

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Setting the Record Straight-
The Dangers of 'Off the Record' Briefings to the
Media During Police Counter-Terrorist Operations

May 2007

Setting the Record Straight

Contents

Page 2: Introduction- Shami Chakrabarti, Director of Liberty

Page 3: Executive Summary and Recommendations

Page 6: Setting the Record Straight; Part 1- The Terrorist Threat

Page 7: Setting the Record Straight; Part 2- The Issues

Page 8: Setting the Record Straight; Part 3- The Case Studies

Page 10: Setting the Record Straight; Part 4- Recommendations and
Conclusions

Page 13: Appendix 1; Freedom of Information Request and the Reply

Page 15: Appendix 2; Research Questions

Page 17: Appendix 3; Current Codes, Guidelines and Protocols

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Further information on Liberty's views concerning how to effectively deal with the threat of terrorism is available at <http://www.liberty-human-rights.org.uk>

Setting the Record Straight

Introduction

Recent events, especially the remarks of Deputy Assistant Commissioner Peter Clarke of the Metropolitan Police; the country's senior counter terror police officer, have made this an extremely timely paper.

I share wholeheartedly his view of what happened during the counter-terrorist operation in Birmingham on the 31st January when he said that "on the morning of the arrests, almost before the detainees had arrived at the police stations to which they were being taken for questioning, it was clear that key details of the investigation and the evidence had been leaked. This damaged the interview strategy of the investigators and undoubtedly raised community tensions".

In response to his remarks many politicians have demanded an inquiry into who gave off the record briefings to the media about this police counter-terrorist operation. Liberty is concerned that we should not concentrate upon such an enquiry exclusively. It is also important that more systemic issues are considered with future counter-terrorist operations in mind.

I firmly believe that the free flow of information, and the free press necessary to guarantee it, is vital in the struggle against terrorism. Irresponsible off the record briefings during police counter-terrorist operations are a real danger to this. They foster mistrust in the general population who are left wondering if the 'sources' are telling the truth or spreading misinformation designed to justify unpopular operations or promote unpopular policies; such as the extension of pre-charge detention periods for terrorist suspects.

Many people fear that if this situation is not addressed we will see a vicious circle develop where draconian and counter-productive legislation is 'sold' on the basis of misinformation spread by off the record briefings about counter-terrorist operations. We have already found worrying evidence that public trust in government information about the terrorist threat is declining. Addressing the issue of the practice of off the record briefings during police counter-terrorist operations is one way of dealing with this.

I believe that if this course of action were taken it could be the first step towards building a new consensus in this country; one in which the rule of law, democratic values and human rights are the cornerstones of a successful struggle against terrorism.

I hope our politicians are brave enough to take that step.

Shami Chakrabarti
May 2007

Setting the Record Straight

Executive Summary

Liberty knows that the United Kingdom faces a serious terrorist threat and that dealing with it is one of the most difficult issues of our time. Liberty's long involvement in the field of counter-terrorist measures has taught us that when the public feels it is being misled or that information is being manipulated then support for the struggle against terrorism is adversely effected.

In recent times we have noted a growing tendency for often misleading off the record briefings about police counter-terrorist operations to be reported as straight fact.

For present purposes off the record briefings are those where members of the media are given information on an un-attributable basis. This is a common and often useful, although much debated, tool of journalism. However it should be noted that whatever the general debate about off the record briefings they do give rise to specific problems during counter-terrorist operations:

- Firstly, the inevitable lack of alternative on the record sources can give rise to a greater risk of unbalanced reporting.
- Secondly, whether the report is accurate or not its timing may have an extremely prejudicial effect upon (a) the operation itself, (b) public confidence and (c) subsequent fair trials.

We believe that misleading off the record briefings during counter-terrorist operations are dangerous because they encourage the distrust which is so damaging to the struggle against terrorism. We are especially concerned at the impact of this on the Muslim community; both because many such briefings foster disunity, by seeming to equate Islam with terrorism, and because the mistrust generated inhibits the flow of information to the police.

