



Case: EA/2016/0223

**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS)**

Heard at: Field House, Breems Buildings, London EC4

Date of hearing: 6, 7, 8 March 2018

Date of decision: 11 June 2018

BETWEEN

PHIL MILLER

Appellant

THE INFORMATION COMMISSIONER

First Respondent

THE CABINET OFFICE

Second Respondent

HH JUDGE SHANKS

ROSALIND TATAM

HENRY FITZHUGH

Representation:

For the Appellant: Julianne Kerr Morrison

For the First Respondent: Julian Milford

For the Second Respondent: Jonathan Swift QC and Christopher Knight

TRIBUNAL'S DECISION

For the reasons which follow the appeal is allowed in part and the Tribunal issues the following substitute decision notice.

The time for applying for permission to appeal against this decision expires on 11 July 2018.

SUBSTITUTE DECISION NOTICE

Complainant: Phil Miller
Public Authority: The Cabinet Office

Decision

The Public Authority was obliged under section 1 of the Freedom of Information Act 2000 ("FOIA") to disclose those parts of the requested files marked "Disclose" in the Schedule below and was not entitled to rely on sections 23, 24, 27 and/or 40 as the case may be to withhold them.

Action required

The Public Authority must disclose to the Complainant those parts of the files in question which are marked "Disclose" in the Schedule below by 12 July 2018.

REASONS

General background

1. In 1982 armed Sikh militants, led by Jarnail Singh Bhindranwale, took up residence in the Golden Temple complex in Amritsar in the Punjab. Their political goal was the establishment of an independent homeland for the Sikhs called Khalistan.
2. From 3 to 8 June 1984 the Indian army attacked the Golden Temple, killing Bhindranwale and his supporters and many civilians, in an operation named "Blue Star". There is a real controversy about the numbers killed in the operation; official statistics give the number as 575 but other reports suggest as many as 7-8,000 people died. There can be no doubt that, as David Cameron, then Prime Minister, put it in January 2014, the event "... remains a source of deep pain to Sikhs everywhere."

3. On 31 October 1984, Indira Gandhi, the Congress Party Prime Minister of India, who had given the go-ahead for Blue Star, was assassinated by some of her Sikh bodyguards. Her son, Rajiv Gandhi, succeeded her as Prime Minister of India.
4. In the aftermath of the assassination, there were riots and killings across India in which it has been estimated that nearly 3,000 Sikhs were killed in Delhi alone. There is also evidence that Operation Blue Star marked the start of a decade long counter-insurgency campaign against Sikhs which involved human rights violations by the Indian government and security forces (see quotations from Human Rights Watch and the Medical Foundation for the Care of Victims of Torture at OB/2/19 and 21).
5. Rajiv Gandhi was himself assassinated by Tamil extremists in 1991.
6. On 11 August 2005 the then (Congress) Prime Minister of India, Manmohan Singh, issued an apology for the 1984 anti-Sikh violence, saying that he apologised not only to the Sikh community but "... to the whole Indian nation because what took place in 1984 is the negation of nationhood enshrined in our Constitution".
7. In 2014 the opposition Bharatiya Janata Party (BJP) won the election and Narendra Modi became Prime Minister. Mrs Gandhi's daughter-in-law (Sonia Gandhi) and grandson continue to lead the Congress party which is now the main opposition party.

Mr Miller's discovery and the Heywood enquiry

8. The Appellant, Mr Miller, is a journalist and researcher with a long-standing interest in British involvement in South Asia at the time of the "Amritsar massacre" and close links to the UK Sikh community. He has carried out extensive research at the National Archives (TNA).
9. In January 2014 while researching at TNA he came upon two recently released documents which showed that an SAS officer had been sent to India in February 1984 to advise on plans for the removal of dissident Sikhs from the Golden Temple with the approval of Mrs Thatcher, who was then Prime Minister. These documents had apparently been released in error.
10. In response to this Mr Cameron set up an enquiry under Sir Jeremy Heywood, the Cabinet Secretary, to look into why and how assistance was provided in 1984 and a separate enquiry under Sir Alex Allan to look into the inadvertent release of documents. Sir Jeremy reported back very quickly on 3 February 2014. He concluded that the assistance was limited to the visit by the SAS officer in February 1984, that it was provided simply because the Indian government had requested the assistance and that it had little influence on the way the operation was in fact carried out in June 1984. The report said that 200 files containing 23,000 documents from December 1983 to June 1984 had been considered and it annexed a number of relevant documents from files which we have been concerned with in this appeal.
11. It is worth noting that we have heard no evidence of any adverse reaction from the Indian government resulting from the events of January and February 2014.

