Claimant
C Stoughton
Second
8 February 2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No: CO/1052/2017

B E T W E E N:

THE QUEEN
on the application of
LIBERTY

Claimant

- and -

(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT
(2) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

Defendants

SECOND WITNESS STATEMENT OF COREY LYNN STOUGHTON

I, COREY LYNN STOUGHTON, of 26-30 STRUTTON GROUND, LONDON SW1P 2HR, will say as follows:

1. I previously made a statement dated on behalf of Liberty dated 15 January 2018 (my "**First Statement**"). My position as Advocacy Director at Liberty and qualifications remain as set out in my First Statement.

2. I am authorised by Liberty to make this statement in support of its application for judicial review of certain provisions of the Investigatory Powers Act 2016 ("**IPA**"), to respond to the Witness Statement of Graeme Biggar dated 31 January 2018 ("**Biggar 1**").I am not authorised to, and I do not by anything said below, waive any privilege on behalf of Liberty.

3. The contents of this statement are based upon my own knowledge, except where I indicate otherwise, and are true. Where they are not based upon my own knowledge, the contents of this statement are true to the best of my knowledge and belief and I have identified the sources of that knowledge and belief, including government publications and other publicly available sources.

4. Below, I use the terms I defined in my First Statement.

SERVICE OF AND LIBERTY'S RESPONSE TO BIGGAR 1

5. The Defendants served Biggar 1 by email at 4.50pm on 1 February 2018. I am informed by Bhatt Murphy, Liberty's solicitors, that:

   (1) the order giving Liberty permission to pursue its challenge to Part 4 of the IPA does not provide for the Defendants to serve evidence in response to Liberty's reply evidence; and

   (2) the Defendants informed Liberty for the first time at around 3.00pm on 29 January 2018 that they proposed to serve Biggar 1.

6. Accordingly, Liberty did not have any notice of or opportunity to respond to Biggar 1 prior to this witness statement.

7. Biggar 1 purports to respond to my First Statement. Mr Biggar suggests that I have misunderstood the Government's draft Communications Data Code of Practice (**Biggar 1 ¶10**) and attributes to me statements about "entity data" and retention notices that I do not make (to which Mr Biggar purports to respond) (**Biggar 1 ¶¶18, 22**). I believe that it will assist the Court for me to respond, very briefly, on these points. (Mr Biggar also makes argumentative responses to my evidence, but I am advised that these are a matter for argument. I do not accept, but do not below respond to, those responses.)

8. I therefore respectfully request that the Court gives Liberty permission to rely on this further statement.

THE INTRUSIVENESS OF RETAINING COMMUNICATIONS DATA

9. Mr Biggar clarifies Mr Scurry's evidence and makes clear to the Court that the government does consider that retention of and access to communications data is intrusive (**Biggar 1 ¶5**).

10. However, Mr Biggar suggests (**Biggar 1 ¶ 6**) that my conclusions about the intrusiveness of the retention communications data "appear to be predicated on the basis of the entirety, or at least a significant proportion, of a person's communications data being acquired and examined over an extended period of time."

11. I note that Part 4 of the IPA allows the government to require telecommunications operators to retain the entirety of a person's communications data over an extended period of time. The same is true of access to retained data.

12. Mr Biggar states (**Biggar 1 ¶6**) that he considers "it highly unlikely, except in the most extreme circumstances, that the acquisition of such data from a service provider would be authorised, because it would not be considered necessary and proportionate." Mr Biggar therefore accepts the correctness of the point I have made in paragraph 11 above: very extensive retention is possible under Part 4 of the IPA. I cannot properly respond to Mr Biggar's contention that this is "highly unlikely" except in "extreme circumstances", as I have no clear idea of what Mr Biggar considers "a significant proportion" of a person's communications data, nor what he considers "an extended period of time" nor "the most extreme circumstances."

13. I note that Mr Biggar does not disagree with the matters of fact in my statement about the capacity of communications data to reveal a great deal about a person's life. In paragraphs 10 and 12, for example, I listed several examples where Internet Connection Record (ICR) data about a single internet search could reveal sensitive data, including whether a person visited a particular internet forum, viewed certain pornography, or accessed advice about sexuality, gender identity, suicide or abortion. In paragraphs 17–23, I explained how location information can pinpoint the specific location of a person with increasing accuracy, can be used to track a person's commuting route, and document a visit to a doctor, lawyer, journalist, political associate, sexual partner, or human rights organisation. And in paragraphs 26–27, I noted how the proliferation of the "internet of things" can reveal increasingly specific points of data about body functions, reproductive health, and sexual activity, even from a single point of communications data. Mr Biggar does not suggest that any of this is incorrect.

14. Mr Biggar is wrong to suggest (**Biggar 1 ¶6**) that my conclusions about the intrusiveness of the retention of communications are predicated on the extent of retention. It is obvious that, for example, a record of a visit to one of the websites I mentioned, may reveal a great deal.

