

B E T W E E N:

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

CLAIMANT'S REQUEST FOR FURTHER INFORMATION AND DISCLOSURE
CONCERNING THE OPEN REPORT ON SEARCHES

The Claimant requests further information and disclosure in respect of the Respondents' Open Report on Searches, disclosed on Tuesday 21 February 2017. The information sought is required so that the Claimant can understand the extent of the unlawful conduct that has taken place prior to avowal and can make meaningful submissions on appropriate remedies.

Of paragraph 3 ("GCHQ's search results did not show that GCHQ held data relating to the Claimant in its BPDs before avowal on 12 March 2015")

1. The sentence is so ambiguous as to be uninformative. It leaves the reader unclear as to whether: (a) GCHQ knows it never held such data; (b) GCHQ does not know whether it held such data but knows that a dataset containing data likely (or for that matter unlikely) to relate to the Claimant has been deleted; (c) GCHQ knows that it did hold information relating to the Claimant but knows that the relevant dataset has been deleted; or (d) a blend of the above.
2. GCHQ has operated data retention periods, the duration of which are unknown, but which may well be shorter than the time elapsing from avowal on 12 March 2015 or earlier (if the dataset was obtained earlier) to the date of the searches. As such, the Claimant considers that it is more likely than not that the negative search result is a result of one of

(b) or (c) because GCHQ knows it has or might have deleted data relating to the Claimant in its BPDs concerning the period before avowal.

3. For these reasons please explain the factual basis for the answer given, specifying which of (a) to (c) it is above, or in the case of (d) which blend of (a) to (c) applies and any other information that makes the response intelligible.
4. If the answer is in the case of any dataset (b) or (c) please:
 - a) identify when the data was or is likely to have been deleted; and
 - b) answer the questions in paragraph 5 below in respect of GCHQ's holdings of BPDs prior to avowal.

Of paragraphs 4 and 5 ("The Security Service's/SIS's search results showed that the Security Service held data relating to the Claimant in its BPDs before avowal on 12 March 2015")

5. Please identify:
 - a) the data held;
 - b) the time periods for which it was held;
 - c) whether the data was searched or otherwise processed (and if so how and why);
 - d) whether the data was read, looked at or listened to by any person (and if so, how and why);
 - e) whether the data was shared with any foreign liaison service, other government department or commercial or academic partner (and if so, how, why and whether it was searched, processed, read, looked at or listened to by any transferee);
 - f) whether the (secret) arrangements in place governing the data were in all respects complied with, including arrangements for access and destruction.

Of paragraphs 6 and 7 ("GCHQ's/The Security Service's search results did not show that GCHQ/the Security Service held data relating to the Claimant in its BCDs before avowal on 4 November 2015")

6. Paragraphs 1 and 2 above are repeated with the necessary changes.
7. For these reasons please explain the factual basis for the answer given, specifying which of (a) to (c) it is above, or in the case of (d) which blend of (a) to (c) applies and any other information that makes the response intelligible.
8. If the answer is in the case of any dataset (b) or (c) please:
 - a) identify when the data was or is likely to have been deleted; and
 - b) answer the questions in paragraph 5 above in respect of GCHQ and the Security Service's holdings of BCD relating to the Claimant prior to avowal.

Of paragraphs 3-7

9. What steps were taken to preserve data relating to the Claimant on the issue of the claim to ensure that accurate and complete responses could be given to searches directed by the Tribunal?

10. Pursuant to the Government Legal Department Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings (“the Guidance”):
- a) (Pursuant to paragraph 2.1 of the Guidance) what steps were taken by the GLD case-handler to *“ensure the defendant department(s)... understand... the need to preserve documents and to ensure that in a department knowledge of the obligation is passed on to everyone who may be affected by it”*?
 - b) (Pursuant to paragraph 2.2 of the Guidance) what steps were taken by each of the Respondents to *“suspend document destruction policies where necessary to ensure that potentially relevant and relevant documents are preserved”*?

THOMAS DE LA MARE QC

BEN JAFFEY QC

DANIEL CASHMAN

Blackstone Chambers

22 February 2017