Mr Miller's request for information and complaint to the Information Commissioner

12. Having learnt of the existence of particular government files which he considered may be relevant to his research Mr Miller made a FOIA request addressed to the Cabinet Office on 30 December 2014 asking for copies of four files in these terms:

CAB 163/452: India: political:

Date: 1979 May 04 - 1985 Aug 08

PREM 19/1535 INDIA Visits to UK by L K Jha, member of the Brandt Commission and adviser to Indira Gandhi: meetings with Prime Minister.

Date: 1983 Jul 04 - 1985 Mar 21

PREM 19/1536 INDIA. UK/Indian relations: situation in Punjab; activities of Sikh extremists; proposed visit to UK of Rajiv Gandhi in June 1985; part 4.

Date: 1984 Mar 05 - 1985 May 22

PREM 19/1663 DEATHS. Assassination of Indira Gandhi, October 1984: Prime Minister's visit to India to attend funeral.

Date: 1984 Oct 31 - 1984 Dec 12.

The identifier PREM means that the documents in the relevant file were collated in the Prime Minister's Office in No 10 Downing St. The CAB 163 series contains files of the Secretariat of the Joint Intelligence Committee (JIC).

13. The Cabinet Office replied in a letter dated 3 February 2015 which it seems was actually sent on 3 March 2015. The letter accepted that the material was held but refused to disclose it in reliance on section 22 of FOIA (which relates to information intended for future publication which the Cabinet Office said was engaged because some of the requested files were to be sent to TNA), as well as sections 23 ("information supplied to, or relating to, bodies dealing with security matters"), 24 ("national security"), 27 ("international relations") and 40 ("personal information"). Mr Miller sought a review and in a letter dated 19 August 2015 the Cabinet Office confirmed its decision.
14. On 25 August 2015 Mr Miller complained to the Information Commissioner under section 50 of FOIA. In a decision notice issued just over a year later on 30 August 2016 the Commissioner upheld his complaint in relation to some of the information for which the section 22 exemption had been claimed (but stated that because the information had by then been transferred to TNA she could make no order requiring any steps to be taken by the Cabinet Office in respect thereof), but otherwise upheld the Cabinet Office's position.

15. Mr Miller appealed against the decision notice under section 57 of FOIA on 31 October 2016. He legitimately complained about certain aspects of the Commissioner's procedure (in particular the fact that she did not inspect the contents of the files and relied on a "letter of assurance" from a senior civil servant in relation to the applicability of section 23 and 24) and about her failure to make any order against the Cabinet Office even after finding they had not been entitled to rely on section 22 of FOIA, but those are not matters that in the event concern the Tribunal, since the Cabinet Office accepts that it holds all the material requested and does not seek to rely on section 22 any longer and the Tribunal has itself seen the withheld material and is able to form its own judgment as to the applicability of section 23.

The issues for the Tribunal

16. In general terms, the Cabinet Office's position on the appeal was to continue to seek to withhold almost the entire contents of the CAB file on the basis of section 23 of FOIA and, in the case of a substantial number of documents, section 27 as well. The parts of the PREM files which were withheld (mainly by redaction) were based variously on sections 23, 27 and 40.
17. The Commissioner generally accepted the Cabinet Office's position on the CAB file but, having considered the evidence, said that many of the redactions in the PREM files should not be allowed.
18. Mr Miller, who of course has not seen the withheld material, would obviously want the maximum disclosure possible. He made clear in his statement that his reason for seeking it was in order to obtain information about the "Amritsar Massacre [of] 1984" and subsequent events for the Sikh community and the wider public and in particular to "expose British involvement in this incident and subsequent events", in order to serve the public interest in governmental transparency and accountability.
19. The issue for the Tribunal on the appeal is therefore whether (and to what extent), looking at the material which is still withheld "document by document" in the light of all the evidence presented to us, the Cabinet Office was entitled to rely on sections 23, 24, 27 and/or 40 (as the case may be) to refuse to disclose it to Mr Miller under FOIA as at the relevant date, ie August 2015 (when the Cabinet Office review was carried out).
20. We set out below in the body of this judgment:
 - (1) the legal context;
 - (2) procedure and evidence on the appeal;
 - (3) our conclusions on general points of controversy, which inform our conclusions on individual documents and which relate to:
 - (a) the JIC papers in the CAB file and the applicability of section 23 to them;
 - (b) the possible prejudice resulting from disclosure where reliance is placed on section 27;

- (c) the public interest in disclosure of the withheld material; and
- (d) the applicability of section 40.

