Neutral Citation Number: [2025] UKIPTrib 1

Case No: IPT/25/68/CH

IN THE INVESTIGATORY POWERS TRIBUNAL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 April 2025

Before :

LORD JUSTICE SINGH (President)
and
MR JUSTICE JOHNSON

Between :

Apple Inc — **Claimant**

- and -

Secretary of State for the Home Department — **Respondent**

Daniel Beard KC, Julian Milford KC, Raphael Hogarth and Gayatri Sarathy (instructed by Fieldfisher) for the Claimant
Sir James Eadie KC, Neil Sheldon KC and Karl Laird (instructed by Government Legal Department) for the Respondent
Paul Skinner (instructed by the Tribunal) as Counsel to the Tribunal

Hearing date: 14 March 2025

Lord Justice Singh (President) and Mr Justice Johnson:

1. The claimant has filed a claim and a complaint in the Investigatory Powers Tribunal ("the Tribunal") raising issues as to the Secretary of State's powers to make Technical Capability Notices under the Investigatory Powers Act 2016. The respondent says that it would be damaging to national security if the fact or details of the claim, or the identities of the parties to the claim ("the bare details of the case"), are published, with reference to the longstanding policy of neither confirming nor denying the existence of individual notices. She therefore applies for an order that the bare details of the case shall be private and must not be disclosed. The application is opposed by the claimant. The claimant also seeks various alternative directions, relying on principles of open justice and fairness, and the developed practice of the Tribunal.

2. For the reasons that are explained below, we listed the application for a hearing in private. The listing was public, but the public listing did not reveal the parties' names.

3. We heard submissions from Daniel Beard KC for the claimant, from Sir James Eadie KC for the respondent and from Paul Skinner as Counsel to the Tribunal.

4. We also received written arguments from a number of third parties, including the press. We address those submissions below. We asked Mr Skinner to advance submissions from the perspective of those third parties in the course of the private hearing.

5. We are grateful to all of those involved in preparing and advancing all of the excellent submissions that were put before us.

6. We have today handed down a judgment that is private to the parties. This public judgment is a summary or extract of that, fuller, judgment.

The facts

Procedural background to hearing on 14 March 2025

7. When this claim was brought, the respondent's solicitor wrote to the Tribunal and said that it would be contrary to the public interest, and to the interests of national security, if there were any public disclosure of the existence or substance of the claim or the identity of the parties. The respondent's solicitor asked the Tribunal to list a hearing to determine how the claim could proceed without causing harm to the public interest or national security. On 28 February 2025, the respondent sought an order that the bare details of the case should be private, including by them not appearing on the Tribunal's website, until further order of the Tribunal.

8. In order to preserve the position, and to enable a hearing to take place where the respondent could make representations in support of the application without doing the very thing that the respondent wanted to avoid, we made an order in

the terms sought by the respondent but on an interim basis pending further order. We gave the parties liberty to apply to vary the terms of the order.

9. On 3 March 2025, we made directions for the determination of the respondent's application and listed a hearing to take place on 14 March 2025. We directed that the hearing would initially be listed to be heard in private, and that the published court list would not reveal the names of the parties, but would reveal the fact of the hearing, the case number and the names of the judges. We gave the parties liberty to apply to vary the terms of the directions.

10. On 5 March 2025, the respondent wrote to the Tribunal to ask it to vary the directions so as not to list publicly the hearing on 14 March – in other words, so that the hearing would take place entirely in secret. The respondent said that was necessary to prevent damage to national security. We sought representations from the claimant. The claimant responded on 6 March 2025 and contended that there was no reason to change the Tribunal's directions, and that the principle of open justice favoured information about judicial proceedings being published in the absence of compelling reasons to the contrary. We agreed with the claimant. It would have been a truly extraordinary step to conduct a hearing entirely in secret without any public revelation of the fact that a hearing was taking place. That would be the most fundamental interference with the principle of open justice. It would require a correspondingly compelling justification. We do not rule out the possibility that there may be exceptionally rare cases where such a step can be justified. On the evidence, this is not such a case. It was not shown that publicly listing a hearing, without publishing the names of the parties or the nature of the case, would create any real risk of damage to the public interest or prejudice to the interests of national security.

