



Neutral Citation Number: [2022] UKIPTrib 1

Case No: IPT 14/85/CH

IN THE INVESTIGATORY POWERS TRIBUNAL

Date: 28 April 2022

Before :

**LORD JUSTICE SINGH (PRESIDENT)
and
LORD BOYD OF DUNCANSBY (VICE-PRESIDENT)**

Between :

PRIVACY INTERNATIONAL

Claimant

- v -

**(1) SECRETARY OF STATE FOR FOREIGN AND
COMMONWEALTH AFFAIRS (2)
GOVERNMENT COMMUNICATIONS
HEADQUARTERS**

Respondents

Ben Jaffey QC and Tom Cleaver (instructed by **Bhatt Murphy) for the Claimant
Sir James Eadie QC and Richard O'Brien (instructed by the **Treasury Solicitor**) for
the Respondents
Jonathan Glasson QC as Counsel to the Tribunal**

OPEN JUDGMENT

Lord Justice Singh:

Introduction

1. This, like the CLOSED judgment which accompanies it, is the judgment of the Tribunal. There has been discussion between Counsel to the Tribunal and the Respondents which has led to some text from the CLOSED judgment being included in the OPEN judgment.
2. This Tribunal first gave judgment in this case on 12 February 2016: [2016] UKIP Trib 14_85_CH. By letter dated 9 March 2016, the Tribunal notified the Claimant that it had made no determination in its favour. That determination was the subject of judicial review proceedings, in which the Supreme Court held that the High Court does have jurisdiction to entertain a claim for judicial review despite the provisions of section 67(8) of the Regulation of Investigatory Powers Act 2000: [2019] UKSC 22; [2020] AC 491. The Supreme Court remitted the matter to the Divisional Court, which, on 8 January 2021, decided that the claim for judicial review was well founded: [2021] EWHC 27 (Admin); [2021] QB 936. The Court (Bean LJ and Farbey J) granted a declaration that a warrant under section 5 of the Intelligence Services Act 1994 (“ISA”) will be lawful if it is sufficiently specific for the property concerned to be objectively ascertainable on the face of the warrant, in the sense the Court set out at paras. 57-64 of its judgment. The Court quashed the original decision of this Tribunal and remitted the complaint to it for redetermination.
3. The complaint has therefore returned to this Tribunal for redetermination in accordance with the judgment of the Divisional Court.
4. By directions made by the President dated 29 June 2021, it was directed that a hearing should be held after 15 November 2021 to determine any outstanding disclosure

requests and to set further directions. In the event, the parties were agreed that there was no need for any further hearing and that this Tribunal should now proceed to determine the matter on the papers. We have been assisted by submissions from Counsel to the Tribunal as well from the parties.

Searches by the Respondents

5. The Respondents previously served a Note dated 27 November 2015, setting out the results of searches carried out at that stage for the purpose of this and other, related complaints.
6. Following the order of the Divisional Court, the Respondents have carried out updating searches. These cover the period from 24 June 2015 (the end of the period covered by the November 2015 Note) to 6 June 2021. Searches were carried out using the same list of selectors as were agreed with the complainants in 2015.
7. On 9 November 2021 the President of this Tribunal made a statutory request to the Office of the Investigatory Powers Commissioner (“IPCO”) pursuant to section 68(2) of the Regulation of Investigatory Powers Act 2000 and section 232(1) of the Investigatory Powers Act 2016, asking IPCO to verify, so far as possible, the accuracy of the searches carried out by the Respondents. A reply was received which was dated 17 December 2021. The Deputy Investigatory Powers Commissioner said that, in short, on the basis of the inspectors’ report, he was “satisfied that the results of the searches in respect of Privacy International as disclosed to the Tribunal are accurate.”

The Respondents’ submissions

8. In their submissions dated 27 July 2021, the Respondents submit that, in the light of the updating searches conducted by GCHQ, it is clear that the complainant has not been the

subject of any conduct which is not permitted to be authorised by a warrant under section 5 of the Intelligence Services Act 1994 (“ISA”), applying the judgment of the Divisional Court.

9. Accordingly, they submit that the appropriate determination, as in March 2016, should be that there be no determination in the complainant’s favour.

Submissions from CTT

10. Counsel to the Tribunal has sought to assist us by making requests to the Respondents as to what could be put into OPEN, many of which have been agreed by them. He has not submitted to us that anything further should be put into OPEN. He has also reminded this Tribunal of its duty to provide a summary of any determination we make on the remitted complaint if we consider it necessary in the interests of justice to do so: see rule 15(3) of the IPT Rules 2018, which, as CTT reminds us, is subject to the general duty imposed on this Tribunal by rule 7(1).

Conclusion

11. In view of the updating searches which have been conducted by GCHQ, and which have been verified by IPCO, we are satisfied that the complainant, Privacy International, was not at any material time, subject to any conduct which is not permitted to be authorised by a warrant under section 5 of the ISA in accordance with the judgment of the Divisional Court. For the reasons which are set out in our CLOSED judgment, we make no determination in favour of the Claimant.
12. Under section 67A(2) of the Regulation of Investigatory Powers Act 2000, as amended, we specify that the relevant appellate court is the Court of Appeal of England and Wales.