EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

ENG - 2016/1

Application Form

About this application form

This form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the "Notes for filling in the application form". Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) requires that a concise statement of facts, complaints and information about compliance with the admissibility criteria MUST be on the relevant parts of the application form itself. The completed form should enable the Court to determine the nature and scope of the application without recourse to any other submissions.

Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

A. The applicant

A.1. Individual

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to section A.2.

1. Surname

2. First name(s)

3. Date of birth (D D M M Y Y Y Y) e.g. 31/12/1960

4. Place of birth

5. Nationality

6. Address

7. Telephone (including international dialling code)

8. Email (if any)

9. Sex ◯ male ◯ female

A.2. Organisation

This section should only be filled in where the applicant is a company, NGO, association or other legal entity. In this case, please also fill in section D.1.

10. Name
Privacy International

11. Identification number (if any)
Registered Charity Number: 1147471

12. Date of registration or incorporation (if any) (D D M M Y Y Y Y) e.g. 27/09/2012
2 8 0 5 2 0 1 2

13. Activity
Non-governmental organisation

14. Registered address
62 Britton Street
London EC1M 5UY
United Kingdom

15. Telephone (including international dialling code)
+44 (0) 20 3422 4321

16. Email
caroline@privacyinternational.org

B. State(s) against which the application is directed

17. Tick the name(s) of the State(s) against which the application is directed

- [ ] ALB - Albania
- [ ] AND - Andorra
- [ ] ARM - Armenia
- [ ] AUT - Austria
- [ ] AZE - Azerbaijan
- [ ] BEL - Belgium
- [ ] BGR - Bulgaria
- [ ] BIH - Bosnia and Herzegovina
- [ ] CHE - Switzerland
- [ ] CYP - Cyprus
- [ ] CZE - Czech Republic
- [ ] DEU - Germany
- [ ] DNK - Denmark
- [ ] ESP - Spain
- [ ] EST - Estonia
- [ ] FIN - Finland
- [ ] FRA - France
- [x] GBR - United Kingdom
- [ ] GEO - Georgia
- [ ] GRC - Greece
- [ ] HRV - Croatia
- [ ] HUN - Hungary
- [ ] IRL - Ireland
- [ ] ISL - Iceland
- [ ] ITA - Italy
- [ ] LIE - Liechtenstein
- [ ] LTU - Lithuania
- [ ] LUX - Luxembourg
- [ ] LVA - Latvia
- [ ] MCO - Monaco
- [ ] MDA - Republic of Moldova
- [ ] MKD - "The former Yugoslav Republic of Macedonia"
- [ ] MLT - Malta
- [ ] MNE - Montenegro
- [ ] NLD - Netherlands
- [ ] NOR - Norway
- [ ] POL - Poland
- [ ] PRT - Portugal
- [ ] ROU - Romania
- [ ] RUS - Russian Federation
- [ ] SMR - San Marino
- [ ] SRB - Serbia
- [ ] SVK - Slovak Republic
- [ ] SVN - Slovenia
- [ ] SWE - Sweden
- [ ] TUR - Turkey
- [ ] UKR - Ukraine

C. Representative(s) of the individual applicant

An individual applicant does not have to be represented by a lawyer at this stage. If the applicant is not represented please go to section E.

Where the application is lodged on behalf of an individual applicant by a non-lawyer (e.g. a relative, friend or guardian), the non-lawyer must fill in section C.1; if it is lodged by a lawyer, the lawyer must fill in section C.2. In both situations section C.3 must be completed.

C.1. Non-lawyer

18. Capacity/relationship/function

19. Surname

20. First name(s)

21. Nationality

22. Address

23. Telephone (including international dialling code)

24. Fax

25. Email

C.2. Lawyer

26. Surname

27. First name(s)

28. Nationality

29. Address

30. Telephone (including international dialling code)

31. Fax

32. Email

C.3. Authority

The applicant must authorise any representative to act on his or her behalf by signing the first box below; the designated representative must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated above to represent me in the proceedings before the European Court of Human Rights concerning my application lodged under Article 34 of the Convention.

33. Signature of applicant

34. Date

D D M M Y Y Y Y e.g. 27/09/2015

I hereby agree to represent the applicant in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

35. Signature of representative

36. Date

D D M M Y Y Y Y e.g. 27/09/2015

D. Representative(s) of the applicant organisation

Where the applicant is an organisation, it must be represented before the Court by a person entitled to act on its behalf and in its name (e.g. a duly authorised director or official). The details of the representative must be set out in section D.1.

If the representative instructs a lawyer to plead on behalf of the organisation, both D.2 and D.3 must be completed.

