IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/1567/07

B E T W E E N :-

THE QUEEN
on the application of
(1) CORNER HOUSE RESEARCH
(2) CAMPAIGN AGAINST ARMS TRADE

Claimants

- and -

THE DIRECTOR OF THE SERIOUS FRAUD OFFICE

Defendant

- and -

BAE SYSTEMS PLC

Interested Party

INDEX TO EXHIBIT RW4

DOCUMENT 1: Letter from Jonathan Jones, Legal Secretary to the Law Officers, to Robert Wardle, Director of the SFO, 10 November 2005

RESTRICTED - INVESTIGATION

10 November 2005

Dear Robert,

BAe SYSTEMS

I am **enclosing** a copy of a letter from Mr Michael Lester of BAe systems dated 7 November 2005, and accompanying memorandum, together with a copy of my reply of today's date.

You will see that although the Law Officers are aware of Mr Lester's letter they have not read the memorandum.

Yours ever,

Jonathan

Jonathan Jones

enc.

RESTRICTED - INVESTIGATION

DOCUMENT 2: Letter from Jonathan Jones, Legal Secretary to the Law Officers, to Michael Lester of BAE Systems plc, 10 November 2005

10 November 2005

Dear Mr Lester

I refer to your letter of 7 November 2005 to the Attorney General. Both the Attorney General and the Solicitor General are aware of your letter but they have not read the accompanying memorandum. I note that the memorandum is marked "strictly private and confidential". It is not appropriate for representations to be made to the Law Officers on such a private and confidential basis. The proper recipient of such representations is the Serious Fraud Office and I have therefore forwarded your letter and the memorandum to the Director of the SFO.

Yours sincerely

Jonathan Jones

Jonathan Jones

BAE SYSTEMS

Michael Lester
Group Legal Director

07 November 2005

The Lord Goldsmith QC
Attorney General
Attorney General's Chambers
9 Buckingham Gate
London SW1E 6JP

Private & Confidential

Dear Lord Goldsmith

This Company has been the subject of a Serious Fraud Office (SFO) investigation instituted in November 2004. Recent developments in this investigation raise in our view serious public interest issues which we consider should be brought to your personal attention having regard to the prosecutorial discretion conferred upon you.

I enclose a brief note summarising the position and would welcome the opportunity to see you to amplify its contents and answer any questions you may have. You should be aware that I have discussed the issues referred to in the enclosed note with Sir Kevin Tebbit, the Permanent Secretary at the Ministry of Defence, who is aware that I am contacting you.

I look forward to hearing from you.

Yours sincerely

enc.

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STRICTLY PRIVATE & CONFIDENTIAL

BAE SYSTEMS plc ("the Company")

SFO INVESTIGATION

MEMORANDUM FOR ATTORNEY GENERAL

INTRODUCTION

1. The purpose of this note is to set out the reasons why the Company considers it not to be in the public interest for the SFO investigation mentioned below to continue and that the Attorney General should therefore exercise his discretion to halt the investigation. This note briefly summarises the investigation and the matters of public interest which would be damaged by its continuation.

THE ORIGINAL INVESTIGATION

2. On 17 November 2004, the SFO informed the Company that it was investigating the Company in relation to suspected false accounting.

On the 8 February 2005, the SFO indicated that it was also investigating the Company and others in relation to offences of corruption. This was a technical change and did not affect the substance of the investigation.

3. The Company has disclosed a large amount of documentation to the SFO in response to statutory disclosure notices. Some senior former and current employees of the Company have also been interviewed by the SFO. On 27 July 2005, the Company voluntarily provided the SFO with a written analysis of the accounting treatment of the
prepared by Price waterhouse Coopers and Allen & Overy, the Company's accounting and legal advisers respectively. The conclusion reached in this analysis was the costs were

effectively borne by the Saudi customer in accordance with the terms of the contract with the customer.

4. Allen & Overy have written to the SFO on a number of occasions questioning whether the SFO has a legal basis for continuing the investigation given that the investigation has revealed no evidence of criminal conduct and the conclusion reached in the analysis provided to the SFO on 27 July 2005. The SFO have not provided any substantive response to Allen & Overy on this point. On 14 October 2005, the SFO advised the Company that it proposed to continue its investigation and interview Company personnel on Company premises. It is unclear what further evidence the SFO hopes to obtain in this way.

