

**IN THE INVESTIGATORY POWERS TRIBUNAL**

**BEFORE THE PRESIDENT, THE VICE-PRESIDENT AND SIR RICHARD  
MCLAUGHLIN**

**BETWEEN:**

**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**

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**ORDER**

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**UPON HEARING MR DE LA MARE QC AND MR JAFFEY OF COUNSEL  
FOR THE CLAIMANT AND MR O'CONNOR QC AND MR O'BRIEN OF  
COUNSEL FOR THE RESPONDENTS AND MR GLASSON QC AS  
COUNSEL TO THE TRIBUNAL**

**THE TRIBUNAL DETERMINED**

1. That Issue 1 in the List of Issues appended hereto should not be determined as an initial issue

**AND DIRECTED**

2. The Claimant to serve its re-amended Statement of Grounds and Request for Further Information and Disclosure by 4pm Friday 22 January 2016.
3. The Counsel to the Tribunal (CtT) to serve his CLOSED submissions in relation to the Respondents' CLOSED Response by 4pm on Friday 29 January 2016.
4. The Respondents to serve by 4pm Friday 19 February 2016:
  - a. An OPEN (and, if so advised, a CLOSED) Reply to the Claimant's Request for Further Information and Disclosure Concerning the Respondents' OPEN Response. The OPEN Reply shall contain the disclosure of such of the policies, procedures and safeguards operated by the Respondents since June 2014 as may be disclosed subject to Rule 6 (1) of the Investigatory Powers Tribunal Rules 2000.
  - b. The Respondent's response to the CtT's submissions.
  - c. The Respondents amended OPEN Response to the Claimant's Re-Amended Statement of Grounds.
5. The Respondents to serve their CLOSED material in relation to the policies, procedures and safeguards in existence since 1 June 2005 upon which they wish to rely by 4pm Monday 7 March 2016.
6. The CtT and Counsel to the Respondents to meet in the week commencing Monday 14 March 2016 to seek agreement if possible in relation to the issues raised by their respective submissions. A CLOSED hearing shall be fixed in consultation with the Tribunal for the week commencing Monday 21 March 2016 to consider any outstanding issues.

7. The Respondents shall file and serve a re-Amended OPEN Response by Friday 8 April 2016 setting out any parts of the CLOSED response as agreed or directed.
8. By 4pm Monday 18 April 2016 the Claimant is to serve any evidence relevant to the preliminary issues and a statement of any further grounds the Claimant wishes to rely on following any disclosure of material from the CLOSED Response.
9. By 4pm Monday 18 May 2016 the Respondents are to file and serve any OPEN and CLOSED evidence relevant to the preliminary issues.
10. CtT to serve his CLOSED submissions in relation to the Respondents' CLOSED evidence by 4pm on Tuesday 7 June 2016.
11. The Respondents to serve their response to the CtT's submissions by 4pm Monday 20 June 2016.
12. The CtT and counsel to the Respondents to meet in the week commencing Monday 27 June 2016 to seek agreement if possible in relation to the issues raised by their respective submissions. A CLOSED hearing is to be fixed in consultation with the Tribunal for the week commencing 4 July 2016 to consider any outstanding issues.
13. The Respondents to serve any evidence consequent to the CtT's submissions by 4pm Monday 11 July 2016.
14. The parties to serve skeleton arguments and agreed bundles by 9am Wednesday 20 July 2016
15. CtT to serve his skeleton argument (if requested to do so by the Tribunal) by 2pm Monday 25 July 2016
16. The substantive hearing of the claim to take place over 5 days starting Monday 25 July 2016 (with the first day designated as a reading day).

17. Liberty to apply

Dated 15 January 2016

**IN THE INVESTIGATORY POWERS TRIBUNAL**

**BEFORE THE PRESIDENT AND THE VICE-PRESIDENT**

**BETWEEN:**

**PRIVACY INTERNATIONAL**

**Claimant**

**-and -**

**(1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH  
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**Respondents**

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**ORDER**

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**UPON HEARING MR DE LA MARE QC AND MR JAFFEY OF COUNSEL FOR THE CLAIMANT AND MR O'CONNOR QC AND MR O'BRIEN OF COUNSEL FOR THE RESPONDENTS AND MR GLASSON QC AS COUNSEL TO THE TRIBUNAL**

**THE TRIBUNAL RULED**

1. That Issues 5 to 8 in the List of Issues appended the Order of 15 January 2016 shall not be determined at the hearing listed to commence on Monday 25 July 2016 ("the July hearing"). Those Issues shall instead be determined at a two

day hearing to be fixed in the period 14-30 November 2016. Such hearing to be fixed by 4pm Wednesday 15 June 2016 in consultation with the Tribunal and the parties.

**AND DIRECTED**

2. The Claimant to serve by 4pm Friday 10 June 2016 its
  - a. Revised Request for Further Information; and its
  - b. List of paragraphs in the Respondents' witness statements upon which they seek clarification.
  