The legal context

21. The general structure of FOIA is that section 1 requires a public authority which holds information to supply it to a person making a request which covers it unless it is subject either (a) to an absolute exemption or (b) to a qualified exemption and, in all the circumstances, the public interest in maintaining that qualified exemption outweighs the public interest in disclosure of the information.

22. As far as relevant section 23(1) provides:

Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

Subsection (3) lists various security bodies, including the Security Service (MI5), the Security Intelligence Service (MI6), and the “special forces” (which would include the SAS) but not, significantly, the JIC.

23. The section 23 exemption has the following features:

- (1) It is a class-based exemption: there is no need to show that there will be any adverse effect resulting from disclosure.
- (2) It is an absolute exemption: if the information comes within the exemption it does not have to be disclosed and there is no public interest balance to be carried out.
- (3) The words “relates to” are to be construed in a wide sense, reflecting the obvious importance of protecting any information from or about security bodies from disclosure; there is therefore no need for the information in question to have a security body as its main focus and it is highly likely that information supplied *to* a security body for the purpose of carrying out its functions will itself be caught by the exemption. (see: *APPGER v ICO and FCO* [2015] UKUT 0377 (AAC)).
- (4) Where a requested document is apparently covered by the exemption there may still be information in the document which can be disclosed if (a) it can sensibly be “disaggregated” from the remainder of the document and (b) it is not itself “caught” by section 23. (see: *Cordery v IC et al* [2017] UKUT 495 (AAC)).

24. Section 24 provides a qualified exemption designed to protect national security where for some reason section 23 does not apply in these terms:

- (1) **Information which does not fall within section 23(1) is exempt information if exemption ... is required for the purpose of safeguarding national security.**

25. Section 27 is a qualified exemption in these terms:

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice

(a) relations between the United Kingdom and any State

...

(d) the promotion or protection by the United Kingdom of its interests abroad.

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom ...

(3) For the purposes of this section, any information obtained from a State ... is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State ... to expect that it will be so held.

26. The following points are relevant in relation to section 27:

(1) Section 27(1) applies if there is “a real and significant risk (even if less than a probability) that disclosure would prejudice relations with another State in the sense of impairing relations” (see *APPGER v IC* [2012] 1 Info LR 258)

(2) Prejudice “can be real and of substance if it makes relations more difficult or calls for a particular diplomatic response to contain or limit damage which would not otherwise have been necessary” (see *Gilby v IC* (EA/2007/0071 at [23])).

(3) Section 27(2) provides for a class based exemption arising from the requirement to preserve confidences in the field of international relations.

(4) Inevitably, the government and its civil servants are generally better informed and have far more relevant experience than Tribunal members when it comes to assessing the possible consequences for foreign relations of disclosing information and appropriate weight must accordingly be given to their views.

(5) As a qualified exemption, section 27 only allows a public authority not to disclose information if the public interest in maintaining the exemption outweighs the public interest in disclosure: that balance is ultimately one for the Tribunal to strike.

27. In summary, section 40 provides an absolute exemption for “personal data” (ie recorded information held by a public authority relating to an identifiable living individual) where disclosure of the information to a member of the public would involve a breach of one of the “data protection principles” found in the Data Protection Act 1998. Generally, the first data protection principle is relevant in this context. It requires data to be “processed” (which includes “disclosed”) fairly and lawfully and not to be processed unless at least one of the conditions in Schedule 2 (to the 1998 Act) is met, and, in the case of “sensitive personal data” at least one of the conditions in Schedule 3 is also met. “Sensitive personal data” means information as to various matters specified in section 3 of the 1998 Act, which include

ethnic origins, political opinions, religious beliefs and the commission or alleged commission of any offence. The condition in Schedule 2 most often encountered in FOIA cases is condition 6(1) which provides:

The processing is necessary for the purposes of legitimate interests pursued by the ... third party to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject

There is no analogous condition in Schedule 3.

