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*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.

18th September 1984

R. Butler, Esq.,  
Private Secretary,  
10 Downing Street,  
LONDON, SW1

*Dear Robin,*

R. V. PONTING

I refer to our telephone conversation of last night.

The note from MOD basically accords with our view. The only comments on the note we have are these:- At Para. 3. the Solicitor General does not recall having told Sir Ewen Broadbent on the 13th August 1984 that his provisional view was in favour of a prosecution; at paragraph 7 it would be correct to say in the last sentence that the Solicitor General indicated to the Director that he would be prepared to grant his fiat.

The relevant guidance regarding investigations of leaks would appear to be "Security in Government Departments Chapter 18" (May 1982), a copy of which I enclose. In particular, I draw to your attention paragraphs 18.5 and 18.6. I also enclose a note of a meeting on the 16th May 1984 in which leak procedures were discussed (see in particular paragraph 7). Lastly, I enclose notes of a meeting held on the 17th December 1980 in which leak procedures were discussed. You will see at para. 4a that the then Legal Secretary to the Law Officers set out the sort of considerations he would take into account when advising

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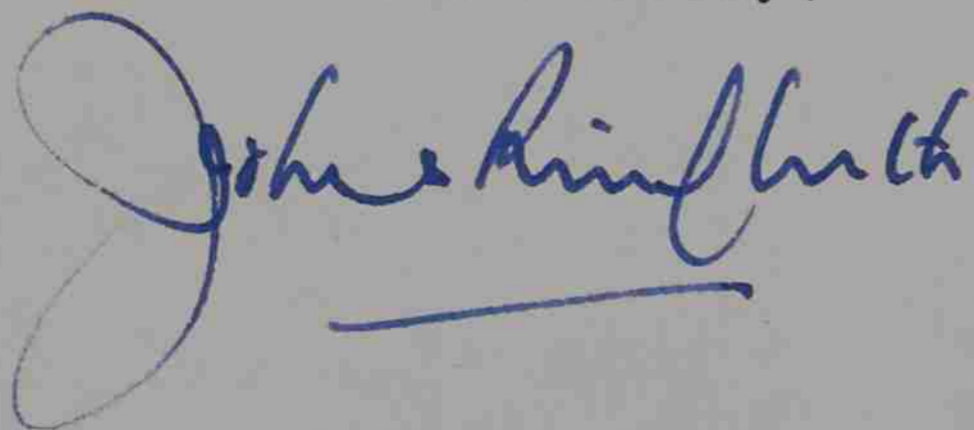
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the Attorney General in Official Secrets cases. This may erroneously form the basis for the so-called convention of which the article in the "Observer" spoke. In any event, if this ever were policy, it appears to have been superseded.

Lastly, I suggest that the Prime Minister's response to Mr. Kinnock should knock on the head the suggestion that the Law Officers consulted or were consulted by any other Ministers. I suggest a sentence - "The Law Officers did not consult any of their ministerial colleagues in reaching their decision to prosecute Mr. Ponting, nor were the views of any of their ministerial colleagues communicated to them."

Yours sincerely,

A handwritten signature in blue ink, appearing to read "John Ringguth", with a horizontal line underneath.

J. S. RINGGUTH

## CHAPTER 18

## BREACHES OF SECURITY OR COMPROMISES OF INFORMATION: LOSSES AND LEAKS

## GENERAL

18.1 Breaches of security can be divided into:

- a. **Losses** when classified material or security keys are missing or there is reason to believe that such material or keys have been compromised, or
- b. **Leaks** when a report in the news media, or other information, gives rise to suspicion that there has been an unauthorised disclosure of classified information, or sensitive, unclassified information.

The investigation of a leak may result in the discovery of a loss or vice versa, but in general the two types of breach and the procedures for dealing with them are different.

18.2 There must be an **immediate** investigation. It should therefore be impressed on all staff that they must report any breach or suspected breach of security to their Branch or Departmental Security Officer as soon as it is discovered.

18.3 Each Department should have a recognised procedure for making investigations into breaches which should be set in motion as soon as a report of a breach is received. Since delay will allow the trail to grow cold, investigations should be completed as quickly as the need for thoroughness and precision allows.

