

Bhatt Murphy Solicitors

Our ref: MPS/FBT/002295-5-0/3285
Your ref:
Email: m.scott@bhattmurphy.co.uk

Investigatory Powers Tribunal
Secure Area, 9th Floor
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

27 Hoxton Square
London N1 6NN

Phone 020 7729 1115
Fax 020 7729 1117

DX 36626 Finsbury
www.bhattmurphy.co.uk

Also by email

29 March 2017 (2nd letter)

Partners/Directors
Hamish Arnott
Raju Bhatt
Simon Creighton
Shamik Dutta
Carolynn Gallwey
Tony Murphy
Mark Scott

Dear Sirs

Solicitors
Chanel Doicy
Janet Farrell
Sophie Naftalin
Michael Oswald
Jed Pennington
Megan Phillips
Jane Ryan
Jessica Waldman

Privacy International v The Secretary of State for Foreign and Commonwealth Affairs and Others, IPT/15/110/CH

We refer to the Respondents' Response to the RFI of 7 March 2017. We consider the response is inadequate. Further, it is unhelpful that the response has not been provided in the ordinary format, indicating each question and the answer side by side. This has only been done in relation to BCD (Part I), not in relation to sharing (Part II). There appears to be a reluctance to actually engage with the questions asked. As with the searches RFI, the Tribunal is invited to direct that the Response to the RFI be re-served in the proper format, answering each question put.

We understand that a closed response has also been served. We therefore invite Counsel to the Tribunal to seek disclosure of the following matters. If this cannot be agreed, the Claimant wishes to make submissions in support of disclosure in due course.

Question 1(d): No information whatsoever has been supplied as to the nature and extent of the processing that takes place to extract BCD. The nature and extent of the processing carried out is relevant to the case. The Claimant does not accept the factual assertion that the only processing that takes place is transfer. Extraction and retention also appears to take place. The cost of such work is a reasonable proxy for the extent of the processing, which should therefore be disclosed in aggregate form. Similarly, negotiations with the PECNs are relevant because there will have been discussions about the nature and extent of the processing required by them, which will explain what is (and is not) being done by them.

Bhatt Murphy Ltd
(trading as 'Bhatt Murphy'
or 'Bhatt Murphy Solicitors')
is a private limited
company registered in
England and Wales
(Company No. 9033637).

Authorised and regulated
by the Solicitors Regulation
Authority (SRA No. 613721).

The term 'Partner' as used
by us refers to a shareholder
or director of the company
or an employee or consultant
who is a lawyer with equivalent
standing and qualifications.

Questions 3-5: These questions concern the delegation of powers to the Director of GCHQ. The Response says that "it is denied that either paragraph 2 or any other provision of the direction creates a power on the part of the Director of GCHQ or any other official either to select (i.e. to reduce) or to alter the specified communications data that the named PECN is required to provide". Further, it is said that "neither the Director of GCHQ nor any other official has ever sought to exercise such a power". This statement cannot be reconciled with Sir Stanley Burnton's report on BCD at §8.42 which explains that MI5's section 94 directions were "highly detailed" and "stated that any amendment to an existing data requirement required a new section 94 direction to be given by the Secretary of State". In contrast, GCHQ's directions were "very broad and provided a general description... which was far wider than the requirement actually made of the PECN". Accordingly, GCHQ's section 94 directions are in a form that permits an official "to reduce" the scope of the Direction. This conflict requires a proper explanation in the response and the service of evidence.

Further, it is suggested that the words "but are not limited" is an equivalent to section 5(6) of RIPA. Please provide any internal contemporaneous document which evidences that this is the proper interpretation of the wording, including any relevant part of any submission to Ministers.

On sharing, the position appears to be that GCHQ requires a recipient to adopt equivalent standards, but MI5 and MI6 do not. Further, many of the 'arrangements' are not in writing and have never previously been recorded. The key absence from the responses is information about what oversight the Commissioners have *in fact* carried out in respect of sharing. That the Commissioners in theory have oversight is not in dispute. The problem is that historically there is no evidence there has been any audit or meaningful review. The quality of the actual oversight is relevant to whether a scheme is in accordance with the law. This is what the Claimant has asked. The question has not yet been answered. If the Respondents are unable to answer it, the IPT is invited to request assistance from the Commissioners.

Yours faithfully



Bhatt Murphy

c.c. Government Legal Department