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 AND DISCLOSURE DATED 7 MARCH 2017

The Claimant requests further information and disclosure in respect of the witness statements and disclosure provided on 2, 3 and 6 March 2017.

Of: the sample section 94 Directions

1. Under Article 2(b) of Council Directive 95/46/EC ("the Data Protection Directive") the term *"processing"* is defined as meaning *"any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction"*. Under Article 2 of the e-Privacy Directive the definitions supplied by the Data Protection Directive shall apply. In respect of each s.94 Direction that has been made (whether for internet, fixed-line telephone or mobile telephone BCD):

a) what activities amounting to processing within the meaning of the Data Protection Directive (set out above) are carried out by the PECN?

b) To what extent does each PECN process data, extract it from other data, format it, or retain it pending transfer?

c) Does any PECN retain data pending transfer? If so, for how long?

d) Does any PECN use software or hardware to extract communications data from internet traffic or telephone calls, such as (but not limited to) by:

i) removing from an internet URL the path but not the hostname, pursuant to section 21(6) of RIPA 2000 (i.e. stripping out the communications data from the content provided after the 'first slash');

ii) carrying out deep packet inspection to obtain communications data; or

iii) any other means?

e) Have payments been made to PECNs pursuant to s.94(6)? If so:

i) How much has been paid to PECNs over the last 5 years? When were payments made, and what were they for?

ii) Please disclose documents from and to PECNs seeking, negotiating and agreeing or refusing to make payments, and documentation supporting the payments made and the reasons for them.

f) Please disclose documents recording the consultations with and any representations made by PECNs about s.94 BCD notices.

2. Please disclose any guidance, requirements or information provided to PECNs specifying the processing, formatting or other arrangements affecting BCD that apply to them.

3. Please provide full particulars of the precise nature and extent of the delegation of powers or authority to select what communications data is provided, when, in what circumstances and to whom and how such delegation has been exercised by:

a) the Director of GCHQ;

b) any person authorised by him to make such requests (including the civil service level or grade of such person);

c) the Security Service (including the civil service level or grade of such person); and

d) any other person (whether a public official or otherwise)?

4. On what basis is the Secretary of State satisfied that the GCHQ section 94 Direction is in accordance with the law and proportionate in circumstances where the data to be collected are:

a) not identified (*"will include but are not limited to"*); and

b) may be altered by the Director of GCHQ without the prior approval of the Secretary of State?

5. What procedures and arrangements are in place when the Director of GCHQ or any other person alters the requirements for data sought pursuant to a section 94 Direction?

6. Please disclose any submissions or representations made to the Secretary of State in support of the section 94 Directions disclosed.

Of the GCHQ witness statement of 6 March 2017 [7]

7. Are the matters at paragraphs 7 and 8 of the witness statement recorded in a written policy? If so, what is the date of the policy? Please disclose it.

8. Do the matters in paragraphs 7 and 8 apply to granting any remote access to law enforcement agencies and/or international partners who are not integrated staff or on GCHQ's premises?

9. Do the matters in paragraphs 7 and 8 apply to sharing with industry partners? In particular, are staff of industry partners required to:

a) comply with the same policies and safeguards as GCHQ staff;

b) complete all relevant training, including legalities training;

c) be assessed as having sufficient analysis skills;

d) have security clearance;

e) accompany all queries by necessity and proportionality statements;

f) have such statements audited by GCHQ;

g) comply with GCHQ's compliance guide; and

h) comply with the same safeguards in relation to the treatment of LPP and journalistic material as GCHQ staff?

Of the MI5 witness statement [8]

10. GCHQ requires that "*recipients must accord the material a level of protection equivalent to GCHQ's own safeguards*". Does MI5 apply the same requirement, *mutatis mutandis* to any:

a) sharing with UK Law Enforcement Agencies;

b) sharing with industry partners; and

c) sharing with foreign liaison partners?

Please disclose the relevant arrangements evidencing the answers.

11. In particular, does MI5 require that any UK Law Enforcement Agency, industry partner or foreign liaison partner each:

a) comply with the same policies and safeguards as MI5's staff;

b) complete all relevant training, including legalities training;

c) be assessed as having sufficient analysis skills;

d) have security clearance;

e) accompany all queries by necessity and proportionality statements;

f) have such statements audited by MI5;

g) comply with MI5's arrangements; and

h) comply with the same safeguards in relation to the treatment of LPP and journalistic material as MI5 staff?

Of the SIS witness statement [9]

12. Of paragraph 12, is *"equivalent standards"* a requirement of SIS's policy and arrangements, or an objective which is aimed for but may not always be achieved before sharing may be permitted?

13. GCHQ requires that *"recipients must accord the material a level of protection equivalent to GCHQ's own safeguards"*. Does SIS apply the same requirement, *mutatis mutandis* to any:

a) sharing with UK Law Enforcement Agencies;

b) sharing with industry partners; and

c) sharing with foreign liaison partners?

Please disclose the relevant arrangements evidencing the answers.

14. In particular, does SIS require that any UK Law Enforcement Agency, industry partner or foreign liaison partner each:

a) comply with the same policies and safeguards as SIS's staff;

b) complete all relevant training, including legalities training;

c) be assessed as having sufficient analysis skills;

d) have security clearance;

e) accompany all queries by necessity and proportionality statements;

f) have such statements audited by SIS;

g) comply with SIS's arrangements; and

h) comply with the same safeguards in relation to the treatment of LPP and journalistic material as SIS staff?

15. Of paragraph 21, would each of the following constitute *"Action-On"*?

a) holding BPD;

b) aggregating BPD with a foreign liaison service's own datasets;

c) searching BPD;

d) searching BPD for legally privileged or journalistic material;

e) preparing intelligence analysis on the basis of BPD searches;

f) disclosing such an intelligence report to SIS;

g) disclosing such an intelligence report outside of the foreign liaison service to a foreign Minister responsible for the liaison service or equivalent;

h) disclosing such an intelligence report to an intelligence agency in a third country; and

i) detaining a person based on such a report?

Of the unanswered requests

16. The Claimant renews its requests for disclosure of the unanswered requests in the RFI dated 17 February 2017.

THOMAS DE LA MARE QC

BEN JAFFEY QC

DANIEL CASHMAN

Blackstone Chambers
7 March 2017