

LORD PRESCOTT

EXHIBIT JP1



HOUSE OF COMMONS
LONDON SW1A 0AA

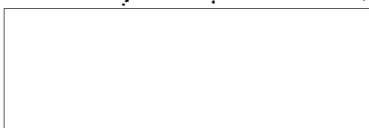
The Office of
The Rt Hon John Prescott MP

9th July 2009

Dear Commissioner

You will be aware of the many allegations in today's *Guardian* newspaper regarding the illegal tapping of thousands of phones, including my own, by *News of the World* journalists. It also states that the Metropolitan Police have in their possession the names of all those whose phones were targeted. I would like to know if you do have such information. And if so, why we were not informed and why no was action taken. It is important that you make the Police's position on this issue clear.

Yours sincerely



The Rt Hon John Prescott MP

(Dictated by Mr Prescott and electronically signed in his absence)

Sir Paul Stephenson
Commissioner
Metropolitan Police Service
New Scotland Yard
Broadway
London
SW1H 0BG



Working together for a safer London

Our Ref:

9 July 2009

Sir Paul Stephenson OPM
Commissioner of Police of the Metropolis

New Scotland Yard
Broadway
London SW1H 0BG

Tel: 0
Website: www.met.police.uk

Rt Hon John Prescott MP
House of Commons
London
SW1A -AA

John
For information.
Any action?

Dear Mr Prescott

I write to acknowledge receipt of your letter dated 9 July addressed to the Commissioner, Sir Paul Stephenson.

This correspondence has been forwarded to Assistant Commissioner John Yates, Specialist Operations to arrange for a response to be sent to you as soon as possible regarding the issues raised.

Yours sincerely,

Commissioner's Private Office

1 of 8

Mr. Colin Myler
Editor
The News of the World
Newsgroup Newspapers
1 Virginia Street
London E98 1XY

Our Ref:
Your Ref:

10 July 2009

Dear Sir,

Rt Hon John Prescott MP

We act on behalf of the Rt. Hon. John Prescott PC MP in connection with your obligations under the Data Protection Act 1998. We wish to make a subject access request pursuant to Section 7(1) of the Data Protection Act 1998 which states:-

7. Right of access to personal data

(1) Subject to the following provisions of the section and to sections 8 and 9, an individual is entitled-

- (a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller;*
- (b) if that is the case, to be given by the data controller a description of*
 - i. the personal data of which that individual is the data subject-*
 - ii. the purposes for which they are being or are to be processed, and*



2 of 8

iii. the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form-

- i. the information constituting any personal data of which that individual is the data subject, and
- ii. any information available to the data controller as to the source of those data, and

(d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluation matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.

1. Would you therefore please inform us whether any personal data of which John Prescott is the data subject is being held by or on behalf of the News of the World.
2. If that is the case give us a description of:-
 - (a) Personal data of which John Prescott is the data subject.
 - (b) The purpose for which those data are being or are to be processed.
 - (c) The Recipients or class of recipient to whom they are or may be disclosed.
3. Communicate to John Prescott via ourselves in an intelligible form:-
 - (a) The information constituting any personal data of which John Prescott is the data subject and,
 - (b) Any information available to the News of the World as to the source of those data.
4. A statement by the News of the World of the logic involved in any decision taken of the sort contemplated within Section &(1)(d) of the Data Protection Act 1998.

Please note that a reply must be made promptly under the Data Protection Act 1998, but in any event you have forty days within which to reply to this request. That date is 19th August 2009. Please find attached our cheque for £10 being the fee prescribed under the Regulations SI 2000/191.

We look forward to hearing from you.

Yours faithfully

3 of 8

Steel and Shamash

Direct email: steelandshamash.co.uk

STEEL & SHAMASH
SOLICITORS



Mr. Colin Myler
Editor
The News of the World
Newsgroup Newspapers
1 Virginia Street
London E98 1XY

REC DELIVERED
FIRST LETTER

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mail@steelandshamash.co.uk
www.steelandshamash.co.uk

FAO: wsinf.co.uk
 @newsinf.co.uk

Also by fax:

Our Ref:
Your Ref:

10 July 2009

Partners
Gerald Shamash
Janice Kaufman
Robert Dynowski
Anna O'Connell
Mary-Ann Harris
Rakesh Bhasin
Andrew Dowle

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Yen Ly
Caroline Bonnett
Frances Randle
Sara Upton
Rachel Duke
Aamer Ahmad
Frances Rattray
Andrew Bowmer
Carl Newman

Barrister at Law
Matthew Seligman

Consultants
Deborah Bowker
Jas Adill - Notary Public
Sarah Gratton
Rebecca Ellison

Members of
The Law Society
Family Panel,
Resolution,
Children Panel,
Mental Health Panel.

Practice Manager
Melissa Butler

Dear Sir

Rt Hon John Prescott MP
Notice under section 10 of the Data Protection Act 1998

We act on behalf of the Rt. Hon. John Prescott PC MP,

This is a NOTICE under section 10 of the Data Protection Act 1998.

You must, by the end of today, cease processing any personal data of which John Prescott is the data subject, save for processing that is for the purpose of complying with the section 7 request made of you today by Mr Prescott or any processing required for the purpose of complying with any enforcement function of the Information Commission under the Data Protection Act 1998 (including an assessment under Part V and compliance with any notices under Part V).

The personal data to which this notice applies includes text messages, telephone messages be they landlines or mobile phones, voicemail, emails and other correspondence.

This Notice is given on the ground that the data is personal to Mr Prescott, was acquired by News of the World unlawfully and/or unfairly such that any processing (other than for the purposes excepted above) is both causing and is likely to substantial damage or distress to our client (and others to whom those data relate) and that damage or distress is unwarranted.



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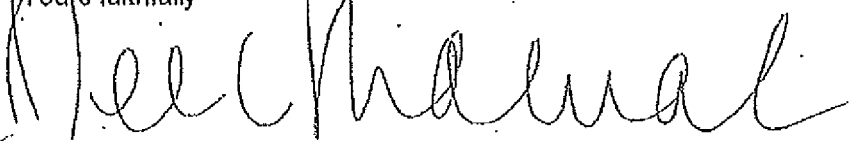


Please note the broad definition given to the term by the legislation to the word "processing" in the DPA 1998 which includes the mere holding of information or data.

Please note that you have 21 days within which to provide us with a notice under s.10(3) of the Data Protection Act 1998.

Please acknowledge receipt by return and provide us with the s.10(3) Notice within the time prescribed by the Data Protection Act 1998.

Yours faithfully



Steel and Shamash

Direct email: steelandshamash.co.uk

4 of 8

Mr. Colln Myler
Editor
The News of the World
Newsgroup Newspapers
1 Virginia Street
London E98 1XY

Our Ref:
Your Ref:

10 July 2009
Second letter

Dear Sir

Re Hon John Prescott MP

We act on behalf of the Rt. Hon. John Prescott PC MP in connection with material appearing in the Guardian Newspaper on the 9 & 10 July relating to your newspapers involvement in alleged accessing of telephone messages of our client/

We now enclose a Notice pursuant to Section 10 of the Data Protection Act 1998. Pursuant to that request you must cease or not begin processing any personal data related to John Prescott including text messages, telephone messages be they landlines or mobile phones, voicemail, emails and other correspondence on the grounds that processing is likely to cause substantial damage or distress to our client and that damage or distress is unwarranted.

Please note the broad definition given to the term by the legislation to the word "processing" in the DPA 1998 which includes the mere holding of information or data.

We look forward to hearing from you as soon as possible.

