



**Upper Tribunal
(Administrative Appeals Chamber)**

Appeal Number: GI/150/2011
GI/151/2011
GI/152/2011

On appeal from
Information Commissioner's Decision Notices FS50200146 and FS50246244

INFORMATION RIGHTS

**Determination Promulgated
8 July 2011**

**Before
THE HON MR JUSTICE BLAKE
ANDREW BARTLETT QC
ROSALIND TATAM**

Between

ALL PARTY PARLIAMENTARY GROUP ON EXTRAORDINARY RENDITION

**Appellant in 150, 151
Second Respondent in 152**

-and-

THE INFORMATION COMMISSIONER

First Respondent

-and-

THE MINISTRY OF DEFENCE

**Appellant in 152
Second Respondent in 150, 151**

DECISION OF THE UPPER TRIBUNAL

Request 1 - memoranda of understanding - GI/150/2011 (FS50200146)

There being no defence now pursued by the MOD that the requested information is protected from disclosure by FOIA s27, the requested information (in so far, if at all, as not already disclosed) shall be disclosed to the All Party Parliamentary Group on Extraordinary Rendition (APG) within one calendar month from the date of this decision.

SUBSTITUTED DECISION NOTICE

Dated As date of this decision
Public authority: **Ministry of Defence**
Address: **Main Building, Whitehall, London SW1A 2HB**
Name of Complainant: **All Party Parliamentary Group on Extraordinary Rendition (chairman: Andrew Tyrie MP)**

This substituted decision notice completes the substituted decision notice attached to the Tribunal's decision promulgated on 18 April 2011, [2011] UKUT 153 (AAC), in relation to the Information Commissioner's Decision Notice FS50200146.

There being no defence now pursued by the Ministry of Defence that the requested information is protected from disclosure by FOIA s27, the Tribunal determines that the requested information is not protected from disclosure.

Action Required in relation to FS50200146

The Ministry of Defence shall disclose to the All Party Parliamentary Group on Extraordinary Rendition (APG) within one calendar month from the date of this decision, the information within the scope of request 1 in so far, if at all, as not already disclosed.

The scope of the information to be disclosed is as determined in paragraphs 50-53 of the Tribunal's decision issued on 18 April 2011.

REASONS FOR DECISION

Matters outstanding from our previous decision

1. This decision is supplementary to our decision promulgated on 18 April 2011, [2011] UKUT 153 (AAC).
2. The only matter outstanding from that decision related to what we called request 1. It arose from the fact that we were not in a position to make a decision on whether the protection of the exemption under FOIA s27 (international relations) applied to the information relating to the memorandum or memoranda of understanding between the United Kingdom and the Governments of Iraq, Afghanistan and the United States of America in respect of the treatment of persons detained in the conflicts in Iraq and Afghanistan. It appeared that in practice this question only arose in relation to the memorandum or memoranda of understanding with the United States of America.
3. In paragraphs 50-53 of our decision we determined that the scope of the request, on its true construction in context, was that it related to information about the nature and terms of the understanding reached with another sovereign state rather than all documents dealing with the preparation or application of the understanding or documents materially referring to it. It was because of this narrow construction of the scope of the request that we rejected the MOD's reliance on s12.
4. Since the publication of our decision on 18 April 2011 the MOD has decided not to rely on s27 as regards information within the scope of the request as construed by the Tribunal. It has released, under cover of a letter of 9 June 2011, the 2008 UK/US MOU together with an associated 2009 supplementary note.
5. Accordingly there is nothing further for us to decide, save to state that if the MOD has any information within the scope of the request, as determined by the Tribunal, which has not already been disclosed, it shall be disclosed within one calendar month from the date of this decision.

Other matters raised by the parties in their submissions

Request 1

6. APG has raised concerns about whether the disclosure given with the MOD's letter of 9 June 2011, together with earlier disclosures, amounts in practice to full satisfaction of the first request.
7. This is not a matter that we have jurisdiction to consider. It depends on the scope of the request, on which we have previously given our decision. We would not endorse any attempt to broaden the scope of the request beyond that previously decided. If there is not full compliance, that will be a matter for the Information Commissioner to take to the High Court pursuant to FOIA s54.

Request 4

8. APG has raised concerns about the adequacy of the MOD's answer to request 4 to the extent that the request sought explanation of what was treated as 'detention' and 'capture' for the purpose of answering the specific questions raised.
9. Again, this is not a matter that we have jurisdiction to consider. We have given our decision on request 4. In the event of insufficient compliance, that would be a matter for the Information Commissioner to take to the High Court pursuant to FOIA s54.
10. In the circumstances we consider that these appeals are concluded, so far as the Upper Tribunal is concerned, and we do not consider that any further directions are required or appropriate.

Signed

The Hon Mr Justice Blake

Andrew Bartlett QC

Rosalind Tatam

8 July 2011