

A Freedom of Expression foray

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All views expressed in the article and correspondence written by me are my own.

Included in the appendices are copies of correspondence which was sent or received by me by way of electronic mail and, in some cases, additional paper copies by registered mail.

All original copies are retained by me.

Albert Moisiu

December 2009

So, what has the 'old fart' got to say this time?

With respect to the Maddie Case the term "Freedom of Expression" has been getting an extensive airing in recent weeks (November/December 2009), not least, to my mind, the McCann's seemingly distorted perspective thereof, but, putting that to one side, I was asked a while ago to write something on a slightly different, though related, venture – some might think 'adventure' – using the UK Freedom of Information Act.

While the story as written here is fairly short (for those who may be familiar with my previous epistles) volume is made up in spades with the appendices which arose during the nearly 500 days that passed during the venture.

I have not included all the documents that went back and forth between the various agencies and myself during that period, limiting this tale to only those that still give me reason to pause and consider their content. The initial summary shows 'hyper-links' to attachments.

I have also removed certain of my personal particulars, and reduced the names of the persons in the other agencies to initials because – even though they are all well known in the FOI public arena (and I have confirmed that) - I have not sought their specific permission to disclose the identities in public.

"How to tell a story: Begin at the beginning, ... "

The journey began back on 11 August 2008 when I submitted an FOI request to the UK Home Office entitled "*Freedom of Information Request: Press reporting gag in the case of Madeleine Beth McCann.*". [1]

Some might recall the various FOIA templates that I posted on the 3A forum around that date, and this was one of them. Those people might also recall the seemingly interminable wait for an intelligible response between August and December as opposed to the monthly "Please Wait until the 'Public Interest Test' is completed."

On 28 January 2009 I received, as did many other people, the eventual response. [2]

On 31 January, I submitted a request for an Internal Review. [3]

Over the ensuing five calendar months there were promises to deliver the report of the Internal Review, followed by corresponding failures to execute those promises, prompting me, on 2 July 2009, to submit a formal complaint to the Information Commissioner's Office (ICO). [4]

Interspersed with a little more information [5], and some additional prompting from me, by 20 October 2009 the ICO had managed to elicit yet more promises for the delivery of the Internal Review [6], the first versions of which came to light on 23 and 30 October 2009. [7]

Although aghast at what I read in those missives I withheld my views at that time, not wishing to jeopardise the tenuous link with the Home Office. The following week, however, yet again having received none of the promised responses from them, when I received the ICO communication of 5 November 2009 [8] in which, while not compromising their independence, the ICO appeared to be unimpressed with handling of the entire matter by the Home Office agents, my response (7 November 2009) was unequivocal. [9]

I admit it. I had finally come to the point of losing my composure.

"... continue until you reach the end, ..."

Said reaction on my part appeared to shake the tree, with confirmation from the ICO [10] that yet another date had been given to them by the Home Office, and this time, finally, on 27 November 2009 I received the Home Office response [11] that I had fully expected to receive back in September 2008.

"... then stop."

So, why do I not stop here? Have I not received the answer that I expected?

As regards my expectation, I was not surprised by the final response because I have always held the belief that any limitations in media reporting would be due to owner/editor edict within the media operation concerned. The question posed to the Home Office was to test that belief.

As to the receipt of information, the simple answer is "Yes", but I have, in fact, received quite a bit more information than expected and this, when coupled with some additional factors in hindsight, prompts some further thought.

At the outset this was a fairly simple question, which may or may not have had some minor relevance in the Public Interest Test, but certainly it was one that should have been put to bed in a secure manner (unlike Ocean Club Apartment 5A) so that the 'adults' in the Home Office could go off to 'wine and dine' (and maybe take in a blue-film or two) on the more pressing matter of the impending MPs 'Tapas Bar' revelations later publicised via the *Daily Telegraph*.

Instead of settling this trivial matter quickly and quietly, in the same way as the dozen-or-so other FOI requests I had submitted to various agencies had been settled, it was allowed to become 'abducted' for some reason, or in some way, and that – he says, donning his conspiracy hat for a moment – is perplexing in itself.

Was this 'abduction' of the original question – like in Praia da Luz – a result of sheer stupidity on someone's part? Possible but unlikely, in my view.

Did the excessively flowery wording (verbose legalistic character, if you wish) of the original request cause certain panties to pad or knickers to knot, perhaps? Again, I think not.

Was it simply a lack of attention during the period of movement of ministers (McNulty and Jackboot Jacqui being the most well-publicised), along with the likely preparations being made in readiness for the Expenses' backlash? A distinct possibility, I feel, and something that might have affected many other requests for information during that same period.

Conversely, had the close-shave that had arisen from the 'FCO diplomatic e-mail' revelations that had gone all the way to the Tribunal via the ICO caused all remaining unanswered requests to be vetted multiple times over? Another distinct possibility, I feel.

Or, worst case (conspiracy-alert), was at least part of the delay, not to mention the eventual rationale provided by the Home Office on 30 October 2009, intended to convey that there was, indeed, some 'fire' emitting 'smoke' with respect to the failure of UK authorities to communicate information to the Portuguese authorities?

If such a thing were intended, and the 'fire' was barely containable within the ambit of the original request – that is, had the request been worded in a slightly different way then the existence of the 'fire' would have to have been fully revealed – then that certainly would be food for further thought.

So, what was behind the 'defined' question?

As I intimated in my diatribe of 7 November 2009, just how did a supposedly highly-intelligent and literate bunch of media-savvy political careerists manage to convert a question about a "*Press reporting gag*" on the British media into a question about "*any restrictions that might have been placed on the sharing of information with the Portuguese authorities following a formal request for Mutual Legal Assistance (MLA) from them.*"

Re-reading the documents I could venture a few ideas, but they would be little more than mere points of semantics and supposition.

Alternatively, I could let enough time pass to avoid being labelled 'vexatious' and pose this question to the people concerned, but, really, in the context of the case, I feel the point is already moot and, anyway, I do not think that I could wait another 480 days for an answer.

Albert Moisiu

December 2009

Appendix 1

11 August 2008

Home Office
Direct Communications Unit
2 Marsham Street
London
SW1P 4DF

Dear Sir

Freedom of Information Request: Press reporting gag in the case of Madeleine Beth McCann.

With the current suspension of the inquiry into the disappearance of Madeleine Beth McCann, who reportedly disappeared from her bedroom in Praia da Luz, Algarve, Portugal some time between 21:00 and 22:00 on the night of 3 May 2007, and the consequent release in Portugal of the detailed papers from the inquiry case file, the grossly unbalanced reporting of the British 'media' evidenced by the failure to fairly present even the most basic facts uncovered by the joint Anglo-Portuguese Inquiry team has given rise to thoughts about there being a restriction order having been placed on the British press, specifically in respect of those persons who, while not directly or biologically related to Madeleine Beth McCann, were nevertheless directly associated with her disappearance, namely Dr David Payne and his partner, Fiona Payne; Dr Russell O'Brien and his partner, Jane Tanner; Dr Matthew Oldfield and his partner, Rachel Mampilly Oldfield.