Yours faithfully

Steel and Shamash

10 9 27 09

STEEL & SHAMASH
SOLICITORS



FAO – Keir Starmer QC
The Director of Public Prosecutions
60 Ludgate Hill
LONDON
EC4M 7EX

12 Baylis Road
Waterloo
London SE1 7AA
DX: 36503 Lambeth

Telephone: 020 7803 3999
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www.steelandshamash.co.uk

BY HAND

Also by fax:

Our Ref:
Your Ref:

10 July 2009

Partners
Gerald Shamash
Janice Kaufman
Robert Dynowski
Anna O'Connell
Mary-Ann Harris
Rajesh Bhasin
Andrew Dowling

Dear Director

Solicitors
Yen Ly
Caroline Bennett
Frances Randle
Sara Upton
Rachel Duke
Amer Ahmad
Frances Ratray
Andrew Bowmer
Carl Newman

Rt Hon John Prescott MP

Barrister at Law
Matthew Seligman

We act on behalf of the Rt. Hon. John Prescott PCMP in connection with the allegations appearing in the Guardian newspaper on 9th & 10th July regarding the illegal tapping of a considerable number of individuals phones including that of our client by journalists employed by the News of the World.

Consultants
Deborah Bowker
Jas Adli – Notary Public
Sarah Gratton
Rebecca Ellison

The various articles refer inter alia to a case involving Mr Gordon Taylor, the Chief Executive of the Professional Footballers Association. The News of the World suggest that a settlement was reached, part of which resulted in the "sealing" of documentation possibly as part of a Tomlin Order, relating to a list of names of individuals, possibly including our client whose phone may have been accessed. The information "sealed" may in all likelihood disclose the commission of criminal offences committed by those individuals who obtained information without permission or consent.

**Members of
The Law Society**
Family Panel,
Resolution,
Children Panel,
Mental Health Panel.

We enclose for your information a copy of a letter that our client has written to the Commissioner, Sir Paul Stephenson which at the time of writing no reply has been received.

Practice Manager
Melissa Butler

Accordingly, would you confirm whether or not you are minded to make the appropriate application to gain access to material allegedly sealed in the Taylor case. If you are not so minded would you please let us know the detailed reasons why? Our client treats the invasion of his privacy



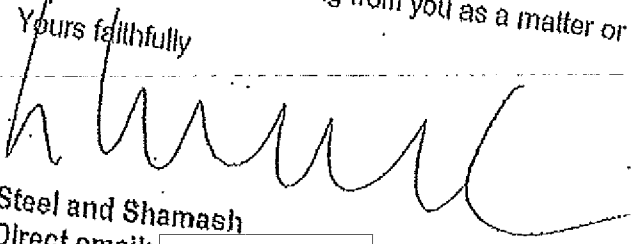
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extremely seriously not least as In June 2007 he was Deputy Prime Minister.

We look forward to hearing from you as a matter of urgency.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Steel and Shamash', written over a horizontal dashed line.

Steel and Shamash

Direct email: @steelandshamash.co.uk

From: Page: 1/6 Date: 10/07/2009 18:31:55

Simon Clements
Head of Special Crime Division,
London



Steel and Shamash
Solicitors
DX 36503 Lambeth

Direct Line:

Our Reference:
Your Reference:

By fax to:

Friday 16th July 2009

Dear Sirs,

Re: RT HON JOHN PRESCOTT MP

A copy of your letter dated 10 July 2009 addressed to the Director of Public Prosecutions has been forwarded to me for response as my Division was responsible for the conduct of the prosecution of Clive Goodman and Glen Mulcaire. I have also seen the copy of the letter that your client wrote to the Commissioner of the Metropolitan police dated 9 July 2009.

On 9 July 2009 the Director issued a statement indicating that he had asked for an urgent examination of the material that was supplied to the Crown Prosecution Service by the police in this case. He made this statement not because he had any reason to consider that there was anything inappropriate in the prosecutions that were undertaken in this case, but to satisfy himself and assure the public that the appropriate actions were taken in relation to that material.

That examination has now been completed by my Division and today the Director announced the conclusions of that examination. I enclose a copy for the information of yourself and your client.


You have asked that the Director give consideration to making the appropriate application to gain access to material allegedly sealed in a civil case involving Mr Gordon Taylor. You have also made reference in your letter to the "News of the World suggest that a settlement was reached, part of which resulted in the "sealing" of documentation possibly as part of a Tomlin Order, relating to a list of names of individuals, possibly including our client whose phone may have been accessed". (The emphases are mine).


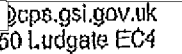

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From: +44 20 7796 8370 Page: 2/6 Date: 16/07/2009 16:31:55

The Crown Prosecution Service was not a party to any litigation that may have been conducted by Mr Taylor. Your letter is also vague as to the details of what may or may not have happened in the course of the litigation. Additionally the Crown Prosecution Service does not have any powers of investigation. If your client has any concerns that he may have been the victim of a criminal offence I can only suggest that you do as you have already done and write to the Metropolitan police. I am sorry that I cannot assist your client any further.

Yours sincerely


Simon Clements
Head of the Special Crime Division
Crown Prosecution Service Headquarters

5th floor
50 Ludgate Hill
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From:

Page: 3/6

Date: 16/07/2009 16:31:56

DPP's findings in relation to 'phone hacking'

A statement by Keir Starmer QC, Director of Public Prosecutions

On 9 July 2009 I issued a statement indicating that I had asked for an urgent examination of the material that was supplied to the Crown Prosecution Service (CPS) by the police in this case.

I made this statement not because I had any reason to consider that there was anything inappropriate in the prosecutions that were undertaken, but to satisfy myself and assure the public that the appropriate actions were taken in relation to that material.

That examination has now been completed by the Special Crime Division of CPS Headquarters (SCD).

Background

Following a complaint by the Royal Household, the Metropolitan Police Service first contacted the CPS on 20 April 2006 seeking guidance about the alleged interception of mobile telephone voicemail messages. The potential victims were members of the Royal Household.

During April and May 2006 there followed a series of case conferences and exchanges between the CPS reviewing lawyer dealing with the case and the police in relation to these alleged interceptions. Advice was given about the nature of evidence to be obtained so that the police could make policy decisions about who ought to be treated as victims. Advice was also given about how to identify the individual(s) responsible for these alleged interceptions.

During June and July 2006 there were further discussions and conferences between the reviewing lawyer, the police and leading counsel instructed by the CPS. On 8 August 2006 the reviewing lawyer made a charging decision in respect of Clive Goodman and Glen Mulcaire. They were arrested the same day.

On 9 August 2006 Goodman and Mulcaire were charged with conspiracy to intercept communications, contrary to section 1 (1) of the Criminal Law Act 1977, and eight substantive offences of unlawful interception of communications, contrary to section 1 (1) of the Regulation of Investigatory Powers Act 2000. The charges related to accessing voice messages left on the mobile phones of members of the Royal Household.

The two were bailed to appear at the City of London Magistrates' Court on 16 August 2006 when they were sent to the Central Criminal Court for trial.

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From:

Page: 4/6

Date: 18/07/2009 16:31:58

When Mulcaire's business premises were searched on 8 August, in addition to finding evidence that supported the conspiracy between him and Goodman regarding the Royal Household allegations, the police also uncovered further evidence of interception and found a number of invoices. At that stage, it appeared these invoices were for payments that Mulcaire had received from the News of the World newspaper related to research that he had conducted in respect of a number of individuals, none of whom had any connection with the Royal Household. They included politicians, sports personalities and other well known individuals.

The prosecution team (CPS and Metropolitan Police Service) therefore had to decide how to address this aspect of the case against Mulcaire. At a case conference in August 2006, attended by the reviewing lawyer, the police and leading counsel, decisions were made in this respect and a prosecution approach devised.

From a prosecution point of view what was important was that any case brought to court properly reflected the overall criminal conduct of Goodman and Mulcaire. It was the collective view of the prosecution team that to select five or six potential victims would allow the prosecution properly to present the case to the court and in the event of convictions, ensure that the court had adequate sentencing powers.

To that end there was a focus on the potential victims where the evidence was strongest, where there was integrity in the data, corroboration was available and where any charges would be representative of the potential pool of victims. The willingness of the victims to give evidence was also taken into account. Any other approach would have made the case unmanageable and potentially much more difficult to prove.