THE FURTHER INVESTIGATION

5. On 14 October 2005, the SFO also notified the Company that it was investigating the in pursuit of the marketing of the Company's products abroad. This investigation has two elements; one is the in relation to the Al Yamamah programme; the other is the in the rest of the world. The SFO has not indicated on what grounds it suspects that any offence has occurred.

6. In connection with this further investigation, the SFO has issued two further section 2 notices covering the by the Company. It seems clear from the section 2 notice relating to the Al Yamamah programme that the SFO has received information from the Revenue and Customs with the names of consultants engaged by the Company and the amounts paid to them, notwithstanding written assurances of confidentiality given by the then Inland Revenue to the Company and a conversation between the Permanent Secretary at the Ministry of Defence (Sir Kevin Tebbit) and the then head of the Inland Revenue (Sir Nicholas Montagu) at which the highly confidential nature of the information to be provided by the Company to the Inland Revenue was explained.

THE AL YAMAMAH PROGRAMME

7. The Al Yamamah programme is the subject of two wide ranging MoUs between the UK and Saudi Arabia governments. Pursuant to this programme the Company has supplied and continues to supply to the Kingdom of Saudi Arabia, as prime contractor to the UK government, aircraft, defence systems, weapons, construction and infrastructure services and support. The Company currently has approximately 4500 employees in Saudi Arabia in support of the Al Yamamah programme.

8. Following the Prime Minister's visit to Saudi Arabia earlier this year, the Company has been working with the MoD to secure the next tranche of work under the Al Yamamah programme. This covers a sustainment programme for the Tornado aircraft previously supplied by the Company to the Royal Saudi Air Force and the sale of new Typhoon aircraft. The Secretary of State for Defence is currently scheduled to visit Saudi Arabia in early December 2005 to sign a MoU between the UK and Saudi Arabia governments for the sale of these new Typhoon aircraft. Arrangements are in hand for the Prime Minister to visit Saudi Arabia in early 2006 to cement the relationship between the two countries.

THE PUBLIC INTEREST

9. Disclosure to the SFO of the information relating to Al Yamamah requested in the section 2 notice would be regarded by the Saudi Arabia government as a serious breach of confidentiality by the Company and the UK government. The Company believes that if this information is provided there is little prospect of it remaining confidential with consequent jeopardy to the next tranche of the Al Yamamah programme relating to the sustainment of Tornado aircraft and the sale of Typhoon aircraft being agreed between the UK and Saudi Arabia governments.

10. It is the Company's view that compliance with the section 2 notice and the continued investigation in relation to the Al Yamamah programme will be seriously contrary to the public interest in that:

i) it would adversely and seriously affect relations between the UK and Saudi Arabia governments at a time when the UK government, and the Prime Minister in particular, is seeking to nurture the relationship between the two countries in pursuit of the UK's strategic objectives in the Middle East; and

ii) it would almost inevitably prevent the UK securing its largest export contract in the last decade of some with the consequent adverse consequences for the UK economy in general and employment, both in the UK and Continental Europe, in particular.

11. The Code for Crown Prosecutors states that one of the common public interest factors against a prosecution is that details may become public that may harm international relations (see paragraph 5.10(i) of the Code). The damage identified at paragraph 10 above would occur if the investigation continued, regardless of whether or not a prosecution followed. In the circumstances, the Company considers that the considerations set out in the Code relevant to determining whether to prosecute should be applied equally to the decision on whether to continue the investigation.

12. The Company does not believe it has committed any offence in connection with its in relation to the Al Yamamah programme, notwithstanding the SFO's assertion that it has reason to suspect that an offence has been committed. The SFO has not given any indication of the grounds for its suspicion.

7 November 2005

BAE SYSTEMS

Michael Lester
Group Legal Director

11 November 2005

BY HAND

Mr Jonathan Jones
The Legal Secretariat to the Law Officers
Attorney General's Chambers
9 Buckingham Gate
London SW1E 6JP

Dear Mr Jones

I have received your letter of 10 November and am puzzled by its contents. The memorandum enclosed with my letter dated 7 November to the Attorney General was marked strictly private and confidential in accordance with good practice. I would however be happy to re-submit this memorandum with the legend removed.

The representations made in my letter related essentially to public interest issues affecting this country's international relations. In these circumstances, I concluded that it would be appropriate if these representations were made at ministerial level. It is my understanding that the Attorney General is the minister responsible for the Serious Fraud Office and I accordingly wrote to him. If I am wrong in my understanding I shall be grateful if you will let me know.

