

**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**AND IN THE MATTER OF TWO APPEALS PURSUANT TO SECTION 57 OF  
THE FREEDOM OF INFORMATION ACT 2000**

**B E T W E E N:**

**PRIVACY INTERNATIONAL**

**Appellant**

- and -

**THE INFORMATION COMMISSIONER**

**First Respondent**

- and -

**(1) THE COMMISSIONER OF POLICE OF THE METROPOLIS  
(2) POLICE AND CRIME COMMISSIONER FOR WARWICKSHIRE**  
**Second Respondents**

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**OPEN SKELETON ARGUMENT FOR  
THE COMMISSIONER OF POLICE OF THE METROPOLIS**

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**INTRODUCTION**

1. The Appellant sought information from a large number of police forces concerning CCDC or 'IMSI catchers'. With the exception of Warwickshire and West Mercia Police and Crime Commissioners, who confirmed they held a business case, the unified response of those police forces was to the neither confirm nor deny (NCND) whether they held the information requested. This approach was, for the most part, upheld by the Commissioner on the twin bases that the information requested fell within s.23(5) and/or 24(2) of FOIA. The MPS would submit that the decision of the Commissioner was correct for those reasons and also due to the applicability of s.31(3) FOIA.
2. The Appellant sets out its case at §5 of its skeleton argument. In response, the MPS submits that:

- (i) The Appellant's submissions as to the test in s.23(5), that the term 'relates to' should be interpreted narrowly, are misconceived;
  - (ii) The Commissioner applied the correct test in respect of s.23(5) and s.24(2) FOIA; and
  - (iii) Considering those two exemptions together, that being the correct approach, as well as s.31(3) FOIA, the decision to uphold the NCND response was correct.
3. The MPS also endorses and supports the submissions filed by Warwickshire PCC in respect of the other joined lead appeal.
4. In terms of procedural matters, the MPS agrees with the approach set out in section A of the Appellant's skeleton argument and will adopt the same approach to referencing documents.
5. The MPS has filed open and closed evidence and will file closed submissions in addition to these open submissions. The Tribunal will be requested to consider the totality of the MPS's case in determining the outcome of this appeal. The MPS requests that:
  - (i) the Tribunal read the closed evidence and submissions prior to the commencement of the Appeal; and
  - (ii) time be set aside at the hearing for a closed hearing pursuant to r.35 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the FTT Rules") to consider the closed evidence and hear submissions.

#### **PRELIMINARY POINT**

6. Before addressing the three issues set out at §2 above, the MPS makes the overarching point that confirming or denying whether it has the information requested is to effectively confirm or deny whether the police possess and use IMSI catchers.
7. Starting with the FOI request made to the MPS [1A/109], the Appellant seeks *inter alia* purchase orders, invoices, correspondence regarding acquisition of IMSI catchers, requests by technology companies to keep the use of their equipment confidential, and training materials and internal guidance on how to use IMSI catchers. It is an obvious but important point that disclosing whether or not any of that material is held 'lets the

cat out of the bag' as to whether the MPS owns and uses IMSI catchers. As detailed in §28-§30 of the MPS's Response to the Appeal [2A/68-9], revealing to the world that the MPS has or does not have purchase orders, or invoices, or confidentiality agreements, or internal guidance on use signals with clarity whether or not the MPS owns and uses IMSI catchers.

8. That fact bears on how the Tribunal should approach the tests in s.23(5), s.24(2) and s.30(3) of FOIA. As the MPS has relied on NCND, the Tribunal is concerned with the impact of informing the world as to whether the information is held as opposed to the content of the information requested by the Appellant. Yet, for the reasons set out above, the confirmation or denial of possession of that information would have far-reaching and significant ramifications: the MPS would not just be confirming or denying possession of the information, they would be confirming or denying possession of equipment and, as an inevitable consequence, the use or not of a covert technique.

#### **INTERPRETATION OF 'RELATES TO' IN S.23(5) FOIA**

9. Section 23(5) FOIA provides:

(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3) [*bodies dealing with security matters*].

