



Neutral Citation Number: [2015] UKIPTrib 13_132-H

IN THE INVESTIGATORY POWERS TRIBUNAL

P.O. Box 33220
London
SW1H 9ZQ

Date: 29/04/2015

Before :

MR JUSTICE BURTON (PRESIDENT)
MR SEABROOK QC
MR FLINT QC
MS SUSAN O'BRIEN QC
PROFESSOR GRAHAM ZELICK CBE QC

Between :

(1) ABDEL-HAKIM BELHAJ
(2) FATIMA BOUDCHAR
(3) SAMI AL SAADI
(4) KARIMA AIT BAAZIZ
(5) KHADIJA SAADI
(6) MUSTAFA AL SAADI
(7) ANAS AL SAADI
(8) ARWA AL SAADI
(9) AMNESTY INTERNATIONAL LIMITED

Claimants

- and -

(1) SECURITY SERVICE
(2) SECRET INTELLIGENCE SERVICE
(3) GOVERNMENT COMMUNICATION HEADQUARTERS
(4) SECRETARY OF STATE FOR THE HOME DEPARTMENT
(5) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

Respondents

Miss Dinah Rose QC, Mr Ben Jaffey and Mr Conor McCarthy (instructed by **Leigh Day**)
for (1) to (8) Claimants

Mr Hugh Tomlinson QC, Mr Nick Armstrong and Miss Tamara Jaber (instructed by
Mr Nick Williams, Legal Counsel for Amnesty International) for **Amnesty International**

Mr James Eadie QC, Miss Marina Wheeler and Miss Kate Grange (instructed by **the
Treasury Solicitor**) for the **Respondents**

Mr Jonathan Glasson QC (instructed by **the Treasury Solicitor**) as **Counsel to the Tribunal**

DETERMINATION

1. These are the determinations made by the Tribunal in these proceedings in accordance with section 68 (4) of the Regulation of Investigatory Powers Act 2000. They should be read together with the Tribunal's judgment of the same date.
2. No determination has been made in favour of the First, Second or Fourth to Ninth Claimants inclusive.
3. A determination has been made in favour of the Third Claimant, Sami Al Saadi.
4. Under Rule 13 (2) of the Investigatory Powers Tribunal Rules 2000 where the Tribunal makes a determination in favour of a complainant it is required to provide him with a summary of that determination including any findings of fact. However that duty is subject, under Rule 13 (4), to the general duty imposed on the Tribunal by Rule 6 (1).
5. The general duty imposed on the Tribunal under Rule 6 (1) is to carry out its functions "in such a way as to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security ... or the continued discharge of the functions of any of the intelligence services." The Tribunal may not provide any information by way of findings of fact that raise any substantial risk of damaging national security interests by, inter alia, revealing or indicating the methods of operation of the intelligence agencies in carrying out surveillance or interception functions. For that reason this summary states only the essential elements of the Tribunal's determination.
6. The Tribunal, exercising its powers under section 68 (7), has required and received full cooperation from the Respondents in disclosing all documents and information required in order to investigate the complaints made by the Claimants.
7. Under section 68 (2) the Tribunal exercised its power to require assistance from the Interception of Communications Commissioner, given that his office is best placed and has the technical expertise to scrutinise the evidence submitted. The Tribunal has been assisted by an Inspector appointed by the Commissioner, who carried out the investigative work required by the Tribunal to confirm the accuracy of the material evidence. On the basis of his investigative work, and its own assessment of the evidence, both written and oral, the Tribunal is fully satisfied that the evidence relevant to the complaints of the Claimants is accurate and complete.
8. The Tribunal has found that there are only two documents containing material subject to the legal professional privilege of any of the Claimants which have been held by any of the Agencies, namely by GCHQ. These two documents contain information

which is subject to the privilege of the Third Claimant. It is important to record that, although that information is covered by privilege it did not disclose nor refer to any legal advice.

9. The Tribunal, after careful consideration, is satisfied that there was no use or disclosure of the privileged information for the purpose of defending the civil claim brought by the Third Claimant and others in *Al Saadi & ors v. Straw & ors* [HQ12X02604] . That information was not disclosed to any lawyer instructed in or policy official working on those proceedings. Thus there was no contravention of Article 6 ECHR.
10. In addition the Tribunal's finding is that even if the legally privileged information had been disclosed to the Government defence team it would not have been of any use in the conduct of the defence, nor have provided any litigation advantage to the defence.
11. On the basis of the declaration made on 26 February 2015 the Tribunal has determined that there was an infringement of Article 8 in respect only of the legally privileged information of the Third Claimant contained in two documents held by GCHQ.
12. As to remedy the Tribunal has determined that there should be no award of compensation. The Third Claimant has not suffered any detriment or damage, because the information was of no significant value and was not disclosed nor used to his prejudice. The declaration already made, and this determination, is just satisfaction for the Third Claimant.
13. The Tribunal is satisfied that the legally privileged information contained in the two relevant documents will be adequately protected from any unlawful use or disclosure in the future. However in order to emphasise the importance of the protection of legally privileged material the Tribunal has required GCHQ to give an undertaking that the parts of the documents containing legally privileged information will be destroyed or deleted so as to render such information inaccessible to the agency in the future. One hard copy of the two documents will be delivered within 7 days to the Interception of Communications Commissioner, to be retained for a period of 5 years, in case it may be required for any further legal proceedings or inquiry. The Respondents may only seek to inspect that copy by application to the Tribunal, which will only be permitted on grounds other than the use of the information for intelligence purposes. The Tribunal has also required GCHQ to provide within 14 days a closed report confirming that the destruction and deletion of the two documents has effectively been carried out.

14. Delivery up rather than destruction of any such documents was sought by the Claimants. The Tribunal refers to its duty set out at paragraph 5 above. An order for delivery up of documents would in effect be a disclosure of information which might give an indication of the means by which the information was obtained by the Intelligence Agency, or enable a person who is legitimately subject to surveillance or interception to take measures to make such surveillance or interception more difficult to achieve in the future. In this case the deletion of the material fully protects the rights of the Third Claimant in ensuring that the information cannot be used in the future and, as noted at paragraph 9 above, the material held by GCHQ was not actually disclosed or used for the purpose of the Third Claimant's civil claim, which has now settled. We are satisfied that there is no legitimate need for the Third Claimant to have access to the material held by GCHQ. In these circumstances the Tribunal has decided not to make any order for delivery up of any document containing the LPP material.

15. It is necessary to record that the Tribunal invited the Respondents to give their consent (pursuant to Rule 6(3) of the Investigatory Powers Tribunal Rules, 2000) to disclosure of information other than in relation to the Third Claimant contained in paragraph 8 above, which they gave on the express basis that such consent and such disclosure should not be seen as a precedent for future cases