Historically such briefings may have emanated from a number of different sources. However when, as in the case of the Birmingham counter-terrorist operation of January 2007, both police and community figures suspect Government sources were behind the briefing, people begin to fear that this is being done to achieve political goals, especially plans to extend pre-charge detention periods.

Liberty is extremely concerned that given the potential dangers no substantial guidelines exist on this matter for the civil service, especially politically appointed special advisors, or the police. We note that individuals may be dealt with under disciplinary codes but that this would not deal with any systemic problem.

Therefore Liberty concludes:

1. The current situation where no proper guidelines, protocols, guidance or procedures exist regarding off the record briefings to the media by police officers or civil servants during counter-terrorist operations is unacceptable and potentially disastrous. Such guidelines should be developed as a matter of urgency.
2. In developing such guidelines the over riding concern is that nothing should be done to jeopardise any potential trials or ongoing operations.
3. The guidelines should be based upon the presumption that the flow of information about counter-terrorist operations should be as open as possible rather than 'on a need to know' basis.
4. The guidelines should ensure that information comes from appropriate and readily identifiable sources within the police or civil service to allow for proper accountability. Failure to adhere to the guidelines will be a disciplinary matter.
5. A commission should be established as a matter of urgency to draft such guidelines for the police and civil service concerning off the record briefings in line with the above conclusions.

Setting the Record Straight

Part1- The Current Terrorist Threat

We all recognise that the United Kingdom faces a serious terrorist threat. At the time of writing MI5 believes the terrorist threat in the UK to be severe¹ and the UK Government believes that the “scale of the threat (from terrorism) is potentially still increasing and is not likely to diminish significantly for some years²”.

Safeguarding national security is always an awesome responsibility. No one could envy the position of those in Government, the police or the security services who have to take momentous decisions on how to carry out this responsibility, especially during this time of heightened fear.

Liberty appreciates that how the United Kingdom approaches questions of national security will have profound consequences for all and so we believe this must be the subject of the most rigorous debate. Liberty (the National Council for Civil Liberties) believes that its history of campaigning for civil liberties and fundamental human rights for over seventy years, especially during previous waves of terror, has given it an expertise in this area. It has specifically led us to an understanding that such situations must be dealt with in as transparent a way as possible, that community involvement is vital and that the rule of law must be observed if we are to succeed.

History teaches us that when the public feels it is being misled or that information about terrorism is being manipulated then public support for the struggle against terrorism is adversely effected. We believe that we are in danger of that phenomenon becoming a real problem today and would count as symptomatic of this the Guardian/ICM poll of August 2006³, conducted in the wake of the alleged plot against transatlantic airlines. Carried out over the following weekend, after a series of terror arrests, the poll showed that only 20% of all voters, and 26% of Labour voters, thought the government was telling the truth about the threat, while 21% of voters thought the government had actively exaggerated the danger.

A majority, 51%, thought the government was not giving the full truth and may have been telling less than it knew. We also note that the British Social Attitudes

¹ <http://www.mi5.gov.uk/output/Page269.html>

² HM Government. Countering International Terrorism: The United Kingdom's Strategy, (July 2006). Page 1.

³ <http://www.icmresearch.co.uk/reviews/2006/Guardian%20-%20August/guardian-august-2006.asp>

Survey for 2006/7 reported that only 43% of respondents believed that people do not exaggerate the risk of a major terrorist attack in Britain⁴.

Setting the Record Straight

Part 2- The Issues

Given the importance of public support to combating terrorism, especially in the development of community based approaches as proposed by the think tank Demos⁵ amongst others, any factor which diminishes such support must be minimised. This paper deals with one such factor- off the record briefings given to the media during counter-terrorist operations.