D.1. Organisation official

37. Capacity/relationship/function (please provide proof)

Company Director, Chair of the Board

38. Surname

Fielder

39. First name(s)

Anna

40. Nationality

British

41. Address

62 Britton Street
London EC1M 5UY
United Kingdom

42. Telephone (including international dialling code)

+44 7974 923429

43. Fax

44. Email

anna@privacyinternational.org

D.2. Lawyer

45. Surname

Scott

46. First name(s)

Mark

47. Nationality

British

48. Address

Bhatt Murphy Solicitors
27 Hoxton Square
London N1 6NN
United Kingdom

49. Telephone (including international dialling code)

+44 (0) 20 7729 1115

50. Fax

+44 (0) 20 7729 1117

51. Email

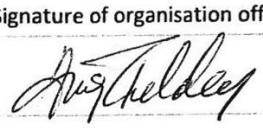
m.scott@bhattmurphy.co.uk

D.3. Authority

The representative of the applicant organisation must authorise any lawyer to act on its behalf by signing the first box below; the lawyer must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated in section D.2 above to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

52. Signature of organisation official



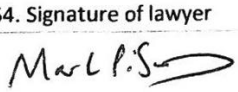
53. Date

2 0 0 7 2 0 1 6 e.g. 27 09 2015

D D M M Y Y Y Y

I hereby agree to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

54. Signature of lawyer



55. Date

0 4 0 8 2 0 1 6 e.g. 27 09 2015

D D M M Y Y Y Y

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

56.

This application is about computer hacking by the UK Government Communications Headquarters ("GCHQ") outside the territory of the United Kingdom.

The Applicants are Privacy International and five internet service and communications providers from around the world: GreenNet (UK), Riseup (US), Jinbonet (Korea), May First/People Link (US), and the Chaos Computer Club (Germany).

Privacy International is a leading UK charity working on the right to privacy at an international level. Privacy International has a reasonable belief that it may be subject to GCHQ hacking because it campaigns against unlawful state surveillance and corresponds with other organisations around the world with similar goals and objectives. Moreover, Privacy International works on capacity building on issues of privacy in developing countries, sometimes in places that are of particular interest to UK foreign policy. Finally, groups and individuals in repressive regimes, victims, whistleblowers, and journalists, all of whom may be of interest to the UK government, frequently contact Privacy International. In another case brought by Privacy International and other NGOs, a UK tribunal found that two of the organisations – Amnesty International and the South African Legal Resources Centre – had been subject to unlawful surveillance. That case is currently also before the European Court of Human Rights (10 Human Rights Organisations v. United Kingdom, App. No. 24960/15).

The other Applicants also hold a reasonable belief that they may be subject to GCHQ hacking. GCHQ targets organisations and individuals who control access to information, including software developers, system administrators, and security researchers. Thus, internet service and telecommunications providers may be targeted because they have access to the communications of many individuals or because their employees have access to source code or other software of interest to the UK government.

Modern computer hacking is highly intrusive. First, it exposes to the government far more than would be obtained in the most exhaustive search of a house or interception of telephone calls. The intrusiveness of gaining access to a modern smart telephone was summarised by Chief Justice Roberts in Riley v California in the Supreme Court of the United States:

"Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person. The term 'cell phone' is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.

First, a cell phone collects in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier..."

Second, computer hacking techniques can be deployed against entire networks of communications infrastructure, giving access to numerous computers at once. The consequence is the ability to gain bulk access to the data of very large numbers of people. For example, it appears that GCHQ carried out a hacking operation against a manufacturer of mobile phone SIM cards in order to allow the circumvention of their encryption and to enable "harvesting...at scale".

Statement of the facts (continued)

57.

Finally, computer hacking is not a passive means of collecting intelligence (c.f. "strategic interception" of satellite transmissions in Weber & Saravia v Germany (2008) 46 EHRR SE5). It requires active intrusion into a persons' computer, and often involves changing and altering the system to serve the purpose of the intruder. At its most serious, computer hacking can be destructive of people and property. Further, in order to carry out a hacking operation, GCHQ must either seek or induce security holes in the systems that protect our computers, telephones and networks. Some of the more troubling elements of the Snowden disclosures are that the Five Eyes agencies have engaged in activities that weaken computer security for all (see expert report of Professor Ross Anderson and witness statement of Mr Eric King).

GCHQ has admitted that it:

a) Undertakes hacking operations both within the UK and overseas.
b) Carries out "persistent" hacking operations (where an implant "resides" on a computer for an extended period) and "non-persistent" operations.
c) Carries out operations against specific devices, computer networks and other targets.

