



Neutral Citation Number: [2022] EWHC 3328 (Admin)

Case No: CO/4200/2019

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2022

Before

MR JUSTICE SWIFT

Between

THE KING

on the application of

SAIFULLAH GHARAB YAR

Claimant

-and-

SECRETARY OF STATE FOR DEFENCE

Defendant

Edward Craven, Emma Foubister (instructed by **Leigh Day**) for the **Claimant**
Steven Gray, John Bethell (instructed by **GLD**) for the **Defendant**
Special Advocates
Jenny Carter-Manning KC, Gareth Weetman, Dominic Lewis,
Alex Jamieson (instructed by SASO)

Hearing dates: 26 July 2022, 15 September 2022 and 19 October 2022

OPEN JUDGMENT
Approved Judgment

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MR JUSTICE SWIFT

A. Introduction

1. The Secretary of State for Defence applies for public interest immunity against disclosure of certain documents and certain parts of other documents in these proceedings. The application was made on 1 June 2022 and is supported by a certificate made by the Secretary of State. The certificate is in the usual form. It confirms that the material in respect of which public interest immunity is sought is relevant and disclosable material. It also states that the Secretary of State's opinion that disclosure of the material in question "... would cause serious harm to international relations, and in particular to the United Kingdom's relationship with a reputable international organisation, limiting the ability for vital co-operation in future". Versions of the documents, redacted to reflect the public interest immunity application now made have been served on the Claimant. The Secretary of State has also served a further document which contains a gist of information in the redacted parts of the documents that have been disclosed. I will refer to the material covered by the public interest immunity application as the "redacted information".
2. There is no dispute as to the applicable legal principles. These are set out in a skeleton argument filed by the Claimant: see that document at paragraphs 11-24. The Claimant's written submissions were supplemented by brief oral submissions at a hearing that took place in public on 26 July 2022. My decision on this application starts from the legal premises set out in the written and those oral submissions.
3. The underlying proceedings are already the subject of a closed material procedure under the provisions of the Justice and Security Act 2013. Special Advocates have been appointed for the purpose. The same Special Advocates have had the opportunity to consider unredacted versions of the documents covered by this public interest immunity application. They have made submissions on the application of the relevant legal principles to the redacted information. Those submissions were made during two hearings that took place in private, on 15 September 2022 and 19 October 2022. On those occasions I also heard submissions from the Secretary of State, again premised on the application of the agreed legal principles to the redacted information.

B. Decision

4. My conclusion is that the Secretary of State's application to withhold the redacted information from disclosure on grounds of public interest immunity should be allowed. The reasons for my conclusion are set out in greater detail in the closed part of this judgment. However, I am satisfied that there is a significant public interest in excluding the redacted information from disclosure in these proceedings. I do not consider that there are measures short of non-disclosure that are appropriate. No such measure could provide certainty that the public interest protected by withholding the redacted information would be fully safeguarded. In the circumstances of this case, it is appropriate that a high level of protection be provided to the public interest that the Secretary of State relies on in support of the public interest immunity application.
5. Moreover, and more importantly, I am satisfied that the prejudice arising to the Claimant as a result of upholding the Secretary of State's application would be

insignificant. The Re-Amended Statement of Facts and Grounds asserts that the Secretary of State has acted in breach of the obligation under article 2 ECHR to investigate circumstances leading to the deaths of four Afghan civilians. Each was shot by British troops on the night of 16 February 2011. The men who were shot had been visiting neighbouring families when they encountered the British troops. The Claimant contends each was killed after being detained and asked to assist searching premises where they had been detained. This practice has been referred to as “house search operation”. The Secretary of State accepts that the investigation that was carried out did not start promptly. But he disputes claims that the investigation was not thorough or ought to have considered the “critical systemic issues” listed by the Claimant in a Schedule to the Re-Amended Statement of Facts and Grounds. The redacted information is not central to the Claimant’s case or the matters in dispute. Any adverse impact that might arise from non-disclosure of the redacted information is, in any event, mitigated by the narrative gist that the Secretary of State has prepared and has already served on the Claimant. That mitigation is significant. As a result of this public interest immunity application, a further version of the gist document is to be prepared and served containing a small amount of further information. Overall, the prejudice to the Claimant’s case is not material and the derogation from the public interest that litigation be conducted on the basis of disclosure of documents according to the established principles is of a minor order.