For present purposes we define off the record briefings as those where members of the media are given information on an un-attributable basis. This is a common and often useful, although much debated, tool of journalism. However it should be noted that whatever the general debate about off the record briefings they do give rise to specific problems during counter-terrorist operations:

- Firstly the inevitable lack of alternative on the record sources can give rise to a greater risk of unbalanced reporting.
- Secondly whether the report is accurate or not its timing may have an extremely prejudicial effect upon (a) the operation itself, (b) public confidence and (c) subsequent fair trials.

Whilst recognising that such briefings are only one part of a complex situation Liberty does believe that off the record briefings which result in the reporting of false allegations or information can have a serious impact, Part 3 of this paper contains case studies which we believe prove there is. We would also specifically highlight the situation regarding the arrests of nine men in Birmingham in January 2007 and the concerns of some in the West Midlands Police that the operation was hampered by off the record briefings which made both detailed information and lurid claims public before all nine suspects had been arrested.

We also note the fears of some concerning this off the record operation that it was coming from Government sources and was designed to achieve political goals. Some speculated that it was designed to bolster support for extending the period those suspected of involvement in terrorism could be detained without being charged.

⁴ Mark Johnson and Conor Gearty; Civil Liberties and the Challenge of Terrorism in British Social Attitudes 23rd Report. (Sage Publications 2007). Page 157.

⁵ Briggs, Fieschi and Lownsborough. Bringing it Home. Demos, 2006.

Setting the Record Straight

Part 4: Case Studies:

There have been many instances in the past few years when irresponsible off the record briefings to the media during counter-terrorism operations have had a negative impact. Here we outline three case studies:

Case Study 1 – West Midlands Police Operation 31st January 2007

The Allegations

On the 31st of January 2007, nine Muslim men were arrested under the Terrorism Act in the West Midlands area. The media coverage at the time of the arrests focused on a 'kidnap plot'. The details of this plot were reported to be that a British Muslim soldier would be kidnapped and taken to a 'safe house' in Tipton. It was reported that he would be blindfolded and handcuffed and made to demand the withdrawal of troops in Iraq. He would then be killed by beheading. This would be videoed and released on the Internet.

- *Target to be filmed and executed*, Daily Express, 31 January 2007
- *Muslim soldiers 'faced kidnap and beheading'*, Times, 31 January 2007

Two anonymous British Muslim soldiers were said to have acted as bait for the plotters. The group were also reported to have drawn up a list of 25 targets for kidnap. Unnamed counter terrorism sources later refuted both the 'live bait' story and the list of 25 targets as 'completely untrue'.

- *Muslim soldiers acted as bait*, The Sun, 1 February 2007
- *Terror hit list named 25 Muslim soldiers*, Times, 1 February 2007

The reporting – unnamed sources

Much of the media reports quoted anonymous Whitehall, Security Service or Military sources. West Midlands police publicly expressed dismay and frustration at these off-the-record briefings.

- *MI5, police and SAS practise for a Beslan siege*, Guardian, 3 February 2007 ('Whitehall sources')
- *Al-Qaeda tells British cells to carry out wave of beheadings*, Times, 4 February 2007 ('Whitehall official')
- *Muslim soldiers acted as bait*, The Sun, 1 February 2007 ('Military source')
- *Suspect known as the Terminator*, Daily Mail, 3 February 2007 ('Security forces')

The current situation

Three of the suspects were released without charge and stated through their lawyer that they were not questioned about a kidnap plot. One suspect was charged with withholding information. Five men were charged with attempting to supply equipment for use in committing acts of terrorism and funding acts of

terrorism. Of the six, one suspect was charged with 'engaging in conduct to give effect to his intention to kidnap and kill a member of the Armed Forces'.

Case Study 2 – The Forest Gate Raid

The Raid

On the 2nd of June 2006, 46 and 48 Landsdown Road in Forest Gate, London, were raided by the police. Two brothers, Mohammed Abdul Kahar and Abdul Koyair, resident at 46 Landsdown Road, were arrested under the Terrorism Act. During the raid Mohammed Abdul Kahar was shot in the shoulder. Two hundred and fifty police were involved in the operation.