This is a request for information, namely for any and all records or documents or extracts thereof reporting or evidencing that at any time on or after 4 May 2007 any form of limitation or restriction or injunction or moratorium over the free and fair and unfettered disclosure of any aspect whatsoever of, or any detail whatsoever of, the Inquiry into the disappearance of Madeleine Beth McCann and/or over any information pertaining to any persons directly associated with that disappearance and/or directly associated with the Inquiry, was requested, instructed and/or obtained by any person, or persons, whether employed at any level within or providing any service within the Home Office or any of its ancillary operations, including, but not limited to, the Central Office of Information.

It seeks further:

- (a) the identity, or identities, of any and all the persons by whom,
- (b) the date and time at which, and
- (c) the means of communication through which, any such limitation or restriction or injunction or moratorium referred to above was requested, instructed and/or obtained.

On an administrative point, I request that I be afforded both an acknowledgement of receipt and a response to the above request for information in accordance with the time prescribed in Section 10 of the Freedom of Information Act 2000.

Further, I request that such acknowledgement of receipt and response be communicated and delivered to my electronic mail address given hereunder, failing which, by letter to the postal address provided below.

Yours faithfully

Albert Moisiu

Appendix 2



Home Office

Organised & International Crime Directorate

5th Floor Fry Building, 2 Marsham Street, London SW1P 4DF

Switchboard +44 (0) 870 0001585 Fax +44 (0) 207-035-6985 Direct Line +44 (0) 207 035 1275

E-mail L.S2@homeoffice.gsi.gov.uk www.homeoffice.gov.uk

Mr Albert Moisiu
Portugal

Our ref: MLI07/210/2104 – FOI 10041
Date: 28th January 2009

Dear Mr Moisiu,

RE: FREEDOM OF INFORMATION ACT REQUEST HOME OFFICE MATERIAL RELATING TO MADELEINE MCCANN

I am writing further to my correspondence on the 16th December 2008. We are now in a position to offer a full reply to your request. I would like to apologise for the length of time it has taken to respond to your request. This delay has been due to giving full and due consideration to the public interest test together with the necessity to consult with other agencies.

It is noted that your request was to essentially seek information for any and all records or extracts thereof reporting or evidencing that at any time on or after 4th May 2007 any form of limitation or restriction or injunction or moratorium over the free and fair and unfettered disclosure of any aspect whatsoever of, or any detail whatsoever of, the inquiry into the disappearance of Madeleine Beth McCann. The request was also seeking information pertaining to any persons directly associated with that disappearance and/or directly associated with the Inquiry, was requested, instructed and/or obtained by any person(s) whether employed at any level within or providing any service within the Home Office or any of its ancillary operations, including, but not limited to, the Central Office of Information and the identities of all persons the dates and the means of communication through which such limitation or restriction was obtained.

Your request for information has been considered under the Freedom of Information Act 2000 (the Act) and we are now able to provide you with a substantive response to your request.

Section 1 of the Act places two duties on public authorities when handling requests. The first of these duties, provided at s1(1)(a) is to confirm or deny whether the information requested is actually held by that authority. The second duty is for that information to be disclosed where it has been confirmed that it exists. This is provided under s1(1)(b).

The Home Office can neither confirm nor deny that we hold information relevant to your request as our duty under s1(1)(a) does not apply by virtue of the following provisions of the Act:

- Section 27(4) – prejudice to International Relations;
- Section 31(3) – prejudice to Law Enforcement activities; and
- Section 38(2) – endangering Health & Safety.

This letter therefore also serves as a refusal notice under s17(1) of the Act.

Furthermore, the Home Office will not comment on any of the information contained in Goncal Amaral's book, 'A Verdade da Mentira' as it would potentially undermine ongoing investigations.

There are a number of sensitivities relevant to your request, given that Madeleine McCann is still missing and the investigation is still ongoing. Confirming or denying whether any information is held could undermine the investigation, prejudice international relations and could endanger the health and safety of members of the public.

We have considered public interest considerations in making our decision and we have attached these to this letter. We believe that, at this time, the public interest strongly favours neither confirming nor denying that the information you have requested is or is not held by the Home Office.

This response should not be taken as conclusive evidence that the information you have requested either does or does not exist.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting your complaint within two months to the below address quoting reference **CR10041**

*Information Rights Team
Information and Record Management Service
Home Office
4th Floor, Seacole Building
2 Marsham Street
London
SW1P 4DF*

Or email: info.access@homeoffice.gsi.gov.uk

During the independent review the department's handling of your information request will be reassessed by an official that was not involved in providing you with this response. Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

I realise that you may be disappointed with this response. However we have considered your request with great care, and the Home Office always seeks to provide as much information as it is able to.

Thank you for your interest in the Home Office.

Yours sincerely

L S
Team Leader
UK Central Authority

Public Interest Considerations

s.17 – Refusal of request

- (1) *A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision in part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -*
- (a) states the fact,*
 - (b) specifies the exemption in question, and*
 - (c) states (if that would not otherwise be apparent) why the exemption applies.*

s.27 – International Relations

- (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 other state,*
 - (b) relations between the United Kingdom and any international organisation or international court*
- (4) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) –*
- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)*

s.31 – Law Enforcement

- (1) *Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*
- (a) the prevention or detection of crime,*
 - (b) the apprehension or prosecution of offenders,*
 - (c) the administration of justice,*
- (4) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)*

s.38 – Health & Safety

- (1) *Information is exempt information if its disclosure under this Act would, or would be likely to-*
- (a) endanger the physical or mental health of any individual, or*
 - (b) endanger the safety of any individual.*
- (4) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)*

Harm and prejudice

The investigation into the disappearance of Madeleine McCann is still ongoing. There are significant unknowns in relation to her disappearance. Leicestershire Constabulary are the lead force in the UK dealing with this investigation but the principle investigation agency is Policia Judiciara (PJ) in Portugal. We believe that significant harm to the investigation could result from either confirming or denying that we hold the information you have asked for.

Should this investigation lead to a prosecution, saying whether or not this information is or is not held by the Home Office would risk undermining the human rights of any suspect to a fair trial and the rights of a victim, particularly if the prosecution would fail due to such an announcement.

If the Home Office was to either confirm or deny that it did or did not hold any information that was gathered in the course of this investigation, it might risk compromising the conduct of this investigation. This could ultimately prejudice the administration of justice. In any event, to confirm or deny that any such information that was or was not obtained in the course of a criminal investigation, either voluntarily or through compulsory powers, ought not to be generally disclosed, save as far as it is necessary for the purposes of establishing or defending rights in litigation.

There is consequently a strong public interest in ensuring that evidence is not contaminated for any future trial. In addition there is a strong public interest to preserve relations with the Policia Judiciara (PJ) in Portugal whilst Madeleine remains missing.

Two of the Home Office's objectives are to support the efficient and effective delivery of justice, and to lead visible, responsive and accountable policing. The manner in which the Home Office works to support the

Police Service as a whole is one of our core business functions.

If the Home Office prejudiced such a high-profile and sensitive investigation by confirming or denying that we either do or do not hold any of the information that you have requested, we would be seen as working against the efforts of both UK and Portuguese policing authorities, undermining their determined efforts to locate Madeline McCann and her assailants. This would not be in the best interests of the public..

Any prejudicial effects to these ongoing investigations could jeopardise the health & safety, of Madeline McCann, in that it might significantly affect the chances of her being found. There is no actual public interest served in releasing information that may jeopardise the health & safety of any individual.