This is an approach that is adopted routinely in cases where there is a large number of potential offences. For any potential victim not reflected in the charges actually brought, it was agreed that the police would inform them of the situation.

Adopting this approach, five further counts were added to the indictment against Mulcaire alone based on his unlawful interception of voicemail messages left for Max Clifford, Andrew Skylet, Gordon Taylor, Simon Hughes and Elle MacPherson.

In addition to obtaining evidence from these persons, the police also asked the reviewing lawyer to take a charging decision against one other suspect. On analysis, there was insufficient evidence to prosecute that suspect and a decision was made in November 2006 not to charge. So far as I am aware, this individual was neither a journalist on, nor an executive of, any national newspaper.

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From

Page: 5/6

Date: 16/07/2009 16:31:56

This progress in the case meant that its preparation was completed by the time Goodman and Mulcaire appeared at the Central Criminal Court on 29 November 2006 before Mr Justice Gross. When they did appear at court, Goodman and Mulcaire both pleaded guilty to one count of conspiracy to intercept communications – the voicemail messages left for members of the Royal Household. Mulcaire alone pleaded guilty to the five further substantive counts in respect of Max Clifford, Andrew Skyler, Gordon Taylor, Simon Hughes and Elle MacPherson. The case was then adjourned to obtain probation reports on the defendants.

On 26 January 2007 sentencing took place. Goodman was sentenced to four months' imprisonment and Mulcaire to a total of six months' imprisonment, with a confiscation order made against him in the sum of £12,300.

As part of my examination of the case, I have spoken to the then DPP Sir Ken Macdonald QC as he and the Attorney General at the time, Lord Goldsmith, were both regularly briefed – as would be expected with such a high profile case.

Findings

As a result of what I have been told I am satisfied that in the cases of Goodman and Mulcaire, the CPS was properly involved in providing advice both before and after charge; that the Metropolitan Police provided the CPS with all the relevant information and evidence upon which the charges were based; and that the prosecution approach in charging and prosecuting was proper and appropriate.

There has been much speculation about whether or not persons other than those identified above were the victims of unlawful interception of their mobile telephones. There has also been much speculation about whether other suspects were identified or investigated at the time. Having examined the material that was supplied to the CPS by the police in this case, I can confirm that no victims or suspects other than those referred to above were identified to the CPS at the time. I am not in a position to say whether the police had any information on any other victims or suspects that was not passed to the CPS.

In light of my findings, it would not be appropriate to re-open the cases against Goodman or Mulcaire, or to revisit the decisions taken in the course of investigating and prosecuting them.

However, if and insofar as there may now be further information relating to other possible victims and suspects, that should be reported to the police who have responsibility for deciding whether or

From: +44 20 7796 8370 , Page: 6/6 Date: 16/07/2009 16:31:57

not to conduct a criminal investigation, I have no power to direct the police to conduct any such investigation.

In conducting this review I have put a good deal of detailed information in the public domain. This demonstrates my commitment that the CPS should be visible, transparent and accountable. It should also assure the public about the integrity of the exercise I have undertaken.

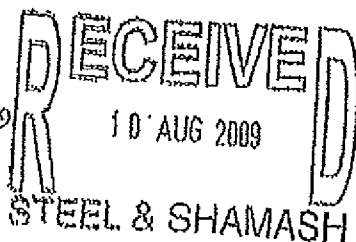
Keir Starmer QC
Director of Public Prosecutions

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FARRER & Co

Steel & Shamash Solicitors
DX 36503
Lambeth

7 August 2009



Dear Sirs

Right Honourable John Prescott MP

We refer to your two letters of 10 July addressed to Mr Colin Myler, the Editor of the *News of the World* and our letter of 21 July. We also refer to the recent telephone conversation between Mr Beabey of this firm and Phillip Shamash of your firm.

Mr Shamash subsequently left Mr Beabey a voicemail seeking our client's written response to your letters. As explained to Mr Shamash on the telephone, it appears to us, in particular from the first letter sent under Section 10 of the Data Protection Act 1998, that your client's concerns arise from the assertion in that letter that his personal data has been "*acquired by the News of the World unlawfully and/or unfairly*" and that "*any processing*" of his personal data is "*both causing and is likely to [cause] substantial damage or distress*" to your client which is "*unwarranted*".

At about the same time as you were instructed to send your letters of 10 July, your client, of course, publicly expressed a concern that his mobile telephone may have previously been "tapped" by our client's journalists or private investigators working for them. This, no doubt, arose out of similar allegations published in *The Guardian* newspaper.

As you will no doubt be aware on 9 July, Metropolitan Police Assistant Commissioner John Yates issued a statement in relation to the telephone tapping allegations concerning our client. In particular, the Assistant Commissioner stated that:

- *It is important to recognise that our inquiries showed that in the vast majority of cases there was insufficient evidence to show that tapping had actually been achieved.*
- *Where there was clear evidence that people had been the subject of tapping, they were all contacted by the Police.*

Farrer & Co LLP 66 Lincoln's Inn Fields London WC2A 3LH Telephone +44 (0)20 7242 2022 Facsimile +44 (0)20 7242 9899
DX 32 Chancery Lane Website www.farrer.co.uk

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Your reference

Our reference

Direct telephone

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By Fax:

By DX

FARRER & Co

Steel & Shamash Solicitors
7 August 2009

- *There has been a lot of media comment today about the then Deputy Prime Minister John Prescott. This investigation has not uncovered any evidence to suggest that John Prescott's phone had been tapped.*
- *No additional evidence has come to light since this case has concluded. I therefore consider that no further investigation is required.*
- *However, I do recognise the very real concerns, expressed today by a number of people, who believe that their privacy may have been intruded upon...I therefore need to ensure that we have been diligent, responsible and sensible and taken all proper steps to ensure that where we have evidence that people have been the subject of any form of phone tapping, or that there is any suspicion that they might have been, that they have been informed.*

Your client told the BBC mistakenly "those of us that had our phones tapped and the Police were aware of it -- why were we not told?"

In the circumstances, your client was in July acting, under the misapprehension that his mobile telephone had previously been tapped on behalf of the *News of the World*. The Police have corrected this in clear terms. Our client, therefore, rejects your assertion that it (the *News of the World*) has acquired your client's personal data unlawfully and/or unfairly and it rejects the assertion that it is carrying out any processing of such personal data in a way causing or likely to cause substantial damage or distress to your client which is unwarranted.

We also mentioned to Mr Shamash on the telephone that our client considers it unreasonable and unworkable for it as a national media organisation to "cease processing any personal data of which John Prescott is the data subject" for the obvious reason of your client's previous and current role in public life and matters of public interest. Our client, therefore, takes the view that your client's Section 10 requirements cannot be met and are, in any event, borne out of a misconceived concern that his mobile telephone has been tapped by or on behalf of the *News of the World*. The demand that the *News of the World* cease all processing of your client's personal data (including the mere holding of information or data) about your client is unjustified and our client declines to agree to it.

Your client has also made a subject access request under Section 7 of the Act. As Mr Beabey explained to Mr Shamash on the telephone, having taken instructions from our client's in-house Legal Manager, Mr Crone, we can confirm that Mr Crone is not aware of any ongoing *News of the World* journalistic investigation into your client such that there is any current processing of his personal data for journalistic purposes. Our client does, of course, hold your client's personal data in the form of its journalistic archive and press cuttings of information and stories concerning your

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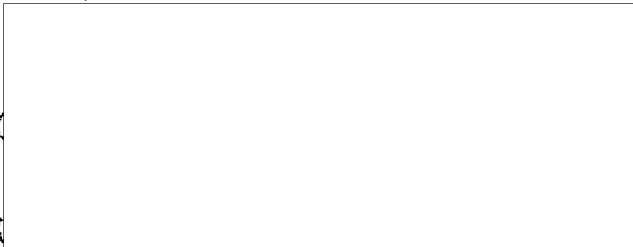
Steel & Shamash Solicitors
7 August 2009

client. Even if, however, there is other as yet unpublished personal data concerning your client held by the *News of the World*, then any such processing of that information will be undertaken with the view to publication of journalistic material in due course.