Initial reporting

Initial reports stated that the police were looking for a 'chemical vest' or 'poison bomb' and that the plan was to detonate on the London Underground or in a 'busy bar packed with World Cup fans' (Mirror, 3 June 2006). The sources of these assertions were reported as unnamed Security or Police contacts. No chemical substances were found and none of these claims turned out to be true. Both men were released without charge.

- *Police hunt for lethal chemical suicide vest*, The Times, June 3, 2006
- *Hunt for 'poison bomb'; anti-terror cops in bid to foil lethal attack on world cup bar*, The Mirror, June 3, 2006
- *We know a bomb's out there*, The Sun, June 3, 2006

Subsequent reports

A number of serious inaccuracies appeared in articles following the raids. In a Sunday newspaper it was reported that Kahar had not been shot by police, but by his brother (News of the World, 4 June 2006). It was also reported that both brothers had criminal records (The Sun, 10 June 2006). Neither of these assertions had any foundation. Unnamed security sources were quoted questioning the innocence of the large amount of money found in the house (The Sun, 10 June 2006) but no links to any crime were found.

Case Study 3 – the Ricin plot

The Allegations

In January 2003 seven men in North London were arrested on suspicion of involvement of a plot to manufacture ricin and cyanide for use in a terrorist attack. A further six people in Bournemouth and three in Manchester are arrested in connection with the same plot. Seven arrests are also made in the Finsbury Park Mosque.

The reporting

The reports contained lots of details on the alleged plot, namely that the gang would smear Ricin poison on the door handles of cars and shops in North

London and intended to open toothbrush packs in shops and daub these in ricin. Ricin poison was reported to have been found at the North London address. Links were drawn between the main suspect and Al Qaeda. These were invariably attributed to Scotland Yard sources.

- *Terror Police find deadly poison*, BBC News, 7 January 2003
- *Toxic Terrorist – he plotted to kill 1000s with cyanide, ricin and botulism*, The Mirror, April 14 2005
- *Bin Laden's Poisoner*, The Sun, April 14 2005
- *From the Taliban camps to the poison factory over a north London chemist's*, The Telegraph, April 14 2005

The result

No poisons, ricin or otherwise, were found in North London— a few castor oil beans plus some recipes were the only items that were discovered. Kamel Bourgass was convicted of the murder of a policeman who he killed during his arrest – the remaining arrestees were cleared of any involvement with a plot.

Setting the Record Straight

Part 4: Conclusions and Recommendations:

Liberty recognises that some information will have to be disseminated during police counter-terrorist operations. Indeed we share the view of Demos that the “flow of information between the police and communities should not be on a ‘need to know’ basis but rather based upon the assumption that open channels of communication are in everyone’s best interest⁶”. Liberty believes that a free press is vital to a democratic society and that it would clearly be intolerable if large scale counter-terrorist operations took place, large numbers of people were taken into custody and no information imparted.

Liberty also believes that the rights of legitimate whistleblowers should be protected. However we feel this is a serious enough situation to warrant procedures being developed by Police forces and the civil service. We feel this to be especially important because:

- The real danger of prejudicing the fair trials that must be the intended end-product of any police operation.
- Most procedures or guidance are based upon dealing with the situation after charge, given that pre-charge detention periods can be as long as twenty eight days for those suspected of terrorism, as opposed to forty eight hours for most criminal cases, then the impact of any lurid claims is that much greater.

⁶ Briggs, Fieschi and Lownsborough. Bringing it Home. Demos, 2006. Page 89.

- The perception amongst many British Muslims in particular that inappropriate reporting of counter-terrorist operations can lead some to a perception that all Muslims are terrorists.