The appeal: procedure and evidence

28. The Cabinet Office was joined to the appeal as Second Respondent on 18 November 2016. Unfortunately it was not possible to arrange an effective hearing before March 2018.
29. At the hearing we were provided with:
 - (1) all the withheld material, ie the entire CAB file and the limited parts of the PREM files which (mainly by redaction of isolated paragraphs or sentences) is still withheld;
 - (2) written statements from Mr Miller, Dabinderjit Singh Sidhu, principal advisor to the Sikh Federation (UK), and Darragh Makin, a Northern Ireland solicitor who has been assisting them, on Mr Miller's behalf;
 - (3) written statements (both open and closed) from Owen Jenkins and Philip Barton, two senior civil servants, on behalf of the Cabinet Office;
 - (4) a number of reports prepared by Mr Miller including one called "Sacrificing Sikhs" and one by Mr Sidhu entitled "The Truth behind the Amritsar Massacre", relevant press reports and reports by Human Rights Watch and Freedom from Torture;
 - (5) open material from the PREM files and the Gov.UK website relating to India (we noted that the Cabinet Office did not always seem aware of the extent of some of this open material);
 - (6) the Heywood Review and its annexes.
30. At the hearing Mr Miller and Mr Sidhu gave oral evidence and the Cabinet Office called Mr Barton and Mr Jenkins. Mr Barton joined the Foreign and Commonwealth Office in 1986 and has been Director General, Consular and Security at the FCO since April 2017; from September 2016 to March 2017 he was the acting Chairman of the JIC. Mr Jenkins has been the FCO's Director for South Asia and Afghanistan since the autumn of 2014; he has particular expertise in Anglo-Indian relations and served as Counsellor at the British High Commission in New Delhi between 2009 and 2012. The evidence of both these witnesses was, as their positions and experience would suggest, of high quality and we remind ourselves of the need to take into account

their expertise in the fields of foreign relations and security and to give their evidence appropriate weight.

31. A large part of Mr Barton's and Mr Jenkins's evidence was necessarily held in closed session so that the Tribunal and the Commissioner could consider with them the withheld material and test their position in relation to it. In accordance with the usual practice Mr Miller was provided with a "gist" of the evidence given in the closed sessions as soon as possible thereafter. He was also supplied at the insistence of the Tribunal with most of paragraphs 11-17 of Mr Barton's closed witness statement which related to the role and operation of the JIC. During the hearing the Cabinet Office also provided us at our request with a note on the treatment of JIC papers under the National Records Act.
32. The provision of that note and paragraphs 11-17 of Mr Barton's statement during the hearing led to adjournment applications by Ms Kerr Morrison for Mr Miller. Those applications were legitimate and had some merit but we refused them on the basis that the delays had already been excessive and we did not consider any prejudice to Mr Miller's case to warrant yet further delay before matters were resolved. Standing back at the end of the process we remain satisfied that those decisions were right.
33. As well as open submissions by all parties, we received closed submissions from the Commissioner and the Cabinet Office and a very helpful closed skeleton argument prepared by Mr Milford for the Commissioner based on her revised position having taken account of the evidence received during the hearing. We considered all the material together in chambers on 26 April 2018.

Section 23 and JIC papers/reports

34. As indicated above the CAB file relates to the work of the JIC. Having looked at its contents we are satisfied that many of the documents in it contain information obviously supplied by or about security bodies, as we have indicated in the Schedule below. It also contains a number of JIC reports and papers relating to such reports and we have considered whether these also, regardless of their precise contents and the fact that the JIC is not a named security body, are covered by section 23, as contended by the Cabinet Office.
35. Mr Barton describes the JIC and its work in paragraphs 11-17 of his statement. It is a cross-government committee (and a sub-committee of the Cabinet) based at the Cabinet Office, responsible for providing ministers and senior officials with intelligence assessments on a range of matters of importance to the UK's national interests, supported by the Joint Intelligence Organisation. Its members are senior officials from the FCO, the MoD, the Treasury, Home Office and the heads of the three intelligence agencies, MI5, MI6 and GCHQ; representatives of allies attend when appropriate. Its role includes the assessment of events and situations relating to external affairs, defence, terrorism, and major international crime; the identification of threats and opportunities to British interests; keeping security threats under review; contributing to formulation of intelligence gathering priorities;

oversight of the intelligence community's capability; and liaison with Commonwealth and other foreign intelligence organisations.

