

IN THE INVESTIGATORY POWERS TRIBUNAL
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

RE-AMENDED OPEN RESPONSE TO THE CLAIMANTS' REQUEST
FOR FURTHER INFORMATION RELATING TO
SEARCHES DATED 22 FEBRUARY 2017

This document contains certain voluntary disclosure that the Respondents make relating to the searches that have been conducted for the purposes of these proceedings, which is additional to the information contained in the Amended OPEN Report on Searches dated 6 October 2017 ~~17 February 2017~~ ('the Amended Report on Searches').

This document also contains responses to ~~some of the Claimant's Requests for Further Information dated 22 February 2017. Requests that are premature and/or disproportionate and/or irrelevant have not been answered.~~

Full details of the searches and their results were disclosed to the Tribunal as CLOSED annexes to the Amended Report on Searches. An additional short CLOSED Response to the Request for Further Information has also been served. ~~There is no CLOSED analogue to this document.~~

Voluntary Disclosure

1. MI5 and GCHQ conducted searches of their BPD and BCD holdings. SIS conducted searches of its BPD holdings. In addition, all three agencies conducted searches against their respective corporate records.

Corporate record searches are the searches that the agencies routinely conduct in response to IPT claims. They are designed to indicate whether or not any `conduct` has been undertaken in relation to the Claimant.

2. With regard to the corporate record searches, all three agencies searched on a date range running from 1 March 2013 (i.e., 2 years prior to the avowal of BPDs) to the date of the search. For the avoidance of doubt, there was no date range involved in the searches of BPD and BCD: the searches were simply conducted against current holdings.
 3. The three agencies hold their records and data in different ways, and their individual systems have different search capabilities. The searches conducted were not, therefore, identical. However, the searches conducted by each of the agencies were considered to be both thorough and proportionate. The searches of the BPD and BCD databases alone (as opposed to the corporate record searches) were very resource intensive. The task of conducting the SIA searches of BPD/BCD and analyzing the results took teams of officers across the three agencies a total in excess of 30 working days to complete.
- 3A. In July 2017 the MI5 team dealing with the BPD/BCD case established that MI5 held a category of data, in the form of "workings" that officers conducting investigations may have saved, and that this data could be relevant to the accuracy of the searches undertaken in January 2017. In particular, it was established that, in an area known as ["Workings"], officers could (if they needed to do so) save the results of their analysis (arising from a particular investigation) and that these saved "workings" could include (amongst other things) the results from searches that they had undertaken, including the results of searches of MI5's BPD holdings and MI5's BCD database.
- 3B. Because of the possibility that the data that had been saved into "Workings" could potentially be the result of a search of a BPD database or the BCD database, MI5 concluded that it should search "Workings" for any data in relation to the search terms provided by the Claimant. The results of these searches (carried out in August and September 2017) relating to the Claimant's search terms, are reflected in the re-amendments below, and are described in more detail in CLOSED.
- 3C. The search results from "Workings" also caused MI5 to review its corporate record search results.
- 3D. Separately and independently of the above matters, MI5 has (since January 2017) revised its process for undertaking searches for IPT

cases, and this revised process will ensure that any searches now undertaken for IPT cases would ensure that appropriate searches of their holdings would thus be undertaken. In the light of the foregoing matters, MI5 has reviewed whether or not there are any further omissions in relation to the searches carried out, and has concluded that there are no further omissions in the searches carried out.

3E. MI5 has reported the retention of data in "Workings" (as described at paragraph 3A above) to the Investigatory Powers Commissioner as an error (this was initially reported on 19 July with further details provided on 6 October 2017). The nature of the error is that there is no existing review, retention and deletion ("RRD") period prescribed for the data (officers' workings, including the results of searches) that has been saved in "Workings". MI5 does not consider that this issue gives rise to any breach of either the BPD or BCD handling arrangements or other BPD/BCD policies; the data retained in "Workings" includes the results of targeted searches of MI5's holdings (including BPD/BCD) but not BPD or BCD itself.