There is a strong public interest in the UK maintaining the arrangements it currently enjoys with other States in matters of judicial and mutual legal cooperation in criminal and other matters. Any act that would prejudice this investigation may discourage other States with complying with reasonable requests issued by the UK or from pursuing legitimate investigations in the UK for fear that the product of such requests or investigations may be disclosed to private citizens.

Appendix 3

Information Rights Team

Information and Record Management Service

Home Office

4th Floor, Seacole Building

2 Marsham Street

London

SW1P 4DF

email: info.access@homeoffice.gsi.gov.uk

To whom it may concern.

Home Office reference: MLI07/210/2104 – FOI 10041; CR10041

Home Office MATERIAL RELATING TO MADELEINE McCANN

The Home Office of the United Kingdom recently released a standard form letter in response to requests made under the Freedom of Information Act concerning aspects of the investigation into the disappearance of Madeleine Beth McCann.

Errors reflected in the section entitled 'Public Interest Considerations' notwithstanding, it is claimed, and I quote two sentences from the first paragraph of the section entitled 'Harm and prejudice':

"The investigation into the disappearance of Madeleine McCann is still ongoing.", and

"Leicestershire Constabulary are the lead force in the UK dealing with this investigation but the principle [sic] investigation agency is Policia Judiciara (PJ) in Portugal."

It is commonly known that the case file of the Polícia Judiciária (PJ) was handed over to the judicial authorities in Portugal, namely the Ministério Público (MP), headed by the Procurator-General of the Republic who announced publicly on the Ministry's official website on 21 July 2008:

"Por despacho com data de hoje (21.07.2008) proferido pelos dois magistrados do Ministério Público competentes para o caso, foi determinado o arquivamento do inquérito relativo ao desaparecimento da menor Madeleine McCann, por não se terem obtido provas da prática de qualquer crime por parte dos arguidos.

II

Cessa assim a condição de arguido de Robert James Queriol Evelegh Murat, Gerald Patrick McCann e Kate Marie Healy, declarando-se extintas as medidas de coacção impostas aos mesmos.

III

Poderão ter lugar a reclamação hierárquica, o pedido de abertura de instrução ou a reabertura do inquérito, requeridos por quem tiver legitimidade para tal.

IV

O inquérito poderá vir a ser reaberto por iniciativa do Ministério Público ou a requerimento de algum interessado se surgirem novos elementos de prova que originem diligências sérias, pertinentes e consequentes.

V

Decorridos que sejam os prazos legais, o processo poderá ser consultado por qualquer pessoa que nisso revele interesse legítimo, respeitados que sejam o formalismo e limites impostos por lei."

In the first paragraph it is stated explicitly "foi determinado o arquivamento do inquérito relativo ao desaparecimento da menor Madeleine McCann", in English: "the inquiry relating to the disappearance of the minor Madeleine McCann was archived" with effect from the date of his officially published instruction ('despacho'), namely, 21 July 2008.

Paragraph IV of the above despacho states, in English, "the inquiry can be re-opened by the Ministério Público or the request of an interested party should new evidence come to light that would give rise to the need for serious, relevant and consequential police work."

The consequence of these two official pronouncements is, therefore, that, contrary to the status implied by the Home Office, the investigation in Portugal is not ongoing.

With that principal investigation being in legal abeyance pending the receipt of new evidence, any and all evidence held by the Leicestershire Constabulary acquired during their support role in that principal investigation should have been passed to the judicial authorities in Portugal. Failure to have done this might be construed to be obstruction of justice.

Further, any documented evidence in that principal investigation that has been retained by the Leicestershire Constabulary belongs to the judicial authorities in Portugal and, therefore, should be subject to the same legal provisions that apply to the documented evidence held in Portugal, specifically, as stated in paragraph V of the above despacho, it should be made available for consultation by any person, subject to the formalities and limits imposed by the law (in Portugal), who can show a legitimate interest in the documents of the case file.

Among other things, Articles in the Portuguese Penal Process Code stipulate that,

- at 86(1), a criminal case is public, subject to restrictions imposed by (Portuguese) law;
- at 86(6), the publication of a criminal case implies the right of the general public to hear, the right of the media to publish, and the right of anyone having legal cause to obtain copies, extracts or certificates of documents pertaining to the case;
- at 88, the media are expressly permitted, within the limits of the (Portuguese) law, to publish information about the case. There is no mention in that article of any limitation prescribed at the whim of a foreign government;
- at 90(2), other persons are permitted, without prohibition, to read details of the case published through the media;

On 4 August 2008 access to the case file was granted to the 'media' by the Portuguese authorities. In compliance with Portuguese law certain documents had been withheld by the Portuguese authorities for reasons recorded in the file.

It should be noted that the term 'media' (comunicação social) above is not limited solely to organs of the Portuguese press but, rather, it encompasses every organ of communication to people in general in every country throughout the world.

Hence, the 'media' in general, anywhere in the world, is deemed to have a legitimate interest in the documents contained in the case file.

It is, therefore, very much in the Public Interest to know whether any organ of the Government of the United Kingdom has placed any restriction or limitation on the reporting of any facet of this case, save for those already specifically excluded by Portuguese law, by any or all media organisations in the United Kingdom.

In considering this request, read together with the response already received from the Home Office, I submit that:

- Section 27 of the Freedom of Information Act as an exception has no bearing on this question other than as an attempt by the Government of the United Kingdom to avoid embarrassment, which is not a valid foundation for exception;
- Section 38 of the above Act as an exception has no foundation because the condition of the missing child, whatever that might be, cannot be affected by the disclosure of the existence or otherwise of a 'gag' on the British media;
- Section 31 of the above Act has no foundation due to the fact that, as demonstrated above, the principal investigation in Portugal is no longer ongoing.

It is made clear here that should there be, outside the principal case, one or more investigations into the disappearance of Madeleine Beth McCann mounted by or under any British authority alone, then this request does NOT seek to know any information about that, or those, investigations. This request is focused entirely upon material pertaining solely to the principal investigation.

I reiterate the original request submitted on 11 August 2008:

This is a request for information, namely for any and all records or documents or extracts thereof reporting or evidencing that at any time on or after 4 May 2007 any form of limitation or restriction or injunction or moratorium over the free and fair and unfettered disclosure of any aspect whatsoever of, or any detail whatsoever of, the Inquiry into the disappearance of Madeleine Beth McCann and/or over any information pertaining to any persons directly associated with that disappearance and/or directly associated with the Inquiry, was requested, instructed and/or obtained by any person, or persons, whether employed at any level within or providing any service within the Home Office or any of its ancillary operations, including, but not limited to, the Central Office of Information.

It seeks further:

- (a) the identity, or identities, of any and all the persons by whom,
- (b) the date and time at which, and
- (c) the means of communication through which, any such limitation or restriction or injunction or moratorium referred to above was requested, instructed and/or obtained.

For the purposes of this complaint, and due to the elapse of time during which certain information has become public knowledge, I will reduce the request to its simplest form in the hope of a simple, one-word response – a Yes, or a No:

Has any organisation in the British media been restricted by any organ of the British Government from freely and fairly disclosing anything pertaining to the principal investigation as documented in the case file released by the Portuguese authorities on 4 August 2008?

