

CC FCS

Prime Minister

CONFIDENTIAL

B.07613

MR WICKS

Agreed with

Are you content with the telegram attached?

N.L.W  
3-12

Peter Wright Case: Discovery of Documents

Following Sir Robert Armstrong's further request for some latitude in what our team say about discovery during the appeal hearing starting tonight, the Home Secretary has decided not to hold a meeting of Ministers, or to seek to identify documents which might be discovered. The Home Secretary considers, however, that our people might be given a very small degree of latitude.

2. The attached draft telegram seeks to express this in the form of instructions to our team in Sydney. It is being shown to the Foreign and Commonwealth Secretary and to the Attorney General. Officials in the Law Officers' Department believe that the Attorney will be content. The wording of the draft telegram is also being cleared with the Home Office.

3. The telegram would need to issue this evening.

C L G Mallaby

C L G Mallaby

3 December 1986

CONFIDENTIAL

TELEGRAM TO SYDNEY

IMMEDIATE

DESKBY 0320100Z

FOR ARMSTRONG FROM MALLABY

YOUR TELEGRAM NUMBER 17: PETER WRIGHT CASE: PUBLIC INTEREST IMMUNITY

The position remains that Ministers have not yet decided what documents if any could ultimately be discovered and with what deletions. But Ministers have further considered what might be said by Counsel on the matter during the appeal hearing, in the light of your telegram under reference.

2. Ministers recognise that:-

a. To reject outright the idea of a much shorter list of documents for discovery than Mr Justice Powell's could close off the possibility of an arrangement we could live with.

b. We should still be in a position, if any indications of possible flexibility that we had given were very general ones, to appeal against any arrangement decided on by the Appeal Court.

(and only if) 3. In the appeal hearing, Counsel should be careful not to suggest willingness on the Government's part to discover any documents. But if Counsel judges that it would be advantageous to our interests in the hearing, he may draw on the following points:-

i. The list of documents for discovery presents, as it stands, all the difficulties concerning PII, confidentiality etc that the plaintiff has presented.

ii. The plaintiff has not considered other possible lists of documents for discovery. But the documents on the present

list do of course vary in their sensitivity, so that lists where confidentiality would present less difficulty are in principle conceivable.

4. If asked which documents present less (or more) difficulty, Counsel should say he has no instructions.



10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*

MS2 CPU  
file  
GC FCO  
(Galsworthy)

MR MALLABY  
CABINET OFFICE

PETER WRIGHT CASE: DISCOVERY OF DOCUMENTS

I have shown the Prime Minister your minute of today, in which you seek authority to despatch to Sir Robert Armstrong in Sidney the telegram which you attached.

Subject to the views of other Ministers concerned, the Prime Minister is content for the telegram to issue.

The Foreign Secretary who was in the room while I discussed your draft with the Prime Minister, suggested that you might wish to consider amending paragraph 3(ii) of the draft telegram to read:-

"As regards PII, the plaintiff continues to maintain that this applies to all the documents on the list. He has not therefore considered other possible lists of documents for discovery. As regards confidentiality, the documents on the present list do of course vary ....."

This would make it crystal clear to our Australian Counsel that we want to maintain the priority of our PII claim.

N.L. Wicks

3 December 1986

MS

FROM: A D S GOODALL

DATE: 3 DECEMBER 1986

Private Secretary

cc:- Mr Battiscombe, PUSD

*Si J. Freeland*

PETER WRIGHT CASE: PUBLIC INTEREST IN UNITY

1. I hesitate to offer a view on what seems to be a primarily legal question. But I wonder if, in hinting at readiness to shift our ground from the "class" claim of PII to one of confidentiality, we may not be undermining the cogency of the PII doctrine when we next come to need it in an English court. It is true that, in the Wright case, our PII claim appears to have been set aside because the judge has ruled that the criterion must be the Australian public interest rather than the British public interest; but I cannot help feeling, as a layman, that if this leads us to disclose documents which we regard as covered by British PII, this could weaken our position even in a British court.

*Low PII*

2. The Secretary of State will know better than I if there is any force in this anxiety. It may in any case be right at least to keep open the possibility of limited disclosure on the basis of confidentiality at the present stage, even if it is unlikely that we shall want to take advantage of it. In that event, I would suggest amending 3(ii) of the draft telegram to read:

"As regards PII, the plaintiff continues to maintain that this applies to all the documents on the list. He has not therefore considered other possible lists of documents for discovery. As regards confidentiality, the documents on the present list do of course vary ...."

3. This would make it crystal clear to our Australian Counsel that we want to maintain the priority of our PII claim - which seemed to be a principal concern of the Attorney General at yesterday's meeting.

*David Goodall*

A D S Goodall



10 DOWNING STREET

Prime Minister

CABINET

You may wish  
to ask the Home  
Secretary tomorrow  
to give a brief  
report <sup>\*</sup> on the Wright  
case. He would be  
ready to do so.

Apparently some  
Cabinet Ministers have  
<sup>\*</sup> under Parliamentary and Home Affairs

asked him.

N. L. W.

3.12.