Yours sincerely

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DOCUMENT 5: Letter from Jonathan Jones, Legal Secretary to the Law Officers, to Michael Lester of BAE Systems plc, 14 November 2005

14 November 2005

Dear Mr Lester,

Thank you for your letter of 11 November 2005. You are of course correct to say that the Attorney General has ministerial responsibility for the Serious Fraud Office.

The point being made in my previous letter was that it is inappropriate for representations to be made "privately" to the Attorney General: any such representations would need to be treated as having been made formally (or not at all) and would potentially be liable to be disclosed, for example in any proceedings or under the Freedom of Information Act.

Any representations as to the public interest should be addressed to the SFO as the prosecutor, which would consult the Attorney General where appropriate.

As mentioned in my previous letter, your letter of 7 November and memorandum have been forwarded to the SFO.

I am also copying this letter, and yours of 11 November, to the Director of the SFO.

Yours sincerely,

Jonathan Jones

Jonathan Jones

DOCUMENT 6: Letter from Matthew Cowie of the SFO to Jonathan Hitchin of Allen & Overy LLP, 15 November 2005

Date: 15th November 2005

Dear Mr Hitchin,

BAE Systems Plc Investigation – 5th Notice

I refer to your fax received at 3pm yesterday.

I refer only to the 5th notice in this letter because, as I understand it from our telephone conversation yesterday evening, your representations concerning confidentiality and the consequent public interest features are limited to Al Yamamah. Please confirm that my assumption is correct.

As a preliminary point, I am assuming that, on every occasion that you use the expression "our client", as in for example,

> "Our client made the submission to the Attorney General" and
>
> "our client concluded that it would be appropriate if these representations were made at ministerial level"

you acknowledge that BAE was acting at all times with your knowledge and with the benefit of your advice. If that is incorrect would you please clarify the position.

It is both relevant and important that you do so. You are now asking the SFO to give full and proper consideration to the contents of a memorandum, apparently prepared by the company and not by yourselves, addressed not to the SFO but to the Attorney General and sent to the Attorney without providing the SFO with a copy, or even giving us notice that this approach had been made.

The return date in relation to hard copy documents under the 5th notice was yesterday. The notice is dated 14th October and was sent to you on that date. The memorandum was dated 7th November, a bare week before compliance was required and would appear to amount to a fundamental objection to compliance with the 5th notice. It also raises the same claim of public interest as a ground to discontinue the entire SFO investigation. However, as I set out in my last letter dated yesterday, your firm had never sought to raise any such concerns or objections in the previous detailed

correspondence that had passed between us. Furthermore the clear indication that the SFO has been given by you was that the only hindrance to full compliance lay in administrative difficulties. You wrote to this Office on 10th November in terms that led me to believe that your client would at least partially comply with the 5th notice on 14th November.

I have no reason to believe that the terms of the 5th notice raise any issues that could amount to a reasonable excuse for the company to refuse to comply. The only claim to the contrary is contained in paragraph 9 of the memorandum and is predicated by the assertion that

> "Disclosure to the SFO of the information relating to Al Yamamah requested in the section 2 Notice would be regarded by the Saudi Arabian Government as a serious breach of confidentiality by the company and the UK Government."

[REDACTION – two sentences] There are only public interest consequences if this assertion is accurate and justifiable. Further, no explanation is given for the assertion that compliance by the company with a compulsory statutory requirement is capable of being regarded as a breach of confidentiality on the part of the company, or why the pursuance by the SFO of its independent statutory powers of investigation could properly be regarded as a breach of a duty of confidentiality by the United Kingdom government.

I understand that your client is a participant in the Organisation for Economic Co-operation and Development ("OECD") process and has committed itself to the principles of the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) 1997. Equally the UK government is a signatory to the Convention.

Article 5 states:

> "Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved."

On this basis I can confidently discount the public interest considerations raised in the memorandum based on economic considerations (paragraph 10(ii)) as irrelevant to whether the SFO should take particular investigative steps or in any determination of whether this investigation ought to continue.

If there is material in existence which gives weight to the assertion in paragraph 10(i) concerning national interest, I would ask you to supply it forthwith. It may have a bearing on the public interest test as set out in the Code for Crown Prosecutors, however

any such representations will have to be weighed against other public interest factors contained in the Code and the OECD Convention itself.