10. There are two ways in which s.23(5) can bite:
  - (i) If compliance with the requirement to confirm or deny would involve the disclosure of information 'supplied' by a listed body; or
  - (ii) If compliance with the requirement to confirm or deny would involve the disclosure of information that 'relates to' a listed body.
11. The term 'directly or indirectly supplied' has a plain meaning.
12. The Tribunals have had to grapple with what is meant by 'relates to'. All that is necessary is for there to be 'some connection' between the information and a body listed in s.23(3). As set out in *The All Party Parliamentary Group on Extraordinary Rendition v Information Commissioner* (EA/2012/0049-51) at [65]:

Applying the ordinary meaning of the words “relates to”, it is clearly only necessary to show some connection between the information and a s.23(3) security body; or that it touches or stands in some relation to such a body. Relates to does not mean ‘refers to’; the latter is a narrower term. Thus, for example, a response that no information is held may create a sufficient connection between the response and a security body for the purpose of s.23(5): see *Cabinet Office v Information Commissioner* (EA/2008/0080) at [21]-[23] and [27] (“Cabinet Office”).

13. This approach was approved in *Dowling v Information Commissioner* EA/2011/0118, where it was said by the First Tier Tribunal at [22]:

We conclude that a broad interpretation of these words is therefore inevitable. There are clearly limits to be imposed by commonsense and, in a particular case, the probable ambit in principle of the need for protection.

14. The Tribunal has repeatedly rejected attempts to insert the word ‘directly’ into the definition of ‘relates to’ so as to narrow its ambit. This rejection of a narrower interpretation to include the word ‘directly’ was explicitly set out in *Callus v The Information Commissioner and The Home Office* EA/2013/0159 where, at [39], the Tribunal went on to approve the Commissioner’s use of the phrase “within the territory” of one of the security bodies.
15. It follows that the Appellant’s principle point – that the term ‘relates to’ should be construed narrowly and require a ‘direct connection’ to a s.23(3) body – runs directly contrary to the developed authority and practice of the Tribunal. The attempt to re-argue that s.23(5) requires there to be a ‘direct connection’ to a security body is a brazen attack on established, albeit non-binding, authority. No authority or argument is provided to support such an attack other than a generic reliance on the FOI regime encouraging openness and disclosure.
16. In addition to being contrary to authority, the effect of the Appellant’s suggested approach would be to undermine the very purpose of s.23(5). If, in order for s.23(5) to take effect, the Tribunal had to be satisfied on balance that there was a direct connection to a s.23(3) body then the simple act of NCND under s.23(5) would be to reveal that direct connection. The purpose of NCND when it comes to the s.23(3) bodies is to keep their involvement or non-involvement a secret both in any individual FOIA request and also to prevent individually insignificant pieces of information entering the public domain so as to permit people to establish a mosaic of that information and piece together what the security services are and are not doing. An approach that undermines that purpose should not be countenanced.

**WHETHER THE COMMISSIONER APPLIED THE CORRECT TEST UNDER s.23(5)  
AND s.24(2) FOIA**

17. The Appellant has set up a straw man by selectively quoting from the Decision Notice. It is submitted that the Commissioner has applied the correct test for both s.23(5) and s.24(2) FOIA.

Section 23(5)

18. The Appellant submits that the test applied by the Commissioner was whether the use of CCDs “could ‘relate to’ any of the security bodies” (see Skeleton Argument at §21, quoting from §38 of the Decision Notice [1A/10]). The Appellant appears to take issue with two parts of that approach:
- (i) The use of phraseology such as ‘in the territory of’ to give a broad interpretation to the term ‘relates to’ in s.23(5); and
  - (ii) The use of the word ‘could’ so as to lessen the standard of proof to be applied.
19. Neither of these arguments takes the Appellant far.
20. First, as set out above, a broad interpretation of the term ‘relates to’ is supported by authority and is the only correct approach in light of the purpose of s.23 and the need to keep the role and actions of the security services secret. It is suggested that this can lead to absurd consequences so that information that falls within the remit of the security services but is not truly related to their core purposes falls within s.23(5). However, as set out in *Dowling*, what does and does not ‘relate to’ s.23(3) bodies is subject to a ‘common sense’ filter and there is no suggestion that s.23(5) will be interpreted so rigidly so that it acts as the bar suggested by the Appellant.
21. Second, the quotation taken from §38 of the Decision Notice is not how the test is put at the critical stage of the decision. In fact, as set out in §41-§43 of the Decision Notice, the Commissioner considered whether on balance the information would relate to a s.23(3) body [1A/11]. In other words, the Commissioner applied the correct test.

