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8 January 2018

Dear Sir/Madam

Privacy International v The Secretary of State for Foreign and Commonwealth Affairs and Others, IPT/15/110/CH

Cross-examination of GCHQ Witness

Our client has reviewed the tenth witness statement of the GCHQ Witness. We consider that the explanations that he or she provides are incomplete and unsatisfactory. We wish to cross-examine the GCHQ witness at the March hearing on the following topics:

- The extent of the errors made in the previous evidence. In particular the circumstances in which the firm statement that "no selection of the data to be provided... has ever been made unilaterally by the Director of GCHQ or any other official" without this ever having in fact been checked.
- Whether those errors might extend to other areas of evidence before the Tribunal.
- The reasons for and culpability for the errors.

The Tribunal will have noted that the tenth witness statement contains neither a personal apology from the GCHQ witness for misleading the Tribubal nor an apology on behalf of GCHQ. It is a matter purely of luck and the Claimant's persistence in continuing to investigate this matter that the highly misleading evidence has now been corrected.

Nevertheless, in circumstances where the tenth witness statement does not contain a full explanation of the extent of the errors or the reasons for them, cross-examination is appropriate and necessary in order to find out what in

fact happened. Our client is content for the usual arrangements to be made for the witness to give evidence from behind a screen.

'Trigger letters'

It appears that GCHQ is now unsure whether it sent trigger letters in many cases, or whether the extent of the data sought was explained orally to PECN officials. The Tenth Witness Statement gives rise to the possibility that letters were sent but the terms are unknown If the letters were sent, the PECN's will have retained a copy. The obvious solution is for the Tribunal to request (or if necessary require) the PECNs to search for and provide these letters. It appears that GCHQ has not asked the PECN's to check their own records. This is necessary to ensure that the full evidence is before the Tribunal.

If the 'trigger' was delivered orally by a GCHQ officer, then the records of the relevant meetings need to be provided to the Tribunal; if no GCHQ record of the meeting were kept (which would be most troubling), we would expect the PECN to have kept a record of such meetings (given the consequences to them of non-compliance). Equally, if no records were kept, by either GCHQ **or** PECNs, this should also be disclosed.

Consequential disclosure

No doubt there will be closed argument about disclosure of such trigger letters, appropriately redacted, or of records of meetings where oral instructions will be given. We wish to record that we consider that open disclosure of such materials is imperative in the light both of the fact of and content of the recent witness evidence. Fairness requires such material to be made available to support cross-examination.

Yours faithfully

Bhatt Murphy

cc GLD