We have no duty to consult with other Government departments on operational matters; however we will receive and consider any representations that are properly brought to us from any quarter. Strictly speaking the SFO need not take representations concerning public interest until it has completed its investigation, however in matters as serious as these, we would not stand in the way of direct information being made available to the SFO at this stage. BAE has had a month to make such information known to the SFO and it has failed to do so.

As at the close of business yesterday your client was in deliberate breach of the 5th notice. Would you therefore as a matter of urgency provide me with your answers to the questions I have posed in this letter and in particular with the grounds upon which you assert that compliance would be regarded as a breach of confidentiality by the company and the United Kingdom government by return.

Yours sincerely

Matthew Cowie

Matthew Cowie
Case Controller
cc. Jonathan Jones, LSLO

DOCUMENT 7: File note written by Robert Wardle, Director of the SFO, dated 22 December 2005

FILE NOTE

RESTRICTED – INVESTIGATION

Author: Robert Wardle

Circulated to: Helen Garlick
Matthew Cowie

Date: 22 December 2005

Subject: **BAe**

Ref: RLI02

On 7 December 2005 in Helen Garlick's presence I telephoned Michael Lester, BAe's Head Legal Adviser, at his request, or rather at the request of Jonathan Hitchin by way of e-mail.

At the stage the Office telephones were faulty and Mr Lester had not been able to get through to me.

I phoned Mr Lester at 12.25. He said that he had spoken to Bill Jeffrey, Permanent Under Secretary at the Ministry of Defence, and understood that representations were to be made. He said that he would like to know what further help that BAe could provide and stressed that the public interest considerations were engaged and that he was concerned therefore that the company should not be in breach of its obligation to provide documents under the Section 2 Notice.

I explained that the position was that a formal consultation on the public interest was being undertaken. Obviously we would consider this at any appropriate stage. As far as the 5th Notice is concerned my present view was set out in the letter sent to Allen & Overy on 6 December and that we do not see how public interest considerations would prevent the company providing us with the documents now under the terms set out in that letter. [REDACTION – one sentence] That was where we were. Obviously whether there was a public interest consideration that prevented the company from even complying with the Notice to that extent then we would consider it.

Mr Lester said that there was and it concerned the duty of confidentiality and that they would wish to make further representations.

I said that at this stage, bearing in mind that BAe was the suspect company, it was best if they set it out in writing and I also said that without wishing to be offensive BAe was a suspect in a criminal investigation and the amount of weight that can be given to a suspects representations as to the public interest in continuing an investigation are likely to be much less than those of a Government Department.

Mr Lester appeared to understand this. As I understood it he would make further representations to the Ministry for them to make representations to us but he felt that the company should themselves make representations. I agreed with that and confirmed that they could make them and asked why the company could not comply with our limitation as to what we would do whilst the wider discussions are taking place. He reiterated the confidentiality point but went on to say that he was concerned about the timescale and the obligation to comply with the Notice. I said that I was happy to extend the time of the compliance until the end of 8 December. I stressed that if they needed more time we would not be unreasonable.

C Grimsey

pp RJW

Tim Laydate

ROBINSON Alison

From: COWIE Matthew
Sent: 08 December 2005 15:57
To: ROBINSON Alison
Subject: FW: Private and confidential - BAE (13413-00476)

Importance: High

Scanned_.pdf (133 KB)

-----Original Message-----
From: Jonathan.Hitchin@AllenOvery.com [mailto:Jonathan.Hitchin@AllenOvery.com]
Sent: 08 December 2005 15:54
To: COWIE Matthew
Cc: Arnondo.Chakrabarti@AllenOvery.com
Subject: Private and confidential - BAE (13413-00476)
Importance: High

ar Mr Cowie,

In the interests of speed I attach a further submission by BAE that was foreshadowed in Mr Lester's conversation with the Director yesterday and to which I referred in a conversation with the Director this morning.

We understand that Government departments also intend to make representations about this issue to the SFO. In the conversation yesterday we understand that the Director indicated that the SFO would be prepared to take a reasonable approach to the date for submission of documents under the 5th notice where, as here, there are representations to be made over which BAE has no control. BAE therefore requests that the date be extended for a reasonable period to permit the Director to consider the attached representation and the other representations we understand are to be made.