15. Mr Biggar suggests that it is not "fair" to compare retention of communications data to content. He says that if a "like for like" comparison is made between retention of and access to content and communications data, then in any given volume of communications, retention of and access to the content is always more intrusive (**Biggar 1 ¶ 7**).

16. I consider that Mr Biggar's blanket assertion that retention of/access to content would always be more invasive than retention of/access to communications data is incorrect. It is not difficult to think of examples where that is not the case, either because communications data is just as revealing or because communications data is more revealing.

17. For example, in any given volume of intercepted mobile phone communications over any given period of time — be it an hour, a day or a month — the communications data will reveal, with varying degrees of precision (as I explain in paragraphs 15–27 of my First Statement), a person's location and movements. That communications data is generated even when a person is generating no meaningful content whatsoever — that is, a mobile phone is communicating with cell sites even when a person is not making or receiving any phone calls or any messages. Further, detailed communications data about our location and movements is generated even when a person uses her mobile phone only to have very limited, content-light communications, or when the content of any revealing communications is not accessible because it is encrypted. In these situations, communications data can be a far richer source of information about a person than the so-called "like for like" content. There are, of course, counter-examples where the content of a given volume of intercepted communications will be far more intrusive than the communications data, but that is beside the point.

18. Further, Mr Biggar's "like for like" comparison fails to reflect important differences in access to communications data and content under the IPA. Content may be intercepted only for more limited purposes than are currently permitted under Part 4 and by a much more limited range of bodies. Most fundamentally, the fact that more intrusive information could be obtained does not make the retention of/access to communications data any less intrusive.

WEB PAGES AND INTERNET CONNECTION RECORDS

19. Mr Biggar states (**Biggar 1 ¶10**) that my First Statement in paragraphs 10–13 "misunderstands the effect of paragraphs 2.64-2.65 of the [November 2017] Draft Communications Data Code of Practice". Mr Biggar says that the November 2017 code "is not intended to have a different effect to the version published in 2016" and that these changes between the November 2017 and previous draft were "for clarity, rather than representing any change in the Home Office's position as set out in the previous Draft Code from November 2016" (**Biggar 1 ¶12**). Mr Biggar also states (**Biggar 1 ¶10**) that: "Communications data will still not include a list of all web pages visited."

20. I did not, in my First Statement, make any comment about the intent of the Draft Code's drafters. My First Statement set out, accurately, textual differences between the November 2017 draft and the 2016 Code of Practice it is proposed to replace. Liberty will write to the government to ask for further explanation of the purpose of the changes.

21. Mr Biggar also does not suggest that paragraphs 10, 12 and 13 of my First Statement are inaccurate in their discussion of the intrusiveness of ICRs.

22. I also note that Mr Biggar gives one example of an ICR (specific to the website in question, Facebook) where the password and path are not required to route a communication (**Biggar ¶11**). However, Mr Biggar does not suggest that the path and passwords can never constitute communications data, and specifically ICRs, under Part 4. Nor does he suggest that I was incorrect to say in paragraph 11 of my statement that under the IPA (unlike under RIPA due to s 21(6) of that Act) a full web address can constitute communications data.

"EVENTS DATA" AND "ENTITY DATA"

23. Mr Biggar disputes the notion that data about which applications a mobile phone or internet service subscriber has installed could be considered "entity data." His argument is premised on a factual assumption that "There is no reason why the telecommunications operator to which the owner of the device subscribes would have any list of those apps." (**Biggar¶ 19**). But my understanding is that a "telecommunications operator" within the meaning of the IPA includes not only the company that provides your mobile phone service (e.g. Vodafone) but also the company that provides your phone's operating system (e.g. Apple or Google), which

has every reason to know which apps have been purchased from that company's app marketplace and downloaded onto your phone. My reading of the statutory definition of "telecommunications operator" also includes each of the multiple companies that provide apps, such that the IPA allows the Government to obtain communications data in the form of those companies' subscriber information.

INDISCRIMINATE RETENTION NOTICES

24. Mr Biggar finally attributes to me various suggestions about how the government goes about framing a retention notice, purports to respond to my suggestions, and concludes (**Biggar 1 ¶22**): "In practice, retention notices simply do not operate in the way Ms Stoughton suggests." However, my statement did not contain any evidence about how retention notices are framed and operate in practice. I am not privy to information about those processes, beyond what little has been said by the government. Nor do I make any suggestion about how retention notices are framed in practice. Mr Biggar does not refer to any particular part of my First Statement when making his observation. I assume, however, that he is referring to my statement at paragraphs 33–36. Those paragraphs accurately describe the scope of the power that Part 4 gives to issue retention notices.

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

Signed: [redacted]

Name: Corey Lynn Stoughton

Date: 8 Feb 2018