

CAMPAIGN AGAINST ARMS TRADE v PAUL MERCER & LIGNEDEUX ASSOCIATES

BRIEFING

Summary

1. This briefing paper is provided by Leigh Day & Co, solicitors to Campaign Against Arms Trade. If you have any queries, please contact Symon Hill, CAAT Press Officer (020 7281 0297 / 07990 673 232, press@caat.org.uk).
2. CAAT is now able to disclose the preliminary results of its investigation into how BAE Systems Plc obtained copies of CAAT's privileged and confidential legal advice.
3. BAE received the information from Paul Mercer, a journalist and researcher trading as part of LigneDeux Associates. LigneDeux is paid by BAE to supply information about the activities of CAAT and other campaigning organisations. Mr Mercer received the privileged materials and instead of returning them to CAAT, he passed them on to Michael McGinty, BAE's Director of Security.
4. CAAT believes that the actions of Mr Mercer and BAE raise issues of the utmost public importance. Purportedly acting under a contract with BAE, Mr Mercer passed privileged and confidential legal advice to BAE, an interested party in pending judicial review proceedings. Further, Mr McGinty of BAE tipped off Mr Mercer that he would be named by BAE. After being tipped off, Mr Mercer closed the relevant email account, thus deleting the documents in that account.
5. This matter has now been referred to the police for further investigation.

Background

6. Starting with what is already well known:
 - a) BAE has previously hired agents to infiltrate CAAT. A full report can be found on CAAT's website at: <http://www.caat.org.uk/about/spying/spy-investigation-report.pdf>.
 - b) In 2004 the Serious Fraud Office commenced an investigation into alleged corruption and bribery by BAE in relation to the Al Yamamah arms deals.
 - c) On 14 December 2006, the Director of the SFO announced his decision to discontinue the investigation into BAE in so far as it related to the Al Yamamah contracts with Saudi Arabia.
 - d) As soon as the decision was announced, CAAT and Corner House Research instructed Leigh Day & Co and counsel.
 - e) On 18 December 2006, Leigh Day & Co wrote a letter before claim to the SFO, the Attorney-General and the Prime Minister. A copy of the letter was sent to BAE, as a potential interested party in the proceedings and is available on CAAT's website at http://www.caat.org.uk/issues/sfo/legal_letter_to_sfo.pdf.
 - f) Leigh Day & Co gave advice to CAAT on tactics. This advice was set out in an email sent by Leigh Day & Co to Ann Feltham of CAAT.
 - g) On 29 December 2006, Ann Feltham prepared and sent an email to the CAAT Steering Committee, its executive body. The email repeated Leigh Day's legal advice verbatim with an introduction and conclusion drafted by Ms Feltham. The email requested the Steering Committee's authorisation to proceed with the proposed claim.

h) The email was sent to the 12 members of the Steering Committee and CAAT's staff members. The email was not sent to any other person.

i) On 10 January 2007, Leigh Day & Co received a letter from Allen & Overy:

Our client, BAE Systems plc, recently received electronically an email which appears to have been sent from and to members of one of your clients, the Campaign Against the Arms Trade. This email was not solicited by our client and we enclose a copy for your information.

Save for the copy enclosed with this letter, both we and our client have undertaken all reasonable efforts to destroy any paper or electronic copies of this email that we or our client hold.

j) A copy of the 29 December email was enclosed with the letter. However, the version enclosed with the letter had been redacted so as to delete the forwarding information which would have shown how and when the email was sent to BAE. This was not an accidental omission.

k) On 24 January 2007, CAAT obtained a without notice injunction from Mr Justice Underhill requiring BAE to preserve relevant documents.

l) At a further hearing on 2 February 2007 before Mr Justice King, BAE argued that it should not be ordered to disclose how it had obtained the email. Mr Justice King handed down judgment on 26 February 2007, finding in favour of CAAT. The judge directed BAE to recover and disclose a full copy of the privileged email, disclose routing information relating to the email and for an appropriate officer of BAE to swear an affidavit disclosing how BAE had obtained the email.

m) On 12 March 2007, BAE served an affidavit sworn by Mr McGinty, BAE's Director of Security.

New developments

7. Since 12 March, CAAT has been taking urgent legal steps to discover how BAE obtained the email:
 - a) On 14 March, Mr Justice Treacy granted CAAT an injunction against Paul Mercer and LigneDeux to preserve documents and evidence and require explanations as to how they obtained CAAT's privileged legal advice.
 - b) Mr Mercer has sworn an affidavit explaining his involvement. A copy of the affidavit is attached. CAAT was concerned that this affidavit was unsatisfactory and sought further information to rectify the defects. Copies of the relevant correspondence replying to CAAT's enquiries are attached.

8. The documents reveal how BAE obtained CAAT's legal advice:
 - a) BAE entered into a contract under which it pays LigneDeux £2,500 per month for the provision of media and internet monitoring services. Information is passed to Michael McGinty, BAE's Director of Security, using an anonymous email account. The email account used during the relevant period was "davedurham417@googlemail.com". The contract between BAE and LigneDeux specifically provided that non-public documents were not required by BAE.
 - b) Mr Mercer claims that he was sent the privileged email anonymously through the post. His account is that the email was sent to him on a CD-R in an envelope without any supporting note which he collected from a Post Office in Loughborough just before it closed for the New Year holidays at midday on Saturday 30 December 2006. Mr Mercer claims to have no idea who sent him the CD-R.
 - c) On 2 January 2007, Mr Mercer sent the privileged CAAT email to Michael McGinty and another BAE employee.

- d) On 5 January, Mr Mercer telephoned Mr McGinty to check whether he had received the email. Mr McGinty expressed concern that the email might be privileged. Mr McGinty followed up this conversation with an email to Mr Mercer on 9 January stating “further to our conversation of last week regarding potential CAAT legal action, I would just confirm that we do not wish you to send us further unsolicited material of that nature. You may wish to know that our legal department have returned the material to CAAT’s solicitors as they are obliged to do since it may contain legally privileged information”. Mr Mercer then passed the email onto an associate, Mr Leeming of Global Open Limited.
9. We also now know Mr McGinty tipped off Mr Mercer sometime between 4-5pm on 12 March 2007 that BAE had named him as the source of the email. Mr McGinty telephoned Mr Mercer between 4 and 5pm on the 12th of March 2007. Mr McGinty informed Mr Mercer that he had been unable to speak to him (Mr Mercer) because legal proceedings had been in progress. Mr McGinty said that he was now able to do so because BAE had complied with certain orders in those proceedings. Mr McGinty said that he had provided an affidavit, could not remember the precise details but did say that it included Mr Mercer’s name and other details, together with information about the contract between LigneDeux and BAE.
10. Following this tipping off, Mr Mercer closed the anonymous email account which he had used to transmit the email to BAE, thus deleting the emails in it.
11. CAAT invites anyone who can shed further light on how the email was leaked or intercepted or who can shed further light on any of these issues to contact Leigh Day & Co. CAAT has also referred the case to the police for further investigation.

18 April 2007