Yours sincerely, Jonathan Hitchin

Allen & Overy LLP
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STRICTLY PRIVATE & CONFIDENTIAL

BAE SYSTEMS plc ("the Company")

SFO INVESTIGATION

MEMORANDUM FOR DIRECTOR OF SERIOUS FRAUD OFFICE

INTRODUCTION

1. This note supplements the Memorandum dated 7 November 2005 ("the First Memorandum") sent to the Attorney General. It addresses the confidentiality and public interest issues which have been raised since the First Memorandum as there appears to be some misunderstanding about the representations made in this respect.

2. As a preliminary point, it is essential to understand that it is the UK government that provides defence equipment to the Saudi Arabian government and that the Company is the UK Government's prime contractor. This situation cannot simply be analysed as a contractual relationship between two Western companies might be. The relationship is different for two principal reasons. First, the provision of defence equipment by one state to another is key to a much broader political and strategic relationship. It is symbolic of mutual trust between the two countries. Second, Saudi Arabia has a culture which is markedly different from that of western nations with, in particular, a higher degree of respect of privacy.

CONFIDENTIALITY

3. For the reasons set out in the letters dated 21 and 24 November from the Company's solicitors Allen & Overy LLP to Mr Cowie of the SFO,

that disclosure of documents in response to the Fifth Notice issued by the SFO would amount to a breach of confidentiality to the Saudi Arabian government.

4. It is self evident that the Saudi Arabian government expects, like any other government, that information in relation to its defence procurement will be kept strictly confidential. The SFO will be aware that much of the documentation that it has sought in relation to this matter has been security classified by the MoD, which serves to underline its highly confidential nature.

5. Even if as a strict matter of law this view cannot be sustained (which we do not accept), there is no doubt that disclosure of this information to the SFO would be regarded by the Saudi Arabia government as a serious breach of confidentiality by the UK government and the Company. It is important to understand that, in the context of a sensitive and strategic inter-governmental relationship, an understanding between governments that certain matters will be kept confidential must be respected, whether or not that understanding is based on a strict legal obligation.

The sanctions that can be imposed for perceived breaches are political and economic. It would be a mistake to proceed simply on the basis that unless a strict legally enforceable duty of confidentiality exists, the Saudi Arabian government would not perceive disclosure of information, which it understands to be confidential, as a breach of confidentiality.

6. The Company welcomes the SFO's assurance that "once disclosed under the Section 2 Notice the documents will be held in conditions of confidentiality during the course of the investigation". This assurance however misses the point that it is the very fact of disclosure to the SFO which gives rise to the breach of confidentiality, whether actual or perceived.

7. Since the date of the First Memorandum and following a meeting between the Saudi Arabia government and the UK Ambassador to Saudi Arabia held on 25 November, arrangements have been made for the Secretary of State for Defence to visit Saudi Arabia on 19 December. During the course of this visit, it is intended that the Secretary of State for

Defence will attend meetings with the King and the Saudi Defence Secretary with a view to signing a Memorandum of Understanding for the sale of 72 Typhoons pursuant to an extension of the Al Yamamah programme as envisaged in paragraph 8 of the First Memorandum.

8. The Saudi Arabia government has already complained to the UK government about the SFO investigation announced in November 2004.

9.

PUBLIC INTEREST

10. The Company re-iterates the public interest points made in paragraph 10 of the First Memorandum. It would add that the Al Yamamah contract is not simply a commercial arrangement with Saudi Arabia. It is a government to government agreement which underpins the strategic relationship between the two countries and is of significant political importance to each. A political relationship such as that between the UK and Saudi Arabian governments is critically dependent on trust. A breach of an understanding that information

will be kept confidential will breach that trust. This is particularly so in the case of Saudi Arabia, given the higher degree of respect for privacy than in the West.

8 December 2005

DOCUMENT 9: Director Brief written by Matthew Cowie, 19 December 2005

FILE NOTE

[RESTRICTED]

Author: Matthew Cowie

Circulated to: Robert Wardle
Helen Garlick
Peter Kiernan

Date: 19.12.05

Subject: BAE SYSTEMS – Director Brief

Ref: RLI02

[REDACTION – 4 ½ pages]

Should public interest consequences be considered by the SFO at this stage in the investigation?

