

**BEFORE THE PRESIDENT (SIR MICHAEL
BURTON), MR JUSTICE EDIS, SIR RICHARD
MCLAUGHLIN, MR CHARLES FLINT QC AND MS
SUSAN O'BRIEN QC**

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

ORDER

UPON HEARING Thomas de la Mare QC, Ben Jaffey QC and Daniel Cashman for the Claimant, Sir James Eadie QC, Andrew O'Connor QC and Richard O'Brien for the Respondents, and Jonathan Glasson QC as Counsel to the Tribunal at hearings on 17-19 October 2017, 1 December 2017, 10 January 2018, 26 February 2018, 12-13 March 2018 and 23 July 2018

AND FOR THE REASONS SET OUT IN THE TRIBUNAL'S OPEN AND CLOSED JUDGMENTS

IT IS DECLARED THAT:

1. The Directions under section 94 of the Telecommunications Act 1984 identified in the Tribunal's CLOSED judgment were not lawfully made.
2. The Respondents' regime in respect of sharing of BCD/BPD with foreign agencies complied with Article 8 ECHR from 4 November 2015.

3. The Respondents' regime in respect of sharing BCD/BPD with law enforcement agencies complied with Article 8 ECHR and UK domestic law from 4 November 2015.
4. The Respondents' regime in respect of sharing BCD/BPD with industry partners complied with Article 8 ECHR from 4 November 2015.
5. The steps taken by way of collection, retention and use of BCD or BPD by the Respondents complied with the requirements of proportionality pursuant to Article 8 ECHR from 4 November 2015.

AND IT IS ORDERED THAT:

6. Save in the respect consequent upon the Tribunal's conclusion in relation to Issues 1 and 2, the Claimant's application to set aside the conclusions in the Tribunal's judgment of 17 October 2016 is dismissed.
7. Paragraph 2 of the Tribunal's Order of October 2016 is amended as follows:

"The Respondents' bulk communications data ('BCD') regime under section 94 of the Telecommunications Act 1984 ('TA') was not in accordance with the law under Article 8(2) ECHR until 4 November 2015, but has been in accordance with the law under Article 8(2) ECHR since that date, save that the Third Respondent's BCD regime under section 94 of the TA was not in accordance with the law under Article 8(2) ECHR until 14 October 2016, but has been since that date."

8. The Claimant's application that the Tribunal should instruct its Counsel to identify any arguable error of law in the Tribunal's CLOSED judgments is refused.
9. The Respondent shall file its response to the Counsel to the Tribunal's further requests to open up parts of the CLOSED judgments by 4pm Wednesday 23 July 2018. In the absence of agreement on those requests, the Tribunal shall resolve the issue on paper.
10. The Respondents to prepare a Revised Report on Searches taking account of the Tribunal's further finding of unlawfulness relating to the Third Respondent's BCD regime. The Revised Report to be provided to the Claimant (in OPEN) and to the Tribunal and Counsel to the Tribunal (in CLOSED, so far as necessary) by 4pm on Friday 17 August 2018.
11. The Revised Report must:

- a. be prepared in OPEN, so far as possible without breaching Rule 6 of the Investigatory Powers Tribunal Rules 2000;
- b. separate, so far as practicable, the results relating to the lawful and unlawful periods in each case;
- c. if data has been deleted, provide a reasoned assessment (applying a balance of probabilities test if possible) of whether responsive data has in the past been held; and
- d. indicate whether (and, if so, to what extent, including reasons) the Respondents object to the disclosure of any parts of the report.

12. In the event that the Respondents notify the Tribunal of any objection to disclosure:

- a. Counsel to the Tribunal shall make submissions in relation to disclosure by 4pm Friday 7 September 2018;
- b. The Respondents shall file submissions in response by 4pm Friday 14 September; and
- c. Counsel to the Tribunal shall meet with counsel for the Respondents on Monday 17 September 2018.

13. A hearing (at which the Claimant may make OPEN and the Respondents and Counsel to the Tribunal may, as necessary, make OPEN and/or CLOSED submissions) shall be fixed for 1030 AM Tuesday 25 September 2018 to rule on (a) disclosure; and (b) to hear OPEN and CLOSED submissions on what, if any, determination the Tribunal should make.

Dated 23 July 2018