

## **Press Release**

**Thursday 14 February 2008**

### **Immediate**

## **New documents reveal BAE pressured government to halt corruption investigation**

Documents released in the High Court today reveal that Britain's biggest arms company, BAE Systems, wrote to the Attorney General on a "strictly private and confidential" basis urging him to halt the Serious Fraud Office investigation into allegations that BAE had bribed Saudi officials to secure the Al Yamamah arms deal. The company argued that the investigation should be dropped on commercial and diplomatic grounds.[1]

The documents were released as part of a judicial review being brought by Campaign Against Arms Trade (CAAT) and The Corner House, who argue that the decision to drop the investigation was illegal. The case is being heard in the High Court today and tomorrow (14-15 February) before Lord Justice Moses and Mr Justice Sullivan.

BAE's "Memorandum for Attorney General" set out "the reasons why the Company considers it not to be in the public interest for the SFO investigation . . . to continue." It argues that the continued investigation would "adversely and seriously affect relations between the UK and Saudi Arabia" and would jeopardise the multibillion-pound sale of Typhoon aircraft.

This Memorandum triggered a consultation within government departments on the "public interest" aspects of the investigation, even though it had been sent by BAE itself - the very subject of that criminal investigation.[2]

The Serious Fraud Office began its investigation into the Saudi arms deals in November 2004, but the BAE letters released today were only written one year later in response to an SFO order that BAE disclose its payments to agents and consultants involved in the Saudi arms deals.

BAE expressed concern in the released Memorandum that the Saudis would view disclosure of documents to the SFO as a breach of confidentiality and trust (although it admitted that similar information about "the names of consultants engaged by the Company and the amounts paid to them" had previously been provided to the Inland Revenue, apparently without any adverse commercial or diplomatic consequences").

Nowhere did BAE mention the issue of 'national security'.

Another document released today indicates that even the representations subsequently made by government departments to the SFO on the public interest aspects of the investigation were made at BAE's instigation.

Robert Wardle notes of a telephone conversation with BAE's Legal Director, Michael Lester, that BAE "would make further representations to the Ministry [of Defence] for them to make representations to us [the Serious Fraud Office]".[3]

Nicholas Hildyard of The Corner House said today:

"Even though it was the subject of the criminal investigation, BAE brazenly tried to stop the Serious Fraud Office from doing its job. Nor was it alone. The letters released today reveal the hand-in-glove relationship between BAE and its friends in government. What's more, it's clear from these documents that 'national security' -- the reason ultimately given for pulling the plug on this investigation -- was trotted out as a concern only when all these other special pleadings of commercial and diplomatic consequences had failed."

Symon Hill of CAAT said:

"This is absurd. A criminal investigation was dropped at the request of the people accused of the crime. The whole BAE saga is becoming more and more like a plotline from 'Yes, Minister'. Britain's democracy, economy and security will all be better off when BAE is no longer calling the shots."

## NOTES

1. Michael Lester, Group Legal Director, BAE Systems, letter to Lord Goldsmith, Attorney General, 7 November 2005, and "BAE Systems plc (the Company)", SFO Investigation, Memorandum for Attorney General", RW4, pp.3-7.

<http://www.thecornerhouse.org.uk/pdf/document/SecondRedactDocsRW4.pdf>

2. The normal procedure is to assess the public interest aspects of a potential prosecution after a completed investigation has revealed whether there is enough evidence for a prosecution or not.