The SFO must investigate crime. It has a reasonable belief that crime has been committed. It must investigate all reasonable lines of enquiry and do so in the light of our domestic and international obligations. The international obligations currently incude Article 5 OECD and are likely, in the near future, to include Article 35 of the UN Convention on Corruption (yet to be ratified). Those international instruments envisage an independent role for law enforcement outside of economic or political considerations. To have any meaningful effect they must have application, regardless of the seriousness of the consequences stated. There always likely to be economic and political consequences of any major enquiry into defence contracts. That is why such considerations must ultimately be irrelevant to the independent conduct of such enquiries. It is impossible for the Director of the SFO to weigh up these competing public interest considerations.

If it is conceded that public interest features of this importance have to be considered by the investigating authority or by the Attorney General, at this stage in the investigation, how should the public interest in the rule of law as opposed to economic and political consequences be balanced?

The SFO does not concede this point and believes identical considerations apply to the role of the Attorney General. However if this point is not accepted we suggest the effect of the Shawcross Note from the Cabinet Office is as follows:

1. The PM/FCO/MOD have seen and agreed with the Cabinet Secretary's Shawcross Note.
2. The Note contains representations about the viability of an investigation leading to charges. It is clear that the representations are intended to apply to the public interest in bringing a prosecution. These representations equally applied at the outset of this investigation and prior to the commitment of significant public funds in its investigation.
3. The most powerful representations are that our investigation could have a [REDACTION] on their relations with the UK, on counter terrorism efforts, and specifically on [REDACTION] and in the efforts to stabilise Iraq.
4. The Note also endorses the company's assertions
    a) that compliance with the 5th Notice could precipitate these effects because
    b) [REDACTION]
5. If a prosecution would not be in the public interest, there is no justification for us to proceed with the investigation into corruption with respect to Saudi Arabia.

The only challenge we can make, if it is conceded that this issue is not covered by Article 5 of the OECD Convention is if we have grounds to believe that the Cabinet are not fully apprised of considerations that are capable of altering the balance of the public interest.

Have they given full consideration to the public interest in the rule of law, the independence of the SFO and MDP and the role of central government, all of which could suffer reputational damage if it emerged that an investigation by the SFO had been cut short, [REDACTION – half sentence]

Should the SFO terminate the investigation now, what will be the inevitable outcome? How will the SFO, the Attorney and the Government generally respond to the questions that will be asked?

[REDACTION – one paragraph]

DOCUMENT 10: Note of Meeting, 11 January 2006, attended by the Law Officers and the Director of the SFO and others

CONFIDENTIAL

BAe SYSTEMS

NOTE OF MEETING ON 11 JANUARY 2006

Present:

Attorney General
Solicitor General
Jonathan Jones
Huw Heycock

SFO
Robert Wardle
James Kellock
Helen Garlick
Matthew Cowie

Det Supt Robert Allen (Ministry of Defence Police)

Timothy Langdale QC
David Huw Williams

The Attorney General indicated that he wished to explore two points in particular:

(1) [REDACTION – one paragraph]

(2) Whether the consequences of proceeding with the investigation would in fact be so grave as suggested by BAe and by the note accompanying Sir Gus O'Donnell's letter of 16 December 2005.

[REDACTION – seven paragraphs]

On point (2), the SFO had considered the representations made as to the public interest. They were very conscious of the competing arguments, namely the public interest in investigation and prosecuting serious crime, potentially involving [REDACTION] and a conspiracy to avoid the provisions of the 2001 Act. The importance of tackling overseas corruption was reflected in the OECD Convention. It could be assumed that any decision to drop the case would attract significant publicity which could be damaging to the reputation of the SFO and the government in this area.

This view was reinforced by Detective Superintendent Allen, who had handed over a letter to the Attorney General, and by counsel.

[REDACTION – one sentence]

The current position was that the investigation was frozen. It was agreed that there was a need to resolve the position quickly.

The Law Officers undertook to consider the matter further and reach a view quickly.

JGJ

Jonathan Jones
12 January 2006

DOCUMENT 11: Letter from Helen Garlick, Assistant Director of the SFO, to Jonathan Jones, Legal Secretary to the Law Officers, 27 October 2006

SECRET BY HAND

Date: 27th October 2006

Dear Jonathan

BAE Investigation - Al Yamamah

At our meeting on Saturday 30th September 2006, you handed the Director a copy of the Cabinet Secretary's letter to you of the same day, together with a copy of his Office's Response to the Shawcross Exercise, prepared in December 2005, which we did of course see at the time.

The Cabinet Secretary's letter contains a number of statements that we have considered carefully.