Prevarication in the form of a mere re-issuance of the standard form letter already received will be taken to be an affirmative response.

Yours faithfully

Albert Moisiu

Appendix 4

Complaint to the Information Commissioner's Office.

In summary:

- 31 January 2009: Following a protracted FOI request process with the Home Office, an FOI review request was submitted to the Home Office review address (Appendix 2; three pages)
- 09 February 2009: an acknowledgement was received from a Mr S K which started an e-mail stream spanning that date through to 2 July 2009 (Appendix 1; five pages). In that acknowledgement a response date of 30 March was indicated.
- 01 April 2009: no response having been received a reminder was sent to Mr K.
- 03 April 2009: A Mr O L, claiming to be Mr K's line manager, acknowledged the failure to respond and assured prompt action.
- 04 April 2009: I acknowledged the above note from Mr L.
- 30 April 2009: Mr L claimed the review had been completed but required a further short period of time to clarify some minor matters.
- 04 June 2009: Still having received no response during the whole of May 2009 a further reminder was sent to Mr L – no acknowledgement to this was received.
- 17 June 2009: Still having received no response a further reminder was sent to Mr L – no acknowledgement to this was received.
- 02 July 2008: Still having received no response a further reminder was sent to Mr L stating that despite my patience in this matter time had run out.

Complaint

I wish to receive a response to the submitted review request.

The original response date was 30 March 2009 and despite ongoing correspondence no official response has been received by 02 July 2009.

It is my sincere hope that Messrs K and L are real people and not some Internet fabrication.

Albert Moisiu.

Appendix 1 (of ICO complaint)

Re: Freedom of Information - Internal Review (ref 10041)

Thursday, July 2, 2009 2:33 PM

From Albert Moisiu Thu Jul 2 05:33:07 2009

Received: from [x.x.x.x] by [mailserver] via HTTP; Thu, 02 Jul 2009 05:33:07 PDT

Date: Thu, 2 Jul 2009 05:33:07 -0700 (PDT)

From: Albert Moisiu <x@x>

Subject: Re: Freedom of Information - Internal Review (ref 10041)

To: "L O (IMS)" <O.L@homeoffice.gsi.gov.uk>

MIME-Version: 1.0

Content-Type: multipart/alternative; boundary="0-1985901703-1246537987=:77856"

Content-Length: 171105

Mr L, another two weeks have come and gone; indeed another entire calendar month since your assurances that all is well - and not one response, not even another 'please wait' note. I am a patient person but time has run out.

Kind regards.
Albert Moisiu.

--- On **Wed, 6/17/09**, Albert Moisiu <x@x> wrote:

From: Albert Moisiu <x@x>

Subject: Re: Freedom of Information - Internal Review (ref 10041)

To: "L O (IMS)" <O.L@homeoffice.gsi.gov.uk>

Date: Wednesday, June 17, 2009, 6:44 AM

Mr L.

I still await your response.

Kind regards.
Albert Moisiu.

--- On **Thu, 6/4/09**, Albert Moisiu <x@x> wrote:

From: Albert Moisiu <x@x>

Subject: Re: Freedom of Information - Internal Review (ref 10041)

To: "L O (IMS)" <O.L@homeoffice.gsi.gov.uk>

Date: Thursday, June 4, 2009, 5:29 AM

Mr L.

In spite of your assurances below another full calendar month has passed.

Do you have a response?

Kind regards.
Albert Moisiu

--- On **Thu, 4/30/09**, L O (IMS) <O.L@homeoffice.gsi.gov.uk> wrote:

From: L O (IMS) <O.L@homeoffice.gsi.gov.uk>

Subject: Freedom of Information - Internal Review (ref 10041)

To: x@x

Date: Thursday, April 30, 2009, 5:56 PM

Dear Mr Moisiu

Thank you for your patience in relation to this matter. I have now been sent the report into the handling of this FOI request, but there are just a couple of issues in relation to it that I am in the process of clarifying before I approve the recommendations within it. We cannot therefore send the final response to you today but will do so very shortly. I do not expect these issues to take long to resolve at all. I am sorry if this inconveniences you, but hope that you will appreciate that my actions are intended solely to ensure the Home Office's proper handling of FOI requests.

I am as ever happy to discuss this matter with you should you wish.

Yours sincerely,

O L

Information Access Team

Information Management Service | Shared Services Directorate | Home Office | 4th Floor | Seacole Building
| 2 Marsham Street | London | SW1P 4DF

Tel: 020 7035 1037

-----Original Message-----

From: Albert Moisiu [mailto:x@x]

Sent: 04 April 2009 5:28 AM

To: L O (IMS)

Subject: RE: Freedom of Information - request for an internal review

Thank you for your reply, Mr L.

I look forward to receiving the review response to be provided within this month, April 2009.

I do hope that Mr K's sudden absence does not bode ill for him or his family.

I note that you responded to my reminder dated 1 April. Please ignore, therefore, my second reminder sent on 3 April.

Kind regards.

Albert Moisiu.

--- On Fri, 4/3/09, L O (IMS) <O.L@homeoffice.gsi.gov.uk> wrote:

From: L O (IMS) <O.L@homeoffice.gsi.gov.uk>

Subject: RE: Freedom of Information - request for an internal review

To: x@x

Date: Friday, April 3, 2009, 6:04 PM

Dear Mr Moisiu

Thank you for your email. I am writing in my capacity as S K's line manager.

I am sorry that we have not yet been able to respond to your internal review request. Unfortunately S K had to be away from the office due to unforeseen circumstances over recent weeks; and although the case was reallocated to another caseworker in his absence that person was, due to their existing workload, unable to bring this case to a conclusion or make significant further progress with it. I apologise for this, but would like to reassure you that this case is now being worked on again and is being treated as a priority. You will receive a reply this month, and please do not hesitate to contact me should you have any further concerns about this issue.

Yours sincerely

O L

Information Access Team

Information Management Service | Shared Services Directorate | Home Office | 4th Floor | Seacole Building
| 2 Marsham Street | London | SW1P 4DF

Tel: 020 7035 1037

-----Original Message-----

From: Albert Moisiu [mailto:x@x]
Sent: 01 April 2009 6:39 PM
To: Information Access
Subject: Re: Freedom of Information - request for an internal review

Dear Mr K,

Today is 1 April 2009 and I have yet to receive your response after 40 days of internal review as per your attached message.

Kindly oblige. Thank you.

Yours faithfully

Albert Moisiu.

--- On **Mon, 2/9/09, Information Access <Info.Access@homeoffice.gsi.gov.uk>** wrote:

From: Information Access <Info.Access@homeoffice.gsi.gov.uk>
Subject: Freedom of Information - request for an internal review
To: x@x
Date: Monday, February 9, 2009, 10:27 AM

Dear Mr Moisiu

Thank you for your e-mail message of 31 January in which you ask for an internal review to be carried out into the reply you received to a Freedom of Information request from the Home Office. I can confirm that I was not involved in the consideration of your original request.

We have a target of 40 working days to reply to requests for internal reviews and I therefore hope to be able to send you a reply no later than 30 March.