**Possibility of Criminal Proceedings**

18.4 Those responsible for investigating breaches, whether in the form of leakages or losses, should bear in mind that such breaches may constitute an offence against the Official Secrets Acts and a prosecution may have to be considered. Departmental enquiries should therefore not be pursued in such a way as to prejudice a prosecution.

18.5 Where preliminary enquiries point to a possible breach of the Acts, and the Security Service or the police have not taken over the investigation (see paragraphs 18.12 and 18.13), Departments should consult the Director of Public Prosecutions (DPP) if the breach occurred in England or Wales; or the Crown Office if in Scotland. In cases of urgency, special secrecy or exceptional difficulty, the DPP or the Crown Office can be consulted orally.

18.6 In cases in which the Security Service or the police have assumed responsibility for the enquiries, the Security Service or the Chief Officer of the police force concerned will if necessary consult the DPP or the Crown Office direct.

**METHODS OF INVESTIGATION****LOSSES****Responsibility for Investigation**

18.7 It is the responsibility of Departments to institute investigations into losses. If the loss relates to a document originating in another Department, the matter should be reported to that Department and the 2 Departments should consult to decide which of them should lead the investigation. Where the document was issued by an interdepartmental committee, the matter should be reported to the Secretary, who will in turn refer to the Management and Personnel Office or the Department primarily concerned, to decide who should investigate.

18.8 Responsibility should be placed on a particular individual - hereinafter referred to as the Investigating Officer - who should normally be a member of the departmental security staff. The Investigating Officer should always have ready access to an appropriate senior official who should be consulted if the breach appears to be serious.

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18.9 When a loss occurs the main objectives will be:

- a. to find out exactly what happened;
- b. to assess the degree of compromise and minimise the damage done;
- c. to prevent a recurrence.

18.10 The Investigating Officer's first task, therefore, will be to ascertain, in consultation with the appropriate branch, the basic facts of the loss, and then determine the reasons for the loss and assess its seriousness.

18.11 If the loss was due to carelessness the Investigating Officer will not normally need to call upon outside assistance. He should however take into account the guidance contained in paragraphs 18.4-18.6.

18.12 If the Investigating Officer, by virtue of his enquiries, considers that espionage or subversion is or may be involved, he should immediately report the facts to the Security Service, who will determine whether or not there is a prima facie case for suspecting espionage or subversion. The Security Service will investigate if in its opinion there is such a case.

18.13 However, there may be rare occasions when the Investigating Officer suspects, in circumstances not covered by paragraphs 18.4-18.6 or 18.12 that a criminal offence may have been committed (eg where a break-in has occurred) and decides that police assistance is needed. On such occasions, in the Metropolitan district, police assistance should be sought through the Deputy Assistant Commissioner Special Branch, New Scotland Yard; elsewhere through the Chief Constable. The Security Service should also be informed.

18.14 If the help of the Security Service or police is necessary, it should be sought as early as possible.

18.15 If at any point during the investigation it becomes apparent that the loss has resulted in an **actual** compromise of material, the Investigating Officer should inform the senior official (see paragraph 18.8). The action to be taken in the event of a compromise is set out in paragraphs 18.32-18.34.

### LEAKS

18.16 Leaks usually take the form of reports in a newspaper or in other media which appear to involve the unauthorised disclosure of classified information, or sensitive, unclassified information which may be protected by a privacy marking such as "Commercial in Confidence". Such disclosure will have been made either by word of mouth, whether deliberately or carelessly, or following the unauthorised sight or passage of a document. First news of a leak may come direct from a journalist, either because he is attempting to verify the information he has received or because he wishes the Department to know that he has gained access to classified information. In the rare cases where this occurs before publication has taken place, it may be possible to seek an injunction to prevent publication in breach of Crown copyright and/or in breach of confidence (see paragraph 18.33 below).