[REDACTION – four paragraphs]

I note the continued assertion by the Saudis that the SFO investigation breaches confidentiality provisions in the contract. This has long been asserted by the company, the MOD and the Cabinet Office. It was one of the principal arguments in support of the Shawcross Exercise last year. When pressed, the company has reverted to claiming that our investigation will be "perceived" as a breach of confidence. This is an old issue and in our view nothing new emerges from this recent correspondence.

[REDACTION – two sentences] Again, it is worth noting that the SFO informed BAE on 14th October 2005 that it intended to make enquiry into its [REDACTION] and that this provoked the submissions to the Attorney on the public interest. The consequences of this line of enquiry have been known and visible to BAE and the Saudi side from this time. The purpose and intent of our investigation was transparent to the Saudi side without apparent prejudice to the viability of the new phase of the Al Yamamah contract signed in December last. Our duty is to continue to investigate alleged corruption despite the acknowledged importance to the company and MOD of maintaining commercial relations with the Kingdom of Saudi Arabia.

[REDACTION – one paragrah]

Similarly [REDACTION] approach to [REDACTION] via the [REDACTION] appears to have been confined to the effect on the Typhoon and Al Yamamah contract. [REDACTION] raises the prospect that Saudi co-operation on counter terrorism and the relationship on Iraq and the wider Middle East will suffer. The Cabinet Secretary has raised the possibility of harm to intelligence gathering, [REDACTION] and to multinational initiative to try to resolve the Israel/Palestine conflict concluding that "if the Saudis are already starting to take such steps in relation to the Typhoon programme, then we must anticipate that they could follow though (sic) [REDACTION] in relation to counter terrorism and the bi-lateral relationship."

There perhaps should be come caution exercised when considering the views of [REDACTION – remainder of paragraph]

[REDACTION – one paragraph]

The SFO and MDP would expect that, if our investigation directly impinges on wider operations, proper guidance and briefing on the substance of that threat and risk would be undertaken and furthermore, that we would have been alerted to this at the outset of the investigation and certainly during the court of the Shawcross representation in November last year. We note that the Cabinet Secretary states that he has "not yet been able to verify or assess the significance of these statements but will provide that further information as soon as possible." With respect, in all the circumstances, it seems to us that this information is long overdue.

Yours sincerely

Helen Garlick
Assistant Director

DOCUMENT 12: Note, dated 14 December 2006, of meeting on 13 December 2006, attended by the Law Officers and the Director, and others

FILE NOTE

[RESTRICTED]

Author: Helen Garlick Circulated to: Robert Wardle; Matthew Cowie

Date: 14/12/2006

Subject: RLI

Ref:

RW and HG attended a meeting with the AG, SG and JJ at 3pm on 13th.

The AG asked RW where he thought our investigation was.

RW stated that

[REDACTION – four lines]

In the last few days the representations on public interest had been made with renewed and increasing force by HM Ambassador. If further investigation will cause such damage to national and international security he accepted that it would not be in the public interest. What he could not accept, was that there was insufficient evidence to continue, although he would wish to have time to consider any reservations expressed by the AG and to take T Langdale's advice.

[REDACTION – one sentence]

AG asked for my views. I said that the SFO had never sought to place the interests of our investigation above those of national and international security. It seemed to me that the AG and RW were in the same position. We were qualified to make judgements on the law and the evidence. On questions of security, we had to take the advice of others. The SFO had only heard first hand from HM ambassador, we assumed that the AG had better advice, including advice from the Security Services. At the meeting at the FCO attended by JJ we had been told that "British lives on British streets" were at risk, also that

[REDACTION]. If this caused another 7/7 how could we say that our investigation, which at this stage might or might not result in a successful prosecution was more important?

The AG summarised his view of the state of the case.

[REDACTION – twelve paragraphs]

We discussed the public interest again. I said it was clear that, whilst we needed time, the representations were gathering force and accelerating. [REDACTION – two sentences]

If the investigation was ended on public interest grounds there were a number of implications.

1. [REDACTION – two sentences]
2. The US might well take up the case into [REDACTION – half sentence]
3. The Swiss might launch a money laundering and corruption investigation, based on material we had asked them to get which we were not being allowed to acquire.

The AG asked us to enquire in to the Swiss and UK positions.

Throughout the meeting he made it clear that he whilst he had wished to test the SFO case, he was committed to supporting it provided it was viable, whatever the outcome might be. He was extremely unhappy at the implications of dropping it now.