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INFORMATION COMMISSIONER

V

OPERATION MOTORMAN

INSTRUCTIONS TO COUNSEL

TO ADVISE

Counsel has herewith:-

1. Draft Opening Note in respect of the Sentencing Hearing at Blackfriars Crown Court in respect of the Operation Glade defendants, Whittamore, Boyall, King and Marshall.
2. File Note of Court Hearing on 15 April 2005 in respect of the sentencing of the defendants in Operation Glade as prepared by this office.
3. Newspaper article from the Guardian dated Saturday 16 April 2005.

Counsel will note for the most part the initial part of the Hearing followed the outline of opening draft. Counsel will note that every effort has been made to prepare as verbatim a transcript as possible, and the comments made by the various Counsel and the Judge have been recorded as accurately as possible.

Counsel will note from the file note of the court hearing that the Judge was clearly of the view that this was a case which warranted a sentence which deviated exceptionally from that which would normally be handed out in cases of this nature. Whilst we do not have sight of the various documentation handed in by the defendants in their mitigation bundles, reading between the lines it can be assumed that Marshall's medical condition is of such a serious nature that the Judge in his theft case did not want to see him incarcerated. Faced with the fact that Mr Marshall was already attending Court under a suspended sentence the Judge, bearing in mind the order of the defendants on the indictment and the circumstances regarding the other defendants imposed a sentence which would not unseat that previously imposed by the Recorder in the theft proceedings. As a result of this you will note the Judge's comment that he cannot deem it appropriate to deny King his liberty if he is not doing so for Marshall.

However, you will no doubt share our concerns that the Judge chose not to fine Whittamore at all and simply chose to issue him with a conditional discharge for two years. You will also note that Whittamore received no order for costs nor was he ordered to pay any Recovery of Defence Costs Order. It can only be assumed from this that Whittamore advanced a credible argument of penury. As a result of the de-minimis sentences handed out by the Judge at Blackfriars Crown Court I would be grateful if you would consider the position with regard to our prosecution and our obligations under the Code for Crown Prosecutors, and in particular our ongoing obligation to review the appropriateness of proceedings. In particular I am mindful of the section in

the Code which deals with the public interest in proceeding where the likely sentence to be handed down at the conclusion of the proceedings is minimal. You will note the comments made by Whittamore's Counsel in the Hearing together with the views of the Judge in relation to the arguments he would expect Whittamore to advance in due course, and accordingly I would be grateful if you would apply your mind to whether or not the continuation of our proceedings is in the public interest. As Stephen Whittamore is our primary defendant, we are concerned that in the event he receives no additional penalty or a minimal sentence there will be a "knock-on" impact upon any sentences that the other five defendants may receive.

The Commissioner is naturally disappointed at the sentences received by the defendants at Blackfriars Crown Court and the message that this sends out to those who are involved in the world of organized information gathering and selling.

Should Counsel require any further information then could he please contact Mr Philip Taylor at this office as soon as possible.

IN THE MATTER OF:

THE INFORMATION COMMISSIONER

-v-

MOTORMAN

INSTRUCTIONS TO COUNSEL
TO ADVISE

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