Request relating to paragraph 3 of the Amended Report on Searches: GCHQ BPD

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.
4. As stated in the Amended Report on Searches, GCHQ's search results did not show that GCHQ held data relating to the Claimant in its BPDs before avowal on 12 March 2015.
5. GCHQ considers it to be possible that it did in fact hold such data in its BPDs prior to avowal, which has now been deleted.
6. The results of the corporate record and BPD searches conducted by GCHQ do not show that any data from GCHQ's BPD relating to the Claimant was either accessed or examined during the pre-avowal period.
7. The results of the corporate record and BPD searches conducted by GCHQ do not show that any data that it may have held in its BPDs relating to the Claimant during the pre-avowal period was held in a way that was contrary to any internal or cross-Agency handling arrangements or policies.
8. As to paragraph 3 of the RFI, see paragraph 5 of this Response above.
9. As to paragraph 4 of the RFI:
 - a. The Respondents cannot answer this request in OPEN, save as set out at paragraph 4 of this Re-Amended Response above, as to do so would be damaging to the interests of national security. Further information is provided in the CLOSED Report on Searches;
 - b. As to the questions in paragraph 5 which are incorporated by reference:
 - i. (a): The Respondents cannot answer this request in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Report on Searches;
 - ii. (b): The Respondents cannot answer this request in OPEN, save as set out at paragraph 4 of this Re-Amended Response above, as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Report on Searches;
 - iii. (c): See paragraph 6 above of this Re-Amended Response;
 - iv. (d): See paragraph 6 above of this Re-Amended Response;

- v. (e): Insofar as this request refers to any sharing of targeted data, see paragraph 6 above. GCHQ's position on sharing of BPD with industry partners is set out in the GCHQ Witness's statement dated 21 June 2017. Insofar as the request refers to any other sharing of BPDs, the Respondents cannot answer in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the CLOSED Response;
- vi. (f): See paragraph 7 above of this Re-Amended Response.

Request relating to paragraph 4 of the Amended Report on Searches: MI5 BPD

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 listed 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.
10. As stated in the Amended Report on Searches, MI5's search results showed that it did hold data relating to the Claimant in its BPDs before avowal on 12 March 2015.
11. The results of the corporate record and BPD searches conducted by MI5 ~~do not~~ show that ~~any~~ data from MI5's BPDs relating to the Claimant was either accessed or examined during the pre-avowal period. No further details can be provided in OPEN without damage to national security, but are given in CLOSED.

12. The results of the corporate record and BPD searches conducted by MI5 do not show, save in one respect (as to which see below), that the data relating to the Claimant that MI5 held in its BPDs prior to avowal was held in its BPDs during that period in a way that was contrary to any internal or cross-Agency handling arrangements or policies. MI5 did hold (and continues to hold) an open-sourced BPD which was not duly authorised when it was acquired in the pre-avowal period. That dataset contains data relating to the Claimant. MI5 had adverted to the fact that this BPD was not properly authorised prior to the searches being conducted in January 2017 and had already initiated (and has now completed) the process of authorising this BPD.
13. As to the questions in request 5 of the Claimant's RFI:
- a. The Respondents cannot answer this request in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Report on Searches;
 - b. The Respondents cannot answer this request in OPEN, save as set out at paragraph 10 of this Re-Amended Response above, as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Report on Searches;
 - c. See paragraph 11 above of this Re-Amended Response;
 - d. See paragraph 11 above of this Re-Amended Response;
 - e. Insofar as this request refers to any sharing of targeted data, see paragraph 11 above. Insofar as the request refers to the sharing of bulk data, the Respondents cannot answer in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Response;
 - f. See paragraph 12 above of this Re-Amended Response.

Request relating to paragraph 5 of the Amended Report on Searches: SIS BPD

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 listed 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.
14. As stated in the Amended Report on Searches, SIS's search results showed that it did hold data relating to the Claimant in its BPDs before avowal on 12 March 2015.
15. The results of the corporate record and BPD searches conducted by SIS do not show that any data relating to the Claimant that it held in its BPDs was either accessed or examined during the pre-avowal period.
16. The results of the corporate record and BPD searches conducted by SIS do not show that the data relating to the Claimant that it held in its BCDs during the pre-avowal period was held in a way that was contrary to any internal or cross-Agency handling arrangements or policies.
17. As to the questions in request 5 of the Claimant's RFI:
- a. The Respondents cannot answer this request in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Report on Searches;
 - b. The Respondents cannot answer this request in OPEN, save as set out at paragraph 14 of this Re-Amended Response above, as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Report on Searches;
 - c. See paragraph 15 above of this Re-Amended Response;
 - d. See paragraph 15 above of this Re-Amended Response;
 - e. Insofar as this request refers to any sharing of targeted data, see paragraph 15 above. Insofar as the request refers to the sharing of bulk data, the Respondents cannot answer in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Response;
 - f. See paragraph 16 above of this Re-Amended Response.