18.17 Any apparent leak which comes to notice should be reported promptly to the Permanent Secretary of the Department who should arrange for the Departmental Security Officer to make immediate preliminary enquiries. The object of these enquiries should be to determine in consultation with the branch responsible for the subject matter and the Departmental Press Officer, whether there is firm evidence of a leak. It should be borne in mind that what looks like a leak may be no more than intelligent deduction or speculation or an unfounded claim by a journalist that the article he has written is based on unauthorised disclosure.

18.18 Several factors will contribute to the decision to mount a leak investigation, including the intrinsic importance of the information leaked, how widely it was circulated and the resources available for investigation. The Permanent Secretary of the Department concerned will be responsible, in consultation with the Chairman of the Official Committee on Security, for deciding whether an investigation should take place.

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18.19 In general there is likely to be advantage in pursuing an investigation in those cases where:

- a. the consequences of the leak (including political consequences) are serious;
- b. a specific document can be identified from the contents of the leak;
- c. the authorised circulation of the leaked document was small;
- d. it has been possible to take the decision to investigate promptly.

18.20 In all cases Permanent Secretaries will wish to exercise their discretion. There may be instances where all the criteria above are satisfied but where an investigation would not be justified and, equally, where the investigation of an apparently 'oral' leak would be worthwhile. There are 2 risks attached to frequent investigations into leaks which do not satisfy the criteria in paragraph 18.19: first, they might devalue investigations generally and result in their being taken less seriously by staff; second, they might encourage individuals in the belief that they can disclose classified information with impunity.

### Leaks Involving More than one Department

18.21 If the leaked information was available within more than one Department enquiries should be made as quickly as possible in all the Departments concerned. The responsibility for initiating these procedures lies with the Department primarily concerned, that is, the Department whose information has been leaked.

18.22 The initiating Department should consult the other Departments concerned, at Permanent Secretary level, about the leak. If it is not clear that the leak has occurred in the initiating Department, each Permanent Secretary should be invited to instruct his Departmental Security Officer to conduct prompt but discreet enquiries to see if it can be quickly established from which Department the information was leaked. If this can be done, responsibility for investigating the leak will pass to the appropriate Permanent Secretary. If it cannot be established, the initiating Department will retain the responsibility for the investigation until the source of the leak has been established.

18.23 Any leak involving Sigint information must be investigated in accordance with the procedures laid down in Chapter X of "Instructions and Regulations concerning the Security of Signal Intelligence" (IRSIG).

### The Leak Procedure

18.24 When the preliminary enquiries (see paragraph 18.17) indicate that there has been a leak the Permanent Secretary of the initiating Department (or of the Department primarily concerned if this has been established) should inform the Chairman of the Official Committee on Security, with copies to the Private Secretary to the Prime Minister, the Director General of the Security Service, and the Legal Secretary to the Law Officers' Department (or, for Scotland, the Crown Agent) giving the result of the preliminary investigation and his conclusion about the likely damage caused. He should recommend whether or not circumstances warrant a full investigation. When an investigation is recommended, the Departmental Security Officer should, in consultation with his Permanent Secretary, take any reasonable steps likely to assist the investigation, in order to minimise delay.

18.25. The Legal Secretary to the Law Officers' Department (or the Crown Agent) should inform the Chairman of the Official Committee on Security whether the Attorney General (or the Lord Advocate) is satisfied that it would not at that stage be appropriate to institute an investigation by the Security Service or the police.

18.26 If the Chairman of the Official Committee on Security agrees that there should be no investigation, the Department concerned should submit, either at Permanent Secretary level to the Chairman of the Official Committee on Security or at a lower level to the Management and Personnel Office Secretary to the Official Committee, a report of the circumstances of the leak, any preliminary or other investigation which has taken place and the conclusions and lessons which can be drawn, together with any background information which is likely to be of use to the Central Panel of Investigators in future investigations. The Central Panel is described in paragraph 18.32.

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18.27 If the Chairman of the Official Committee agrees that an investigation should take place, the Management and Personnel Office will recommend that an investigator from the Central Panel of Investigators takes charge of the investigation. He will be directly responsible to the Permanent Secretary concerned but he should work closely with the Departmental Security Officer and his staff. If, exceptionally, and with the agreement of the Chairman of the Official Committee on Security, an investigator who is not a member of the Panel is invited to take charge, the Panel will remain available to assist or advise as required.

