



Neutral Citation Number: [2018] UKIPTrib IPT_17_84-85_H

Case No: IPT/17/84-85/H

IN THE INVESTIGATORY POWERS TRIBUNAL

Date: 19th February 2018

Before:

THE PRESIDENT (SIR MICHAEL BURTON)

CHRISTOPHER GARDNER QC

BETWEEN

1. THOMAS WILKINSON
2. OWEN HUMPHRIES

Claimants

- and -

THE CHIEF CONSTABLE OF CLEVELAND POLICE

Respondent

APPROVED JUDGMENT

1. This is the Judgment of the Tribunal in these consolidated Applications.
2. As a direct result of this Tribunal's decision in **Dias and Mathews v The Chief Constable of Cleveland Police (2017) UKIPTrib15_586-Ch** we are pleased to learn that the Cleveland Police carried out a review of its use of powers under the Regulation of Investigatory Powers Act 2000 during the previous six years. One consequence of this was that the Respondent wrote letters dated 6 April 2017 to both Claimants, who were employed by the Press Association as the North East Bureau Chief and as a photographer respectively, informing them that Applications for Communications Data (CDA) had been obtained by the Cleveland Police which included their subscribers' details and call records over a four-day period in July 2013. This did not include content. It was accepted that such were unlawful as they were neither necessary nor proportionate.
3. Accordingly, the complaints that the Claimants have then made to this Tribunal are admitted in a letter from Respondent dated 11 January 2018, in which an explanation as to why such authorisations were sought is given. On 12 July 2013 Assistant Chief Officer Hall, who was suspended and due to face a disciplinary hearing, resigned. At 11.01 that day an internal e-mail was sent to staff informing them of this, and an internal intranet home page carried the same information at 12.00. For reasons that are unclear the media was not to be informed until 1300. At 12.43 a local reporter rang the Force's communications unit seeking confirmation of the resignation. This led the Respondent to suspect that the news had been leaked by a member of its staff. The call data of the local reporter's mobile revealed that only one call from a mobile number had been received by him between 11.01 and 11.43. Authorisation to obtain a CDA in respect of that mobile number was then sought. It is accepted that this was the number of the First Claimant. A further CDA was obtained in respect of the mobile number shown to be in contact with the First Claimant at 11.11, which was shown, and is admitted, to be that of the Second Claimant.
4. In seeking to justify the requirement of necessity, it is asserted that it was not known whether the number had been registered by its user, and that, if it was found to be an unsubscribed number, the incoming /outgoing call data would be examined to attribute its use to an individual. In relation to proportionality, it was said that, if the user of the mobile was identified, that was likely to identify the source of the leak to the local reporter, and if by an employee of the Respondent, then it may assist in the investigation of the alleged crime of Misconduct in Public Office: in the light of the discussion at paragraphs 17 and 18 in **Dias** it appears unlikely that commission of such offence could have been justified, and in any event no charges were brought against either Claimant.

5. Having seen an unredacted copy of each CDA, we have no reason to doubt that its purpose was as detailed above, or that this was the basis on which they were approved: and in view of the admissions that have been made by the Respondent, we do not consider that it is necessary to investigate these Applications further. We are quite satisfied that they were neither necessary nor proportionate, and that the Respondent acted unlawfully.

6. The remedies sought are a declaration that the Respondent acted unlawfully and an order quashing the authorisations, and for the destruction of all material and information gained as a result of them. The Respondent accepts that the Claimants are entitled to such relief, and we so find. Complaints were made, by reference to the occupation of both Claimants, by reference to Article 10 as well as to Article 8 of the European Convention of Human Rights (ECHR), but as the issues are identical and the Respondent's concession is expressly by reference to Article 8, we need make no separate finding.

7. We declare that authorisation number 17/333/13/1/1A dated 2.8.13 and authorisation numbers 17/383/13/1/1A and 17/383/13/1/2A, each dated 19.9.13, were each unlawfully obtained, in that it was neither necessary nor proportionate to secure each of the authorisations.

8. We further declare that the said authorisations were in breach of the Claimants' rights under Article 8 of the ECHR and that in each case the Respondent acted unlawfully, contrary to s.6 Human Rights Act 1998.

9. Exercising our powers under s.67(7) Regulation of Investigatory Powers Act 2000, we order that the said authorisations shall be quashed and that all personal data relating to each Claimant obtained as a result of the authorisations shall be destroyed.