



PRESS RELEASE

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UK THREAT TO USE OFFICIAL SECRETS ACT FOR REVEALING BLAIR-BUSH DISAGREEMENT UNACCEPTABLE

The UK Attorney General's warning to newspapers that they risk Official Secrets Act (OSA) prosecutions if they publish the contents of an internal memo highlighting what appears to have been a serious disagreement between Bush and Blair regarding the conduct of the Iraq war is unacceptable. ARTICLE 19 also condemns the OSA charges against David Keogh, a civil servant, and Leo O'Connor, a former MP's researcher, both relating to disclosure of the memo.

“The warning amounts to censoring the press at a time and on an issue – the war in Iraq – where transparency and the public right to know should govern the government's relationships with the press and the public. It also highlights the grave risks posed by the OSA to freedom of expression, free media and the right to access information” says Agnès Callamard, ARTICLE 19 Executive Director.

The 1989 Official Secrets Act (OSA):

- Section 5 of the OSA makes it a criminal offence for anyone – including the media – to further disseminate information if they are aware that the primary disclosure was illegal and that further dissemination may be damaging, although there is no requirement that dissemination be made with intent to cause harm.
- It is also an offence under the OSA for civil servants to disclose information relating to security or intelligence obtained as a result of their employment. Such disclosure is subject to a harm test, so that a civil servant will commit an offence only when making a ‘damaging disclosure’. Mr. Keogh, a civil servant at the time of his alleged leak, would be liable for any leak for which he was responsible which was damaging. ‘Damaging’ in the context of the OSA has traditionally been understood very broadly and there it is no defence that dissemination was in the public interest.

ARTICLE 19's Position:

- ARTICLE 19 is of the view that public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately secret information under their control. Other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information.
- Criminal law provisions that don't restrict liability for the dissemination of State secrets to those who are officially entitled to handle those secrets should be repealed or amended.
- Furthermore, anyone disclosing classified information should benefit from a **public interest defence** whereby, even if disclosure of the information would cause harm to a protected

interest, no liability should ensue if the benefits of disclosure outweigh the harm. Although we recognise that civil servants may legitimately be placed under obligations of secrecy, these should be limited by their obligation to serve the overall public interest.

In this case, it is relevant to note that the laws of war clearly prohibit direct attacks against civilians. A deliberate attack on al-Jazeera's headquarters in Qatar would breach this rule and therefore constitute a war crime. Disclosing alleged proposals by a head of State to commit a war crime is as clear an example of serving the public interest as it is possible to imagine. Furthermore, we note that no legitimate national security interest is served by keeping this information secret. Alleged criminal proposals cannot be legitimate secrets. Indeed, in our view, information such as this should be subject to mandatory disclosure under an access to information law where, again, the overall public interest should trump secrecy exceptions.

Bombing al-Jazeera would not only have been illegal under the laws of war but also a blatant attempt to undermine the public's right to be informed about the conduct of the war. Rather than try to abuse the oppressive OSA to prevent this information becoming public, the British government should recognise its obligation to release this and further information and clarification. Specifically, we call on the British authorities to drop all charges relating to this issue and to make it quite clear that it will not use the OSA to try to prevent the public from being informed about these events.

Background:

David Keogh, an official with the Cabinet office at the relevant time, was charged last week with making a damaging disclosure under the OSA, apparently relating to the memo. Leo O'Connor, also charged under the OSA last week, former MP's researcher, who appears to have received the memo from Keogh and to have passed it on to his boss, MP Tony Clarke, who apparently returned the memo to Downing Street. The memo apparently outlines a Bush proposal to bomb Arab satellite TV, al-Jazeera's, Qatar headquarters to limit negative coverage of the war, and Blair's resistance to this proposal. On 22 November, *The Daily Mirror* published an article, "Exclusive: Bush Plot to Bomb His Arab Ally: Madness of war memo", on the memo and the Attorney General responded with the OSA warning.

NOTE TO EDITORS

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