Yours sincerely

S K

Information Access Team
Information Management Service
Financial and Commercial Group
4th Floor, Seacole Building (NE)
2 Marsham Street
London
SW1P 4DF

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Appendix 2 (of ICO complaint)

Complaint: HO ref: MLI07/210/2104 – FOI 10041; CR10041

Saturday, January 31, 2009 7:28 PM

From: "Albert Moisiu" <x@x>

To: info.access@homeoffice.gsi.gov.uk

Cc: L.S2@homeoffice.gsi.gov.uk

Information Rights Team
Information and Record Management Service
Home Office
4th Floor, Seacole Building
2 Marsham Street
London
SW1P 4DF
email: info.access@homeoffice.gsi.gov.uk

To whom it may concern.

Home Office reference: MLI07/210/2104 – FOI 10041; CR10041
Home Office MATERIAL RELATING TO MADELEINE McCANN

The Home Office of the United Kingdom recently released a standard form letter in response to requests made under the Freedom of Information Act concerning aspects of the investigation into the disappearance of Madeleine Beth McCann.

Errors reflected in the section entitled 'Public Interest Considerations' notwithstanding, it is claimed, and I quote two sentences from the first paragraph of the section entitled 'Harm and prejudice':

"The investigation into the disappearance of Madeleine McCann is still ongoing.", and

"Leicestershire Constabulary are the lead force in the UK dealing with this investigation but the principle [sic] investigation agency is Polícia Judiciara (PJ) in Portugal."

It is commonly known that the case file of the Polícia Judiciária (PJ) was handed over to the judicial authorities in Portugal, namely the Ministério Público (MP), headed by the Procurator-General of the Republic who announced publicly on the Ministry's official website on 21 July 2008:

"Por despacho com data de hoje (21.07.2008) proferido pelos dois magistrados do Ministério Público competentes para o caso, foi determinado o arquivamento do inquérito relativo ao desaparecimento da menor Madeleine McCann, por não se terem obtido provas da prática de qualquer crime por parte dos arguidos.

II

Cessa assim a condição de arguido de Robert James Queriol Evelegh Murat, Gerald Patrick McCann e Kate Marie Healy, declarando-se extintas as medidas de coacção impostas aos mesmos.

III

Poderão ter lugar a reclamação hierárquica, o pedido de abertura de instrução ou a reabertura do inquérito, requeridos por quem tiver legitimidade para tal.

IV

O inquérito poderá vir a ser reaberto por iniciativa do Ministério Público ou a requerimento de algum interessado se surgirem novos elementos de prova que originem diligências sérias, pertinentes e consequentes.

V

Decorridos que sejam os prazos legais, o processo poderá ser consultado por qualquer pessoa que nisso revele interesse legítimo, respeitados que sejam o formalismo e limites impostos por lei."

In the first paragraph it is stated explicitly "foi determinado o arquivamento do inquérito relativo ao desaparecimento da menor Madeleine McCann", in English: "the inquiry relating to the disappearance of the minor Madeleine McCann was archived" with effect from the date of his officially published instruction ('despacho'), namely, 21 July 2008.

Paragraph IV of the above despacho states, in English, "the inquiry can be re-opened by the Ministério Público

or the request of an interested party should new evidence come to light that would give rise to the need for serious, relevant and consequential police work."

The consequence of these two official pronouncements is, therefore, that, contrary to the status implied by the Home Office, the investigation in Portugal is not ongoing.

With that principal investigation being in legal abeyance pending the receipt of new evidence, any and all evidence held by the Leicestershire Constabulary acquired during their support role in that principal investigation should have been passed to the judicial authorities in Portugal. Failure to have done this might be construed to be obstruction of justice.

Further, any documented evidence in that principal investigation that has been retained by the Leicestershire Constabulary belongs to the judicial authorities in Portugal and, therefore, should be subject to the same legal provisions that apply to the documented evidence held in Portugal, specifically, as stated in paragraph V of the above despacho, it should be made available for consultation by any person, subject to the formalities and limits imposed by the law (in Portugal), who can show a legitimate interest in the documents of the case file.

Among other things, Articles in the Portuguese Penal Process Code stipulate that,

- at 86(1), a criminal case is public, subject to restrictions imposed by (Portuguese) law;
- at 86(6), the publication of a criminal case implies the right of the general public to hear, the right of the media to publish, and the right of anyone having legal cause to obtain copies, extracts or certificates of documents pertaining to the case;
- at 88, the media are expressly permitted, within the limits of the (Portuguese) law, to publish information about the case. There is no mention in that article of any limitation prescribed at the whim of a foreign government;
- at 90(2), other persons are permitted, without prohibition, to read details of the case published through the media;

On 4 August 2008 access to the case file was granted to the 'media' by the Portuguese authorities. In compliance with Portuguese law certain documents had been withheld by the Portuguese authorities for reasons recorded in the file.

It should be noted that the term 'media' (comunicação social) above is not limited solely to organs of the Portuguese press but, rather, it encompasses every organ of communication to people in general in every country throughout the world.

Hence, the 'media' in general, anywhere in the world, is deemed to have a legitimate interest in the documents contained in the case file.

It is, therefore, very much in the Public Interest to know whether any organ of the Government of the United Kingdom has placed any restriction or limitation on the reporting of any facet of this case, save for those already specifically excluded by Portuguese law, by any or all media organisations in the United Kingdom.

In considering this request, read together with the response already received from the Home Office, I submit that:

- Section 27 of the Freedom of Information Act as an exception has no bearing on this question other than as an attempt by the Government of the United Kingdom to avoid embarrassment, which is not a valid foundation for exception;
- Section 38 of the above Act as an exception has no foundation because the condition of the missing child, whatever that might be, cannot be affected by the disclosure of the existence or otherwise of a 'gag' on the British media;
- Section 31 of the above Act has no foundation due to the fact that, as demonstrated above, the principal investigation in Portugal is no longer ongoing.

It is made clear here that should there be, outside the principal case, one or more investigations into the disappearance of Madeleine Beth McCann mounted by or under any British authority alone, then this request does NOT seek to know any information about that, or those, investigations. This request is focused entirely upon material pertaining solely to the principal investigation.

I reiterate the original request submitted on 11 August 2008:

This is a request for information, namely for any and all records or documents or extracts thereof reporting or evidencing that at any time on or after 4 May 2007 any form of limitation or restriction or injunction or

moratorium over the free and fair and unfettered disclosure of any aspect whatsoever of, or any detail whatsoever of, the Inquiry into the disappearance of Madeleine Beth McCann and/or over any information pertaining to any persons directly associated with that disappearance and/or directly associated with the Inquiry, was requested, instructed and/or obtained by any person, or persons, whether employed at any level within or providing any service within the Home Office or any of its ancillary operations, including, but not limited to, the Central Office of Information.

It seeks further:

- (a) the identity, or identities, of any and all the persons by whom,
- (b) the date and time at which, and
- (c) the means of communication through which, any such limitation or restriction or injunction or moratorium referred to above was requested, instructed and/or obtained.

For the purposes of this complaint, and due to the elapse of time during which certain information has become public knowledge, I will reduce the request to its simplest form in the hope of a simple, one-word response – a Yes, or a No:

Has any organisation in the British media been restricted by any organ of the British Government from freely and fairly disclosing anything pertaining to the principal investigation as documented in the case file released by the Portuguese authorities on 4 August 2008?

Prevarication in the form of a mere re-issuance of the standard form letter already received will be taken to be an affirmative response.