11. Accordingly, on 7 March 2025 the parties were informed that we had decided that the fact that a hearing was taking place should be set out in a public notice on the Tribunal's website. We provided, on the same date, a draft of the notice that would be placed on the Tribunal's website three days later, on 10 March 2025, and invited any comments to be received by 9am on 10 March 2025. We did not receive any substantive comments, and there was no challenge to our decision. Accordingly, on 10 March 2025 a notice was displayed on the Tribunal's website stating that a hearing would take place on 14 March 2025, giving the case number and the names of the judges, but not giving the names of the parties.

12. Once the notice on the website was published, we received written representations from the BBC (and 9 other media organisations), PA Media, Big Brother Watch, Privacy International and Liberty. We also received a letter from members of the United States Congress signed by Senator Ron Wyden and Senator Alex Padilla, Congresswoman Zoe Lofgren, Congressman Andy Biggs and Congressman Warren Davidson. The representations, and the letter, strongly argued in favour of open justice and against the proceedings taking place in secret. The BBC and other media organisations made a request to advance oral submissions.

Media reporting and other public comment

13. There has been extensive media reporting to the effect that the United Kingdom government has signed a technical capability notice requiring the claimant to be able to maintain access to its users' data in decrypted form, so that such data is available to be passed to the intelligence agencies.

14. On 7 February 2025, the Washington Post published a news story headlined "UK orders Apple to let it spy on users' encrypted accounts". The article says that the Home Secretary had served the claimant with a technical capability notice in January and that this required a blanket capability to view fully encrypted material, and that this had no known precedent in major democracies. It says that instead of breaking security promises that it had made to its users, the claimant would be likely to stop offering encrypted storage in the United Kingdom, but that this would not fulfil the United Kingdom's "demand for backdoor access to the service in other countries, including the United States." It cites as two of its sources a "former White House security adviser" and "a consultant advising the United States on encryption matters". It says that the claimant declined to comment.

15. There was subsequent reporting, to similar effect, around the world, including by the BBC, Sky News, Reuters, The Guardian, The Times, The Financial Times, The Telegraph, Forbes, The New York Times, The Wall Street Journal, Austria's Der Standard, Germany's Macwelt, India's Hindustan Times and NDTV and Qatar's Al Jazeera. The article in The Times says that the Washington Post article was "confirmed by Home Office sources".

16. On 25 February 2025, the United States Director of National Intelligence, Tulsi Gabbard, wrote a letter to Senator Ron Wyden and Congressman Andy Biggs. She said that she had been unaware of the issue prior to the press reporting, but that she shared their "grave concern about the serious implications of the United Kingdom, or any foreign country, requiring Apple or any company to create a 'backdoor' that would allow access to Americans personal encrypted data. This would be a clear and egregious violation of Americans' privacy and civil liberties, and open up a serious vulnerability for cyber exploitation by adversarial actors." The letter was published.

17. On 27 February 2025, there was a well-publicised meeting between the United Kingdom Prime Minister and the President of the United States. Following that meeting, the President gave a recorded interview to The Spectator. In the course of that interview the following exchange took place:

> "Spectator: But the problem is that [the United Kingdom Prime Minister] runs and I mean, your vice president obviously eloquently pointed this out in Munich, he runs a nation now that is you know, removing the security elements on Apple phones so that they can, you know.
>
> President Trump: We told them you can't do this.

Spectator: Yeah, Tulsi, I saw.

President Trump: We actually tell. That's incredible. That's something, you know, that you hear about with China."

18. On the same day there was a broadcast exchange between the Prime Minister and the Vice President:

> "Vice President: there have been infringements on free speech that actually affect not just the British – of course what the British do in their own country is up to them – but also affect American technology companies and, by extension, American citizens. So that is something we will talk about today at lunch.
>
> Prime Minister: We have had free speech for a very very long time in the United Kingdom and it will last for a very very long time [reporter interjects] certainly we wouldn't want to reach across US citizens and we don't and that's absolutely right, but in relation to free speech in the UK I am very proud of our history there."

19. On 4 March 2025, the Financial Times published an article with the headline "Apple launches legal challenge to UK 'back door' order". The article says that the claimant appealed to the Investigatory Powers Tribunal, that a hearing could take place in March but that it was unclear if there would be any public disclosure of the hearing, and that the government was likely to argue that the case should be restricted on national security grounds. There was subsequent reporting, to similar effect, by other newspapers and broadcasters.

20. Neither the claimant nor the respondent has confirmed or denied that the media reporting is accurate. This judgment should not be taken as an indication that the media reporting is or is not accurate.

The respondent's evidence

21. The respondent relies on a witness statement of Lucy Montgomery-Pott, the Head of the Investigatory Powers Unit which is part of the Homeland Security Group within the Home Office. In that statement she explains the damage to national security that she says would arise if the "the fact, substance or parties to these proceedings be made public."