In all the circumstances, we would, as previously indicated by Mr Beabey on the telephone, refer you to the provisions of Section 32 of the Data Protection Act 1998. This section provides our client with an exemption from, inter alia, the Data Protection Principles (save for the 7th Principle); Section 7 and Section 10 of the Act. You have invoked Section 7 and Section 10 by your letters of 10 July both of which are exempt, so far as our client is concerned, by virtue of Section 32 of the Act.

We trust the above is sufficient information for your client's purposes. Whilst reserving our client's rights and, in particular, the protection afforded it by virtue of the exemption for the special purposes (including journalism) in Section 32, should your client require any further clarification or explanation in relation to the above, please let us know.

Yours faithfully





HOUSE OF COMMONS
LONDON SW1A 0AA

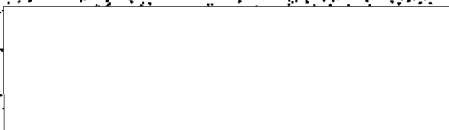
The Office of
The Rt Hon John Prescott MP

21st August 2009

Dear Assistant Commissioner

You will be aware that on the 9th July I sent a letter to the Police Commissioner (a copy of which I enclose for your ease of reference). In response, I received the enclosed acknowledgement stating that it had been passed on to your office. I would be grateful if you could tell me when I can expect a reply.

Yours sincerely



The Rt Hon John Prescott MP

Mr J Yates OPM
Assistant Police Commissioner
Specialist Operations
New Scotland Yard
Broadway
London
SW1H 0BG



Working together for a safer London

SPECIALIST OPERATIONS

The Rt Hon John Prescott MP
House of Commons
London
SW1A 0AA

John
for information
- Any further action?
/E

John Yates, OPM
Assistant Commissioner
New Scotland Yard
Broadway
London SW1H 0BG

Your Ref:

Our Ref:

Date: 11th September 2009

Dear Mr Prescott

I refer to your letters of 9th July and 21st August 2009.

I apologise for not replying to your letter of 9th July, but I had assumed that your enquiry had been answered by my telephone call to you on that day, when I informed you that our investigation in 2005/06 did not uncover any evidence to suggest that your phone had been tapped.

For your information, at the time of our investigation, police did inform and provide briefings to those individuals who fell into the category of Royal Household, MPs, Cabinet Office, police and military (ie, national security concerns) and who we knew and could evidence had had their voicemail called by Goodman or Mulcaire. As for "victims" who fell outside these categories, it was agreed with the phone companies that they would research, assess and address whether or not, and to what degree, their customers had been the subject of contact by the suspects and they would then take appropriate action to reassure their customers and introduce preventative measure to ensure this type of interception did not recur.

I am satisfied therefore that we did take appropriate action at the time and trust the position is now clear.

Yours sincerely

John Yates
Assistant Commissioner
Specialist Operations



HOUSE OF COMMONS
LONDON SW1A 0AA

The Office of
The Rt Hon John Prescott MP

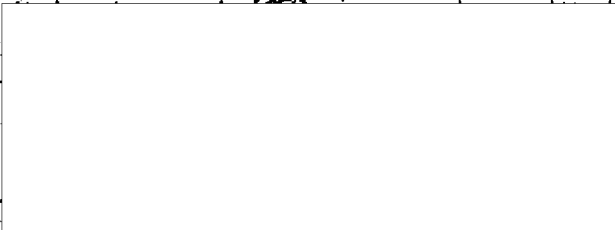
27th November 2009

Dear Mr Saoma

I understand that Scotland Yard has now analysed and logged the contents of all of the material which was seized by Metropolitan Police officers from Glenn Mulcaire and Clive Goodman in the course of inquiries into the interception of voicemail messages by Mulcaire and Goodman.

This is a formal request for you to notify me of any reference of any kind to myself in that material including, but not limited, to references in computer records, paperwork, audio or video recordings dealing with any and all instructions, actions, recordings, notes, messages and payments concerning myself.

Yours sincerely



Rt Hon John Prescott MP

Edward Solomons
Director of Legal Services
Metropolitan Police Service
New Scotland Yard
Broadway
London
SW1H 0BG



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Copy posted to
Gerald Shamash: 17/12/09

15 December 2009

DIRECTORATE OF LEGAL SERVICES

Director: Edward Solomons
Solicitor

The Rt Hon John Prescott MP
House of Commons
London SW1A 0AA

New Scotland Yard
Broadway
London SW1H 0BG
DX: 134700 VICTORIA 7

Enquiries to: Naz Saleh

Direct line: [Redacted]
Facsimile: [Redacted]
Switchboard: [Redacted]

Your ref:

Our ref: U/35943/NFS

naz.saleh@met.police.uk
Service not accepted by e-mail

By Fax No [Redacted] & Post

John
This is the reply to your
letter dated 24/11 (attached)
Gerald Shamash's number is

Dear Mr Prescott,

Re: Disclosure Request

I refer to your letter dated 24 November 2009.

I understand that Assistant Commissioner John Yates spoke to you on 9 July and wrote to you on 11 September 2009 assuring you that the police investigation in 2005/2006 did not uncover any evidence to suggest that your phone had been tapped.

Having now done a further search of all the material that was seized as part of the investigation into Mr Mulcaire and Mr Goodman, I can confirm that we have no documentation in our possession to suggest that Mr Mulcaire attempted to intercept any of your voicemail messages.

The only documentation in our possession to suggest you may have been a "person of interest" to Mr Mulcaire is firstly, one piece of paper on which is written the name "John Prescott". The only other legible word on this document is "Hull".

Secondly, the name "Prescott" appears on two "Self billing tax invoices" which we believe are from News International Supply Company Ltd to Mr Mulcaire's company Nine Consultancy Ltd. One appears to be for a single payment of £250.00 on 7.05.2006 with a reference containing the words "STORY: OTHER PRESCOTT ASSIST-TXT", and the other again appears to be for a single payment of £250.00 on 21.05.2006 with a reference containing the words "STORY: OTHER PRESCOTT ASSIST-TXT URGENT". We do not know what this means or what it is referring to.



There is no other documentation in our possession that makes any reference to a "John Prescott".

Yours sincerely

[Redacted Signature]

Naz Saleh
Assistant Director of Legal Services

Sir Paul Stephenson
The Commissioner of Police of the Metropolis
Metropolitan Police Service
New Scotland Yard
Broadway
London SW1H 0BG

Collyer Bristow LLP solicitors
4 Bedford Row, London WC1R 4DF

T (Direct) [redacted]
F (Direct) [redacted]
E dominic.crossley@collyerbristow.com
DX 163 London Chancery Lane

Our ref: [redacted]
Your ref: [redacted]

For the attention of (copied by email) [redacted]
Directorate of Legal Services

5 August 2010

Dear Sir

Proposed Claim for Judicial Review by Baron Prescott of Kingston-Upon-Hull

We are instructed by Baron Prescott of Kingston-Upon-Hull. Please ensure that all further correspondence in relation to this matter is addressed to this firm using the above address and contact details.

We are writing to you in connection with the information you have concerning our client deriving from your investigation of Glenn Mulcaire and Clive Goodman into their unlawful intrusions into the private lives of a number of individuals and in particular three members of the Royal household.

By this letter you are on notice of our client's intention to pursue a claim for judicial review in the event that you fail to provide the information and remedies sought. The proposed action for judicial review (should it become necessary) will relate to your continuing failure to provide full information to our client concerning invasions of his privacy by Glenn Mulcaire and/or others acting on his behalf or on behalf of the News of the World or other newspapers and your failure to conduct an effective investigation.

Background

You will be aware of correspondence sent by our client's former solicitors Steel & Shamash and correspondence directly between our client and Assistant Commissioner John Yates and between our client and the Legal Directorate. Notwithstanding this correspondence and information within the media it may be of assistance to review the background to this matter.