36. JIC reports are prepared by the Joint Intelligence Organisation based on information supplied by security bodies, the FCO, defence intelligence and other sources. Any JIC paper will be considered by the heads of the security bodies or their representatives on the JIC and the final wording will be discussed by the members of the JIC including those representatives, who may also stipulate that certain information is omitted from a report.
37. Given that context, we are satisfied that the JIC reports and papers relating to them can properly be said to "relate to" security bodies. Although Mr Miller's request was for the CAB file (and therefore necessarily the documents to be found in that file) we have also considered whether there is scope for the "disaggregation" of information contained in such documents. We do not think there is: we are satisfied that it would not be realistic to try to unscramble the source of all the information in the various reports or to establish whether any of the security bodies had any input into any particular part of them; and the fact that representatives of the security bodies sit on the committee which approves the whole content of the reports (including what is omitted) arguably means that the entire contents can be said to relate to those bodies.
38. We should record in this context that, although section 24 was relied on by the Cabinet Office in a few cases as an alternative to section 23, we do not think it applies at all; we could not see that, after 30 years, there was a requirement to withhold any of the withheld material "for the purpose of safeguarding national security".

Section 27 prejudice

39. Mr Jenkins gave detailed evidence about the prejudice that he said would or may have resulted from the disclosure of each document where section 27 is relied on. We have taken due account of that evidence in our decisions as set out in the Schedule below. We would also make some general remarks as follows.
40. We fully accept the great importance of the UK pursuing a successful foreign policy and the essential need for confidential communications between the UK and foreign states to remain confidential. We also accept the importance of India in the world and of our relationship with it and the sensitivities in that relationship arising from what he calls "historical legacy issues", which mean that anything that could be perceived as interference by the UK in Indian internal affairs is likely to cause serious offence (something which applies equally to the BJP government as to any previous government). We recognise that the period we are concerned with was a highly sensitive one in India's recent history and the strength of feeling it continues to evoke; in particular we note that the activities of Sikh separatists continue to be seen to represent a potential existential threat to the State of India and we note the continuing reverence with which the Gandhi family are seen by many. Mr Jenkins is of course right to point out the importance to the UK of continuing good relations with India in terms of trade and commerce as well as world strategic issues.

41. A particular point stressed by Mr Jenkins was that the release of some of the withheld documents would have damaged relations with India by showing that the UK government did not regard the activities of the Sikh extremists with sufficient concern and was "soft" on them, [REDACTED]. While recognising his expertise, we do not give much weight to this point: as the Commissioner points out, anyone concerned would be well aware of the perceived UK failures [REDACTED]; the documents in fact tend to show how seriously the issues were taken at senior levels in the UK government and how hard they tried to do more within the bounds of the law.
42. In general, it should also be remembered that the fact that 30 years has gone by is bound to have reduced any prejudice that may have resulted from release of the withheld material and that the Indian government will be well aware of the obligations lying on the UK government arising from FOIA. It is notable in this context that the disclosures leading to the Heywood review and the review itself do not appear to have produced any adverse reaction on the part of India. Mr Jenkins pointed out that the UK government took the step of letting the Indian government have an advance copy of the Heywood review but, when asked what their response was, he only said it was something "anodyne".

Public interest in disclosure

43. Against any prejudice to foreign relations arising from disclosure must be weighed the public interest in disclosure. As well as the general public interest in transparency and accountability, it is worth remembering that the material we are concerned with relates to the activities at the top level of government in response to very significant (indeed, historic) events in India.
44. We accept the strength of feeling of the Sikh community in the UK and beyond about the "Amritsar massacre" and its aftermath and any role the UK government may have played in it, and the strength of the reaction in that community caused by the inadvertent disclosures in January 2014. We also acknowledge the limitations of the Heywood review from their point of view, in particular the speed with which it was carried out and the limited time period of the files that were looked at.
45. Those points indicate a very high public interest in disclosure of the withheld material in general, though it is always necessary of course to have regard to the value of the specific document or information in question.

Section 40

46. The files contain information relating to numerous named individuals. In so far as such individuals were still alive in 2015 that information was clearly "personal data" and much of it was "sensitive personal data" (which, as we say, includes information about ethnic origins, political opinions, religious beliefs and actual or alleged commission of offences). Section 40 of FOIA therefore applies to such information and it cannot be disclosed unless (a) it is not "sensitive personal data" and (b) even if not, condition 6 in Schedule 2 to the Data Protection Act is met. We note in this

context that there are a number of alleged Sikh extremists among these individuals who were still alive in 2015, [REDACTED]
[REDACTED]
[REDACTED]

Conclusions

47. We have considered the contents of the four files in detail applying the legal principles set out above in the light of all the circumstances applying in August 2015 and have set out in the Schedule below our conclusions on whether each of the documents (or part of documents) in the files should have been disclosed with brief reasons, which incorporate our conclusions on general points of controversy set out above. Broadly speaking, we have accepted that the Cabinet Office was entitled to withhold the CAB file on the basis of section 23 FOIA but consider that much of the withheld material in the PREM files ought to have been disclosed.
48. In the usual way a draft copy of this judgment was supplied to the Cabinet Office in advance to check that nothing was being wrongly disclosed in error. The version to be supplied to Mr Miller and placed on the Tribunal's website will be redacted to remove such material, including the entirety of the Schedule. The position as to redactions will be fully reviewed once the date for bringing an appeal has passed.
49. Our conclusions are unanimous.

