

IN THE INVESTIGATORY POWERS TRIBUNAL
BETWEEN:

PRIVACY INTERNATIONAL

Claimant

and

(1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS
(2) SECRETARY OF STATE FOR THE HOME DEPARTMENT
(3) GOVERNMENT COMMUNICATIONS HEADQUARTERS
(4) SECURITY SERVICE
(5) SECRET INTELLIGENCE SERVICE

Respondents

APPLICATION TO RELY UPON FURTHER EVIDENCE

1. The Respondents apply to rely upon the further witness statements that are attached to this Notice.
2. The further evidence goes directly to the important issues that the Tribunal must resolve. The most important consideration is that the Tribunal should have available to it the fullest information on which to decide these issues. The further evidence should therefore be admitted unless there is good reason not to do so. The Respondents respectfully contend – for the reasons which follow – that there is no such good reason, and that the further evidence should therefore be admitted.
3. There is a good explanation for this evidence being served at this stage.
 - a. Much of the further evidence is responsive to issues raised in the correspondence between the Tribunal and IPCO. The letters from IPCO were only received by the Respondents shortly before the hearing (the first letter was received on 25 September, some three weeks before the hearing, the IPCO 10 October email was only received on 11 October, 3 working days before the start of the hearing). During that period the Respondents were heavily involved not only in their general preparations for the hearing but also in attempting to agree the opening of as much of the correspondence as possible. As the Tribunal is aware, this is in general (and was on this occasion) an extremely resource-intensive process. Whilst the Respondents did serve evidence (before and during the hearing) responding to the OPEN issues raised in the correspondence, they did not prioritise responding to the CLOSED issues, since they were aware that there was to be a further CLOSED hearing in any event. The Tribunal made no order setting deadlines for the service of

OPEN and CLOSED evidence in response to the IPCO correspondence, and so it is not the case that the Respondents are in breach of any such order.

- b. Some of the further evidence responds to submissions made by the Claimant at the October hearing. For example, the further evidence responds to the Claimant's suggestion at the hearing that the Respondents might hold BPDs containing social media datasets such as Facebook and dating websites – a suggestion which founded a series of submissions. It was only at the October hearing that the detail and significance of the Claimant's position in this regard became apparent. The Respondents wish to provide a detailed reply to this suggestion, and it is respectfully submitted that the Tribunal will be assisted by this evidence.
4. The Claimant will suffer little prejudice by the admission of the further evidence, and none that cannot be accommodated by permitting the Claimant to serve responsive submissions. Much of the further evidence is CLOSED. The Claimant will suffer no prejudice as a result of this material not having been served prior to the October hearing, because by its nature the evidence would never have been considered at that hearing in any event. Some of the further evidence is OPEN. There is no reason why the Claimant cannot be invited to respond to that evidence in further written submissions. There is no difficulty in any such submissions being served prior to the substantive CLOSED hearing, which is now listed to take place on 26 February 2018.

ANDREW O'CONNOR QC

RICHARD O'BRIEN

15 November 2017