

# British intelligence prosecution fear over US torture memos

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Despite the memos' release, Barack Obama said there would be no prosecutions

Fresh revelations about the CIA's torture techniques have thrown the spotlight on British Intelligence, which gained valuable insight into terror networks from confessions extracted by American officers. They have raised further fears that British agents could be prosecuted for their indirect role in the abuse of detainees.

Documents declassified this week by the Obama Administration – four US Justice Department memos authorising “harsh interrogation” – show that the CIA based more than 3,000 intelligence reports on the questioning of “high-value” terror suspects from September 11 2001 to April 2003.

They were sanctioned by US government lawyers during the Bush presidency, and MI5 and MI6 would have had access to huge amounts of such material.

The memos show that the majority of these reports – some of which would have been passed to the British as part of intelligence-sharing arrangements between the two countries – came “from detainees subjected to enhanced interrogation techniques”.

In the period between September 11 2001 and April 2003, there were a number of crucial intelligence tip-offs to the British authorities that may have come via US interrogation of suspected al-Qaeda terrorists.

They include the alert that led to the decision by Tony Blair in February 2003 to send 400 troops in light tanks to Heathrow after a warning of an imminent attack on airliners coming into the airport. Another led to the deployment of special forces to intercept a cargo vessel, the *MV Nisha*, off the Isle of Wight in December 2001 because of intelligence that a ship in the English Channel might be carrying biological weapon components.

US Justice Department lawyers justified the techniques, saying that they did not induce severe pain or long-term mental ill health. Opponents of the practice have described it as “torture lite”.

The CIA told the US Justice Department that the enhanced interrogation methods used – including waterboarding (simulating drowning), cramped confinement, wall-standing and sleep deprivation – had been “virtually indispensable” to obtaining “actionable intelligence”. Some Whitehall officials were hoping that the stark clarity of the legal arguments justifying harsh interrogation would keep the focus of attention on the Washington end of the story. But there remain concerns of possible legal implications for Britain, as America's most

intimate partner in the intelligence business. \_Officials said the Government and the intelligence services had had no knowledge of the US Justice Department's memos until they were published on Thursday night.

There are already fears in both MI5 and MI6 – arising from the case of Binyam Mohamed, who alleged that he was tortured by the CIA in a secret detention centre in Morocco – that their counter-terrorist intelligence work will be restricted in the future because of concern that individual officers might face prosecution if found to have been indirectly involved.

Mr Mohamed, an Ethiopian-born British resident recently released from four years of detention in Guantánamo Bay, claimed that he was subjected to inhumane treatment during interrogation by the CIA and that some of the questions had been framed by MI5. His allegations are now the subject of a Scotland Yard investigation ordered by Baroness Scotland of Asthal, QC, the Attorney-General, to assess whether any British intelligence officer was criminally complicit in Mr Mohamed's mistreatment.

Asked whether the Prime Minister intended to stop any possible prosecution of intelligence officers in the case of Binyam Mohamed, in the light of President Obama's decision not to allow CIA officers to be prosecuted, No 10 referred the question to the Home Office. A spokesman there said: "This case has been handed to the Metropolitan Police and is a matter for them and for the Crown Prosecution Service."

The details contained in the four US Justice Department memos may help Mr Mohamed to make his case against the British authorities. Their publication could also generate additional claims by other CIA-held detainees with links to Britain, attempting to show that Britain was complicit.

The response from Whitehall yesterday was that interrogation methods used by the intelligence services were carefully drawn up and constantly reviewed. MI5 and MI6 intelligence officers who are sent abroad to question detainees held by foreign agencies receive special training and are reminded that they must protect the human rights of arrested terror suspects.

Foreign and Commonwealth Office officials said that MI5 and MI6 were governed by guidelines drawn up by the Cabinet Office and approved by the Attorney-General, as the Government's chief legal adviser. The lawyers for both MI5 and MI6 are then responsible for ensuring that the legal requirements are understood by individual officers.

The guidance is currently classified but on March 18, after the accusations by Mr Mohamed, Gordon Brown announced that the parliamentary Intelligence and Security Committee would review the wording of the guidelines and they would then be published.

The guidelines, however, are based on the overriding principle that torture is never justified and that members of the security and intelligence services – and the Armed Forces – must observe the Geneva Conventions and the laws of armed conflict. Hooding, sleep deprivation, excessive noise, refusing food and water – all are banned.

Even if the British standards are proven to be above board and legal, it does not let the intelligence services off the hook if it can be shown that they suspected or knew of methods being used by the CIA – or other foreign agencies – that could be defined as torture. This is the dilemma at the heart of the Binyam Mohamed case, and both MI5 and MI6 are

concerned that they might be deprived of potentially life-saving intelligence if they are barred from dealing with foreign agencies whose detainee-handling record is questionable.

In 2005 Jack Straw, when he was Foreign Secretary, gave evidence to the Intelligence and Security Committee on the handling of prisoners and referred to the “moral hazard” faced by the authorities when given a piece of credible intelligence that might have been extracted through unacceptable practices. “Do you ignore it?” he asked. “My answer to that is, the moment at which it is put before you, you have to make an assessment about its credibility.”

“What if we had been told through liaison partners [foreign intelligence agencies] that September 11 was going to happen, with all the details. Torture is completely unacceptable . . . but you cannot ignore it if the price of ignoring it is 3,000 people dead.”

The Committee’s report revealed that British intelligence officers conducted or witnessed more than 2,000 interviews in Afghanistan, Guantánamo Bay and Iraq, and that there were “fewer than 15 occasions when there were actual or potential breaches of either UK policy or the international conventions involving or reported by UK intelligence personnel”.

It also claimed that British intelligence officers had on several occasions complained about the rough treatment of prisoners at Guantánamo Bay, and that American officials promised to take their comments into account.

MI5, with the backing of MI6, told the Committee in evidence: “Clearly the US is holding al-Qaeda members in detention other than in Guantánamo, but we do not know the locations or terms of their detention and do not have access to them.”

The Security Service went on: “We have, however, received intelligence of the highest value from detainees to whom we have not had access and whose location is unknown to us, some of which has led to the frustration of terrorist attacks in the UK or against UK interests.”

In the case of Mr Mohamed, MI5 passed a series of questions to the CIA without knowing where he had been taken.

An MI5 officer had a face-to-face session with Mr Mohamed in a jail in Pakistan after he was arrested in 2002. But subsequent questions were posed on MI5’s behalf by CIA intelligence officers after he had been flown out of Pakistan on an “extraordinary rendition flight” to Morocco, and then on to Bagram in Afghanistan before he was incarcerated in Guantánamo Bay.

### **The British resident**

**1994** Binyam Mohamed, 30, born in Ethiopia, arrives in Britain, seeking asylum. His application is rejected, but he is given leave to stay for four years, and lives in North Kensington

**2001** He converts to Islam and flies to Pakistan and then Afghanistan. He claims that the trip was to cure him of a drug habit and to observe an Islamic state in operation. The US claims that he was fighting with the Taleban and training in an al-Qaeda camp

**2002** He is arrested at Karachi airport, Pakistan, and charged with conspiracy linked to a

terrorist plot in the US. Five months after his arrest he is flown by the CIA to Morocco, where he alleges he was tortured for a period of 18 months

**2004** He is transferred to Guantánamo Bay via a CIA prison at Bagram in Kabul

**2005** Charges are dropped. He stays in the US camp in Cuba

**2009** Released in February, he is flown to London, where he is granted residence for two years. His claim that he was tortured and that some of the questions during his interrogation were supplied by an MI5 officer is now the subject of a police inquiry

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