Section 7 of the Intelligence Services Act 1994 provides that the Secretary of State may authorise an act outside the United ıgdom that would otherwise be criminal or unlawful. An authorisation may permit an entire class of activity (e.g. computer hacking) (section 7(4)). There is no provision for judicial approval. Authorisations also protect conduct carried out within the UK if it concerns apparatus believed to be outside the UK, signals appearing to originate from such apparatus, or during a 5 day period when equipment is brought into the UK.

GCHQ has admitted that it:

a) Relies on section 7 of the Intelligence Services Act 1994 to authorise computer hacking abroad.
b) Obtained five class-based authorisations to undertake hacking under section 7 in 2014.
c) In 2013, about 20% of GCHQ's intelligence reports contained information derived from hacking operations.

In July 2016 in the course of a further claim involving Privacy International being held at the IPT, the Security and Intelligence Services disclosed a record of a meeting between members of the Tribunal (including one member who sat in the present case) and MI5. At that meeting the IPT and MI5 appear to have agreed a protocol that any bulk holdings of the Agencies would not be searched when an IPT complaint is made. Accordingly, when the IPT makes "no determination" in favour of the Applicants, this may be as a result of no searches having taken place of the Agency's data holdings.

Statement of the facts (continued)

58.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

59. Article invoked	Explanation
Articles 8 and 10	The Court's Article 1 jurisdiction extends to computer hacking carried out from the UK taking control of or extracting information from a device outside the UK. For example, most people (wittingly or unwittingly) use internet services that hold their data outside their country of origin. They do not lose protection for their data under the Convention by so doing. Any interference with Article 8 or 10 must be "in accordance with the law" or prescribed by law. This requires more than that the interference be lawful under domestic law. There must be "a measure of legal protection against arbitrary interferences by public authorities", and public rules must indicate "with sufficient clarity" the scope of any discretion conferred and the manner of its exercise: Gillan v United Kingdom (2010) 50 EHRR 45 at §77. In Weber, the Court at §95 set out minimum safeguards (with numbers and spacing added for clarity): "In its case law on secret measures of surveillance, the Court has developed the following minimum safeguards that should be set out in statute law in order to avoid abuses of power: [1] the nature of the offences which may give rise to an interception order; [2] a definition of the categories of people liable to have their telephones tapped; [3] a limit on the duration of telephone tapping; [4] the procedure to be followed for examining, using and storing the data obtained; [5] the precautions to be taken when communicating the data to other parties; and [6] the circumstances in which recordings may or must be erased or the tapes destroyed." Weber was an interception case, but the principles in Weber have wider application to cases involving surveillance of all kinds. The touchstone is whether the degree of interference with privacy is comparable to that involved in interception of communication. See RE v UK (Application No. 62498/11) at §130 ("the decisive factor will be the level of interference with an individual's right to respect for his or her private life and not the technical definition of that interference"). The bare power under section 7 of the Intelligence Services Act 1994 is not in accordance with the law. There was no Code of Practice governing the use of section 7 (nor even a power to issue one). The absence of a Code of Practice was held to be an important omission in Liberty v UK (2009) 48 EHRR 1. Moreover, section 7 contains no requirement for judicial authorisation. Further, there was no information in the public domain as to how section 7 might be used to authorise intrusive computer hacking. There is no requirement for filtering to exclude irrelevant material. The Weber criteria (which in any event require expansion and adaptation to modern surveillance practices) are therefore not satisfied. There were no sufficient protections against arbitrary conduct because the IPT does not appear to have required that proper searches be carried out of all the data holdings of the Agencies. In consequence, any data obtained by CNE would not necessarily have been discovered by the Tribunal's searches, even if it had been held for too long, or otherwise in breach of the law. The IPT has not provided a genuine or effective safeguard against unlawful conduct.
Articles 6 and 13	The IPT declined to express any view or rule on these important issues (e.g. paragraph 63), even though the Applicants are at real and substantial risk of surveillance. Accordingly, there was no adequate domestic remedy for a breach of the Convention and the Tribunal did not comply with Article 6 ECHR. The IPT should not have held a secret meeting with MI5 to discuss procedure, at least without publishing the minutes. Such a meeting was not appropriate conduct for an independent judicial tribunal. As a result, the IPT secretly adopted a procedure under which no adequate searches were made of conduct by the Agencies.