Legal framework

22. The respondent's application engages fundamental principles of open justice, the exercise by the Tribunal of its jurisdiction to determine claims and complaints, and the approach to be taken to a court review of an assessment by the intelligence agencies of claimed risks to national security.

23. Counsel to the Tribunal raised important issues about the construction of rule 7 of the Tribunal's rules, but it is not necessary to address those issues in this

judgment. So far as is relevant to this application, there was no significant dispute between the parties or Counsel to the Tribunal as to the key principles.

Open justice

24. Open justice is a fundamental common law constitutional principle which applies to all courts and tribunals exercising the state's judicial power: *Dring v Cape Intermediate Holdings Limited* [2019] UKSC 38 [2020] AC 629 *per* Lady Hale at [41]. The principle applies to the Investigatory Powers Tribunal: *Various claimants v Security Service* [2022] UKIP Trib 3, [2023] 2 All ER 849 *per* Singh LJ (President), at [71]. However, the Investigatory Powers Tribunal operates in a different procedural and legislative context compared to other courts and tribunals, and that difference impacts on the application of open justice principles: *Various claimants* at [75] – [76].

25. One consequence of the open justice principle is that the names of the parties to a case are, generally, made public when matters come before a court or tribunal, and are included in court orders and judgments (and, it might be added, the published court list): *JIH v News Group* [2011] EWCA Civ 42 [2011] 1 WLR 1645 *per* Lord Neuberger at [21(1)], *In re Guardian News and Media Ltd* [2010] UKSC 1 [2010] 2 AC 697 *per* Lord Rodger at [63] ("What's in a name? 'A lot', the press would answer."). There are powers to anonymise parties in ordinary civil proceedings before the High Court, but that involves a derogation from the open justice principle, and will only be exercised when, and to the extent that, it is established on clear and cogent evidence that it is strictly necessary: Master of the Rolls' Practice Guidance: Interim Non-Disclosure Orders [2012] 1 WLR 1003 at [12], *Scott v Scott* [1913] AC 463 *per* Viscount Haldane LC at 438 – 439, Lord Atkinson at 463 and Lord Shaw at 477, *Lord Browne of Madingley v Associated Newspapers Limited* [2007] EWCA Civ 295 [2008] 1 WLR 103 *per* Sir Anthony Clarke MR at [2] – [3].

The Tribunal's rules

26. Section 69(1)(b) of the Regulation of Investigatory Powers Act 2000 empowers the Secretary of State to make rules to govern the hearing or consideration of any proceedings or complaint made to the Tribunal. Section 69(6) states:

> "In making rules under this section the Secretary of State shall have regard, in particular, to-
>
> (a) the need to secure that matters which are the subject of proceedings, complaints, or references brought before or made to the Tribunal are properly heard and considered; and
>
> (b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services."

27. Rule 7(1) of the Investigatory Powers Tribunal Rules states:

> "The Tribunal must carry out their functions in such a way as to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services."

Approach to claimed risks to national security

28. The executive is entitled to take a precautionary approach when assessing risks to national security. Courts and tribunals must accord particular weight to such assessments made by the executive. Those assessments should usually be accepted, unless they are shown to be irrational or otherwise vitiated by a public law error: *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, [2003] 1 AC 153 *per* Lord Hoffmann at [50] and [62], Lord Slynn at [17] and [27] and Lord Steyn at [42], *A v Secretary of State for the Home Department* [2004] UKHL 56 [2005] 2 AC 68, *R (Lord Carlile of Berriew QC) v Secretary of State for the Home Department* [2014] UKSC 60 [2014] AC 945 *per* Lord Sumption at [22] – [33], *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7 [2021] AC 765 *per* Lord Reed at [53] – [62], [70] and [109], *Various claimants v Security Service* [2022] UKIP Trib 3 [2023] 2 All ER 849 *per* Singh LJ (President), at [47].

What are the consequences of publishing the bare details of the case?

29. The Tribunal has a statutory duty to carry out its functions in such a way as to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security: rule 7(1) of the Tribunal Rules. This provides the jurisdictional basis for the respondent's application. The critical issue is whether publication of the bare details of the case would be prejudicial to national security. The respondent asserts that it would. She relies on the evidence of Ms Montgomery-Pott. The claimant, and to an extent Counsel to the Tribunal, submit that the respondent's expressed concerns are overblown and unjustified.