The key information is as follows:

- i. In April and May 2006 a number of stories were published in the tabloid press concerning our client's private life. Our client was Deputy Prime Minister at the time.
- ii. As a result of an investigation later in 2006 into the News of the World's Royal correspondent Clive Goodman and Glenn Mulcaire, a private investigator, you obtained a large amount of information about individuals, many of whom were public figures, who had been the targets of Mulcaire and Goodman. The information came in document and other forms (such as audio

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Page 2
Sir Paul Stephenson
5 August 2010

tapes) enabling you to establish whether sent and/or received telephone messages were being accessed.

- iii. Messrs Mulcaire and Goodman were arrested following an analysis of the information you obtained and following information you sought from mobile telephone providers which established that they had unlawfully accessed mobile telephone pin numbers and telephone messages.
- iv. Messrs Mulcaire and Goodman were prosecuted and pleaded guilty to unlawful interception of communications contrary to section 1 (1) of the Regulation of Investigatory Powers Act 2000 in relation to the interception of voicemail messages on the mobile telephones of three members of the Royal Household and to five other public figures. Both individuals served short prison sentences.
- v. Notwithstanding that the prosecution only related to a limited number of victims, you were in possession of a considerable sum of evidence concerning the unlawful activities of these individuals in connection with other targets or victims.
- vi. On 8th July 2009 last year the Guardian newspaper reported that a £700,000 settlement had been reached between News Group Newspapers (the publishers of the News of the World) and an individual who had claimed his messages had unlawfully been intercepted by Mulcaire. It also reported that a far more significant number of people had been targeted by Mulcaire on behalf of the News of the World than had previously been disclosed.
- vii. Upon learning of the Guardian's revelations our client was concerned that he was one of the targeted individuals and he wrote to you on 9th July 2009. Also on 9th July the following occurred: Assistant Commissioner John Yates telephoned our client to state that there was no evidence that his phone had been tapped. Our client asked Mr Yates to put this information in writing to him. Later that day Mr Yates gave a press conference concerning the Guardian revelations and, in relation to our client, stated the following "*There has been a lot of media comment today about the then Deputy Prime Minister John Prescott. This investigation has not uncovered any evidence to suggest that John Prescott's phone had been tapped*".
- viii. On 21st August 2009 our client wrote a letter to Assistant Commissioner Yates enclosing a copy of his letter to you of 9th July 2009 querying when he would receive a reply to this letter. Mr Yates replied to this letter by his letter of 11th September 2009. This letter included the following:

"I apologise for not replying to your letter of 9th July, but I had assumed that your enquiry had been answered by telephone call to you on that day, when I informed you that our investigation in 2005/06 did not uncover any evidence to suggest that your phone had been tapped.

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Page 3
Sir Paul Stephenson
5 August 2010

For your information, at the time of our investigation, police did inform and provide briefings to those who fell into the category of Royal Household, MPs, Cabinet Office, police and military (i.e. national security concerns) and who we knew and could evidence had had their voicemail called by Goodman or Mulcaire. As for "victims" who fell outside these categories, it was agreed with the phone companies that they would research, access and address whether or not, and to what degree, their customers had been the subject of contact by the suspects and they would then take appropriate action to reassure their customers and introduce preventative measure to ensure this type of interception did not recur.

I am satisfied therefore that we did take appropriate action at the time and trust that the position is now clear."

- ix. Our client wrote again to the Metropolitan Police on 24th November 2009, this time to the Director of Legal Services, on the understanding that a further analysis had taken place and asking whether this had revealed any information concerning him.
- x. On 15th December 2009 Naz Saleh of the Metropolitan Police Legal Services replied to this letter. In this letter he stated that documentation exists to suggest our client may have been a "person of interest" to Mulcaire consisting of a piece of paper with the words "John Prescott" and "Hull" and two self billing tax invoices dated 7 May 2006 and 21 May 2006 addressed to News International Supply Company Limited contained the words "Story: Other Prescott Assist - Txt" and "Story: Other Prescott Assist - Txt: Urgent".

It is perfectly clear that you are in possession of information that shows that our client was targeted by Mr Mulcaire, at a time our client's private life was under scrutiny, and that he charged a company which forms a part of the group of companies which publishes the News of the World newspaper for what he did concerning our client. You know, and knew at the time that what Mulcaire did for the News of the World involved unlawfully accessing voicemail messages. You have been in possession of this information and similar information of others since 2006. The response of Assistant Commissioner Yates to our client's correspondence is highly questionable. Whilst our client was the Deputy Prime Minister in 2006 and would fall within the category of people who he states were informed of these activities at the time, our client was given no information. Rather than volunteering information it appears to us from the 2009 correspondence, Mr Yates' press statement and his submissions to the Select Committee, that the Metropolitan Police has denied the existence of any evidence and sought to dissuade him from questioning them further on the issue. It is only by the letter of 15th December 2009, following a third attempt by our client to get information from you, that it is revealed that you do in fact have information that in the view of the Metropolitan Police may suggest that our client was a "person of interest" to Mulcaire. Notwithstanding this belated revelation it cannot reasonably be suggested that the 15 December 2009 letter contains the totality of the information relevant to our client.

It is our view that your failure to provide information relevant to our client's right to a private life represents a clear breach of your obligations under Article 8 of the European Convention on Human Rights. This

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Page 4
Sir Paul Stephenson
5 August 2010

violation occurred by the failure to provide the relevant information to our client in 2006 and is continuing. Our client (even on Mr Yates' analysis) was and remains entitled to know how his privacy had been invaded so that he can protect himself from further violations and seek remedies in relation to past violations. The information our client requires would include not only the documents naming our client or containing his mobile telephone numbers but the documents showing how and when those numbers were accessed (by way of information such as Mr Mulcaire's telephone records and those of his contacts at the various newspapers). Our client would also require information to assess whether his contacts were also targeted, as he suspects from the behaviour of the press at the time, in order to listen to messages left by him or to ascertain information about him. Your failure to provide this information represents an ongoing breach.

In addition to your failure to provide our client with the relevant information, it is our view that your failure to investigate the activities relating to the infringement of our client's privacy adequately or at all represents a further breach of your positive obligations under Article 8. It is our understanding that, at the time of the 2006 investigation, the Metropolitan Police was aware that a very significant number of victims had been targeted by Mulcaire however a decision was taken not to pursue all but a small number. This decision has meant that the extent of the unlawful activities has not been revealed and the likelihood that other offenders have not been identified. The decision may also have increased the likelihood of this activity continuing.

In the letter of Mr Yates to our client dated 11th September 2009 he refers to an agreement that was entered into with the mobile phone companies whereby they would investigate victims not falling within the categories of people he described and contact them. Evidence was also given to the Select Committee to this effect. Although, as we have said, our client fell squarely within categories of people the police would contact, our client is not aware whether or not the mobile phone company of which our client was a customer was asked to investigate in connection with our client and whether or not they did so. He has not been contacted by his mobile telephone company in this regard.

Even after the Guardian newspaper revelations last year a further investigation was ruled out by Mr Yates. This decision was made notwithstanding that on the facts of our client's complaint, what has been described as a further search of the 2006 material has revealed information that is clearly grounds to suspect further unlawful activity which has not been prosecuted by either the civil or criminal courts. The letter from Naz Saleh of the Directorate of Legal Services dated 15th December 2009 reveals both that there has been no proper investigation and the consequence of this failure when he concedes in relation to the information revealed by that letter: "*We do not know what this means or what it is referring to*".

In the event that our client proceeds with a judicial review he will seek full disclosure of documents relating to the decision to limit (and not re-open) the investigation and/or prosecution and concerning all contact or proposed contact with the suspected victims or perpetrators of these activities and/or other relevant third parties such as News International Ltd (or associated companies) and mobile phone companies.

We are aware of other individuals who have written to you concerning a proposed judicial review and we have made contact with their lawyers. We understand that these individuals also complain of a failure to

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Page 5
Sir Paul Stephenson
5 August 2010

provide sufficient information and failure to investigate in relation to the misuse of private information (via intercepted telephone messages) and that there may well be others with similar complaints.