Yours faithfully

Albert Moisiu

Appendix 5

Subject: RE: Freedom of Information - Internal Review (ref 10041)

Date: Wed, 8 Jul 2009 22:08:04 +0100

From:

"L O \ (IMS)" <O.L@homeoffice.gsi.gov.uk>

To: "Albert Moisiu" <x@x>

Dear Mr Moisiu

I am afraid that I have not yet been able to sign this off owing to the number of other tasks that I am currently undertaking. However I would again stress that I will sign it off just as soon as I am able to, and that you will have your reply within the next few working days. However I do apologise for this and fully understand why your frustration over this has led you to contact the Information Commissioner.

Regards

O

O L

Information Access Team Information Management Service | Shared Services Directorate | Home Office | 4th Floor | Seacole Building | 2 Marsham Street | London | SW1P 4DF

Tel: 020 7035 1037

-----Original Message-----

From: Albert Moisiu [mailto:x@x]

Sent: 03 July 2009 9:09 AM

To: L O (IMS)

Subject: RE: Freedom of Information - Internal Review (ref 10041)

Mr L.

I look forward to receiving the awaited response upon which I shall withdraw my complaint to the Information Commissioner's Office submitted some three hours prior to receiving your message below.

Kind regards.

Albert Moisiu.

--- On *Thu, 7/2/09, L O (IMS)

/<O.L@homeoffice.gsi.gov.uk>/ wrote:

From: L O (IMS) <O.L@homeoffice.gsi.gov.uk>

Subject: RE: Freedom of Information - Internal Review (ref 10041)

To: "Albert Moisiu" <x@x>

Date: Thursday, July 2, 2009, 7:36 PM

Dear Mr Moisiu

I am exceptionally sorry that we have not yet sent you a substantive response in this matter, and for not having replied to your previous e-mail. I quite understand your frustration. The issues that I needed to clarify have now been resolved however, and the final report is again with me for sign off. You will therefore receive your full reply within the next five working days.

Yours sincerely

****O L****

Information Access Team

Information Management Service | Shared Services Directorate | Home

Office | 4th Floor | Seacole Building | 2 Marsham Street | London | SW1P 4DF

Tel: 020 7035 1037

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Appendix 6

Tuesday, October 20, 2009 5:39 PM

From casework@ico.gsi.gov.uk Tue Oct 20 15:39:37 2009

To: x@x

Subject: FoI Complaint - Home Office[Ref. FS50256736]

20 October 2009

Case Reference Number FS50256736

Dear Mr Moisiu,

Complaint about the Home Office

Freedom of Information Act 2000

* *

I write in reference to your email of 10 October and 19 October 2009, in which you ask for an update on this case.

As a member of this office's triage team, I have contacted the Home Office about this matter and I am expecting a response from it shortly. With the information it provides, I will have a clearer idea about how this case should be progressed. I will therefore look to update you again at this point.

Yours sincerely,

A J

(FOI) Complaints Officer

Tel: 01625 545 739

* *

The ICO's vision is a society where information rights and responsibilities are respected by all.

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Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,
Cheshire, SK9 5AF

Tel: 01625 545 700 Fax: 01625 524 510 Web: www.ico.gov.uk

<<http://www.ico.gov.uk>>

Appendix 7

[Text extracted from PDF files. Letterhead and other images not extracted]

Information Access Team
Information Management Service
Ground Floor, Seacole Building, 2 Marsham Street, London, SW1P 4DF
Switchboard 020 7035 4848 Direct Line 020 7035 1037
E-mail O.L@homeoffice.gsi.gov.uk www.homeoffice.gov.uk

Our Ref 10041
Your Ref

Date 23 October 2009

Mr Albert Moisiu

Email: x@x

Dear Mr Moisiu

FREEDOM OF INFORMATION: INTERNAL REVIEW

I am writing in relation to our earlier correspondence about your Freedom of Information (FOI) request for information about limitations that might have been placed on the disclosure of information about the inquiry into Madeline McCann's disappearance or those associated with it. I am extremely sorry for the unacceptable length of time that has now passed since you submitted your original internal review request. As will no doubt be aware, the Information Commissioner's Office (ICO) has been in touch with us about the case.

The detailed results of the internal review will be sent you next week. However in the meantime I feel it appropriate to provide the following update.

First, in relation to your original request the outcome of the review will be to uphold the original decision to neither confirm nor deny the existence of any information relating to any restrictions placed on the disclosure of information about the McCann Inquiry. I will however be providing you, when I write again next week, with revised information about the reasons behind that decision. You should not take this statement as an indication that the Home Office either does or does not hold information relevant to your original request.

Second, in your internal review request you asked a second supplementary question about whether "any organisation in the British media (has) been restricted by any organ of the British Government from freely and fairly disclosing anything pertaining to the principal investigation as documented in the case file released by the Portuguese authorities on 4 August 2008". This is a somewhat different question to that which you originally asked, or at least which we answered. Should we have misinterpreted your original request, I apologise for this. Irrespective of this, I will also provide an answer to this either refined or further question next week as well as the detailed explanation of the original decision referred to above.

I would like to apologise again for the delay in bringing this case to its conclusion, and hope that you find the information within this letter to be of interest. I also hope that you will find the letter that I am to send next week informative.

I will be forwarding a copy of this letter to the ICO given their interest in this case.

Yours sincerely

[Graphic Image Signature]

O L
Information Access Manager

=====
Information Access Team
Information Management Service
Ground Floor, Seacole Building, 2 Marsham Street, London, SW1P 4DF
Switchboard 020 7035 4848 Direct Line 020 7035 1037
E-mail O.L@homeoffice.gsi.gov.uk www.homeoffice.gov.uk

Our Ref 10041
Your Ref

Date 30 October 2009

Mr Albert Moisiu
Portugal

Dear Mr Moisiu

FREEDOM OF INFORMATION: INTERNAL REVIEW

I write further to my letter of 23 October. As promised please I am providing you with further information about the refusal of your initial request. Given their interest in this case, a copy of this letter will again be sent to the Information Commissioner's Office (ICO).

In order to carry out my review we contacted the Home Office unit where your initial request for information was considered. We were provided with a copy of the reply sent to you on 28 January and I apologise for the time it took to send you that reply. In the circumstances described in that letter, I am satisfied that the reply you received was correct to neither confirm nor deny whether the Home Office holds information relevant to your original request. However, the explanation supporting the use of exemptions in this case was not as comprehensive as it might have been. I provide additional information in the attached annex.

By way of further explanation I would like to make clear again that your request was defined as being for the disclosure of any information held by the Home Office about any restrictions that might have been placed on the sharing of information with the Portuguese authorities following a formal request for Mutual Legal Assistance (MLA) from them. It is the response to this request that I consider to have been correct for the reasons given in the attached annex. However in your internal review request I note that you appear to refine your request to ask simply whether or not any part of the British media has been restricted in its reporting of the McCann inquiry. This is a somewhat different question to that which we initially answered. I will be in a position to respond to this question substantively at the beginning of next week, and apologise for not being able to do so tonight.

I hope that the information and explanations provided in this letter are of interest. However if you are not satisfied with this response the ICO will investigate this matter further on your behalf. I will be in touch very shortly in response to your one more

recent and outstanding question.