Section 24(2)

22. Section 24(2) FOIA provides:

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

23. The relevant legal principles applicable to s.24(2) are helpfully set out in the Commissioner's response at §19 [1A/54].

24. It is now submitted by the Appellant that the Commissioner applied the wrong test at §46 by simply being satisfied that s.24(2) applied as the information requested related to a covert technique. This is, again, a straw man argument that does not accurately represent the rationale of the Commissioner. The test was, in fact, set out in §53 of the Decision Notice and was set out correctly [1A/13].

**THE NCND RESPONSE WAS CORRECT**

25. The MPS has adopted an NCND position so that the world at large will not discover as a result of this request whether the police do or do not hold information that will reveal the use or non-use of a covert tactic. For that reason, the MPS has not provided open evidence that might reveal the very issue at hand. The MPS has adopted the approach recommended in the authorities and by the Ministry of Justice by not indicating whether it is s.23 or s.24 that applies in this case – see *Baker v Information Commissioner* EA/2006/0045 at [34-5] and [43-5] and the Ministry of Justice's 2012 Guidance on s.23 [1A/67-8].

26. Two conclusions can properly be drawn from the manner in which the Tribunals deal with the application of s.23(5) and 24(2):

(i) That a level of vagueness as to the exact involvement or otherwise of the security services is the express purpose of the NCND regime in ss.23-24; and

(ii) There is a necessary breadth to the test in s.23(5) so that the line between s.23 and s.24 is blurred. If the test for the application of s.23(5) was narrow and strict then there would be less opportunity to maintain a vagueness over whether s.23 and/or s.24 applied.

27. In line with that approach, the MPS has not stated explicitly that s.23(5) does or does not apply. In line with MPS practice, closed evidence has been filed to support the reliance on s.23(5) and s.24(2). However, this is not an indication as to whether the MPS is relying on s.23 or s.24 (see the MPS's application under r.14 [A1/91-2]).
28. In this open skeleton argument, the MPS makes the following submissions:
  - (i) The information requested is of a type that engages s.23(5) and/or s.24(2) and/or s.31(3);
  - (ii) The public interest is against requiring confirmation or denial of whether the MPS holds this information;
  - (iii) The status of the Appellant is not a matter to which any weight attaches;
  - (iv) Such material as there is in the public domain does not substantially undermine the MPS's NCND position; and
  - (v) The evidence provided by the Appellant as to other legal systems does not advance its case.

Engagement of s.23(5) and/or s.24(2) and/or s.31(3)

29. Covert policing tactics plainly have the potential to fall within s.23, s.24 and s.31. The MPS relies on three general reasons why, in this case, those sections are engaged:
  - (i) Policing techniques of this nature are a matter of national security that go to the police's capabilities to prevent serious crime and terrorism;
  - (ii) The executive (i.e. the police) has indicated that this is serious and sensitive, and its opinion on the matter should be given due weight; and
  - (iii) The position is equivalent to applications for Public Interest Immunity (PII), which is routinely held to apply to sensitive policing techniques.
30. The term 'national security' has been interpreted broadly and encompasses the security of the United Kingdom and its people and various associated aspects: *Baker* at [26], applying *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153. A full analysis is set out at [26] of *Baker*.

The expression “national security” is not defined in FOIA and we can find no exhaustive definition in any statutes or judicial decisions. However we have been referred to the House of Lords (HL) decision on the topic in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153. The HL made a number of findings and observations which we find helpful in this case:

- (i) “national security” means “the security of the United Kingdom and its people.” (para 50 per Lord Hoffman);
- (ii) the interests of national security are not limited to action by an individual which can be said to be “targeted at” the UK, its system of government or its people (para 15 per Lord Slynn);
- (iii) the protection of democracy and the legal and constitutional systems of the state is a part of national security as well as military defence (para 16 per Lord Slynn);
- (iv) “action against a foreign state may be capable indirectly of affecting the security of the United Kingdom” (paras 16-17 Lord Slynn); and
- (v) “reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom’s national security” (para 17 Lord Slynn).

