IN THE INVESTIGATORY POWERS TRIBUNAL

Case No. IPT/15/110/CH

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

CLAIMANT'S REQUEST FOR FURTHER INFORMATION CONCERNING THE FIFTH WITNESS STATEMENT OF THE GCHQ WITNESS

The Claimant requests further information in respect of the Fifth Witness Statement of the GCHQ Witness (dated 21 June 2017).

In paragraph 15, the GCHQ Witness states that the proper interpretation of a "Bulk Personal Dataset" under the ISC (Additional Review Functions) (Bulk Personal Datasets) Direction 2015 excludes a dataset derived from and containing raw sigint data, contrary to the plain words of the Direction. The Claimant's position is that the GCHQ Witness has thereby fallen into legal error. Pending resolution of this dispute of law by the Tribunal, and for the purposes of responding to this Request for Further Information, the Respondents are therefore required to respond on the assumption that a "Bulk Personal Dataset" includes a dataset of raw sigint data or data derived from raw sigint data. If necessary, the GCHQ Witness should make clarifications to the text of the Fifth Witness Statement accordingly.

Of paragraphs 10 and 11:

"10. [GCHQ's contracts with industry partners] cover the work of several thousand individuals. All those involved with operational systems are fully vetted. The great majority do their work at GCHQ sites where they work under exactly the same conditions as GCHQ staff and use the same GCHQ infrastructure. They

have the same training requirements for access to GCHQ systems as GCHQ staff in the same area and are subject to the same level of audit.

11. While, as noted above, GCHQ does not use contractors for operational intelligence analysis, it is necessary for some contractors to have access to operational data for the purposes of systems and applications development. This access may be on GCHQ operational systems, or through the provision of sample data for use within a new application while it is being developed. In all cases the data involved will be no more than is necessary for the purpose for which it is to be used."

1. **Paragraph 10 explains that those contractors involved with GCHQ's operational systems are "fully vetted". Paragraph 11 explains that certain contractors have access to operational data other than on GCHQ operational systems. Please identify which contractors, who have access to operational data, are not *"fully vetted"*.**

Of paragraphs 23(d) and 25:

"23(d). [Contractors that have access to databases containing BPD or BCD] (typically between 100-200 individuals) access BPD / BCD only when necessary for purposes of system maintenance and development".

"25. ... It might be necessary for contractors to access sensitive data if, for example, maintenance or development work on a part of the system dedicated to holding material that included sensitive data required the running of test queries that resulted in the returning of such data."

2. **Are all queries of databases containing BPD or BCD made by contractors:**
    a. **Logged?**
    b. **Auditable?**
    c. **Audited?**
3. **What records are kept of, and what controls are exercised over, *"test queries"*?**

Of paragraph 29(b):

"29(b). One database containing BPD has been accessed remotely by a small number of individuals (fewer than 20) working for industry partners. All of these accesses were for the purposes of system testing and have occurred since 2015 when the database came into existence. We cannot demonstrate exactly what data was accessed on these occasions. However none of the BPDs held on this particular system were assessed as containing sensitive data, so it is highly unlikely that such data was accessed."

4. **Were records kept of the access described in paragraph 29(b)? If so, when and why were such records deleted?**

Of paragraph 31:

"31. GCHQ shares samples of operational data with industry partners to enable them to develop systems and techniques that will improve GCHQ's capability to exploit the data. Samples of data are taken from GCHQ systems and transferred securely, often via removable media, to industry partners' own IT networks, which will have been accredited by GCHQ accreditors and will be accessed only within GCHQ-accredited premises or accredited areas within larger premises and by vetted staff."

5. **What is the scale of data included in such a *"sample of operational data"*?**

6. **If an industry partner were given, via removable media, a sample of operational data, what (if any) controls would be exercised over the subsequent use of that data? In particular:**

   a. **Are queries of the data logged?**

   b. **Are records kept of the analysis of the data generated?**

   c. **What, if anything, has the Commissioner done to review the use of such data?**

Of paragraph 33(a):

"33(a). No BPD has been transferred by GCHQ to industry partners in this period."

7. **If a BPD were assumed to include a dataset of raw sigint data, does this statement remain correct?**

Of paragraph 33(b):

"33(b). As for BCD, in the period 2010-11 some samples of operational data that might have contained some section 94 data were transferred to industry partners. The possibility that some BCD data was included in the operational data that was transferred arises from the relevant records, but it is not possible to be certain one way or the other because the samples have now been deleted. Except for the possible transfer in 2010-11, no BCD has been transferred by GCHQ to industry partners in this period."

8. **Are all queries of such operational data:**

a. **Logged?**

b. **Auditable?**

9. **Is the consequent use made of such operational data:**

   a. **Logged?**

   b. **Auditable?**

Of paragraph 39:

"39. For those researchers who have access to GCHQ operational data, or have done so in the past, the data to which they have access is heavily circumscribed and restricted to what they need for their project. None of this data consists of BPD or BCD, nor has it in the past. These researchers' projects aim to improve our analytic tools and techniques using operational data, in a similar way to our use of industry partners."

10. **If a BPD were assumed to include a dataset of raw sigint data, does this statement remain correct?**

Of paragraph 40:

"40. … The rest of paragraph 84(d) [of the Claimant's skeleton argument] *is untrue. …"*

11. **The Respondents' departure from the 'neither confirm nor deny' principle is noted. Is it correct that the sigint selectors/targeting database (identified as the *"target dictionary"* in paragraph F.3.2. of the Heilbronn Institute Problem Book) is made available to some researchers?**

Of paragraph 41:

"41. The Commissioners have been briefed in general terms about GCHQ's use of industry in the course of their inspections of GCHQ."

12. **When was the briefing?**

13. **What were the Commissioners told at the briefing?**

14. **What was the response from the Commissioners to the information they were told?**

15. What, if any, audit was carried out in consequence?

THOMAS DE LA MARE QC

BEN JAFFEY QC

DANIEL CASHMAN

BHATT MURPHY

Blackstone Chambers
6 July 2017