3. File note written by Robert Wardle, Director of the SFO, 22 December 2005, RW4, p.14.

<http://www.thecornerhouse.org.uk/pdf/document/SecondRedactDocsRW4.pdf>

**4. Campaign Against Arms Trade (CAAT)** works for the reduction and ultimate abolition of the international arms trade. **The Corner House** is an environmental and social justice NGO. For more information on the legal challenge, go to <http://www.controlbae.org>; <http://www.caat.org>, or <http://www.thecornerhouse.org.uk>

## 5. Background to judicial review

14<sup>th</sup> December 2006: The Director of the Serious Fraud Office (SFO) suspended the SFO's investigation into bribery and corruption by BAE Systems since 2002 in relation to the Al-Yamamah military aircraft deals signed between the governments of

the UK and Saudi Arabia in 1985 and 1988. The deals ran for 20 years and were to supply aircraft, defence system, weapons and related products and support services. The 2001 Anti-Terrorism Crime and Security Act made bribing a foreign official a criminal offence. The SFO began its investigation in November 2004.

Some time in 2005 and 2006, Saudi Arabia threatened to cancel a further deal involving BAE's Eurofighter Typhoon aircraft and to withdraw security, intelligence and diplomatic co-operation with the UK if the investigation continued. These threats appear to have been made when it was discovered that the SFO was about to obtain details of Swiss bank accounts linking BAE and Saudi officials. Prince Bandar of Saudi Arabia, one of the alleged beneficiaries of the corrupt payments being investigated by the SFO, is reported to have been the source of these threats. (*The Guardian*, "BAE accused of secretly paying £1bn to Saudi prince", 7 June 2007; *The Times*, "Bandar Lobbied No 10 to drop Saudi bribes inquiry", 10 June 2007)

18<sup>th</sup> December 2006: The Corner House and CAAT wrote to the UK Government arguing that the SFO decision was unlawful and should be reversed.

9<sup>th</sup> November 2007: Lord Justice Moses and Mr Justice Irwin granted permission to the two groups to bring a full judicial review hearing against the SFO decision to discontinue its investigation.

21<sup>st</sup> December 2007: At a Directions Hearing, the Director of the Serious Fraud Office presented his evidence to the Courts outlining why he had decided to drop the investigation. This included:

- a witness statement from the Director of the Serious Fraud Office, Robert Wardle

- <http://www.thecornerhouse.org.uk/pdf/document/WardleWitState.pdf>

- letters and memos sent between the Prime Minister/Cabinet Office and the Attorney General from December 2005 to December 2006

- <http://www.thecornerhouse.org.uk/pdf/document/RedactedDocs.pdf>

14<sup>th</sup> February 2008:

The Director of the Serious Fraud Office presented further evidence to the Courts outlining why he had decided to drop the investigation:

- 12 letters, memos, notes and emails sent from November 2005 to December 2006 from and/or to BAE Systems; Allen & Overy (BAE solicitors); Attorney General's office; and the Serious Fraud Office.

- <http://www.thecornerhouse.org.uk/pdf/document/SecondRedactDocsRW4.pdf>

- a second witness statement from the Director of the Serious Fraud Office, Robert Wardle.

- <http://www.thecornerhouse.org.uk/pdf/document/SecondWardleWitState.pdf>

6. CAAT and The Corner House are bringing the judicial review on six overlapping grounds:

**i) OECD Anti-Bribery Convention**

The decision to discontinue the BAE-Saudi corruption investigation was based on considerations of potential damage to the UK's relations with Saudi Arabia, in particular, damage to UK/Saudi security, intelligence and diplomatic cooperation. This is unlawful because it contravenes Article 5 of the OECD's Anti-Bribery Convention, which prevents signatories from terminating an investigation because of "the potential effect [of an investigation] upon relations with another State". (For more information, see note 5 below)

**ii) Saudi Arabia's international legal obligations to combat terrorism**

The UK effectively colluded with Saudi Arabia in breaching Saudi Arabia's international legal obligations to cooperate and share information on terrorist activities, and thereby colluded in committing an internationally wrongful act.

**iii) Acting on tainted advice from government ministers**

Government ministers (including the Prime Minister) took into account the risk of the UK not being able to sell Typhoon aircraft, and other commercial, economic and diplomatic matters when they gave advice to the SFO Director on the public interest aspects of the investigation. This was despite being told by the Attorney General that Article 5 of the OECD Anti-Bribery Convention forbids such considerations from being taken into account. The ministerial advice was therefore "tainted".

