IN THE INVESTIGATORY POWERS TRIBUNAL CASE NO. IPT/15/110/CH

BEFORE THE PRESIDENT,

SIR RICHARD MCLAUGHLIN, CHARLES FLINT QC

AND 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 MR DE LA MARE QC AND MR CASHMAN OF COUNSEL FOR THE CLAIMANT AND MR EADIE QC, MR FACENNA QC AND MR PALMER OF COUNSEL FOR THE RESPONDENTS AND MR GLASSON QC AS COUNSEL FOR THE TRIBUNAL AT A HEARING ON 8 SEPTEMBER 2017

THE FOLLOWING DIRECTIONS ARE GIVEN IN RELATION TO THE PREPARATION OF THE DRAFT ORDER FOR REFERENCE TO THE CJEU CONSEQUENT TO THE TRIBUNAL'S FINAL JUDGMENT OF 11 SEPTEMBER 2017:

1. The Respondents are to prepare a first draft of the order for reference by 5pm on Friday 29 September 2017.

2. The Claimant is to review, and if so advised, suggest amendments to, the draft order for reference by 5pm on Friday 6 October 2017.

3. The parties are to file with the Tribunal the agreed draft of the order for reference (or in default of agreement, the competing drafts) by 5pm on Wednesday 11 October 2017.

AND THE FOLLOWING DIRECTIONS ARE HEREBY GIVEN IN RELATION TO THE HEARING TO BE HELD ON 17-19 OCTOBER 2017 ("THE HEARING"):

4. The issues to be determined at the Hearing are those set out in the Appendix to this Order.

5. The Claimant is to serve its skeleton argument by 4pm on Friday 22 September 2017.

6. The Respondents are to serve their skeleton argument by 4pm Friday 6 October 2017.

7. The Claimant is to serve a reply to the Respondents' skeleton argument (if so advised) by 4pm Friday 13 October 2017.

8. The parties are to use their best endeavours to serve a bundle for the Hearing by 4pm on Monday 9 October 2017.

9. If requested by the Tribunal, Counsel to the Tribunal shall file and serve a skeleton argument by 4pm on Monday 16 October 2017.

10. Liberty to apply.

Dated 8 September 2017

APPENDIX TO ORDER DATED 8 SEPTEMBER 2017

Issues to be determined by the Tribunal at the hearing to be held Tuesday 17 October – Thursday 19 October 2017.

PROPORTIONALITY

1. Is and/or was the section 94 TA 1984 regime a disproportionate interference with rights under Article 8 ECHR?

2. Is and/or was the bulk personal datasets regime a disproportionate interference with rights under Article 8 ECHR?

SHARING/ TRANSFER OF DATA

3. What safeguards are required by law (including by reference to Article 8 ECHR and, in relation to the section 94 TA 1984 regime, EU law) to be imposed on the SIAs when sharing/transferring bulk data with third parties?

4. To what extent do the Respondents comply, and have the Respondents complied, with the safeguards required in respect of the transfer of bulk data (either physically or through remote access) to:
    a. industry partners;
    b. foreign agencies; and
    c. domestic agencies other than the Security Intelligence Agencies?

5. What effect, if any, is there on the legality of the section 94 TA 1984 regime of bulk communications data being transferred to domestic agencies to be used for purposes other than national security?

SECTION 94 DELEGATION

6. Under domestic law, is a Secretary of State permitted to delegate to GCHQ the power to request information or categories of information from Public Electronic Communications Networks ('PECNs') under section 94 TA 1984?

7. Has the Secretary of State delegated to GCHQ the power to request information or categories of information from PECNs under section 94 TA 1984?

8. What is the consequence of any delegation on the part of the Respondents of the power under section 94 TA 1984 to the compliance of the section 94 TA 1984 regime with (a) EU law; (b) Article 8 ECHR; and (c) domestic law?

TIMING OF ARTICLE 8 BREACH

9. Did the Respondents' actions in collecting BCD become 'in accordance with law' for the purposes of Article 8 ECHR first upon avowal of the BCD regime, or only upon their collection pursuant to the authority conferred by the revised section 94 Directions issued on 14 October 2016 (after the Tribunal's judgment had been provided to the parties in draft), since Directions made before avowal were, by dint of the Tribunal's reasoning, *ultra vires* and so void *ab initio*?