[Signed on the original]

HH Judge Shanks

11 June 2018

SCHEDULE

CAB 163/452

The series is described as follows:

War Cabinet, Ministry of Defence and Cabinet Office: Central Intelligence Machinery: Joint Intelligence Sub-Committee, later Committee: Secretariat; Files.

The Cabinet Office seek to withhold most of the contents on the basis of section 23(1) FOIA; in a few cases they rely on section 24 in the alternative. In relation to a number of documents they also rely on section 27.

The Cabinet Office was entitled to withhold most of the documents in this file on the basis of section 23(1). Individual documents falling into this category are not identified below.

Folio	page ref	Decision and reasons
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102	CB/2/53-54	Disclose.
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We accept the submissions by the Commissioner that any damage to relations with India caused by release of this document would be minimal. The document shows the UK government being very concerned to control Sikh demonstrations during the projected visit of Rajiv Gandhi and a document along similar lines (OB/8/27) was released without apparent difficulty. The fact of the Tribunal's proceedings and the close interest therefore generated (a point relied on by Mr Barton in evidence) is irrelevant: the issue is whether the document should have been disclosed in 2015 in response to Mr Miller's request. We agree that the notion that disclosure of the material relating to security arrangements for such a visit over 30 years ago needs to be withheld for the purpose of safeguarding national security now under section 24 is "extremely far-fetched".

87	CB/2/130-6	Disclose except for certain passages which can be redacted:
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[Redacted text block]

By the end of the hearing, it was clear that section 27 was not really relied on in relation to the letter. Redactions allowed are under section 23 as relating to security bodies or section 40 [REDACTED]. On the telegram, section 27(2) was engaged in relation to the first two passages [REDACTED], the public interest balance favours redaction. On the redaction at p136, [REDACTED] section 23 would apply.

86 CB/2/137-9 Disclose except for the following passages at page 138:

[REDACTED]
[REDACTED]

The first passage relates to security bodies: section 23 applies. The second is covered by section 40 in our view. The release of the balance of the letter involved insufficient prejudice to international relations at this distance in time to warrant withholding under section 27.

85 CB/2/140-4 Disclose except for two passages on p141 which can be redacted:

[REDACTED]
[REDACTED]

We accept that [REDACTED]
[REDACTED] section 27(2) would apply. Mr Jenkins did not have a real problem with the remainder being disclosed.

84 CB/2/145 Disclose.

The Cabinet Office suggested that release of the document would cause offence to India as showing that the UK government regarded the proposed Sikh assembly just as a public order issue and was not taking Sikh separatism seriously as an existential threat to India. We accept the Commissioner's argument that in so far as section 27 now applies it cannot outweigh the public interest in disclosure given the time that has passed, the fact that the document shows the seriousness with which the UK government regarded the issue of the assembly and the fact that other documents on a similar theme have been disclosed without problem (eg OB/8/13 and 27).

- 83 **CB/2/146-7** **Disclose.**
As folio 84.
- 81J **CB/2/148-150** **Disclose except for para on p149 starting** [REDACTED]
[REDACTED]
See below under CB/1/36: it is the same document.
- 72 **CB/2/185-6** **Withhold**
**The bulk of this letter has been disclosed already (see OB/8/29-30).
The redactions are justified and indeed required by section 40.**
- 66L **CB/2/210-1** **Disclose.**
**The Cabinet Office rely on section 27 to withhold these documents.
As with other internal UK government communications on the topic
of Sikh demonstrations, we agree with the Commissioner for the
reasons relating to folio 84 above. We also agree with the point she
makes about the heightened public interest in disclosure in that the
documents reveal the influence of foreign affairs on the Home
Office.**
- 66J **CB/2/214-5** **Disclose.**
As folio 66L above.
- 40 **CB/2/327** **Disclose.**
**Although this document has some JIC connection the Cabinet
Office did not claim section 23 applied to it and Mr Barton deferred
to Mr Jenkins in relation to section 27. Mr Jenkins said it gave a
blunt assessment of the relationship between India and the UK but
in our view its disclosure was of some public interest and given the
time that has passed and the level of generality of the analysis any
prejudice to relations with India was well outweighed by the public
interest in disclosure.**
- 37K/J **CB/2/332-4** **Already disclosed.**
- 35 **CB/2/339** **Already disclosed.**

30 CB/2/347-8 Withhold.

[Redacted]
[Redacted]
[Redacted] **Section 27 relied on (but not section 23).** [Redacted]
[Redacted]
[Redacted]

[Redacted] We accept that the public interest in disclosure was slightly outweighed by public interest in maintaining the section 27 exemption.