We are advising our client in his proposed application to the Administrative Court for the following Orders:

- i. A declaration that you have breached section 6 of the Human Rights Act 1998 by failing to discharge your ongoing positive obligations under Article 8,
- ii. That all relevant documents and information concerning the interference or potential interference with our client's private life, including any failure to conduct an effective investigation, be disclosed including but not limited to notes, telephone records and recordings, emails, letters, memos and other documents to allow our client to pursue appropriate action in relation to such violations,
- iii. An order under section 8 of the Human Rights Act for just satisfaction damages for breach of section 6; and
- iv. Payment of our client's legal costs

You should understand that the issues raised in this letter are considered by our client to be of the utmost seriousness. You must recognise not only the seriousness of the extensive unlawful activities of Mr Mulcaire and Mr Goodman but also the unlawfulness of the Metropolitan Police in the way in which it responded to the information it obtained about these activities.

Whilst our client is committed to pursuing this matter, by this letter he invites your proposals to resolve his complaints and provide him with all the relevant documents and information. Should you wish to make such a proposal please do so within 14 days of the date of this letter.

Yours faithfully

Collyer Bristow LLP

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15 September 2010

DIRECTORATE OF LEGAL SERVICES
Director: Edward Solomons
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By DX and email

Enquiries to:
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Facsimile:
Switchboard:
Your ref:
Our ref:

@met.police.uk
Service not accepted by e-mail

Dear Sirs

Re: Proposed Claim for Judicial Review by Baron Prescott of Kingston-Upon-Hull

I write further to my letter dated 13 August 2010 to provide a full response to your letter of claim dated 5 August 2010 which indicates intended judicial review proceedings on behalf of Baron Prescott against the Commissioner of Police of the Metropolis (who are referred to as Claimant and Defendant for the remainder of this letter).

The Claimant's judicial review claim is denied for the reasons set out below. Before I deal with the substantive legal aspects of the proposed claims, I think it is necessary to set out the factual history between the parties, in terms of previous correspondence.

Previous correspondence

On 9 July 2009, the Claimant wrote personally to the Defendant seeking information as to whether his phone had been targeted as a result of the activities of News of the World Journalists. Following this letter, and the Claimant's reminder letter dated 21 August 2009, the Defendant, through Assistant Commissioner Yates wrote to the Claimant on 11 September 2009 stating in clear terms that the MPS investigation in 2005/2006 did not uncover any evidence to suggest that the Claimant's mobile telephone had been unlawfully intercepted. That remains the position today. The MPS does not have in its possession any information to suggest that the Claimant's mobile telephone voicemail had been unlawfully intercepted by anyone, or that any attempt was made to intercept the Claimant's mobile voicemail messages.

On 24 November 2009, the Claimant wrote to the Director of Legal Services on the understanding that the material seized in the course of the investigation into the activities of Messrs Goodman and Mulcaire had now been logged and analysed. In the light of that, the Claimant's letter stated "This is a formal request for you to notify me of any reference of any kind to myself in that material,



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including, but not limited to references in computer records, paperwork, audio or video recordings dealing with any and all instructions, actions, recordings, notes, messages and payments concerning myself.

On 15 December 2009, the Defendant provided a substantive response to that request stating that (i) it remained the position that the MPS investigation revealed no evidence to suggest that Messrs Goodman and Mulcaire had attempted to intercept any of the Claimant's voicemail messages, (ii) that in terms of documentation, there was one sheet of paper with the Claimant's name (John Prescott) on it and the word "Hull" on the same page, and (iii) the name "Prescott" appeared on 2 self billing tax invoices with the heading "News International Supply Company Limited" to a company operated by Mr Mulcaire. This appears to indicate that 2 sums of money had been paid with reference to the name "Prescott", in the sum of £250 on each occasion, with two dates (7 May 2006 and 21 May 06). The Defendant also indicated that he did not know the relevance of these payments or what they referred to.

The Claimant then engaged the services of Steel & Shamash Solicitors who wrote to the Defendant on 2 March 2010 stating that they had previously written on the Claimant's behalf on 22 July 2009. The Defendant has no record of having received that letter. The letter of 2 March 2010 asked that the Defendant "*disclose to us as a matter of urgency, the existence, if any, and nature of the information held by the Metropolitan Police Service in relation to our client*" (emphasis added).

As you will appreciate in considering the chronology of correspondence, the Defendant found this request surprising given his substantive response to what is held by the MPS in the letter of 15 December 2009. Accordingly, the Defendant responded on 12 March 2009 in such terms. Subsequently, a letter from the Claimant's then solicitors dated 15 March 2009 sought documentation with reference to "Operation Motorman" which has no relevance to the activities of Messrs Mulcaire and Goodman. Accordingly, on 24 March 2010 the Defendant responded indicating there were no further documents in the possession of the MPS. For the avoidance of doubt, I attach copies of past correspondence to this letter for ease of reference.

The claim/s now advanced in your letter of 5 August 2010

The Claimant now seeks to bring judicial review proceedings against the Defendant on the basis that (a) there is a continuing failure to provide full information to the Claimant concerning intrusions of his privacy by Glenn Mulcaire and his associates or on behalf of the News of the World, and (b) because the Claimant maintains that the MPS has failed, and continues to fail to conduct an effective investigation into the telephone tapping affair involving Messrs Mulcaire and Goodman.

Further in your letter at page 3, you specify the information now sought from the MPS which is in far wider terms than any of the previous letters written by the Claimant or his legal advisors. I propose to deal with each of the two ways you seek relief by way of judicial review separately.

The alleged continuing failure to provide full information to the Claimant

First, you will appreciate that the material in the MPS' possession does not belong to the MPS nor has it been generated by the MPS. It consists of material seized as a result of a criminal investigation. Secondly, the MPS has conducted searches of the material held in order to respond to requests from individuals coming forward who believe that their telephones have been the subject of unlawful interception. Thirdly, the Defendant has checked the information against the name "John Prescott" and the results of those checks were given to your client on 15 December 2009. Therefore, apart

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from actually providing you with copies of the documents referred to in that letter (which I will deal with below), the Defendant has complied with your requests thus far.

The Claimant has now widened considerably his request for disclosure in your letter of 5 August 2010 which at page 4 states: *"The information our client requires would include not only the documents naming our client or containing his mobile telephone numbers but the documents showing how and when those numbers were accessed (by way of information such as Mr Mulcaire's telephone records and those of his contacts at the various newspapers). Our client would also require information to assess whether his contacts were also targeted, as he suspects from the behaviour of the press at the time, in order to listen to messages left by him or to ascertain information about him"*.

The Defendant has no documents which show whether and if so "how and when" the Claimant's mobile telephone may have been accessed. You will, of course, appreciate that the Defendant has no means of knowing who/what the Claimant's contacts/mobile telephone number(s) were in 2005/2006.

The procedure for applying for disclosure documents

The Defendant cannot simply hand over or copy documents in his possession without a Court order. He requires the Claimant to make an application to the Court, either in the form of a pre-action disclosure application or for disclosure against a non-party. The Defendant assumes that the Claimant intends to bring a private law breach of confidence type action against News International. If he were to do so, the Defendant might expect to be the subject of a disclosure application in terms of CPR 31.17. In *Marcel v Commissioner of Police (1992) 1 ABR 72*, the Court of Appeal made it clear that the police should not disclose documents seized in the course of a criminal investigation to those involved in civil proceedings without a Court order, nor should the police disclose documents in advance of any such hearing.

The need for a Court order stems from the fact that the MPS has no ownership of the documents the Claimant seeks, and owes a duty of confidentiality to any other named individuals. Further, if for example the Claimant were to seek disclosure of any documents concerning a named contact, then that individual would have to be notified before an order was made to give that person a reasonable opportunity to object or express a view. The named contact may not want and object to their details being disclosed to the Claimant. If that is the case, the Court may rule that such private details should not be disclosed. This is why the need to apply for a Court order remains an important safeguard in this case.