Yours sincerely

[Graphics Image Signature]

O L

Information Access Manager

WORKING TOGETHER TO PROTECT THE PUBLIC

Annex

Application of the exemptions

You should not take the explanation provided below as an indication that the Home Office either does or does not hold information relevant to your request, or about whether any limitations exist in relation to any MLA application received in relation to the McCann inquiry.

Engagement of section 27(4)

This exemption exists to protect the United Kingdom's international relations, its interests abroad and the United Kingdom's ability to protect and promote those interests where saying whether or not information is held would be harmful to them. In this case confirming whether or not the UK response to any request for MLA, in this case for information relevant to the inquiry, had been limited would result in harm being caused to the UK's relations with other countries. This is relevant in the context of this case, and more widely. If in this we were to acknowledge in any ongoing case that such a limitation did exist, it would damage our relations with that country. Additionally if we were to acknowledge that in any case no such limitation did exist, but then have to answer a question about a case where such a limitation did exist we would not be able to issue the required neither confirm nor deny response without in effect confirming the fact. Consequently I am satisfied that section 27(4) is engaged in relation to section 27(1)(a) of the FOI Act, which relates to prejudice being caused to the UK's relations with other countries.

Engagement of section 31(3)

Section 31(3) protects various law enforcement purposes where saying whether or not information is held would harm them. In this case any deterioration in the UK's relations with another country, either in relation to this inquiry or any other, would be likely to have a negative impact upon the prospects of success in relation to, first, the prevention and detection of crime, second, the apprehension and prosecution of offenders, and finally the administration of justice. For these reasons section 31(3) is engaged because of the likelihood of harm being caused to these three purposes, which are explicitly covered by sections 31(1)(a), (b) and (c) of the Act.

Engagement of section 38(2)

Section 38(2) protects individuals from harm where saying whether or not information is held would be harmful to them. It is possible that providing confirmation of whether information relevant to your request is held would endanger Madeleine McCann, as it has not been proven that she is dead, with the result that the exemption is engaged in this case.

The Public Interest Test

All three exemptions are subject to a public interest test. This means that they can only be applied where the public interest in confirming whether or not information is held is outweighed by that against. I am satisfied that the public interest in openness is outweighed by that in favour of employing the exemptions. There is a clear public interest in openness and accountability in relation to this case, and in ensuring that

information has been made available where appropriate to both the authorities and the UK and Portugal in support of the investigation. However it is also worth noting that a considerable amount of private interest exists in relation to the McCann case which should not be confused with the wider public interest – i.e. it is necessary to remember that what certain individuals might find interesting is not the same as what is in the public good. The public interest in openness is however outweighed by the overriding public interest in ensuring that the McCann inquiry is ultimately brought to a conclusive end. Given the likelihood of prejudice to this aim, I am satisfied that the public interest favours the application of sections 27(4), 31(3), and section 38(2).

Appendix 8

ICO Ref: FS50256736
PA Ref: 10041



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

By email: x@x

5 November 2009

ICO Ref: FS50256736
PA Ref: 10041

Dear Mr Moisiu,

Complaint about the Home Office

I write further to your complaint concerning the failure of the Home Office to review its refusal of your information request of 11 August 2008.

Following the involvement of this office, I understand that Mr L of the Home Office has now provided you with correspondence informing you of the outcome of its internal review. Given that the original scope of your complaint has now been addressed, we would consider this case closed.

If, however, you are dissatisfied with the Home Office's response, you would be welcome to return to us. We would then look to carry out an investigation into the position taken by the Home Office, although this would be allocated a new case reference number to mark the change in scope of the complaint.

For your information, while this particular case will be closed, I would note our awareness of the procedural issues connected with the Home Office's handling of the complaint. In the first instance, it is clear that the Home Office failed to provide an initial response to your information request within the twenty working days stipulated by section 10(1) of the Freedom of Information Act 2000. Furthermore, despite being requested by you, the Home Office did not carry out an internal review of its refusal until the intervention of the Information Commissioner.

In view of the Home Office's deficient processing of your request, I will be informing the Good Practice and Enforcement team of this case. They undertake the broader exercise of monitoring longer-term compliance with the Act and its associated Codes of Practice and will form their own judgements on how to proceed with their considerations.

If the Enforcement team chooses not to take any action at this time, it will, at the very least, log the issues raised and monitor any future complaints made to the ICO about this particular public authority. You will not be contacted directly to be informed of what, if any, action the Enforcement team intends to take.

On a separate note, I realise that Mr L has identified, and is currently in the course of responding to, the revised request included in your correspondence of 31 January 2009. This asked the Home Office the following:

"Has any organisation in the British media been restricted by any organ of the British Government from freely and fairly disclosing anything pertaining to the principal investigation as documented in the case file released by the Portuguese authorities on 4 August 2008?"

Again, if you are dissatisfied with the Home Office's response to the request, you would be entitled to ask the Information Commissioner to adjudicate on this matter. However, as this would represent a fresh request, you would need to exhaust the Home Office's complaints procedure before referring the complaint to us. This would then be treated as a distinct case by us.

Yours sincerely,

A J
(FOI) Complaints Officer

Tel: 01625 545 739

Appendix 9

This letter, in PDF file format, is sent by way of electronic mail to, and for the attention of:

Mr A J
(FOI) Complaints Officer
Information Commissioner's Office
casework@ico.gsi.gov.uk

7 November 2009

ICO Ref: FS50256736
PA Ref: 10041

Dear Mr J,

Complaint about the Home Office

Once again I thank you for your letter, by way of e-mail, dated 5 November 2009, to which I now respond more fully.

As preamble, suffice it to say that, despite the undertaking given by Mr O. L in each of his letters dated 23 October 2009 and 30 October 2009, the Home Office, unsurprisingly, failed to respond last week to the outstanding part of my complaint, namely to my "refined" question.

The aforementioned letters were received by electronic mail on those dates in October, in PDF file format, and both are attached in that format as separate appendix files to this letter.

In your letter of 5 November you explained that any dissatisfaction on my part with respect thereto, presumably including such a failure to respond as noted above, would necessitate the exhaustion of the Home Office's complaints procedure prior to it being referred to the Information Commissioner's Office. I understand and accept that position of the ICO as being correct

With respect to the original request, however, I wish to do two things here:

First, to place on record my feelings of utter disgust arising from the actions of the Home Office over the past 460 calendar days since 11 August 2008, which actions, I believe, undermined both the spirit and the letter of the Freedom of Information Act, and I would like you to convey my sentiments to the Good Practice and Enforcement team;

Second, again acknowledging information kindly provided in your letter as to the assignment of a new case reference, to ask the ICO to continue to pursue this original matter further, taking into account my submission below and appending it as necessary to documents already in your possession.

Background

My information request of 11 August 2008:

1 - was entitled "*Freedom of Information Request: Press reporting gag in the case of Madeleine Beth McCann.*"

2 - stated in it's opening paragraph: "*... , the grossly unbalanced reporting of the British 'media' evidenced by the failure to fairly present even the most basic facts uncovered by the joint Anglo-Portuguese Inquiry team has given rise to thoughts about there being a restriction order having been placed on the British press, ...*"

3 - the opening paragraph continued: "*... specifically in respect of those persons who, while*

not directly or biologically related to Madeleine Beth McCann, were nevertheless directly associated with her disappearance, namely Dr David Payne and his partner, Fiona Payne; Dr Russell O'Brien and his partner, Jane Tanner; Dr Matthew Oldfield and his partner, Rachel Mampilly Oldfield."