28/27 CB/2/355-7 Disclose.

The Cabinet Office schedule relies on sections 23(1) and 27(1)(a) to withhold these documents but at the end of the case they had effectively agreed disclosure.

PREM 19/1535

This file is described as:

INDIA: Visits to UK by L.K Jha, member of Brandt Commission and adviser to Indira Gandhi: meeting with Prime Minister.

Date: 1983 Jul 04 - 1985 Mar 21

The Cabinet Office seek to redact certain passages in reliance on sections 27 and 40 of FOIA, and in the case of some documents in CB/2 sections 23 or 24.

Page ref Decision and reasons

CB/1/26 Disclose.
See below under CB/1/27.

CB/1/27 Disclose.
These passages relate to Dr Chauhan, the self-styled "President of the Republic of Khalistan" who was dead by 2015; the UK Government had reached the view that there were no grounds for his prosecution or deportation and the Prime Minister was briefed accordingly. Mr Jenkins said in effect that disclosure would damage relations with India by showing that the UK were conscious of how serious Chauhan's activities

were so far as India was concerned but still did nothing about it. It is a matter of public record that Chauhan was not prosecuted or deported. There is open material relating to the steps the UK Government considered (see OB/8/45). If anything these passages show how seriously the UK Government took the matter and that they would have liked to do more. Any prejudice to relations with India resulting from disclosure is therefore minimal and outweighed by the public interest in disclosure.

CB/1/28 Except for [REDACTED] which can be redacted, this document has in fact been disclosed at TNA with no evidence of any adverse reaction.

The Tribunal accept that the redacted comment [REDACTED] of no value to the public.

CB/2/27 Withhold.

We accept Mr Barton's position that this document contains information relating to security bodies and refers to other sensitive security matters [REDACTED] [REDACTED] which mean that section 23 applies to the whole: the balance of the document has already been disclosed (OB/8/5).

CB/2/28-31 Withhold.

We accept that much of the information in this document probably came from security bodies so that section 23 applies and we cannot see any sensible way of disaggregating other information. We also accept that it can be withheld under section 27 given the sensitivity of the topic (nuclear proliferation) and that much of information in the document comes from other governments.

PREM 19/1536

INDIA: UK/Indian relations: situation in Punjab: activities of Sikh extremists; proposed visit to UK by Rajiv Gandhi in June 1985; part 4

Date: 1984 Mar 05 - 1985 May 22

The Cabinet Office seek to withhold or redact certain documents in this file on the basis of section 27 and, in some cases, section 40 FOIA as well as, in CB/2 (Mr Barton's file), section 23 and 24.

CB/1/30 Disclose

This letter concerns Mr (now Lord) Swraj Paul, a prominent UK Indian. We agree with the Commissioner that disclosure of a statement made internally to the effect that he was in disfavour in Delhi 30 years ago would cause minimal prejudice to relations with India if disclosed but is of considerable public interest in showing the way the UK/Indian relationship in part is conducted through non-government actors, particularly in the context of the prospective "Westland" deal. As to section 40, given Lord Paul's prominent and very public position and the age of the information, we do not think he will suffer any real prejudice to his legitimate interests by disclosure.

CB/1/31 **Disclose**

As for CB/1/30.

CB/1/32 **Redact the words** [REDACTED]

The Commissioner did not argue strongly for disclosure of the redacted words. [REDACTED]

[REDACTED] we could see that disclosure may damage relations [REDACTED]

CB/1/33 **Redact the words** [REDACTED]

The Commissioner did not seek to argue for disclosure. Disclosure of the words was of no significant public interest [REDACTED]

CB/1/34 **Redact the words** [REDACTED]

The Commissioner did not seek to argue for disclosure. It did not seem to us likely to benefit anyone and represented an invasion of [REDACTED] privacy which was unwarranted.