18.28 If, during an investigation, it becomes necessary to interview Ministers, the Permanent Secretary concerned is responsible for informing the Chairman of the Official Committee on Security, who will seek approval from the Private Secretary to the Prime Minister.

18.29 If at any stage in the investigation anything should emerge which might give rise to a reconsideration of the possibility of criminal proceedings or to the institution of civil proceedings, the Permanent Secretary should consult the Legal Secretary to the Law Officers, keeping the Chairman of the Official Committee on Security informed.

18.30 The investigator will report the outcome to the Permanent Secretary. The Permanent Secretary, after taking any necessary action, should submit the report, with details of any action taken, to the Chairman of the Official Committee on Security, with copies to the Director General of the Security Service and copies of the letter (but not the report) to the Private Secretary to the Prime Minister and to any other Permanent Secretaries involved. In addition he should arrange for any background information to be sent to the Management and Personnel Office for inclusion in its Central Records.

### Central Records

18.31 Information about leaks and leak investigations is kept centrally in the Management and Personnel Office under the control of the Secretary to the Official Committee on Security. It is indexed and cross-referenced so as to facilitate the task of investigators. Access to this information, apart from those who maintain it, is restricted to the Chairman of the Official Committee on Security and to investigators. Information which has been submitted to the Management and Personnel Office in confidence is kept securely and will be made available to an investigator only if it proves necessary to do so for the purposes of an investigation on which he is engaged.

### Central Panel of Investigators

18.32 The Central Panel of Investigators consists of those who have been selected to provide a wide range of background experience in both the Civil Service and criminal investigation and who have agreed to make themselves available, subject to their other commitments, to investigate leaks as and when they may be asked to do so. It consists mostly, though not exclusively, of retired public servants who have been recommended by their former employers for this work. Individual members will be selected ad hoc to deal with a particular investigation after discussion between the Management and Personnel Office and the Department in which the investigation is to take place. The views of that Department will be the prime consideration in selecting the individuals concerned. After discussion with the Department, the Management and Personnel Office will establish the availability of the investigator or investigators who have been selected as suitable, and will leave the Department concerned to get in touch and make the necessary arrangements. Terms and conditions of service are fixed by the Management and Personnel Office in consultation with the Treasury, but the Department conducting the investigation will be responsible for employing each investigator on a day-to-day contract-for-service basis. For investigations of the most serious leaks, which might involve interviews with very senior Officials or with Ministers, it might be agreed that a pair of investigators should work as a team. Membership of the Panel is subject to continuous scrutiny by the Management and Personnel Office in discussion with Departments and in the light of experience.

### Possible Legal Action to Recover Documents or Discover Sources

18.33 If it should come to a Department's attention that one of the news media, which can be specifically identified, has possession of information arising from a leak, it may be possible to obtain an injunction to prevent publication in breach of Crown copyright (if the contents of a document are to be published) and/or breach of confidence. Action in such cases will need to be taken very swiftly, since no injunction is likely to be granted after publication; but, wherever possible, the Permanent Secretary of the Department concerned should consult the Chairman of the Official Committee on Security and, if it is decided to go ahead, the Management and Personnel Office will so instruct the Treasury Solicitor.

18.34 In theory it should be possible to recover documents (whether originals or copies) which have been sent by civil servants to a newspaper. For this to be a practical proposition, it would be necessary for the investigator to establish with reasonable certainty which document or documents have come into the possession of the newspaper, though not whether the documents are originals or merely copies; but any order for delivery up would be so worded as to extend to original documents and any copies in the newspaper's possession, whether or not these had been made by the newspaper. Among the factors which will need to be considered before this relief is sought are whether the documents contain sensitive information (lest it be said that resort has been had to legal proceedings to recover inconsequential documents) and whether recovery of the documents is likely to assist in ascertaining who was responsible for their disclosure; for example, there have been cases where forensic analysis of the documents which have been leaked has led to the identification of the culprit. In general, it should be recognised that it may become difficult to justify the frequent use of this procedure, with the attendant publicity which will almost inevitably be involved, unless the time, trouble and expense entailed can be shown to be matched by countervailing benefits. In cases where an investigator feels that recovery of the documents may prove essential to the success of the investigation, the Permanent Secretary of the Department concerned should consult the Chairman of the Official Committee. In some cases they may agree that Ministers should also be consulted. If it is decided to institute proceedings, the MPO will instruct the Treasury Solicitor.