3. The Respondents to reply to the document referred to in paragraph 2b. herein by 4pm Friday 17 June 2016. Thereafter the Tribunal will determine what further steps (if any) should be taken by Thursday 23 June 2016.
  
4. The Claimant to apply, if so advised, for permission to cross-examine the Respondents' witnesses by 4pm Wednesday 22 June 2016.
  
5. The parties to seek to agree the assumed facts for the July hearing and to notify the Tribunal by 4pm Friday 1 July 2016 of their proposals for the assumed facts.

Dated 8 June 2016

**IN THE INVESTIGATORY POWERS TRIBUNAL**

**BEFORE THE PRESIDENT, THE VICE-PRESIDENT AND SIR RICHARD  
MCLAUGHLIN**

**BETWEEN:**

**PRIVACY INTERNATIONAL**

**Claimant**

**-and -**

**(1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH  
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**Respondents**

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**ORDER**

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**UPON HEARING MR JAFFEY OF COUNSEL FOR THE CLAIMANT AND  
MR O'CONNOR QC AND MR O'BRIEN OF COUNSEL FOR THE  
RESPONDENTS AND MR GLASSON QC AS COUNSEL TO THE  
TRIBUNAL**

**THE TRIBUNAL DIRECTED**

1. Counsel to the Tribunal (“CtT”) is to serve his disclosure submissions in relation to the CLOSED Reply to the Request for Further Information and documents disclosed as part of that Reply by 9.30 a.m. Monday 11 July 2016.
2. CtT and Counsel for the Respondents are to meet on Tuesday 12 July 2016 to discuss and to seek to resolve the disclosure requests.
3. A CLOSED hearing shall be held on Wednesday 13 July at 445 pm in default of agreement.
4. The Respondents are to serve any further disclosure subsequent to the requests by CtT by 4 p.m. Friday 15 July 2016.
5. The agreed issues for the substantive hearing shall be revised and shall be as set out in the Issue 1 in the List of Issues
6. The Claimant is to append to its skeleton argument a table summarising its position in relation to “Access”, “Use”, “Disclosure”, “Retention Period”, “Review”, “Destruction and “Oversight” by reference to the periods in issues 2-4 in the List of Issues appended hereto.
7. The Claimant is to serve its proposed list of agreed and assumed facts by 4 p.m. Monday 11 July 2016 and the Respondents are to reply to the same by 4 p.m. Wednesday 13 July 2016.
8. The parties are to serve their skeleton arguments by 9.30 a.m. Wednesday 20 July 2016.
9. Any skeleton arguments in reply shall be served by 10.30 a.m. Monday 25 July 2016.

**AND THE TRIBUNAL MADE NO ORDERS IN RELATION TO**

10. The application to cross-examine the Respondents’ witnesses.

11. The request to seek the assistance of the Interception of Communications Commissioner and the Intelligence Services Commissioner in relation to the issues identified in the Claimant's letter of 10 June 2016.
12. Any searches in relation to the Claimant's claim.
13. Liberty to apply.

**Dated 7 July 2016**



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

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APPENDIX TO ORDER DATED 7 JULY 2016

AMENDED AGREED LIST OF ISSUES

FOR HEARING COMMENCING 26 JULY 2016<sup>1</sup>

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Domestic law

1. Is and was:
  - a. the obtaining of communications data,
  - b. any obtaining of the content of communications,
  - c. any carrying out of equipment interference, or
  - d. any other kind of property interferenceunder section 94 of the TA 1984, lawful as a matter of domestic law?

ECHR

2. Is or was the section 94 Regime in accordance with the law under Article 8(2) ECHR:
  - a. prior to the avowal of the use of section 94 to obtain communications data and the publication of the section 94 handling arrangements on 4 November 2015;
  - b. from 4 November 2015 to the date of the hearing; and
  - c. as at the date of hearing?
3. Is or was the BPD Regime in accordance with the law under Article 8(2) ECHR:
  - a. prior to the avowal of BPDs in the ISC's *Privacy and Security* report on 12 March 2015;
  - b. from 12 March 2015 until the publication of the BPD Handling Arrangements on 4 November 2015;

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<sup>1</sup> Amended following directions hearing on 7 July 2016

- c. from 5 November 2015 to the date of the hearing; and
  - d. as at the date of the hearing?
4. Is and was the BPD Regime and the section 94 Regime proportionate under Article 8(2) ECHR:
- a. (for BPD) prior to the avowal of BPDs in the ISC's *Privacy and Security* report on 12 March 2015;
  - b. (for BPD) from 12 March 2015 to the publication of the BPD Handling Arrangements on 4 November 2015;
  - c. (for section 94) prior to the avowal of the use of section 94 to obtain communications data and the publication of the section 94 handling arrangements on 4 November 2015;
  - d. (for both section 94 and BPD) from 4 November 2015 to the date of the hearing; and
  - e. (for both section 94 and BPD) as at the date of hearing?

<sup>\*</sup>  
\* The EU law issues have been adjourned to a hearing to be fixed in the week commencing 28 November 2016