a future war. Its disclosure would reveal, directly or by inference, the structure of contingency planning for civil and home defence and for the transition of Government to a war footing, including the arrangements for the maintenance of the machinery of Government in war.

4. Nevertheless, while there is no reason to doubt the correctness of the overall classification of SECRET for the War Book, it is difficult without detailed knowledge of the contents of each tape to assert with confidence that the material on any single tape would by itself have satisfied the description of SECRET or whether, if this had been true at the time the tape was made, it would still have been true after the lapse of two years. The War Book is subject to regular revision in the course of which existing measures may be reviewed and fresh ones introduced: and measures that remain may change in quite significant respects. For example, their serial numbers may change, nicknames and plan numbers may be revised, and details of actions to be taken altered. It follows that the value to an enemy both of a particular version of the War Book as a whole and of at least some individual passages in it will decline over time.

5. Of the five tapes referred to in the charges against Wagstaff the contents of only the one tape which was not erased are known. The contents of this tape include reference to evacuation plans which, although their nicknames and other details have changed,

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are still classified SECRET. Even here it is difficult to say with confidence that the value of the information on the tape relating to those plans would at January 1978 have fully satisfied the definition of SECRET set out above; nevertheless their disclosure would have involved at least the degree of prejudice to the interests of the nation inherent in the definition of CONFIDENTIAL.

6. Since the inscriptions on the labels of the four erased tapes are believed, by analogy with the one unerased tape, to refer not to War Book measure numbers but to a separate index system that is no longer available, it is not known precisely what measures they contain. As with the one unerased tape, however, the residual value of these tapes would certainly have justified at least a grading of CONFIDENTIAL in January 1978.

7. Wagstaff is not being prosecuted for his negligence in failing to look after other tapes now missing. The total number of tapes that contained Volume I of the War Book and the Book of Briefs is unknown but is unlikely to be less than 80. 30 of these were returned in 1978 and 5 found in Wagstaff's home in 1979. The missing tapes may well not be referred to in court as the charges relate only to the 5 found in Wagstaff's possession. The overall classification of the Book of Briefs at the time the tapes were made is confirmed as TOP SECRET so that had there been unauthorised disclosure of the whole Book of Briefs at that time the damage to the interests of the nation would have been assessed as exceptionally grave. The Ministry of Defence considers that in January 1978 the classification is not likely to have been more than SECRET.

Conclusion

8. The assessment of the damage likely to have resulted from possible disclosure around end 1977/early 1978 of the tapes in respect of which Wagstaff is charged is not considered to differ

materially from that contained in paragraph 4 of the assessment
circulated in April 1980.