4 - the second paragraph contained the formal request for information: "*This is a request for information, namely for any and all records or documents or extracts thereof reporting or evidencing that at any time on or after 4 May 2007 any form of limitation or restriction or injunction or moratorium over the free and fair and unfettered disclosure of any aspect whatsoever of, or any detail whatsoever of, the Inquiry into the disappearance of Madeleine Beth McCann and/or over any information pertaining to any persons directly associated with that disappearance and/or directly associated with the Inquiry, was requested, instructed and/or obtained by any person, or persons, whether employed at any level within or providing any service within the Home Office or any of its ancillary operations, including, but not limited to, the Central Office of Information.*"

For purposes of this submission I have provided in each of the above four paragraphs an emphasis, by way of underlining, that was not present in the original document.

In the Home Office internal review team letters of 23 and 30 October 2009, Mr O. L indicated that members of that Government agency had chosen, arbitrarily, **to define my request** in the following way (quoted from the letter of 30 October 2009 - the underlined and emboldened emphasis, again, being mine):

"By way of further explanation I would like to make clear again that your request was defined as being for the disclosure of any information held by the Home Office about any restrictions that might have been placed on the sharing of information with the Portuguese authorities following a formal request for Mutual Legal Assistance (MLA) from them."

Submission

I submit that:

1- a reasonable person reading my original request for information would interpret it as a request pertaining to a "Press reporting gag", as unequivocally stated in the title (subject line) of the request and reinforced by the words "*thoughts about there being a restriction order having been placed on the British press*" in the first paragraph;

2 - were a reasonable person to seek for any limiting factors contained in the original request then that person might, in fairness, determine that the words following "*specifically in respect of ...*" denote such a limiting factor;

3 - a reasonable person would be capable of aligning the word '*reporting*' in the title (subject) and the word '*disclosure*' in the formal request, thereby simultaneously aligning the word "gag" with "*any form of limitation or restriction or injunction or moratorium*" in those same locations;

4 - a reasonable person, under any circumstances, would be hard-pressed to convert the notion of a "*press reporting gag*" into "*restrictions that might have been placed on the sharing of information with the Portuguese authorities ...*", and even more hard-pressed to introduce the limitation of "*a formal request for Mutual Legal Assistance*" when neither such authority-based sharing nor limiting instrument is alluded to, or intimated, anywhere in the original request document submitted by me.

While self-serving mental gymnastics might serve someone's idea of a wider agenda in this deeply saddening case of a missing child, even if not some trivial part of a political agenda of a totally discredited Government, they can never serve the interests of that child, nor the Public Interest, in any way.

It is my view that the interests of the missing child and the Public Interest will be served in knowing whether any British Government limitation, directly or by way of agency or proxy, has been placed on the disclosure or reporting of any aspect pertaining to the principal case led by the Portuguese authorities between 3 May 2007 and 21 July 2008, save for those matters already withheld by those Portuguese authorities. This is not a question, it is a point of view, but it is the point of view that gave rise to the question raised in my original request for information submitted to the Home Office.

Given that the Home Office response received by me thus far has been solely in response to its own "defined" request (as indicated above), I submit further that that Office has failed to respond adequately, in any way, to my original request for information.

I request, therefore, that the Information Commissioner's Office continue with its investigation into the position held by the Home Office with respect to my original request for information submitted under the Freedom of Information Act.

I thank you for your attention and wish you, and all your ICO colleagues, the best in all your endeavours which, I believe, are wholly worthwhile for all persons world-wide, not only for those in the United Kingdom.

If, as noted in your letter, a new case reference will be assigned to this submission upon its acceptance by the ICO, I await notification of that acceptance and the new reference.

Finally, to reduce any potential communication or administrative delay for the new case reference, I agree to the extraction and copying of any and all documents submitted by me to your Office for purposes of case reference FS50256736, such extracts and copies to be incorporated in the new case file.

Yours sincerely

Albert Moisiu.

Appendix 10

ICO Ref: FS50256736
PA Ref: 10041



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

By email: x@x

20 November 2009

ICO Ref: FS50256736
PA Ref: 10041

Dear Mr Moisiu,

Complaint about the Home Office

Firstly, I would like to apologise for the delay in responding to your earlier emails.

From the correspondence you have provided to me, it is clear you are dissatisfied with the Home Office's response in this matter. Particularly, you have been critical of the way in which the Home Office has interpreted your original request for information.

To this point, it is apparent that the Home Office has read your request as asking whether there were any restrictions on the sharing of information with the Portuguese authorities. However, you have instead asserted that the focus of your request was on the possible existence of a press reporting gag in the case of Madeleine McCann. Given this discrepancy, you have argued that it was not reasonable for the Home Office to have interpreted the request in the way it did.

Under the Freedom of Information Act 2000 ('the Act'), an authority has a duty to read a request objectively. Yet, if there is any doubt about the meaning of a request, section 1(3) of the Act requires that the authority should return to the applicant to seek clarification. In this instance, the Home Office has failed to do either and so has not addressed your request appropriately. As noted, the Good Practice and Enforcement team has been made aware of this case and will continue to monitor the compliance of the Home Office with the Act and its associated Codes of Practice.

Turning to the central feature of your case, I am aware that following the involvement of this office Mr L has revisited your request and has correctly identified that you sought information confirming 'whether or not any part of the British media has been restricted in its reporting of the McCann inquiry.' He has, however, failed to provide a response to this 'refined' request.

In order to take matters forward therefore, I have spoken to Mr L about this issue. He has advised me that he has been waiting on colleagues to come back to him about this matter but has assured me that he will be writing to you by 27 November 2009.

I hope that the Home Office's response will be sufficient to meet your original request. However, if this is not the case, you should exhaust the Home Office's own complaints procedure as this may enable an earlier resolution of the complaint. If you are not satisfied with the outcome of that review though, please inform us and we will look at this further under a new case reference number.

Yours sincerely,

A J
(FOI) Complaints Officer

Tel: 01625 545 739

Appendix 11

[Text extracted from PDF files. Letterhead and other images not extracted]

Information Access Team
Information Management Service
Ground Floor, Seacole Building, 2 Marsham Street, London, SW1P 4DF
Switchboard 020 7035 4848 Direct Line 020 7035 1037
E-mail O.L@homeoffice.gsi.gov.uk www.homeoffice.gov.uk

Our Ref 10041
Your Ref

Date 27 November 2009

Mr Albert Moisiu
Portugal

x@x

Dear Mr Moisiu

FREEDOM OF INFORMATION: INTERNAL REVIEW

I write further to my letter of 30 October. In relation to your supplementary question about restrictions placed on the British media in relation to the Madeleine McCann investigation, I can confirm that the Home Office holds no information to suggest that any such restrictions have been put in place. More generally, as a result of enquiries that I have made outside the Home Office I believe that no such restrictions have been put in place.

I hope that you find this answer satisfactory. However if you are not satisfied with this response or the contents of my previous letters, the ICO will, as I have said before, investigate this matter further on your behalf.

Yours sincerely

[Graphic Image Signature]

O L
Information Access Manager

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I replied with thanks and consider the question now answered.