**Request relating to paragraph 6 of the Amended Report on Searches:
GCHQ BCD**

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) to (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.
18. As stated in the Amended Report on Searches, GCHQ's search results did not show that GCHQ held data relating to the Claimant in its BCDs before avowal on 4 November 2015.
19. GCHQ considers it to be possible that it did in fact hold such data in its BCDs prior to avowal, which has now been deleted.
20. The results of the corporate record and BCD searches conducted by GCHQ do not show that any data from GCHQ's BCD relating to the Claimant was either accessed or examined during the pre-avowal period.
21. The results of the corporate record and BCD searches conducted by GCHQ do not show that any data that it may have held in its BCDs relating to the Claimant during the pre-avowal period was held in a way that was contrary to any internal or cross-Agency handling arrangements or policies.
22. As to the question in paragraph 7 of the RFI, see paragraph 19 above.
23. As to the questions in paragraph 8 of the RFI:
 - a. Any data relating to the Claimant was held for no longer than a year;
 - b. As to the questions in paragraph 5 which are incorporated by reference:

- i. (a): The Respondents cannot answer this request in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Report on Searches;
- ii. (b): Any data relating to the Claimant was held for no longer than a year;
- iii. (c): See paragraph 20 above of this Re-Amended Response;
- iv. (d): See paragraph 20 above of this Re-Amended Response;
- v. (e): Insofar as this request refers to any sharing of targeted data, see paragraph 20 above. GCHQ's position on sharing of BCD with industry partners is set out in the GCHQ Witness's statement dated 21 June 2017. Insofar as the request refers to any other sharing of BCD, the Respondents cannot answer in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Response;
- vi. (f): See paragraph 21 above of this Re-Amended Response.

Request relating to paragraph 7 of the Amended Report on Searches: MI5 BCD

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) to (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.

24. As stated in the Amended Report on Searches, MI5's search results showed ~~did not show~~ that it held data relating to the Claimant in its BCDs before avowal on 4 November 2015.
25. For the avoidance of doubt, the data in question has been deleted from MI5's BCD holdings. MI5 considers it to be possible that it did in fact hold data relating to the Claimant in its BCDs prior to avowal, which has now been deleted.
26. The results of the corporate record and BCD searches conducted by MI5 ~~do not~~ show that ~~any~~ data from MI5's BCDs relating to the Claimant was either accessed or examined during the pre-avowal period. No further details can be provided in OPEN without damage to national security, but are given in CLOSED.
27. The results of the corporate record and BCD searches conducted by MI5 do not show that any data that it may have held in its BCDs relating to the Claimant during the pre-avowal period was held in its BCDs in a way that was contrary to any internal or cross-Agency handling arrangements or policies.
28. As to the question in paragraph 7 of the RFI, see paragraphs 24 to 25 ~~235~~ above.
29. As to the questions in paragraph 8 of the RFI:
- a. Any data relating to the Claimant was held in MI5's BCD holdings for no longer than a year;
 - b. As to the questions in paragraph 5 which are incorporated by reference:
 - i. (a): The Respondents cannot answer this request in OPEN as to do so would be damaging to the interests of national security. Further information is provided in the Amended CLOSED Report on Searches;
 - ii. (b) Any data relating to the Claimant was held in MI5's BCD holdings for no longer than a year;
 - iii. (c): See paragraph 26 above of this Re-Amended Response;
 - iv. (d): See paragraph 26 above of this Re-Amended Response;
 - v. (e): Insofar as this request refers to any sharing of targeted data, see paragraph 26 above. Insofar as the request refers to the sharing of bulk data, the Respondents cannot answer in OPEN as to do so would be damaging to the interests of national security. Further

- information is provided in the Amended CLOSED Response;
- vi. (f): See paragraph 27 above of this Re-Amended Response.

Requests 9 and 10 of the RFI

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"?

30. If the question that is asked is whether all deletion of BPD and BCD data held by all three agencies was suspended from June 2015 to January 2017 because this claim had been issued, the answer is no.

21 March 2017

**ANDREW O'CONNOR QC
RICHARD O'BRIEN**

30 June 2017

**ANDREW O'CONNOR QC
RICHARD O'BRIEN**

6 October 2017

ANDREW O'CONNOR QC

RICHARD O'BRIEN