31. As set out in the evidence of both Det. Supt Williams and Det. Supt Nolan, covert policing is a central plank of policing serious crime and terrorism. Revelation of the limits of the police in respect of specific surveillance or data capturing techniques undermines the ability of the police to deal with crime and impacts national security – see Det. Supt. Williams at §4-§14 **[1A/185-8]**. This applies especially to complex organised crime and terrorism. In short, the Tribunal has before it compelling evidence from senior officers that revealing whether or not the police hold this information would:

- (i) Impact on covert policing on a national level, including with lead s.23 organisations such as the NCA;
- (ii) Undermine future operations and the efficacy of police tactics;
- (iii) Hand criminals and terrorists an advantage in the increasingly complex struggle to police the most serious and devastating acts of crime and terrorism; and
- (iv) Do so in the context where the National Threat Level is designated as SEVERE.

32. It is not, therefore, simply a question of raising the issue of ‘police tactics’ and pleading NCND to all policing tactics but, rather, that disclosing the specific capabilities of operational covert policing will have a deleterious impact on the ability to prevent crime and safeguard the nation. The question of whether secret policing techniques

are a matter of national security is to be found by the analogy to PII as set out in *Mohamed and another v Secretary of State for the Home Department* [2014] 1 WLR 4240 at [20], the Kay LJ stated:

Lurking just below the surface of a case such as this is the governmental policy of “neither confirm nor deny” (“NCND”), to which reference is made. I do not doubt that there are circumstances in which the courts should respect it. However, it is not a legal principle. Indeed, it is a departure from procedural norms relating to pleading and disclosure. It requires justification similar to the position in relation to public interest immunity (of which it is a form of subset). It is not simply a matter of a governmental party to litigation hoisting the NCND flag and the court automatically saluting it. Where statute does not delineate the boundaries of open justice, it is for the court to do so.

33. This applies equally to s.31(3) as it does to s.24(2) given the long history of policing techniques being found to attract PII. As *per* Lord Bingham in *R v H* [2004] 2 AC 134 at [18], public interest immunity would attach to information such as “*the use of [...] operational techniques (such as surveillance) which cannot be disclosed without ... jeopardising the success of future operations*”. This approach was applied in *R. (on the application of Metropolitan Police Service) v Chairman of the Inquiry into the Death of Azelle Rodney* [2012] EWHC 2783 (Admin) at [33-5].
34. It is submitted that the evidence of Det. Supt Williams, as an expert in the field and who works closely with national counter-terrorism bodies, should be given due weight. Lord Hoffmann in *Rehman* at [50-3] separated out the question of law (around the interpretation of the term) from the question of judgment about whether a particular matter is in the public interest, which is primarily a question for the executive. It follows that the courts should be slow to override a decision by the executive that a matter is in the public interest. That approach is further reflected in *Quayum (acting on behalf of the Camden Community Law Centre) v Information Commissioner & Foreign and Commonwealth Office* [2012] 1 Info LR 332 (EA/2011/0167) and many other cases in which the courts have properly deferred to the executive for the determination of the strictly governmental function of determining what is in the national security (for example, see *R (Binyam Mohammed) v Secretary of State for Foreign Affairs* [2011] QB 218 at §131 *per* Lord Neuberger MR at [131]).
35. Accordingly, on the evidence before the Tribunal, there is both a real possibility of an adverse effect to national security and of likely prejudice to the prevention and detection of crime.

Public interest

36. The Tribunal has compelling evidence from both Det. Supt. Williams and Det. Supt. Nolan as to the impact on national security and preventing and detecting crime of revealing whether this information is held. It is submitted that significant weight should be afforded to that evidence.
37. In *Keane v Information Commissioner and others* [2016] UKUT 461 (AAC) at [58] the Upper Tribunal set out the reality of the weight habitually afforded to the matters that safeguard the national security:

Nor am I persuaded by the Appellant's arguments that the Tribunal treated either exemption as absolute in nature. The framework of analysis as set out at the start of the Tribunal's reasons make it plain that they were well aware they were dealing with qualified exemptions, as did the organisation of their reasoning, notwithstanding some rough edges. Whilst it may well be wise to avoid characterising particular exemptions as carrying "inherent weight" (see Upper Tribunal Judge Turnbull's decision in the Cabinet Office case at paragraph 66), the reality is that the public interest in maintaining the qualified national security exemption in section 24(1) is likely to be substantial and to require a compelling competing public interest to equal or outweigh it (as recognised in the First-tier Tribunal decision in *Kalman v Information Commissioner* [2010] UKFTT EA 2009 0111 (GRC), [2011] 1 Info LR 664 at paragraph [47]).