CB/1/36 **Disclose apart from first full paragraph** [REDACTED]

...".

The Commissioner accepted that this material should be withheld [REDACTED]

[REDACTED]

[REDACTED] Sections 27(1)(a) and (2) are engaged and the public interest balance favours

maintaining the exemption. The Cabinet Office did not really resist disclosure of the balance of the letter.

CB/1/38-39

Redact words [REDACTED]

The Commissioner did not seek to argue for disclosure. The comment, [REDACTED] of little value to the public and Mr Miller.

CB/1/41

Disclose paragraph 2 of the cable.

The Commissioner argued strongly that, even if disclosure may cause some minimal risk of prejudicing relations with India, the public interest in disclosure was overwhelming and the Cabinet Office accepted that the public interest balance was fine. We agree that the paragraph indicates that Sir John Treacher (the deputy chairman of Westland) was offering some kind of bribe to a senior Indian politician, and, furthermore, that the British High Commissioner and the UK government would have been aware of that. The public interest in disclosure of those matters is indeed overwhelming in our view.

CB/1/43

Redact paragraph beginning [REDACTED]

The Commissioner did not seek to argue for disclosure. Although there is nothing particularly new in the contents of the paragraph (and indeed they are reflected in open documents (see OBB/3)) we accepted that disclosure of the paragraph, [REDACTED] would be directly covered by section 27(2) of FOIA and the public interest in maintaining that exemption would outweigh any public interest in disclosure.

CB/1/45

Redact opening paragraph.

See below under CB/1/46-7, which goes with this paragraph.

CB/1/46-7

Withhold [REDACTED]

[REDACTED] **The Commissioner did not seek to argue for its disclosure. We were not persuaded that section 27 of FOIA on its own would have warranted the withholding [REDACTED]**

[REDACTED]
However, the document concerns [REDACTED] who, as far as we are aware, is still alive and in the UK, and contains a great deal of his personal data, including "sensitive personal data" [REDACTED] [REDACTED] which is all mixed up; it seems to us that section 40 of FOIA inevitably means that this should not be disclosed. We do not accept Mr Milford's position that [REDACTED] had somehow forfeited his rights; in relation to "sensitive personal data" such considerations do not arise.

CB/1/48-9 Withhold.

As for CB/1/46-7; [REDACTED].
There is also a passage covered by section 23 of FOIA.

CB/1/50-52 Withhold.

As for CB/1/46-7.

CB/1/53 Redact [REDACTED]

As for CB/1/46-7.

CB/1/54 Redact [REDACTED]

As for CB/1/46-7.

CB/1/55-7 Disclose section relating to Khan on p56 but redact the balance [REDACTED]
[REDACTED]

As for CB/1/46-7. We understand Amanullah Khan to have died.

CB/1/58 Redact third full paragraph.

Section 23 of FOIA clearly applies.

CB/1/59 Redact as in OB/8/29.

As for CB/1/46-7 in relation to personal data and section 40.

CB/1/60 Redact [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] section 40 of FOIA requires redaction [REDACTED]
[REDACTED]

CB/2/33-48 Redactions [REDACTED]
[REDACTED], are all allowed on basis of section 23 as requested by Mr Barton; we understand that the balance of the contents of these documents has already been disclosed.

PREM/19/1663

DEATHS. Assassination of India Gandhi, October 1984: Prime Minister's visit to India to attend funeral

Date: 1984 Oct 31 - 1984 Dec 12.

The Cabinet Office seek redactions of short pieces of text relating to specific individuals in reliance on sections 27 and (in so far as the individuals are still living) 40 of FOIA.

CB/1/62 Redact sentence [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] section 27 applies and the potential prejudice [REDACTED]
[REDACTED] outweighs the public interest in disclosure.

CB/1/63 Redact words [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Again, we consider that section 27 allows redaction. It is also covered by section 40 of FOIA in our view.

CB/1/64 Redact [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] We consider that it is covered by section 27 and that the public interest in its disclosure is slight and that it should be redacted.

CB/1/65

Redact [REDACTED]

[REDACTED]

[REDACTED] exempted by section 40 [REDACTED]

CB/1/67

Disclose

We are at a loss to see any basis for the redaction of the comment that Princess Anne was due to dine with Mrs Gandhi on the evening of her assassination on 31 October 1984. This seems to be a "knee-jerk" reaction to the mention of royalty.

CB/1/68

Disclose

Likewise the fact that a brief had been prepared for Princess Anne which was attached to the file for the Prime Minister.