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[Redacted]
Director for Legal Affairs

[Redacted]
[Redacted]

Sir Adrian Fulford
Investigatory Powers Commissioner

[Redacted]
[Redacted]
[Redacted]
[Redacted]

8 November 2017

Dear Sir Adrian,

I wanted to send you a short note in order to share two thoughts that have arisen against the background of the Privacy International v SSFCA case.

My first thought is to suggest that it might be useful to consider having some sort of appropriate process or protocol by which we, and perhaps the other agencies or wider government, might better liaise with IPCO to manage any circumstances where a piece of litigation, whether in the IPT or elsewhere, could raise issues in relation to oversight activity. I am acutely conscious of your independence and the need to avoid any sense of potential prejudice to the proper conduct of proceedings, so the aim might to explore whether it was possible to establish a transparent process with the idea of making our submission of evidence and presentation of facts or issues before the IPT or other courts more efficient by reducing the risk of unnecessary misunderstandings and reducing the list of issues before the IPT. Again, I emphasise that we would want to suggest nothing that had, or could be seen to have, any impact on the independence of your office or on the proper conduct of proceedings.

Secondly, although in the same vein, I would also be keen to explore whether in the current cases there may be any appropriate options for resolving any factual issues which may exist in relation to evidence currently before the IPT – again, only to the extent this may be appropriate having regard to the independence of your office and the ongoing litigation.

I am available at your convenience should you agree that further discussion of these issues would be helpful. I would be happy to make a copy of this letter available to the Claimants if that was thought to be appropriate.

PP [Redacted]
[Redacted]



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INVESTOR IN PEOPLE



Investigatory Powers
Commissioner's Office

PO Box 29105, London
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Director for Legal Affairs
GCHQ

By email

28 November 2017

Dear Sir,

Thank you for your letter of the 8 November 2017.

If I may start by dealing with the final paragraph of your letter concerning the sharing of this correspondence with the claimants, I consider it is necessary to provide this exchange to the Tribunal in order to ensure that the present litigation is conducted with appropriate transparency. I will arrange for a copy of your letter and this reply to be served on the Tribunal.

Dealing first with developing a potential process or protocol to manage litigation that *could raise issues in relation to oversight activity*, may I say that I do not believe that this would be appropriate. My role (and that of the Judicial Commissioners) in respect of matters before the Tribunal is clearly outlined in section 232 (1) of the Investigatory Powers Act 2016. I am required to give the tribunal all such documents, information and other assistance, including my opinion, as the Tribunal may require and I do not anticipate any situation where that engagement could be the subject of any form of prior agreement, however transparent, especially with a party which is subject to my oversight.

I would also say that it is not for my office to attempt to reduce the list of issues before the tribunal but, rather, comply with our statutory obligations and provide a wholly independent assessment of the material before us.

As regards the current matter before the Tribunal, whenever there are minor factual issues that require clarification I am content that the current process of fact checking with the relevant agencies prior to submission of our response remains the correct way forward. This naturally occurs when we submit our responses to ensure we comply with our national security and protective marking obligations and, save for one practical change discussed below, I am happy with this *modus operandi*.

As regards more substantive areas of difference it is for the Tribunal to consider their significance and I do not believe that it would be appropriate to explore options to resolve these. As a robust oversight body I anticipate that there will be further differences of opinion on important matters. That goes with the territory.

I suggest some change in approach, concerning two matters. Firstly, as part of the development of our new IPCO Inspections policy – which deals with the practicalities of oversight inspection [REDACTED]

[REDACTED] We will be contacting your organisation in due course to discuss this issue and I ask that you arrange for a member of your legal staff to assist with this.

Secondly, and this concerns the current litigation, I believe it will assist matters if your office provides the contact details of the legal adviser with conduct of the present case before the IPT so that my lawyer can liaise directly with him or her. At present it appears that, unlike the other agencies involved, we are liaising directly and principally with the primary witness and I am concerned that this is not the most appropriate way of running of this litigation.

You understandably refer a number of times in your letter to the issue of my independence. I consider this is a crucial aspect of the work of my office, and this factor has significantly underpinned my response to your suggestion.

I am sending a copy of this letter to the Investigatory Powers Tribunal.

Yours sincerely



Rt Hon. Lord Justice Fulford
The Investigatory Powers Commissioner