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18/12/90

The Rt Hon. T.J. King, MP.,
Secretary of State for Defence
Ministry of Defence
Main Building
Whitehall
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17 December 1990

Dear Tom:

GULF CRISIS: MEDIA HANDLING

At the Meeting of OPD(G) on 12 December we discussed the proposed arrangements for handling of the media in the event of hostilities. In that context I thought it might be useful if I drew to your attention the desirability of including reference to the provisions of the Official Secrets Act 1989 as they apply to defence.

The definition of "defence" is set out in Section 2(4) of the Act, and the criteria which determine whether a disclosure is damaging are in Section 2(2). These provisions are clearly worded, and could usefully be explained to journalists with little difficulty. A journalist who disclosed material falling within those definitions would be guilty of an offence only if he satisfied the requirements of Section 5 of the Act, which extends the protection given by the other sections to disclosures made by a person receiving the information from a Crown servant or Government contractor in certain circumstances.

Since the Act has been in force for less than a year it is my view that it would be prudent to provide a general briefing to journalists and also to editors.

I am copying this letter to the Prime Minister, to other Members of OPD(G), to Sir Percy Cradock and to Sir Robin Butler.

James King

18/12/90

- (b) it is of information or a document or other article which is such that its unauthorised disclosure would be likely to cause such damage or which falls within a class or description of information, documents or articles the unauthorised disclosure of which would be likely to have that effect.

(5) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the information, document or article in question related to security or intelligence or, in the case of an offence under subsection (3), that the disclosure would be damaging within the meaning of that subsection.

(6) Notification that a person is subject to subsection (1) above shall be effected by a notice in writing served on him by a Minister of the Crown; and such a notice may be served if, in the Minister's opinion, the work undertaken by the person in question is or includes work connected with the security and intelligence services and its nature is such that the interests of national security require that he should be subject to the provisions of that subsection.

(7) Subject to subsection (8) below, a notification for the purposes of subsection (1) above shall be in force for the period of five years beginning with the day on which it is served but may be renewed by further notices under subsection (6) above for periods of five years at a time.

(8) A notification for the purposes of subsection (1) above may at any time be revoked by a further notice in writing served by the Minister on the person concerned; and the Minister shall serve such a further notice as soon as, in his opinion, the work undertaken by that person ceases to be such as is mentioned in subsection (6) above.

(9) In this section "security or intelligence" means the work of, or in support of, the security and intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of, or of any part of, them.

Defence.

2.—(1) A person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to defence which is or has been in his possession by virtue of his position as such.

(2) For the purposes of subsection (1) above a disclosure is damaging if—

- (a) it damages the capability of, or of any part of, the armed forces of the Crown to carry out their tasks or leads to loss of life or injury to members of those forces or serious damage to the equipment or installations of those forces; or
- (b) otherwise than as mentioned in paragraph (a) above, it endangers the interests of the United Kingdom abroad, seriously obstructs the promotion or protection by the United Kingdom of those interests or endangers the safety of British citizens abroad; or
- (c) it is of information or of a document or article which is such that its unauthorised disclosure would be likely to have any of those effects.

(3) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the information, document or article in question related to defence or that its disclosure would be damaging within the meaning of subsection (1) above.

(4) In this section "defence" means—

- (a) the size, shape, organisation, logistics, order of battle, deployment, operations, state of readiness and training of the armed forces of the Crown;
- (b) the weapons, stores or other equipment of those forces and the invention, development, production and operation of such equipment and research relating to it;
- (c) defence policy and strategy and military planning and intelligence;
- (d) plans and measures for the maintenance of essential supplies and services that are or would be needed in time of war.

3.—(1) A person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority he makes a damaging disclosure of— International relations.

- (a) any information, document or other article relating to international relations; or
- (b) any confidential information, document or other article which was obtained from a State other than the United Kingdom or an international organisation,

being information or a document or article which is or has been in his possession by virtue of his position as a Crown servant or government contractor.

(2) For the purposes of subsection (1) above a disclosure is damaging if—

- (a) it endangers the interests of the United Kingdom abroad, seriously obstructs the promotion or protection by the United Kingdom of those interests or endangers the safety of British citizens abroad; or
- (b) it is of information or of a document or article which is such that its unauthorised disclosure would be likely to have any of those effects.

(3) In the case of information or a document or article within subsection (1)(b) above—

- (a) the fact that it is confidential, or
- (b) its nature or contents,

may be sufficient to establish for the purposes of subsection (2)(b) above that the information, document or article is such that its unauthorised disclosure would be likely to have any of the effects there mentioned.