[emphasis added]

38. That there is plainly substantial weight in the public interest arguments in favour of the exemption at s.24 is further set out in the Ministry of Justice's 2012 Guidance on s.24:

There is obviously a very strong public interest in safeguarding national security. If non-disclosure is required to safeguard national security it is likely to be only in exceptional circumstances that consideration of other public interest factors will result in disclosure. The balance of the public interest in disclosure will depend in part on the nature and likelihood of the potential risk to national security, as well as the nature of the countervailing public interest considerations in making the information available. Each request for information will need to be judged on a case-by-case basis.

39. As to s.31, in *Mathieson v IC & Devon & Cornwall Constabulary* (EA/2010/0174) the Information Tribunal considered a request to disclose the locations of all ANPR cameras in Devon and Cornwall and the application of s.31. At [10], the Tribunal stated:

All these points have some validity and we accept that disclosure of the requested information may only have tipped the scales in favour of terrorists and serious organised criminals slightly. But we are bound also to take account of the fact that, although the risk may have been small, if disclosure of the information requested meant, for example, that a terrorist incident took place which might otherwise have been avoided, the results could be catastrophic. We have considerable sympathy with Mr Middleton's plea that the

police “...need to stay one step ahead” and with his rhetorical question: “Why would we want to give one of our tools back to the criminals?”

40. Given the nature of the information being sought, the risk, however small, of tipping the scales in favour of terrorists and serious organised crime is such that the balance falls heavily in favour of upholding the NCND approach of the MPS.
41. The MPS recognises the public interest in holding a public debate on matters that affect the privacy of citizens. However, the point is overstated by the Appellant. There already exists a powerful check on executive power in the form of the regulatory oversight scheme as set out by Det. Supt. Williams at §15-§47 of his statement [1A/188-195]. The Tribunal is invited to recognise the comprehensive nature of the safeguards in place to protect individuals from executive overreach or abuse of power. Where there are serious concerns about wholesale disclosure, as in matters of policing covert tactics, the existence of a comprehensive independent oversight regime alleviates many of the concerns raised by the Appellant. In the circumstances, the public interest in revealing whether the MPS possesses the information requested is lessened by the existence of robust oversight measures designed to protect the public.
42. The Appellant states that it is impossible to address the quality of the oversight regime. It is not known why it is said to be impossible as the oversight regime applies to various policing tactics equally. The regime in the Investigatory Powers Act 2016 (“the 2016 Act”) has now been tested and found to be compatible with the ECHR: the Divisional Court in *R (National Council for Civil Liberties) v Secretary of State for the Home Department* [2019] EWHC 2057 (Admin) considering the “*question of compatibility with the Convention [...] by reference to the totality of the inter-locking safeguards applicable at the various stages of the bulk interception process*” held that the regime in the 2016 Act was in accordance with the law for the purposes of arts. 8 and 10. This builds upon the well-established principle that the oversight of the Investigatory Powers Tribunal provided adequate safeguards against abuse (*Kennedy v UK* (2011) 52 EHRR 4 at [167-9]).
43. Further, as the Appellant will be aware having been party to the proceedings, there is the additional safeguard that decisions of the IPT are amenable to judicial review (*R (Privacy International) v Investigatory Powers Tribunal* [2019] 2 W.L.R. 1219).

### The status of the Appellant

44. The MPS endorses and adopts the submissions made by the PCC for Warwickshire at §42 of his Skeleton Argument as to the immateriality of the status of the Appellant to the questions for the Tribunal. The MPS respectfully requests that the Tribunal adopt the approach set down by the Supreme Court in *Kennedy*.