The Defendant would usually maintain a neutral stance on any such application and, providing the Claimant satisfies the Court that he is entitled to those documents, disclosure would normally be ordered. The Defendant may however make representations on issues such as costs.

Separately, you allege in page 4 of your letter that because of the failure to provide the Claimant with information, the Defendant is in breach of Article 8 of the Convention. The Defendant does not agree that this is the case. As you are aware, Article 8 provides the following:

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the

prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Whilst accepting, to a very limited extent, that there are sometimes positive obligations inherent in respecting family life under Article 8, this has never been quantified by the Courts, and the obligations under the Article do not lend themselves to precise definition. In determining whether or not such a positive obligation exists, the Court has to have regard to the "fair balance" between the general interest of the community and the competing interest of the individual concerned. In relation to the width of Article 8, it is also right to observe that no Court has ever provided a clear definition of the interests protected, as it is simply not possible to give an exhaustive definition of the notion of private life. It is however recognised that "private life" and "home" would include professional or business activities, physical and moral integrity.

In this case, it is not accepted that the Defendant has failed to provide essential information to the Claimant for the purposes of Article 8.

If you are seeking to allege breaches of Article 8 to obtain the details of others, I would draw your attention to Smith -v- The U.K. [Judgment 4th January 2007], where it was held that there is no positive obligation on the State in relation to Article 8 to provide access to documents which do not concern a person's identity or personal history. In other words, there does not appear to be any obligation under Article 8 that you may rely upon to disclose details of other individuals which may be in the possession of the police.

It also is important to recognise the fact that any evidence held by the MPS as a result of the investigation into the activities of Messrs Mulcaire and Goodman are not State created records (such as educational files, social service records etc), or reports created for the benefit of the State. Clearly, a duty of confidentiality exists to other individuals whose details are held in the documents in the MPS' possession. As is made clear in Article 8(2), there can be interference by a public authority insofar as is necessary for the protection of the rights and freedoms of others and this Article operates to prevent wholesale disclosure in the manner suggested by you.

The alleged failure to conduct an effective investigation

You will be aware of the recent developments in this matter over the last few days. The police are considering the new information published in the media with a view to determining whether there is any new evidence of unlawful interception of communications, or any other criminal matter that requires a police investigation. This decision will not be taken without consultation with the CPS. Accordingly, there is no refusal on the part of the Defendant here and no basis for a judicial review challenge.

Furthermore, it is not accepted that the Claimant has locus to bring this challenge as it is not the case that the MPS has documentation to suggest the Claimant has, in fact, had his telephone intercepted. The fact that the name "Prescott" appears on 2 invoices alongside the figures of £250 does not prove that his telephone was intercepted on 2 or more occasions. It merely indicates that at that time News International appeared to pay a total of £500 to Mr Mulcaire with reference to the name "Prescott". What the invoices refer to and what they may or may not have been paying for is unknown to the Defendant. As the MPS has previously stated, some of the material seized, although classed as personal data, could have been in the legitimate possession of Messrs. Goodman and Mulcaire due to their respective jobs. It is not necessarily correct to assume that their possession of this material was for the purposes of interception alone and it is not known what their intentions were or how they intended to use it. In short, it is not accepted that the Claimant has sufficient standing or interest for

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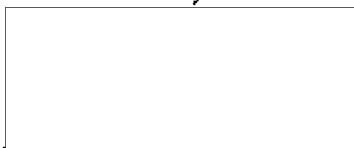
the purposes of Section 31(3) of the Senior Courts Act 1981, to himself require a further police investigation or prosecution beyond that which has already occurred. The Claimant is not a victim for the purposes of the Human Rights Act 1998 (See Section 7(1)).

Summary

Before a claim for judicial review can be advanced, the Claimant has to show that there has been a "decision, action or failure to act" in relation to a public function carried out by the Defendant (CPR 54.1(2)(a)). It is the Defendant's position that the conduct of the Defendant set out above does not show this to be the case.

For the purposes of the judicial review protocol, the address and reference contained at the top of this letter remains the address for further correspondence and the service of court documents.

Yours faithfully

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Directorate of Label Services



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Fax

9 Feb 2011 17:49 P001/002



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9 February 2011

Bindmans LLP
DX 37904 King's Cross

DIRECTORATE OF LEGAL SERVICES

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By Fax and DX

Enquiries to: Sara Royan

Direct line:

Facsimile:

Switchboard:

Your ref:

Our ref:

Dear Sirs

Re: Your Client - Lord Prescott

On the 26th January 2011 documents were supplied to the MPS by News International Ltd that were relevant to the previous investigation conducted into the interception of voicemails by Mr Mulcaire in 2005/6.

On this date, the MPS decided to form a Specialist Crime Directorate investigation team to re-open the previous investigation. This necessitates a full reconsideration of all the material the MPS currently holds as well as new and continuing enquiries involving News International and others. That investigation is ongoing. In effect this meets the relief sought in Ground 3 of your client's claim for judicial review.

A meeting was arranged with Leading Counsel for Friday 4th February 2011 to consider the new material, and on the same day we received the decision of Mitting J. refusing permission for your client and others to apply for judicial review.

Leading Counsel has advised that, in his opinion, the new material does not affect the decision made by Mitting J. in relation to the relief sought in Grounds 1 and 2 of your claim for judicial review. However, owing to the new investigation we can make the following additional disclosure in relation to your client which we were not aware of previously.

In the recent material supplied to the MPS by News International there is an email dated 28th April 2006 which contains in the subject line: "JOAN HAMMELL (ADVISOR FOR PRESCOT)" [sic] In the body of the email it contains the information:

"MOB .MAILBOX; NTERUPT WITH A STAR,PIN THEIR IS 45 MESSAGES)" [sic]

It appears this email was sent from an email address associated with Mr Mulcaire.

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Fax

9 Feb 2011 17:49 P002/002

The new investigation team conducted enquiries into the information in this email and interrogated the Holmes database upon which the previous investigation material had been collated. Upon searching the name "Hammell" a document, amongst the many thousands on the database, was located which was only listed under that name. The document when examined was a notebook page that has written in manuscript:

"PRESCOTT ADVISOR

JOAN HAMMELL

MOBI

You will appreciate this material is part of the new live ongoing investigation and therefore we do not propose to disclose a copy of the document to you at this time. However, the new investigation team will consider whether it can show your client the relevant documentation at this time in order to assist their enquiry.

The situation remains the same in that at present, to the best of our knowledge and belief, the MPS have no other material indicating that your client's voicemail messages were intercepted but obviously there is now material that your client's advisor may have had her messages intercepted. This is being investigated by the new investigation team. We will of course notify her directly.

We are copying this letter to the court for completeness.

Yours faithfully

Directorate of Legal Services

cc. The Honourable Mr Justice Mitting

348

UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE

To be published as HC 907-ii

House of commons

oral EVIDENCE

TAKEN BEFORE THE

Home Affairs Committee

Unauthorised tapping into or hacking of mobile communications

Tuesday 5 April 2011

Mr Keir Starmer QC

Evidence heard in Public Questions 90 - 130

USE OF THE TRANSCRIPT

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Oral Evidence

Taken before the Home Affairs Committee

on Tuesday 5 April 2011

Members present:

Keith Vaz (Chair)

Mr James Clappison

Dr Julian Huppert

Steve McCabe

Alun Michael

Bridget Phillipson

Mark Reckless

Mr David Winnick

Examination of Witness

Witness: Mr Keir Starmer QC, Director of Public Prosecutions, gave evidence.

Q90 Chair: Mr Starmer, thank you very much for giving evidence to us today. I apologise for keeping you waiting. We were having a long discussion with the new Permanent Secretary of the Home Office, and inevitably these things overrun.

Mr Starmer: Your clerk kept me updated, thank you.

Chair: Excellent. Thank you very much, first of all, for the letter that you sent to us in response to my original letter to you in October last year, and for the latest letter that you have sent to the Chairman of the Culture, Media and Sport Committee, who sent us a copy on Friday. We are most grateful. We have just had a chance to absorb this. Can I take it that you are aware of the account that Mr Yates gave to us when he gave evidence to us last week?

