



The Rt Hon Amber Rudd
Home Secretary

Investigatory Powers Tribunal
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Dear Home Secretary

INVESTIGATORY POWERS TRIBUNAL RULES PUBLIC CONSULTATION

The Investigatory Powers Tribunal has welcomed the opportunity to advise on the draft of the new Rules which you are issuing today for consultation.

As a judicial body handling sensitive material, the Tribunal's policies and procedures have been carefully developed and have evolved since its creation with the aim of balancing the principles of open justice for the complainant with a need to protect such sensitive material. The current Rules¹ were first issued in 2000 and the draft Rules reflect some of the ways in which the Tribunal's practice has evolved and developed in the last seventeen years.

The Investigatory Powers Act 2016 introduced a right of appeal from the Tribunal's decisions and, as well as making provision for the making and determination of applications for the Tribunal for leave to appeal, the draft Rules contain a number of significant other changes. They include:

- an explicit power for the Tribunal to direct a respondent to disclose documents or information to a complainant²;
- the removal of rule 9(6) of the Rules which required the Tribunal's proceedings to be conducted in private (a requirement which the Tribunal had some years ago ruled to be ultra vires in any event³);
- a requirement that the Tribunal must endeavour so far as is possible to conduct open adversarial proceedings⁴ (a requirement which reflects the Tribunal's consistent practice in any event⁵); and
- a description of the circumstances in which the Tribunal may appoint Counsel to the Tribunal and the functions which it may ask such Counsel to perform.⁶

¹ The Investigatory Powers Tribunal Rules 2000 (2000 No. 2665)

² Rule 7(7)

³ See the Tribunal's decision in Applications Nos IPT/01/62 and IPT/01/77, 23 January 2003

⁴ Rule 10(6)

⁵ In 2016 for example the Tribunal held 11 days of OPEN, *inter partes*, hearings

⁶ Rule 12. This reflects the guidance the Tribunal gave in relation to the role of Counsel to the Tribunal in *Liberty/Privacy*

The Tribunal's caseload has increased significantly since its inception. The volume of complaints to the IPT has risen from 95 in its first year to 209 new complaints received in 2016.⁷ I append to this letter a detailed analysis of the Tribunal's caseload over time which I hope will be of assistance when the draft Rules are considered by Parliament as well as by the public.

The draft Rules provide a solid basis for the Tribunal to continue its important work in providing rigorous oversight of the intrusive powers exercised by public authorities under the Regulation of Investigatory Powers Act 2000 as well as the Investigatory Powers Act 2016. The members of the Tribunal look forward to the forthcoming consultation period on the draft Rules and, while believing that the proposed draft Rules meet the requirements of the Tribunal and the needs and expectations of those using it, welcomes the views of all those who choose to comment on the proposals.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Burton', with a long horizontal line extending to the right.

The Hon. Sir Michael Burton
Tribunal President

(No. 1) [2014] UKIPTrib 13/77-H; [2015] 3 All ER 142, paragraphs 8-10

⁷ This figure does not include a further 297 complaints received in 2016 as a result of the Privacy International campaign following the IPT's judgement in *Liberty/Privacy International (No 1) and (No 2)* [2014] UKIP Trib 13/77-H [2015] 3 All ER 142 and [2015] 3 AER 212