**iv) Damaging national security by discontinuing the investigation**

The SFO Director is under a legal obligation to take a balanced view of the public interest issues arising from an investigation. But neither the Director nor government ministers assessed or took into account the harm to the UK's national security of *discontinuing* the investigation.

**v) Government ministers expressed a view on what decision an independent prosecutor (the Director of the Serious Fraud Office) should take.**

The SFO Director and Attorney General requested views from government Ministers on the public interest aspects of pursuing the investigation. The rules for these consultations between the judiciary and the executive forbid Ministers from giving a view on whether a prosecution should proceed or not. But the Prime Minister expressed a clear view that the public interest would best be served by intervening to halt the investigation. This is unlawful.

**vi) Blackmail, threats and the rule of law**

It is unlawful for an independent prosecutor to permit threats or blackmail to influence his/her decision to discontinue a criminal investigation or prosecution. To do so is to surrender the rule of law.

7. The **Serious Fraud Office** is a UK government department that investigates and prosecutes complex fraud. It aims to contribute to "the delivery of justice and the rule of law." The **Attorney General** superintends the Director of the Serious Fraud Office; both are supposed to act independently of government.

The Attorney General is the chief legal adviser to the Government and is responsible for all crown litigation. The Attorney General is appointed by the Prime Minister and is a member of parliament. Under the OECD Anti-Bribery Convention, political appointees should not make decisions on corruption cases.

**8. The OECD Anti-Bribery Convention**, which the UK signed in 1997, is a multilateral treaty aiming to ensure that all OECD countries present a combined and united front against bribery and corruption of foreign public officials.

Article 1 of the Convention requires parties to make it a criminal offence to bribe a foreign public official. The UK did so in the 2001 Anti-Terrorism Crime and Security Act.

Article 5 makes provisions to enforce Article 1. It rules out the termination of corruption investigations on grounds other than the merits of the case. Signatory governments specifically undertake *not* to be influenced "by the potential effect [of an investigation] upon relations with another State . . . ."

But the SFO Director's decision to suspend the investigation *was* based on considerations of potential damage to relations with Saudi Arabia if the BAE-Saudi arms deals investigation continued.

Article 5 also prevents signatories from being "influenced by considerations of national economic interest" in deciding whether to terminate an investigation."

Yet Tony Blair stressed his concern about "the critical difficulty presented to the negotiations over the Typhoon contract", (a proposed but unsigned deal for the sale of 72 Eurofighter Typhoon aircraft from BAE to Saudi Arabia) in a "personal minute", dated 8<sup>th</sup> December 2006, to then Attorney General, Lord Goldsmith.

**9. The "rule of law"** is a fundamental principle in Britain's unwritten constitution. It holds that the best way of protecting people's rights from the arbitrary exercise of power is to apply and uphold legal rules impartially. Doing so requires an independent judiciary (prosecutors, judges, magistrates, courts) that acts "without fear, favour or prejudice", according to the Attorney General.

Any action that undermines the impartial application and upholding of the law – such as interference with the courts, judges, prosecutors, juries or witnesses; decisions that courts cannot review; placing individuals or entities above the law – undermines the rule of law.

Applying the rule of law means that a government's authority is legitimately exercised only in accordance with written, publicly disclosed laws that are adopted and enforced according to established procedural steps (or due process).

The rule of law involves a clear separation of powers between the Executive (government), the Legislature (Parliament) and the Judiciary. The Executive is responsible for the day-to-day management of the state; the Legislature creates, amends and ratifies laws; and the Judiciary interprets the law on a case-by-case basis.

**10.** Spokespeople for CAAT and The Corner House are available for interview:

CAAT - Symon Hill  
07920 037 719 or 020 7281 0297

The Corner House - Nicholas Hildyard  
0777 375 0534 or 01258 473795