In the process of compiling this paper we have examined the main pieces of guidance that exist covering relations between the police, the civil service and the media. We also directly approached leading figures in the police, Government and media both nationally and in Birmingham.

These people were asked a series of questions about their knowledge and opinion of guidelines concerning off the record briefings during counter-terrorist operations. Those questions and a list of respondents can be seen in Appendix 2. The main documents concerning relations between the media, police and civil servants are referenced and links to their online versions (where available) are set out in Appendix 3.

Liberty also requested information, under the Freedom of Information Act, from the Home Office with regards to any protocols or guidelines dealing with this subject. Their reply, three months after the initial request was made, confirmed our view that no proper and sufficient guidelines exist. The only document we found during our research that addressed this question was the Media Relations Standing Operating Procedures of the Metropolitan Police Service.

This document does clearly state that people giving off the record briefings “should not speculate or let their own personal views or prejudices influence the discussions”. However this does not, nor do we believe the authors consider it to, fully cover the issue, especially as it covers the issue in general and not as it relates to the important area of counter-terror operations.

Where other instruments deal with the issue of media relations or the passing of information they only deal with individuals, for example the Official Secrets Act could be used to prosecute an individual civil servant or police officer. In Liberty’s view this is insufficient.

This is an incredibly important issue. As Deputy Assistant Commissioner Peter Clarke said in the 2007 Colin Cramphorn Memorial Lecture, irresponsible briefings to the media during counter-terror operations can “put lives at risk”⁷. Therefore it is clearly vital that the situation where no proper guidelines, protocols, guidance or procedures is brought to an end. Towards that goal Liberty makes the following recommendations that we hope will attract support from across the political spectrum as well as from the police and civil service.

⁷ <http://www.policyexchange.org.uk/images/libimages/252.pdf>

Recommendations:

1. The current situation where no proper guidelines, protocols, guidance or procedures exist regarding off the record briefings to the media by police officers or civil servants during counter-terrorist operations is unacceptable and potentially disastrous. Such guidelines should be developed as a matter of urgency.
2. In developing such guidelines the over riding concern is that nothing should be done to jeopardise any potential trials or ongoing operations.
3. The guidelines should be based upon the presumption that the flow of information about counter-terrorist operations should be as open as possible rather than 'on a need to know' basis.
4. The guidelines should ensure that information comes from appropriate and readily identifiable sources within the police or civil service to allow for proper accountability. Failure to adhere to the guidelines will be a disciplinary matter.
5. A commission should be established as a matter of urgency to draft such guidelines for the police and civil service concerning off the record briefings in line with the above conclusions.

Appendix 1

Liberty's freedom of information request to the Home Office regarding media briefings by Political Advisors at the Home Office is reproduced below:

6th February 2007

Dear Sir / Madam

MEDIA BRIEFING BY POLITICAL ADVISERS – FREEDOM OF INFORMATION REQUEST

I am writing to request the following information under the Freedom of Information Act 2000:

- 1. Details of all media organisations, specifying the newspaper, journal, magazine, radio station or television channel, with whom the Home Secretary's political advisers between Tuesday 30th January and Thursday 1st February 2007 inclusive, discussed the alleged plot by Islamist extremists to kidnap one or more members of the armed forces, and the police's investigation or impending investigation into the alleged plot, and/or who was briefed in relation to the same between the same dates, and/or to whom information, in whatever form, in relation to the same was provided by them between the same dates;*
- 2. In relation to each such media organisation (specifying as above) the date and time of each contact and the manner in which it was made;*
- 3. Details of any policy operated by the Home Office on briefing the media on sensitive police and security operations including, where such a policy provides for it:
 - a. Who should authorise such briefing;*
 - b. Who should conduct it;*
 - c. Whether it should be done on or off the record;*
 - d. Whether records are kept of such briefings;*
 - e. Whether the police are consulted about any such briefings before they are conducted;*
 - f. Whether there are any Chinese walls between the Home Office and political staff to protect sensitive material.**

We are happy to receive separate replies to each of the three parts of this request.

