



IN THE INVESTIGATORY POWERS TRIBUNAL

CASE NO. IPT/15/110/CH

26 September 2018

BEFORE:

**SIR MICHAEL BURTON (PRESIDENT)
THE HON MR JUSTICE EDIS
SIR RICHARD MCLAUGHLIN
MR CHARLES FLINT QC
MS SUSAN O'BRIEN QC**

B E T W E E N:

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

**Mr Tom de la Mare QC, Mr Ben Jaffey QC and Mr Daniel Cashman of Counsel
(instructed by Mark Scott of Bhatt Murphy) for the Claimant**

**Mr Andrew O'Connor QC (instructed by the Government Legal Department) for the
Respondents**

**Mr Jonathan Glasson QC (instructed by the Government Legal Department) as
Counsel to the Tribunal**

DETERMINATION

1. This is the determination made by the Tribunal in accordance with section 68 (4) of the Regulation of the Investigatory Powers Act 2000 (“RIPA”).
2. This determination should be read in conjunction with the Tribunal’s judgments of 17 October 2016; 11 September 2017; and 23 July 2018. Unless freshly defined or redefined in this Judgment, we shall use the same terms or abbreviations as we used in those Judgments.
3. We heard argument on 25 September 2018 in relation to whether we should make a determination at this stage in the proceedings, notwithstanding that the EU component of the complaints is awaiting the CJEU’s consideration of our reference to it of the compatibility of the collection, retention and use of bulk communications data with EU law. Both parties encouraged us to make a determination at this stage. They also invited us to make a determination setting out our findings of fact, with a statement of reasons (both OPEN and CLOSED) pursuant to Rule 13(2) of the Investigatory Powers Tribunal Rules 2000 (“the Rules”), to follow in due course. Each of the parties argued that such a course would enable submissions to be made at some later stage as to what remedies, if any, should be ordered.
4. We hereby make a determination in favour of the Claimant, pursuant to section 68 (4) of RIPA. This determination relates only to the Human Rights Act 1998 complaint that has been made by the Claimant. A determination cannot yet be made in relation to the Claimant’s complaint that the use of s.94 of the Telecommunications Act 1984 was contrary to EU law.
5. The factual basis of the determination that we make in the Claimant’s favour is as follows:
 - a. GCHQ held BPD data related to the Claimant in the pre-avowal period. As a consequence of our findings in the judgments referred to in paragraph 2 above

that data was unlawfully held. GCHQ did not however access or examine that data.

- b. GCHQ held BCD data related to the Claimant in the period to 16 October 2016. As a consequence of our findings in the judgments referred to in paragraph 2 above that data was unlawfully held. GCHQ did not however access or examine that data.
 - c. MI5 held BPD data related to the Claimant in the pre-avowal period. As a consequence of our findings in the judgments referred to in paragraph 2 above that data was unlawfully held. MI5 has accessed or examined such data, as it accepts (see paragraph 11 of the Respondent's Re-Amended OPEN Response to the Claimant's Request for Further Information which was served on 6 October 2017 ("the RFI")).
 - d. MI5 held BCD data related to the Claimant in the pre-avowal period. As a consequence of our findings in the judgments referred to in paragraph 2 above that data was unlawfully held. MI5 has accessed or examined such data, as it accepts (see paragraph 26 of the RFI).
 - e. SIS held BPD data related to the Claimant in the pre-avowal period. As a consequence of our findings in the judgments referred to in paragraph 2 above that data was unlawfully held. SIS did not access or examine that data.
6. Finally, we record that at the hearing on 25 September 2018 the Tribunal was informed that the previous day MI5 had destroyed the BPD and BCD data relating to the Claimant that it had held in the 'Workings' area of its systems.
 7. An OPEN and CLOSED statement of our reasons for this determination will follow in due course. Thereafter we will invite the parties to make submissions as to what remedies, if any, that should follow, pursuant to s.67 (7) of RIPA and Rule 12 of the Rules.