

Lewis Croft

From: IPT <info@ipt-uk.com>
Sent: 26 January 2018 16:33
To: 'Mark Scott'; Ellie Oakley
Cc: Lewis Croft; Jo Wallwork; JonathanGlasson@matrixlaw.co.uk
Subject: RE: Bulk Data Hearing-Privacy International v SSFCA & others

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Dear Sirs,

The Tribunal has considered the Claimant's letter of 8 January 2018 in which it applied for permission to cross-examine the GCHQ witness and the consequential correspondence from the parties in relation to that application. The Tribunal shares the Claimant's concern that in his tenth statement the GCHQ witness has had to make a number of corrections to his earlier statement in relation to s.94 directions. It has decided that, exceptionally, it would be appropriate for the GCHQ witness to be called to give oral evidence and to be cross-examined. The cross-examination must be limited to the matters listed on the first page of the 8 January 2018 letter, namely to why the mistakes were made in the earlier statement and must not extend to any CLOSED issues. In so far as there is any necessity for any consequential cross-examination on CLOSED matters the Tribunal will instruct its Counsel to continue the cross-examination in CLOSED session.

The Tribunal intends to ask the GCHQ witness to give evidence following the CLOSED hearing listed for 26 February and the Claimant is asked to confirm as soon as possible that its counsel will be available on the afternoon of 26 February, not before 3p.m. The Respondents are asked to indicate whether any special measures need to be put in place for the GCHQ witness (such as screening) and, if so, to provide reasons for them.

The Tribunal has also decided that it would be appropriate for GCHQ to contact the PECN providers and to ask them to provide to GCHQ and to the Tribunal copies of any "trigger" letters or any documentary material evidencing receipt of such letters. The Tribunal would like that exercise to be completed in good time for the two day hearing on 12 and 13 March. The Tribunal would anticipate that any further disclosure obtained as a consequence of that exercise can be considered at the CLOSED hearing on 26 February.

The Tribunal understands that an edited OPEN version of the Respondents' full Note of Evidence given at the CLOSED hearing on 10 January will be disclosed next week. The editing of that Note has been discussed with Counsel to the Tribunal so that parts of it can be disclosed into OPEN. Unfortunately, although the Tribunal commissioned a transcript of the evidence at the CLOSED hearing, there was a serious technical failure with the transcribing equipment such that only a small part of the hearing has been transcribed. It is for that reason that there is only a note of the evidence.

There was no cross-examination at the hearing on 10 January as its purpose was largely investigative. It proceeded by reference to detailed areas of questioning that had been prepared by the Tribunal in consultation with its counsel. The only aspect where the Tribunal considered that cross-examination might be appropriate was in relation to the 10th witness statement of the GCHQ witness. However, Counsel to the Tribunal indicated that in his view he would not be acting in the Claimant's interests by cross-examining the GCHQ witness as it concerned an entirely OPEN witness statement upon which the Claimant had made an application for cross-examination at an *inter partes* hearing. The Tribunal accepted Counsel to the Tribunal's advice. Nonetheless as can be seen from the Note of Evidence the members of the Tribunal did rigorously explore this issue with the GCHQ witness. The second stage of the CLOSED process, the hearing on 26 February, will be adversarial where Counsel to the Tribunal will be making submissions on behalf of the Claimant.

Yours faithfully

Susan Cobb
Tribunal Secretary