Yours faithfully,
SHAMI CHAKRABARTI

The Home Office was unable to respond to this request within the twenty day deadline set by the Freedom of Information Act 1998. They twice informed Liberty, without explanation, that they would require two extensions to the deadline and finally replied on the 3rd May. Their reply is available on the Liberty website: www.liberty-human-rights.org.uk

Appendix 2

Liberty approached the following people and invited them to give their views on off the record briefings to the media during counter-terrorist operations.

We are very grateful that all those approached either responded with direct replies to the questions or were able to provide us with information regarding their organisations view on the issue. This does not indicate people's agreement with the conclusions and recommendations of this paper:

- Sir Ian Blair QPM, MA, Commissioner of Police of the Metropolis. Metropolitan Police Service.
- Deborah Glass, Commissioner; Independent Police Complaints Commission.
- Assistant Commissioner Andy Hayman CBE, Association of Chief Police Officers.
- Lord Toby Harris, Home Secretary's Appointee to the Metropolitan Police Authority.
- Sir Christopher Meyer, Chairman of the Press Complaints Commission (Sir Christopher made clear that he was replying in a personal capacity).
- Marc Reeves, Editor of the Birmingham Post.
- Assistant David Shaw, West Midlands Police.
- Salma Yaqoob, Birmingham City Council member for Sparkbrook Ward.

People were asked to give their views on the issue and in particular invited to answer the following questions:

1. What guidelines, protocols, guidance or procedures dealing with the question of off the record briefings to the media in respect of ongoing police and security counter-terrorist operations are you aware of?
2. What has your experience of the impact of off the record briefings been? In particular if you could focus on the operation of any guidelines, protocols, guidance or procedures of which you are aware.
3. Do you believe there should be any guidelines, protocols, guidance or procedures dealing with the issue of off the record briefings?

Supplementary questions if the answer is yes:

4. Are existing guidelines, protocols, guidance or procedures of which you are aware sufficient or should new ones be drafted.
5. What principles should be taken into account in drafting any guidelines, protocols, guidance or procedures?
6. What sanctions, if any, should exist for the breaking of any guidelines, protocols, guidance or procedures?

Appendix 3

During the course of our research we identified the following codes, guidelines and protocols. We note that the only one which explicitly deals with the question of off the record briefings is the Media Relations Standard Operating Procedures of the Metropolitan Police Service.

- The Association of Chief Police Officers Media Advisory Group; Guidance Notes.
<http://www.acpo.police.uk/asp/policies/Data/magguidelines.pdf>
- The Civil Service Code of Conduct: Especially; Section 5- Integrity. You must fulfil your duties and obligations responsibility.
Section 6. You must not; disclose official information without authority.
http://www.civilservice.gov.uk/publications/civilservicecode/code_2.asp
- The Civil Service Code of Conduct for Special Advisers
http://www.cabinetoffice.gov.uk/propriety_and_ethics/special_advisers/code/index.asp
- Independent Police Complaints Commission Media Manual
http://www.ipcc.gov.uk/media_manual_plan.pdf
- Independent Police Complaints Commission Media Protocol IPCC/ MPS Forest Gate.
No current website address known. Please contact the IPCC.
- Metropolitan Police Service Media Relations Policy
http://www.met.police.uk/foi/pdfs/policies/media_relations_policy.pdf
- Metropolitan Police Service Media Relations Standard Operating Procedures
No current website address known. Please contact the Metropolitan Police Service.
- Official Secrets Act 1989, Section 8: Safeguarding Information
http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890006_en_2.htm#mdiv8
- Police Code of Conduct; Especially Section 7; Confidentiality
http://www.ipcc.gov.uk/index/complainants/who_complaint/pol_codeconduct.htm
- Press Complaints Commission, Editors Code of Practice.
<http://www.pcc.org.uk/cop/practice.html>