

The National Security Archive

The George Washington University
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November 6, 2015

Registrar: R. Worth

First-Tier Tribunal – General Regulatory Chamber: Information Rights

Re: FOI Appeal, in reply refer to Archive# 20140795BRI004/ Tribunal Reference: EA.2015.0080)

Dear Registrar,

In response to my request for the release of JIC(84)(N)45, “Soviet Union: Concern about a surprise NATO Attack,” the Cabinet Office – by letter of November 6, 2015 – makes a number of claims in favor of this document’s withholding.

I wish to make the following arguments in favor of the document’s release:

Concerning the Cabinet Office’s point 5, arguing that the “vast majority of the document’s content falls directly into the section 23(1) exemption,” it is by no means a certainty that all of the information being withheld is from an exemption 23 agency. The JIC is not listed in exemption 23, for example. While this document may include information from some bodies that are protected under exemption 23, it also includes information from agencies that are not, including, at the very least, the Foreign Office and the Ministry of Defence.

Regarding point 6, that the document provides “no further information of any substance capable of illuminating public understanding of the matter” and that release of the “relatively little” information would point to the content of the report that engages in the section 23 exemption, the fact remains that releasing all segregable information possible is in the public interest. The Ministry of Defence has done this with related records (<http://nuclearinfo.org/blog/peter-burt/2013/11/thirty-years-ago-nuclear-crisis-which-frightened-thatcher-and-reagan-ending>), casting doubt on the argument that a similar Cabinet Office release could confuse the public or would not be in the public interest.

Similarly, in response to point 4 that exemption 23 is an absolute exemption and does not require a public interest test, it should nonetheless occur in order to be in accordance with the spirit of open government, the UK’s FOI law, and the Constitutional Reform and Governance Act 2010’s twenty-year-rule. Just because a document can be withheld on purely technical grounds does not mean that it should, or that the public benefit from its disclosure does not outweigh such technicalities. In fact, per its letter of July 31, 2015, the Cabinet Office itself stated that it would review the document to see if “some of the disputed information could be disclosed”, but abandoned this reasoned stance for reasons unknown.

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I would also underscore that this document is thirty-two years old and was requested in the first place because a reference to it was found at the British Archives. Treating this document as if it were a modern intelligence source, rather than the historical record that it is, is a dangerous precedent to set and not one that the Tribunal should facilitate.

The Cabinet Office's November 6, 2015, letter, containing a number of justifications for this document's withholding, should not withstand the scrutiny of the Tribunal. The Tribunal's independent review of whether the entirety of the information in this important document should be withheld is much needed.

If you have any questions, please call me at (202) 994-7000 or email me at foiamail@gwu.edu.

Sincerely,

Nate Jones
FOIA Coordinator