

# Spanish daily reveals secret correspondence in Pinochet extradition case

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The High Court is expected to rule Monday on a legal challenge contesting the British Home Secretary's intention to release General Augusto Pinochet.

On Sunday, an article in the Spanish daily *El Pais* published extracts from correspondence between the Home Office and lawyers acting for General Pinochet indicating a high degree of collaboration on the part of the British government in moves to obtain the former dictator's release.

On January 11 Home Secretary Jack Straw announced he was "minded", on the grounds of Pinochet's ill health, to halt extradition proceedings against the former dictator, a move that would effectively set Pinochet free to return home. Straw insists that "patient confidentiality" prevents him from divulging the contents of the medical examination upon which he is to base his decision.

The article in *El Pais* reveals why Straw is so keen to keep this evidence, and how it was obtained, a secret.

On October 14, the Chilean ambassador in London, Pablo Cabrera, gave the Foreign Office a note claiming there had been a "significant deterioration" in Pinochet's health. The Chief Medical Officer Liam Donaldson advised Straw that on the basis of this information Pinochet could be deemed unfit to stand trial.

On November 5, Ms. Fenella Tayler, a civil servant working in the department responsible for extraditions, wrote to Pinochet's lawyer Michael Caplan and the Chilean embassy explaining that the Home Office had received a letter from the Chilean embassy asking for Pinochet's release on medical grounds.

Tayler added that Straw had "seriously considered" the approach from Santiago, and concluded that a medical examination of Pinochet would be necessary. She then asked whether Pinochet would submit to an

examination by doctors appointed by the Home Office. In conclusion, her letter offered Pinochet complete confidentiality regarding any medical report.

Six days later Caplan replied, saying his client had agreed in principle to undergoing a medical examination, and thanking the Home Office for its assurances that any report would only be released with Pinochet's consent.

The Home Office had one more obstacle to overcome. Under the Convention against Torture, to which the UK is a signatory, a person can be tried anywhere for such crimes, regardless of the place where they are alleged to have taken place. Furthermore, if an extradition case against a person accused of torture fails for any reason, the competent authorities in the country from which the extradition was originally sought must consider whether to mount a prosecution within their own jurisdiction.

In order to ensure that a prosecution would not be instigated in Britain, the Home Office had to seek the agreement of the relevant departments, the Director of Public Prosecutions, the head of the Crown Prosecution Service and the Solicitor General.

Accordingly, Fenella Tayler wrote again to Caplan on November 26 asking for Pinochet's agreement that these other prosecuting authorities might also be shown any medical reports. His agreement for this was sought, given the "hypothetical outcome" that Straw decided to release Pinochet on medical grounds.

Tayler's letter concluded by assuring Pinochet that these other departments would also abide by the agreement of confidentiality, and that the medical report would "under no circumstances" be made available to the Crown Prosecution Service (CPS).

This last part is highly significant, since the CPS conducts extradition cases on behalf of the state seeking

the extradition, in this instance Spain. As the legal agent for the Spanish authorities, the CPS would have to pass on the information to Judge Garzon, whose extradition warrant brought about Pinochet's arrest in London in 1998.

On November 29, Caplan called Tayler to say he had consulted with Pinochet and would be sending a letter with his consent. He stressed that whilst agreement was given to show the medical report to the DPP and Solicitor General, Pinochet would not agree to the CPS being shown the report "under any circumstances".

The next day Tayler told Caplan that she had obtained the necessary guarantees that only the DPP and Solicitor General would be shown the report, that they had agreed to absolute confidentiality, and that the CPS would not be allowed to see the evidence "under any circumstances".

In the meantime, Home Office Minister David Omand had started to organise the panel of doctors who would examine Pinochet. On November 22, he wrote to the doctors proposed by Chief Medical Officer Liam Donaldson, who all gave their agreement to conduct the examination.

Omand's instructions to the doctors were very specific. He asked them to determine whether there were any separate or aggregate health issues that would mean General Pinochet was unfit to stand trial in Spain. He specifically requested their opinions as to Pinochet's ability to fix his attention on a series of questions, to recall events going back to the 1970s, and to provide coherent testimony. He also asked whether Pinochet would be able to "simulate" a particular state of health.

Finally, once all the safeguards for Pinochet were in place, the examination was conducted on January 5.

On Sunday, January 10 Straw concluded that he was "minded" to halt the extradition proceedings against Pinochet on the basis that he was unfit to stand trial, and announced this to Parliament the next day.

That same day, Tayler wrote again to Caplan informing him of Straw's intentions to release Pinochet on the basis of "unequivocal and unanimous" medical evidence that he was unfit to stand trial. This time, Tayler concluded by asking whether, so that things might progress more easily, the medical report could be shown to the authorities in Spain, France, Switzerland and Belgium, the four countries with outstanding

extradition warrants. She wrote that, of course, this would also be on the basis of the strictest confidentiality.

Caplan responded in writing that Pinochet would not agree to the report being made available to Spain, or any other country or person. On January 12, Tayler telephoned to remind Caplan that Pinochet had already agreed that the medical report could be shown to the DPP and Solicitor General. Caplan told her this agreement still stood.

Meanwhile, in a sign that Chile believes the general's release is imminent, the medically equipped Boeing 707 that had flown from Santiago to Bermuda has now landed in the UK.



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