

Witness: MI5 WITNESS  
Party: 4<sup>th</sup> Respondent  
Number: 2  
Exhibit: n/a  
Date: 10.4.17

Case No. IPT/15/110/CH

IN THE INVESTIGATORY POWERS TRIBUNAL  
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

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WITNESS STATEMENT OF MI5 WITNESS

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I, MI5 WITNESS, Deputy Director in the Security Service, of Thames House London SW1, WILL SAY as follows:

1. I am responsible, amongst other things, for the data governance team. I make this witness statement further to my witness statement in these proceedings of 10 February 2017.
2. I am duly authorised to make this statement on behalf of MI5. The contents of this statement are within my own knowledge and are true to the best of my knowledge and belief. Where matters are not within my own knowledge they are based upon documentation made available to me and from discussions with others within MI5.
3. I make this further statement in order to provide some more detail as to the approach that MI5 would take were it to share either bulk personal data or

bulk communications data ("bulk data") with foreign liaison, UK law enforcement or industry partners.

#### MI5's approach to sharing bulk data

4. In the event that MI5 were considering sharing or were to share bulk data, then the approach that we would take, and the principles that we would apply, would be as described below.
5. The principles and approach that we would apply can be summarised as follows:
  - a. An information gathering exercise would be conducted in relation to the proposed recipient.
  - b. If that was satisfactory, then a sharing agreement would be prepared, if deemed necessary, to reflect the matters that MI5 considered (having regard to the information gathering exercise) needed to be covered.
  - c. Individual consideration of each bulk dataset to be shared would be carried out. If agreed, then any sharing of bulk datasets would be accompanied by specific handling instructions, setting out any particular requirements considered appropriate.
  - d. Ongoing review of the sharing relationship would be conducted.

#### Stage 1 - information gathering

6. In advance of initial sharing, and to inform the decision-making process to do so, an information gathering exercise would be undertaken to better understand the legal framework, policy and practice of the recipient. Specifically this exercise would gather information in the following areas which would inform decision making and any written agreements that were deemed appropriate:
  - a. Law and Policy - identifying the legal and policy regime that would apply in relation to bulk datasets in the recipient.
  - b. Acquisition of Bulk Data - identifying (if any) the process which would be applied before the recipient acquires bulk datasets and whether there is any legal and/or policy obligation to consider the necessity and proportionality of acquiring a particular dataset.

- c. Authorisation - identifying the process and requirements (if any) that would be applied to authorise the retention and examination of bulk datasets.
  - d. Ingestion and Access - identifying how shared data would be stored, any categories of data the recipient considers sensitive (for example legal professional privilege) either by law or policy and any policy governing access to the raw dataset or intelligence derived from it.
  - e. Exploitation and Analysis - make reasonable enquiries regarding the use that would be made of the bulk data and the capabilities of the systems on which it would be used.
  - f. Disclosure - identifying any ACTION ON procedures or safeguards and the considerations taken into account when deciding to share bulk data with others.
  - g. Retention and Review - identifying the process and parameters by which the necessity and proportionality case for continuing to retain and exploit bulk data would be reviewed.
  - h. Oversight - identifying what internal and external oversight arrangements would be in place to audit the acquisition, retention and exploitation of bulk data.
7. In addition, in the event of any sharing of bulk data outside the SIA, MI5 would ensure that sharing of that data is in accordance with any wider HMG policies which MI5 is required to adhere to (for example HMG Consolidated Guidance).

#### Stage 2 - Sharing agreement

8. Subject to MI5 being satisfied following its information gathering exercise, a written agreement would, if considered necessary, be agreed between the recipient and MI5 in advance of any bulk data sharing. Insofar as considered appropriate, we would require the recipient to apply safeguards to the handling of any shared bulk data which correspond to MI5's domestic requirements. A written agreement may detail (taking into account the results of the information gathering exercise) requirements for the following aspects of sharing:
- a. How shared data will be stored, accessed and used.
  - b. An agreed security classification for the shared data.

- c. Suitable technical and organisational measures to protect data from accidental or unauthorised disclosure or misuse.
- d. A requirement that permission be sought from the disclosing partner prior to any onward disclosure from the recipient of all or part of a bulk dataset or any targeted data derived from it.
- e. A requirement that permission be sought from the disclosing partner prior to any executive action being undertaken by the recipient on the basis of any shared data or targeted data derived from it.
- f. A requirement that disclosure of and access to any shared data be limited to appropriately cleared personnel within the recipient who have a business justification for access to the data.
- g. All staff within the recipient with access to the shared data will be made aware of the provision governing the retention and examination of the shared data made within the written agreement.
- h. A requirement for the destruction of the shared data as soon as its retention is no longer deemed to be necessary or proportionate.
- i. A requirement to inform the disclosing partner of any threat to life reporting obtained from examination of the shared data.
- j. An assessment that the sharing of data complies with the disclosing partner's legal obligations and that the receipt of the data by the receiving partner complies with their legal obligations.

Stage 3 - Individual consideration of each bulk dataset to be shared and the terms of handling instructions to accompany each bulk dataset shared

- 9. In every instance where sharing of bulk data were proposed then there would need to be particular consideration of that proposed sharing, having regard to the terms of any sharing agreement in place. In each case where a bulk dataset were shared with a partner, specific handling instructions would accompany it. In addition, insofar as considered appropriate, MI5 would require the recipient to apply specific safeguards to the handling of any shared bulk data which correspond to MI5's domestic requirements appropriate to the nature of the data being shared.

Stage 4 - Review

- 10. Were sharing of bulk data to occur, MI5 would maintain the following ongoing obligations:
  - a. Undertake reviews to ensure the necessity and proportionality case for sharing continued to exist.

- b. Undertake reviews of the adequacy of the arrangements governing the sharing with each recipient, including Action On, as and when necessary.
- c. End current sharing with a recipient if judged necessary as a result of the above.
- d. Inform the recipient of any changes to MI5's legal obligations impacting on bulk data sharing and update, as necessary, any written agreements and/or handling instructions.

Statement of Truth

I believe that the facts stated in this witness statement are true.

MIS witness

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Dated: 10 April 2017