18.35 In certain circumstances it might also be possible for the Crown to obtain an order against a newspaper that it should disclose the source of confidential information which has come into its hands. Such proceedings would not be taken except on the advice of Treasury Counsel and, where appropriate, the Law Officers; the agreement of the Permanent Secretary responsible for the investigation, after consultation with the Chairman of the Official Committee and any other Permanent Secretaries involved in the investigation, should be sought.

#### **Breaches resulting from espionage or subversion**

18.36 If the breach of security results from espionage or subversion, it is the responsibility of the Department in which the culprit was employed to ascertain what documents have been or are likely to have been compromised and to notify the originator - if another Department - who should in turn notify all other Departments which may be concerned. If the compromised information was received from an allied foreign government, the Department should consult the Foreign and Commonwealth Office about how to inform the country concerned.

#### **Limiting damage caused by a compromise**

18.37 It is the responsibility of the originator to decide what steps, if any, should be taken to limit the damage caused by the compromise. In assessing the degree of damage the originator should always consider whether the document was correctly classified.

#### **Cryptographic Material**

18.38 The procedures for reporting compromises or violations affecting the security of cryptographic material or information are contained in Chapter 14 paragraphs 14.10-14.12.

#### **LESSONS**

18.39 Each incident should be regarded not only as calling for investigation in itself but also as a means of drawing lessons for the future - as showing, for instance, where the security arrangements of the Department are defective, or as pointing to failure by an individual to observe them. The measures to be taken may consist of further restriction of access to classified papers, improved document control or physical security eg room, key or combination setting security. No incident should be allowed to pass without its lessons being brought home to the individual responsible. Minor cases can sometimes be dealt with by means of a word from the Security Officer. In more serious cases the Security Officer should report the facts to the Establishments Branch, who will recommend what disciplinary measures, if any, are called for.

#### **PUBLICITY**

18.40 Departments may find that they achieve an improvement in security standards if they compile and distribute to Heads of Divisions/Branches a periodic return (say, quarterly) analysing by types of offence the number of breaches which have occurred branch by branch within the period. The individuals responsible for the breaches should not be identified in these returns.

Ref.A084/1468

NOTE FOR RECORD

Leak Procedures

Sir Robert Armstrong held a meeting on 14 May to discuss leak procedures attended by Sir Thomas Hetherington, Mr Steel, Mr Davie and Mr Parker.

2. Sir Robert Armstrong said that under the procedures adopted in 1980 as a result of the Morrison report, the Legal Secretary was informed on behalf of the Attorney General when a leak inquiry was in prospect, in order to consider whether the case was likely to warrant a prosecution under the Official Secrets Acts. Recent events had, however, shown both the importance and the difficulty of deciding as early as possible whether a leak should be treated as a disciplinary or a criminal matter. There was always a danger that an initial internal investigation would make a subsequent police investigation more difficult, both through delay and by making it more difficult to obtain admissible evidence. The key questions had been identified by the Director of Public Prosecutions' letter of 17 April.
3. Mr Steel said that in practice it was seldom possible to form a clear view on the basis of the initial report from the Department concerned. In particular, it would be helpful if this report included an estimate of the sensitivity of the information concerned, the likely damage and of whether there was any indication of the possible source of the leak.
4. Sir Thomas Hetherington said that the Attorney General was now much more inclined to prosecute than he had been when the procedures had been introduced and was consulted whenever there appeared to be a prima facie case.
5. In discussion it was pointed out that it was usually not possible to answer these questions at the time of the initial report. This suggested that an internal investigator should conduct a rapid internal inquiry in order to establish whether the police should be called in. It was however important to resist the tendency

to pursue an internal investigation too far; in particular, a decision should be taken before interviewing possible suspects.