30. The authorities show that considerable weight must be given to the view of the Secretary of State and the evidence of Ms Montgomery-Pott. We are not entitled simply to substitute our own view as to whether disclosure would be damaging. We are bound to accept the conclusion of the Secretary of State, supported by the evidence of Ms Montgomery-Pott, unless we conclude that conclusion is irrational or otherwise vitiated by a public law error. A court is entitled to intervene on rationality grounds if a decision involves a serious logical or methodological error: *R (London Criminal Courts Solicitors' Association) v Lord Chancellor* [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649 *per* Leggatt LJ and Carr J at [98].

31. Neither Mr Beard nor Mr Skinner challenge the underlying factual evidence of Ms Montgomery-Pott for present purposes (as opposed to her conclusion as to the risk of damage to the public interest or national security).

32. For the reasons that are set out in our private judgment, we do not accept that the revelation of the bare details of the case would be damaging to the public interest or prejudicial to national security.

Further case management

33. As the parties are aware, and as is in the public domain, a complaint was filed by Privacy International and Liberty (and two individual complainants) on the day before the hearing of this application. That complaint concerns the respondent's powers to make a technical capability notice. There is, therefore, potential for overlap between the two cases.

34. We will, separately, invite the parties in the Privacy International case to propose directions, with the fact of this case in mind.

35. We will then make directions for the further case management of both cases, in the light of such proposed directions and any associated representations.

The third party applications and requests

Liberty and Privacy International

36. Liberty and Privacy International filed written submissions in which they asked to attend the hearing, and asked that the case be heard in open court. They also asked that the identity of the parties be disclosed, that the pleadings be made public and that they be given permission to intervene. They also asked that the claim that they had issued be case managed and heard together with this claim.

37. We took account of these written submissions when considering the format for the hearing on 14 March 2025, and also when resolving the issues that arise on the respondent's application. We did not consider that we could accede to the request to attend the hearing. Doing so would have prejudged the application made by the respondent and would have rendered it self-defeating. That is because if we had acceded to the request that would itself have revealed the parties to the hearing and its underlying substance. We therefore considered it necessary to hold the hearing in private without any public or third party attendance. That enabled the respondent fully to ventilate the arguments that she wished to advance in support of her application. If we had otherwise been persuaded to allow the application, then we recognise that this would have had an impact on third parties, and we might then have needed to confront the need to find some way of permitting oral representations. In the event, however, we have dismissed the application.

38. We do not consider it necessary, at this stage, to rule on the application for the pleadings to be made public, or for Privacy International and Liberty to intervene in these proceedings. No defence has yet been filed and so that issue

is premature. It is at least possible that the early stages of the litigation will involve the resolution of issues of law. It is also possible that this claim might be stayed behind the Privacy International/Liberty case. These factors, and the general case management of the case, may impact on the requirements of open justice and the extent to which it is necessary to consider disclosure of statements of case.

US Senators and Members of Congress

39. We acknowledged receipt of the letter from the US Senators and Members of Congress and we disclosed it to the parties. We do not consider it is necessary to rule on any issue in relation to that letter. The letter seeks permission to discuss an alleged technical capability notice with the US Congress, as reported in the media. That is a matter that can be raised with the respondent, but it is not a request that we have the power to grant.

PA Media

40. PA Media asked us to put in place the least restrictive measures. They asked for a public hearing but with reporting restrictions. For the reasons we have given, we considered it necessary for the hearing on 14 March 2025 to take place in private, so that the respondent could make her application. That application was refused. It may well be possible for some or all future hearings to incorporate a public element, with or without reporting restrictions. It is not possible to rule on that at this stage.

BBC and 9 other media organisations

41. The BBC and 9 other media organisations (Associated Newspapers Ltd, Computer Weekly, Financial Times Group Ltd, Guardian News & Media Limited, News Group Newspapers Limited, Reuters News and Media Limited, Sky News, Telegraph Media Group and Times Media Limited) advanced helpful submissions on the principles of open justice. They argued that the media should have the ability to make effective and informed submissions against an order restricting open justice, and said that a public hearing should be listed with greater notice and to provide them with the evidence that was said to justify the maintenance of NCND.

42. As we have explained, we have dismissed the respondent's application. We have not therefore made an order restricting open justice (save so far as was necessary, on an interim basis, to enable the application to be made).

Outcome

43. We dismiss the respondent's application. We will make case management orders once the parties have had an opportunity to consider the terms of this judgment and propose draft directions.