(4) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the information, document or article in question was such as is mentioned in subsection (1) above or that its disclosure would be damaging within the meaning of that subsection.

(6) In this section "legal custody" includes detention in pursuance of any enactment or any instrument made under an enactment.

5.—(1) Subsection (2) below applies where—

(a) any information, document or other article protected against disclosure by the foregoing provisions of this Act has come into a person's possession as a result of having been—

(i) disclosed (whether to him or another) by a Crown servant or government contractor without lawful authority; or

(ii) entrusted to him by a Crown servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the Crown servant or government contractor could reasonably expect that it would be so held; or

(iii) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in sub-paragraph (ii) above; and

(b) the disclosure without lawful authority of the information, document or article by the person into whose possession it has come is not an offence under any of those provisions.

(2) Subject to subsections (3) and (4) below, the person into whose possession the information, document or article has come is guilty of an offence if he discloses it without lawful authority knowing, or having reasonable cause to believe, that it is protected against disclosure by the foregoing provisions of this Act and that it has come into his possession as mentioned in subsection (1) above.

(3) In the case of information or a document or article protected against disclosure by sections 1 to 3 above, a person does not commit an offence under subsection (2) above unless—

(a) the disclosure by him is damaging; and

(b) he makes it knowing, or having reasonable cause to believe, that it would be damaging;

and the question whether a disclosure is damaging shall be determined for the purposes of this subsection as it would be in relation to a disclosure of that information, document or article by a Crown servant in contravention of section 1(3), 2(1) or 3(1) above.

(4) A person does not commit an offence under subsection (2) above in respect of information or a document or other article which has come into his possession as a result of having been disclosed—

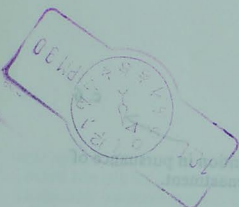
(a) as mentioned in subsection (1)(a)(i) above by a government contractor; or

(b) as mentioned in subsection (1)(a)(iii) above,

unless that disclosure was by a British citizen or took place in the United Kingdom, in any of the Channel Islands or in the Isle of Man or a colony.

(5) For the purposes of this section information or a document or article is protected against disclosure by the foregoing provisions of this Act if—

Information resulting from unauthorised disclosures or entrusted in confidence.



(6) In this section "information" includes data, and "document" or any instrument made under an enactment.

Information
including that
communicated
directly or
indirectly in
writing or
otherwise.

2.—(1) Information is information which—

(a) was information, document or other article protected against disclosure by the foregoing provisions of this Act as soon as this Act came into force as a result of having been—

(i) disclosed (whether to him or another) by a Crown servant or government contractor without lawful authority;

(ii) entrusted to him by a Crown servant or government contractor as being intended to be held in confidence or in circumstances in which the Crown servant or government contractor could reasonably expect that it would be so held;

(iii) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted or communicated in the foregoing circumstances;

(b) the disclosure without lawful authority of the information is or will be a breach of any of those provisions of the Official Secret Act 1950 which relate to the disclosure of information.

(2) Subject to subsections (3) and (4) below, the person into whose possession the information, document or other article protected against disclosure by the foregoing provisions of this Act as soon as this Act came into force was disclosed to him or another by a Crown servant or government contractor without lawful authority is to be treated as having disclosed it to him or another if he has come into its possession in circumstances in which he could reasonably expect that it would be so held.

(3) In the case of information or a document or article protected against disclosure by section 1(1) above a person does not come into its possession as a result of having been disclosed to him or another by a Crown servant or government contractor without lawful authority if he has come into its possession in circumstances in which he could reasonably expect that it would be so held.

(4) The question whether a disclosure is a disclosure to which this section applies shall be determined for the purposes of this subsection as if it would be in relation to the disclosure of information, document or article by a Crown servant in contravention of section 1(1), 1(2) or 1(3) above.

(5) A person does not commit an offence under subsection (1) above in respect of information or a document or other article which has come into his possession as a result of having been disclosed—

(a) as mentioned in subsection (1)(a)(i) above by a government contractor or

(b) as mentioned in subsection (1)(a)(ii) above, unless that disclosure was by a British citizen or took place in the United Kingdom, in any of the circumstances mentioned in the last of those provisions of this section.

(6) For the purposes of this section information or a document or article is protected against disclosure by the foregoing provisions of this Act if—