

**Sir Gus O'Donnell GCB**

Cabinet Secretary and
Head of the Civil Service

70 Whitehall
London
SW1A 2AS

Telephone 020 7276 0101

E-mail gus.odonnell@cabinet-office.x.gsi.gov.uk

Web www.cabinet-office.gov.uk

Dame Helen Ghosh, PUS HO
Sir Simon Fraser, PUS FCO
DG, Security Service
'C', SIS
D/GCHQ
Ursula Brennan, MoD
Via email

21 November 2011

Dear all,

DETAINEE INQUIRY: UNDERTAKING TO GOVERNMENT WITNESSES

As the Prime Minister made clear in his public letter of 6 July 2010 to Sir Peter Gibson (copy attached), staff in departments and agencies are expected to co-operate fully with the Detainee Inquiry, including any requests to give written and oral evidence to it. A formal launch date for the Inquiry has yet to be set, pending the outcome of the related police investigations, but as you know the Government is keen for it to be able to start work as soon as it is possible to do so.

2. I attach great importance to Crown servants engaging with the Inquiry, if asked, in a full and frank way. As Heads of the departments and agencies most likely to receive formal requests from the Inquiry for staff to give evidence, I would ask you to impress on any of your staff called to give evidence the importance of their doing so and potential value of their contribution. It would also be helpful if you could set out the following overarching principles:

- the Attorney General has provided an undertaking that no evidence a person may give before the Inquiry will be used against that person in any criminal proceedings, although this will not apply to prosecution for any offence arising from the provision by a witness of false evidence to the Inquiry or for any offence arising from a witness' involvement in having conspired with or procured others to give false evidence;
- evidence which a person gives to the Inquiry could involve disclosure of information or documents protected under the Official Secrets Acts (OSA). Provided that disclosures concern information relevant to the Inquiry's Terms of Reference and, as regards oral evidence, are made in accordance with advice on whether information can be dealt with in public or private, such disclosures will be regarded as having "lawful authority" for the purposes of the OSA;



- nothing which an employee provides to the Inquiry by way of evidence, whether orally or in writing, will result or be used in subsequent disciplinary proceedings against that employee except where the conduct to which the evidence relates amounts to gross misconduct, or where it is assessed by the employee's home department or agency that he/she has deliberately misled the Inquiry;
- as regards civil proceedings, in line with normal practice the government will provide legal advice and representation where a serving or former official faces civil legal action as a result of actions carried out in the course of their government employment, provided it is satisfied that they were not acting outside the scope of their employment.

3. It will, of course, be important to ensure that these principles are applied consistently for all staff invited to give evidence to the Inquiry. Cabinet Office officials will be working with yours to develop detailed guidance for staff called as witnesses, incorporating these principles.

I am copying this letter to PUS/MoJ, the Treasury Solicitor, Sir Peter Ricketts, Oliver Robbins and Dominic Wilson.

*Yours sincerely,
Gus O'Donnell*

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