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

60. Article invoked	Explanation

- Please ensure that the information you include here does not exceed the pages allotted -

G. Compliance with admisibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

61. Complaint	Information about remedies used and the date of the final decision
Articles 6, 8 and 10	The date of final decision was 9 March 2016. No further domestic remedy was available after that point. The Applicants each made a complaint to the Investigatory Powers Tribunal ("IPT") in an application dated 4 July 2014. The IPT has power to consider a complaint that the UK Security and Intelligence Services have breached the Convention. The Tribunal held an open preliminary hearing on 1-3 December 2015. The Tribunal handed down judgment on the preliminary issues of law on 12 February 2016. On 9 March 2016, the Tribunal notified the Applicants that it had made no determination in their favour. There is no right of appeal against a decision of the IPT. One of the Applicants, Privacy International, has brought a claim for judicial review in the High Court of England and Wales challenging part of the IPT's determination concerning section 5 of the Intelligence Services Act 1994. That claim is currently pending before the Administrative Court and does not overlap with this application. Both GCHQ and the IPT contend that judicial review is not available against a decision of the IPT and that all domestic proceedings have already been exhausted. In any event, the IPT has no power to grant relief against primary legislation, or a declaration of incompatibility. Accordingly, there is no domestic remedy available in relation to the issues arising in this application, regardless of the result of the claim for judicial review.
Article 13	There is no domestic remedy for a breach of Article 13. Article 13 is not included as a Scheduled enforceable right under the Human Rights Act 1998.

- Please ensure that the information you include here does not exceed the page allotted -

62. Is or was there an appeal or remedy available to you which you have not used? ○ Yes ◉ No

63. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

H. Information concerning other international proceedings (if any)

64. Have you raised any of these complaints in another procedure of international investigation or settlement? ○ Yes ◉ No

65. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

66. Do you (the applicant) currently have, or have you previously had, any other applications before the Court? ◉ Yes ○ No

67. If you answered Yes above, please write the relevant application number(s) in the box below.

10 Human Rights Organisations v. United Kingdom (Application no. 24960/15)
Privacy International v. United Kingdom (Application no. 60646/14)

I. List of accompanying documents

You should enclose full and legible copies of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You MUST:

- **arrange the documents in order by date and by procedure;**
- **number the pages consecutively; and**
- **NOT staple, bind or tape the documents.**

68. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found.

1.	Record of meeting IPT and Security and Intelligence Services 15 November 2007	p.	1-5A
2.	Covert Surveillance and Property Interference Code of Practice - December 2014	p.	6-101
3.	Draft Equipment Interference Code of Practice - February 2015	p.	102-131
4.	"Privacy and Security" Report by Parliament's Intelligence & Security Committee - 12 March 2015	p.	132-281
5.	"A Question of Trust: Report of the Investigatory Powers Review" by David Anderson QC - June 2015	p.	282-663
	Privacy International Re Amended Statement of Grounds - 13 July 2015	p.	664-691
7.	GreenNet et al. Re Amended Statement of Grounds - 13 July 2015	p.	692-723
8.	Expert Report of Professor Ross Anderson - 30 September 2015	p.	724-743
9.	Expert Report of Professor Peter Sommer - 30 September 2015	p.	745-788
10.	Witness Statement of Eric King - 5 October 2015	p.	789-830
11.	Government Re-Re-Amended Open Response to Statement of Grounds - 13 November 2015	p.	831-886
12.	Government Response to Request for Further Information - [undated]	p.	887-894
13.	Draft Equipment Interference Code of Practice - November 2015	p.	895-942
14.	Witness Statement of Ciaran Martin - 16 November 2015	p.	943-966
	Second Witness Statement of Ciaran Martin - 24 November 2015	p.	967-976
16.	Third Witness Statement of Ciaran Martin - 24 November 2015	p.	978-981
17.	Claimants' Skeleton Argument before Investigatory Powers Tribunal - 25 November 2015	p.	982-1023
18.	Government's Skeleton Argument before Investigatory Powers Tribunal - 25 November 2015	p.	1024-1103
19.	Judgment of Investigatory Powers Tribunal on Preliminary Issues - 12 February 2016	p.	1104-1159
20.	No Determination Letter from Investigatory Powers Tribunal - 9 March 2016	p.	1160
21.		p.	
22.		p.	
23.		p.	
24.		p.	
25.		p.	

Any other comments

Do you have any other comments about your application?

69. Comments

Declaration and signature

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

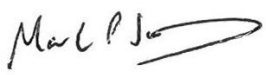
70. Date

0	4	0	8	2	0	1	4
D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2015

The applicant(s) or the applicant's representative(s) must sign in the box below.

71. Signature(s) ○ Applicant(s) ◉ Representative(s) - tick as appropriate



Confirmation of correspondent

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond. Where the applicant is represented, the Court will correspond only with the representative (lawyer or non-lawyer).

72. Name and address of ○ Applicant ◉ Representative - tick as appropriate

Mark Scott
Bhatt Murphy Solicitors
27 Hoxton Square
London N1 6NN
United Kingdom

The completed application form should be signed and sent by post to:

The Registrar
European Court of Human Rights
Council of Europe
67075 STRASBOURG CEDEX
FRANCE