### Information in the public domain

45. The Appellant, primarily through the evidence exhibited to the statement of Ms Callander, places significant emphasis on information said to be in the public domain. The reliance on that information is both misplaced and does not greatly assist the Appellant.
46. The first point to note is much of what the Appellant claims to be information in the public domain is, in fact, speculation by journalist and activists without formal confirmation that what is said is in any way accurate. The reports relied on from the Guardian, the Times and other news outlets are notable due to the fact that there is no official confirmation or denial of the truth of the contents of those articles, indeed the police have maintained the NCND approach [2/126-8, 138-149].
47. The Appellant then relies on entries in certain forces budgets. However, minor infrequent and dispersed disclosures neither portray a comprehensive picture of possession nor use or reveal any detailed information going to the heart of the FOI request. That the Appellant has drawn inferences from information pieced together from various sources does not equate to the information being sought being in the public domain.
48. Third, the Appellant relies on the items stocked by various companies [2/130-2]. It is not in dispute that certain companies make and sell CCDC equipment but that does not greatly assist the Appellant in this appeal.
49. Fourth, what the Ministry of Justice and the Scottish prison service [2/132-4] do to ensure the disciplinary regime in prisons is outside the knowledge of the MPS and, in any event, concerns matters immaterial to this Appeal.

50. Finally, and perhaps most importantly, the Appellant has approached the question of what is in the public domain as a ‘zero sum game’ where (it is said) because some information is in the public domain then the MPS should confirm or deny whether it holds the information requested. However, the position is more complex and more nuanced. The information collated by the Appellant is disparate and partial and the Appellant has been forced to speculate so as to fill in the substantial gaps in respect of what it has collated. The MPS highlights the Information Commissioner’s Office Guidance *Information in the Public Domain*<sup>1</sup>, which provides a framework for analysing ‘public domain’ issues including:
- (i) That some information is in the public domain is not determinative of whether the FOI request should be granted (§39 by reference to *Armstrong v Information Commissioner and HMRC* (EA/2008/0026, 14 October 2008));
  - (ii) That just because some information is in the public domain does not mean that additional more detailed information should be revealed (§46 by reference to *S v Information Commissioner and GRO* (EA/2006/0030, 9 May 2007), and *Craven v Information Commissioner* (EA/2008/0002);
  - (iii) That concerns arise if formal confirmation or denial of possession of information would confirm or give context to information that is currently speculative or arises from a leak or where doing so would paint a clearer picture than the fragmented information currently available (§47 and §50 by reference to *PETA v Information Commissioner and University of Oxford* (EA/2009/0076, 13 April 2010)); and
  - (iv) The existence of an independent regulatory body can meet the need for public discussion on the issues at hand (§§82-3)
51. The Appellant relies on information that is not confirmed, lacks specificity as to the detail of the information in the public domain, and is unproven and speculative. It is submitted that minimal weight should be placed on the information in the public domain in circumstances where in itself it does not portray a picture that is complete, detailed or founded on reliable information. The request by the Appellant goes significantly beyond what information it has thus far been able to collate.

<sup>1</sup> <https://ico.org.uk/media/1204/information-in-the-public-domain-foi-eir-guidance.pdf>

### The position in other jurisdictions

52. The Appellant places weight on the position in the USA and Germany as described by Nathan Freed Wessler [2/2-124] and Ulf Buermeyer [2/1-8] respectively. The MPS's position as to this evidence is that it is of minimal relevance to the questions for the Tribunal. The MPS understands the purpose of their evidence to be that if the Germans and the Americans are happy to disclose that they possess CCDC equipment then why don't the British confirm or deny possession.
53. The simple answer to that hypothetical question is that just because the German or American authorities have taken a position does not mean that it is the correct one and that the British authorities should follow it. The Appellant submits at §19(c) of its skeleton that there is no evidence that revealing that the Germans or Americans possess CCDC equipment has impacted on national security or crime. No evidence is provided to support that assertion, presumably because the Appellant is unable to prove the negative it asserts.
54. There are any number of issues on which the British diverge in approach from other countries in how to police the citizenry and protect the nation. This comparative approach taken by the Appellant is selective both in terms of the topic and the nations represented. The MPS notes that there is no wider analysis from the Appellant as to the approach taken by other countries than the two chosen to support the Appellant's point.
55. Furthermore, and with respect to Mr Wessler and Mr Buermeyer, neither work at the coal face of policing and neither work at all in the UK. It is respectfully submitted that minimal weight should be placed on the evidence of Mr Wessler and Mr Buermeyer as against the police witnesses who are able to assist the Tribunal with the national security and policing needs in this jurisdiction.

### **CONCLUSION**

56. For the reasons set out above, the Tribunal is respectfully requested to dismiss this appeal.

**ROBERT TALALAY**

*Chambers of Jason Beer QC*  
*5 Essex Court*

*6 August 2019*