6. In further discussion the following points were made:

(a) If a police investigation did not result in a prosecution, it would usually not be possible to take disciplinary action as the information obtained by the police was confidential. This emphasised the importance of the initial decision on the type of investigation.

(b) It would be helpful if the Attorney General provided further advice on what might constitute a case on which a prosecution under the Official Secrets Acts could be mounted.

(c) Despite the risks of damaging the prospects of a subsequent prosecution, some internal inquiries had come very close to identifying the culprit.

(d) The damage caused by an individual leak was often less serious than the implications of possible further leaks.

7. Summing up, Sir Robert Armstrong said that unless it was clear that a case should be handled from the outset by the police, the progress of the internal investigation should be kept under continuous review and the advice of the Director of Public Prosecutions sought as soon as there was any indication that a prosecution might be feasible. The Cabinet Office would strengthen the guidance to Permanent Secretaries on this point and emphasise the need to provide as much information as possible in the initial leak report, particularly on the gravity of the leak and the likelihood of discovering evidence for a prosecution. The Legal Secretary should continue to be party to this correspondence and assume responsibility for consulting the Attorney General if this seemed necessary. The Legal Secretary would also consult the Attorney General to see whether it was possible to provide further guidance on the circumstances in which a prosecution would be envisaged.

R. HATFIELD

16 May 1984

R P HATFIELD

Copies: Those present CONFIDENTIAL

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NOTE OF A MEETING

LEAKS: CALLING IN THE POLICE

1. On the afternoon of 17 December 1980 Mr Fraser chaired a meeting in the Civil Service Department to discuss the implications of the Attorney General's recent decision to instruct the Police to investigate an unauthorised leak of information from the Ministry of Defence.

2. The following were present:

Mr A M Fraser (in the Chair)  
Mr J F Boyd, Inland Revenue  
Mr R S Matthews, DHSS  
Mr J Nursaw, Legal Secretary to the Law Officers  
Mr R F D Shuffrey, Home Office  
Mr E Pendlebury, Ministry of Defence  
Mr L Judd, Department of the Environment/Transport  
Mr S R Davie, CSD  
Mr P A James, CSD (Secretary).

3. The following points were raised in discussion:

- a. there were a number of disadvantages in calling in the Police to investigate leaks. These included the slow speed with which the Police had to work; the work load of the Policemen involved and the relative importance with which the Police authorities regarded leak investigations in relation to other crime; and the fact that when the only serious offence was related to Section 2 of the Official Secrets Act 1911 it was unlikely, save in exceptional circumstances, that a prosecution would be in the public interest;
- b. investigation by individual Departments, or by members of the Central Panel of Investigators was more likely to produce speedy results, and disciplinary action provided a perfectly adequate deterrent to offenders;
- c. for these reasons the view of Departments represented at the meeting was that it was undesirable to call in the Police in cases where the only charges likely to arise would involve the Official Secrets Act;
- d. these matters had been covered in the review of leaks which had taken place earlier in the year, and the Report, which had the approval of the Prime Minister, also concluded against the use of Police for leak investigations. In the light of this Report the rules were currently being revised;
- e. while the Official Secrets Acts remain on the statute the Attorney General would continue to need to consider in each case whether prosecution was likely to be in the public interest. He would not wish to commit himself in advance by issuing, for example, a general policy statement.

After discussion it was agreed that:

a. the Legal Secretary would discuss the outcome of the meeting with the Attorney General and, if the Attorney General agreed, would write to Mr Fraser, copying to those present from other Departments, indicating that:

i. he should continue to be kept informed about all leak investigations, and

ii. irrespective of the classification of documents leaked he would in general advise the Attorney General that a Police investigation with a view to eventual prosecution for an offence under the Official Secrets Acts was unlikely to be in the public interest where the offender was a civil servant against whom adequate disciplinary measures could be taken and unless he was advised by the Department concerned that the information disclosed was particularly damaging to state security;

b. if the Attorney General felt unable to agree to this understanding it would be necessary to consider the matter further;

c. Sir Ian Bancroft would be invited by the Chairman to take an early opportunity to mention these matters at a future Wednesday meeting of Permanent Secretaries.