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AFP
AUSTRALIAN FEDERAL POLICE

Overseas Liaison Communications

Classification	HIGHLY PROTECTED
Priority	High
Date Sent	5 July 2007

Subject / Persons / Organisations

Mohamed Haneef

Australian File and Folio	
Liaison Office File and Folio	
Operational Area / Case Officer	JCTT-BO
To	AEME
Attention	CTLO London
Cc	
From	s.41(1)
PROMIS Case Id	3632730
Reply to File and Folio	

Information

The CT Controls Team has been asked to consider an application for a preventative detention order and/or control order for Mohamed Haneef in the event that options under Part 1C *Crimes Act 1914* are exhausted and he is subsequently released.

Preventative Detention Orders are under *Division 105 of the Criminal Code (Cth)* and for the purposes of the current investigation, the *Terrorism (Preventative Detention) Act 2005 (Cth)*. The Commonwealth and State Preventative Detention (PDO) Regimes are drafted in virtually identical terms.

There are two broad ways to obtain a PDO.

- (1) To apply for a PDO, a police officer must be satisfied that **SECTION 8(1) OF THE INFORMATION ACT 1982 (COMMONWEALTH)**
 - (a) a terrorist act has occurred within the last 28 days; and
 - (b) it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and UNDER THE FOI ACT BY

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- (c) detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose of preserving the evidence.

It does not appear at this stage that a person could be satisfied on reasonable grounds that a PDO for Haneef is reasonably necessary for the purposes of preserving evidence of (or relating to) the UK terrorist incidents. Even if Haneef is released without charge following the expiration of options under Part 1C, search warrants obtained pursuant to section 3E of the *Crimes Act 1914 (Cth)* have been executed at various premises with further likely within the next 24 hours. There is currently no information from UK or Australian sources that suggests that Haneef or others in Australia have outstanding evidence that is required to be preserved in relation to the terrorist acts conducted in London and Glasgow.

(2). Alternatively, to apply for a PDO, a police officer must be satisfied that:

- (a) there are reasonable grounds to suspect that the subject:
 - (i) will engage in a terrorist act; or
 - (ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or
 - (iii) has done an act in preparation for, or planning, a terrorist act; and
- (b) the making the order would substantially assist in preventing a terrorist act occurring; and
- (c) detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose of preventing a terrorist act; and
- (d) the terrorist act must be imminent and must be expected to occur, in any event, at some time in the next 14 days.

The available evidence *might* be capable of supporting 'reasonable grounds to suspect' that the subject possesses a thing connected with the preparation of a terrorist act or has done act in preparation for, or planning terrorist act (see subpara (a) immediately above). Further analysis of electronic data and financial records may produce further evidence in support of this element. However, at this stage of the investigation there is insufficient information to support a *satisfaction* that detaining the person under a PDO would *substantially assist in preventing an imminent terrorist attack occurring within the next 14 days* (see subparas (b)-(d) immediately above).

I understand that the current threat level in the UK is *Severe*, which correlates with an attack being highly likely. Information available to the UK authorities in support of this threat level may help us to satisfy (c) that is that the order is reasonably necessary for the purpose of preventing a terrorist act (including overseas) within the next 14 days. Moreover, Australian and UK authorities would need to prove that Haneef has the capability to participate, or is involved, in any conspiracy for that imminent terrorist act.

DOCUMENT HAS BEEN RELEASED

A control order application under Division 110 of the *Criminal Code* would also rely on the same information to demonstrate that a control order is necessary to substantially assist in

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the prevention of a terrorist act, and that obligations are reasonably necessary to prevent a terrorist act from occurring. The difference between preventative detention orders and control orders is that control orders do not need to demonstrate that the terrorist act is imminent, and expected at some time in the next 14 days.

The current status of detention for Haneef is that 'the specified dead time' period expires at 11.20pm on 5 July 2007. Unless further 'specified dead time' can be secured through application, after the use of other 'dead time' periods (eg, sleep, meals, religious observation) and the continuation of the record of interview (12 hours remaining), the investigation period could conclude in the evening of Friday 6 July 2007. Subject to the availability of charges against Haneef, and premised on the willingness of him continuing to participate in the interview, this may be the earliest possible time for his release. If he chooses not to participate in the interview and we do not secure a further dead time period, he could be released in the morning of 6 June 2007. The AFP intends to apply for further 'specified dead time' to extend the investigation period for up to four more days.

Accordingly, a PDO and control order application will need to be drafted for consideration upon his release.

Task

1. Grateful if Post could explain to the UK authorities the operational considerations being undertaken by the AFP.
2. Grateful if Post could ascertain whether the UK authorities have, and are willing to share, information that suggests the likelihood of a future terrorist act in the UK being committed by associates of this group, to support possible applications for control orders and/or preventative detention orders. Given the possibility of the release of Haneef as early as Friday 6 July 2007 (AEST), any information that can be provided by the end of 5 July 2007 (London time) would be appreciated. Cable might be necessary. Sensitive and classified information can be protected under the *National Security Information (Civil and Criminal Proceedings) Act 2004*. If we secure additional 'specified dead time', which will be communicated to Post, then the deadline for such information would be pushed out by that period.

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

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