

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

**SKELETON ARGUMENT
ON BEHALF OF THE RESPONDENTS
For hearing on 1 December 2017**

Introduction

- 1) The 1 December 2017 hearing has been listed (by the Tribunal's direction of 31 October 2017) as an OPEN and CLOSED directions hearing to consider:
 - a) The Respondents' application to rely on further evidence; and
 - b) The Claimant's application to re-open the Tribunal's October 2016 judgment.

Respondents' application to rely on further evidence

- 2) The Respondents applied on 15 November 2017 to rely upon further evidence. The OPEN and CLOSED statements sought to be relied upon were served with the application.
- 3) Permission to rely on the further evidence should be granted for the reasons given in the application. Those reasons are not repeated in detail here. In summary:
 - a) The evidence goes to the important issues which the Tribunal must resolve, and will enable the Tribunal to have the fullest information before it to resolve those issues (see §2).

- b) There are good explanations for the evidence being served at this stage (see §3).
 - c) The Claimant will suffer little, if any, prejudice by the admission of the further evidence, and none that cannot be accommodated by permitting the Claimant to serve responsive submissions (§4).
- 4) Since the Respondents served their application, further material has been received from IPCO going to some of the same issues. It seems likely that the Claimant will wish to serve further submissions about that in any event, thus reducing still further the prejudice that they would suffer by further evidence being served by the Respondents.
- 5) The Respondents therefore submit that permission should be granted to rely on the further evidence. Further, if permission is granted, the Respondents request a direction that the Claimant serve any further submissions about the evidence (together with any other matters, for instance, IPCO's letter received on 14 November 2017) by 15 December 2017, that is in sufficient time for them to be considered before the CLOSED hearing.

Claimant's application to re-open the October 2016 judgment

- 6) By application dated 10 November 2017 the Claimant has applied for the Tribunal to reconsider its findings in its October 2016 judgment concerning Commissioner oversight.
- 7) The Tribunal indicated in its 31 October 2017 directions that, although it will hear argument in relation to the application, it will not reach a decision in relation to it until after the further CLOSED hearing has taken place.
- 8) The Respondents submit that consideration of the Claimants' application should not take place at this stage. The parties will only be in a properly informed position to make submissions on the application, and the Tribunal to determine it, once the Tribunal has considered and ruled on the question of oversight of sharing after the further CLOSED hearing. Indeed, the very material which the Claimant relies on in support of its application to re-open the October 2016 judgment will be considered by the Tribunal when considering the question of sharing. It will inevitably be in a much better position to consider its relevance to, and impact on, the question of oversight more generally when – but only when – it has ruled on the issue of sharing.
- 9) The Respondents accordingly reserve their position on the application at this stage.

- 10) However, for the avoidance of doubt, if the October 2016 judgment is re-opened the Respondents reserve the right to file further evidence and make further submissions on the substantive question which is re-opened. It is not accepted that the re-opening of the Tribunal's judgment is the straightforward corrective exercise that the Claimant appears to suggest at §2 of its application. See also the Claimant's submission on Day 1 of the October 2017 hearing that the issue, raised for the first time that day, could be dealt with in the course of that hearing [transcript, Day 1, p.98, lines 13-16] and did not "*add anything substantial to the task*" before the Tribunal [Day 1, p.100, lines 15-16]; see also the Claimant's submission that the "*point with respect is a simple one*" which was "*pretty obvious*" [Day 2, p.3, lines 6-9]).
- 11) Far from being obvious or an insubstantial task, the issue will, as the Tribunal has already noted, require all the evidence considered at the July 2016 hearing to be reconsidered [Day 2, p.2, lines 10-12]. However, it will also be very likely to require further responsive evidence from the Respondents.
- 12) In summary, the hearing of the Claimant's application, and the related question of any consequential directions for service of further evidence and submissions, should await the Tribunal's determination of the issue of sharing following the further CLOSED hearing.

JAMES EADIE QC
ANDREW O'CONNOR QC
RICHARD O'BRIEN

29 November 2017