Mr Starmer: Yes, I am. Could I just begin by highlighting the caution and caveats at the beginning of my letter on 1 April 2011?

Chair: Of course. You can certainly do that when we get onto the letter, but can I just set this background? We might put questions to you about other witnesses who have been before us. Are you aware of the evidence that he has given?

Mr Starmer: I am aware of the evidence that he has given. I have deliberately attempted to set out simply, in neutral, chronological order, a detailed account from beginning to end.

Q91 Chair: We are very grateful for it. Secondly, are you aware of what Mr Bryant has suggested in the evidence that he gave to us, or is that in a box that you are not aware of?

Mr Starmer: No, I am aware of all of that. I have resisted responding to Mr Yates or Mr Bryant. I thought it more helpful to the Committee to simply set it out in full, in detail and chronologically, so that you can see.

Q92 Chair: We are most grateful. Turning to your letter, which you have referred to already—this is the letter dated 1 April 2011—can I take you to almost the last paragraph? I know the danger is that we will do as you have suggested we shouldn't do, which is ignore the caveats, but we have taken on board all the caveats that you have put forward.

Mr Starmer: One further word on the caveats, if I may. One of the caveats is that, in addition to the review that I asked my principal legal adviser to conduct, which she is conducting and is not complete, there is a live investigation, and the Committee may not know—the news has just broken—that two individuals have been arrested this morning in relation to this operation and are currently in custody awaiting questioning, and therefore—

Chair: The timing is almost perfect for your appearance.

Mr Starmer: I will make no comment about that.

Chair: We are certainly grateful for that. I was not personally aware of that.

Mr Starmer: I have to be so careful on anything that falls within the remit of the live investigation, for obvious reasons that the Committee will understand.

Q93 Chair: We are not going to ask you about the live investigation, simply because this Committee-by way of background to you-are looking at RIPA. We are looking at the law. Obviously, what has happened in respect of the *News of the World* and Mr Yates' examination of what has happened, and your advice, are relevant to our recommendations that we hope to make to Parliament after we have heard from the Information Commissioner as to whether the law is clear and whether the law should be changed. We are interested in that kind of abstract argument, so if you want to keep it at that, we are happy with that.

Mr Starmer: I will, and thank you for that indication.

Q94 Chair: Taking you to "e" of your letter, page 11, just on the basis of the legal advice, because this affects the open evidence given by Mr Yates, Mr Yates told this Committee that, in effect, on 1 October at a case conference, the advice that he was given by leading counsel from the CPS altered the scope of the investigation in that, prior to this, he felt that the advice given by the CPS limited the scope of the investigation-so we are interested in scope here as opposed to anything else. So "e" in your letter, "In my view, the legal advice given by the CPS to the Metropolitan Police on the interpretation of the relevant offences did not limit the scope and extent of the criminal investigation". That is what we are interested in. Was the original advice that was given in any way a limit to what the Metropolitan Police could do?

Mr Starmer: I understand.

Chair: What is the answer?

Mr Starmer: In my opinion, it wasn't, and the conclusion at page 11 "e" is based on everything that goes before it in the previous 10 pages, where I have tried to set out the advice that was given from the start on a number of different offences. In summary, as far as RIPA is concerned, what I have termed "provisional advice" was given on the interpretation of RIPA, which suggested that it might have to be interpreted narrowly, but no final decision was taken on that. In fact, no definitive view was ever articulated on that.

As far as the Computer Misuse Act is concerned, advice was given in relation to offences under that Act almost from the beginning of the CPS involvement. Of course the significance of that is that, under that Act, it is not necessary to establish whether a message was intercepted before or after it was listened to by the intended recipient. Advice was also given about conspiracy charges, which again do not necessarily require proof that a message was intercepted before it was listened to by the intended recipient.

That is why, putting it all together, my view is that nothing but a provisional view was given on the interpretation of RIPA. In any event, however, the advice that was given on the other two offences leads me to the conclusion that the legal advice given by the CPS, in this case, did not limit the scope or extent.

Q95 Chair: Yes. Mr Yates, of course, told the Committee that he believed it did limit his investigation. He was very clear on this when he gave evidence to us last Tuesday, and he then said that on 1 October, things changed. Your advice changed. I appreciate that you were not the DPP on the original occasion, but you have had a review of all the advice that has been given. Do you think that there was a change on 1 October?

Mr Starmer: I certainly accept that in October, when for the first time under my watch this became a live issue for the CPS-until then I had simply been looking back and trying to piece together what had gone before; this was the first time it became live on my watch-at that stage, I was concerned that clearer, more robust legal advice should be given to the Metropolitan Police. Looking at the history and the detailed analysis we have provided, I don't, for my part, think that that was a radical departure from the approach that had been taken before. I do accept that it was clearer and more robust, and insofar as-

Chair: But consistent.

Mr Starmer: But consistent. Insofar as counsel previously had been prepared to take a pragmatic view for the purpose of the particular prosecution, I think I was indicating that in future, I thought the clearer and more robust approach should be adopted. To that extent, I think it would probably not have adopted, looking forward, the pragmatic approach that was taken at the time.

Q96 Chair : Indeed. One final question on process: I am fascinated by all these calls that are being made to people at the CPS on such a very important issue. It is a matter of huge public concern and public interest. People keep ringing up and saying, "By the way, has this offence been committed? Has it not been committed? This is not confirmed in writing." Requests are not put in writing. It seems-I wouldn't say chaotic-but a little bit relaxed. Is that the normal way it is done?

Mr Starmer: I don't think that is a proper interpretation of events. I say that for the following reason. It is not uncommon for an investigator, very usually the police, to seek the advice of the CPS before charge. That is a perfectly sensible thing to do, so that they don't waste time and energy investigating something that is never going to result in a charge. Very often there will be exchanges. There might come a point at which a definitive view needs to be taken on something, and one of the points that leading counsel has made to me is that, had this become an issue that absolutely needed to be determined-i.e. the proper interpretation of RIPA-he would have expected to have been required, and he would have wanted, to give a formal written advice, and we would have expected it. What you see here, I would suggest, is evidence that no definitive view had been reached. Had that been a real issue, you would have probably seen the more formal advice.

Q97 Chair : Which happened on 1 October, "We need a robust set of advice. We are proceeding; tell us what to do. What is the law?" and so on. That is basically what you are saying?

Mr Starmer: Yes.

Q98 Dr Huppert: Thank you, Mr Starmer, for coming before us, and also for writing one of the most compelling pieces of legal literature I have ever had the pleasure to read. It was fascinating. I am still trying to work out who did it at the end.

It is a helpful coincidence, in some sense, that we are meeting just after the former News Editor and current Chief Reporter at *News of the World* has been arrested. I don't expect you to comment on that case at all. I think it is worth the Committee noting, though, that they were arrested on suspicion of conspiracy to tap into or hack mobile communications, which I think does relate to the breadth here. Can I just press you on your conclusion in "e", and what you said at the end of your letter is that you shared this letter with Acting Deputy Commissioner Yates and invited him to identify any factual inaccuracies, and that he did not do so. Do you think that means that he now accepts that this version of events is what happened, and therefore what he told us about previously was clearly not what happened?

Mr Starmer: I am very clear about this. I am not here to give evidence of what Mr Yates may or may not think, and it is not a sensible thing for me to attempt and it is not a fair thing for me to attempt. What I was anxious to do, when the Committee asked me to give evidence, was to go through all of the records that we had-I have set out the process-and to give the detailed narrative and chronology in as much detail as I could, and far more than we normally would, so that the Committee could see the whole picture, full stop. What I also wanted to do, because I knew that the Committee may ask me whether there are differences between me and Mr Yates, is to provide him with an opportunity to see the draft before it was sent to the Committee, so that if there was a factual inaccuracy that was identified and I could deal with, I could deal with that in the body of the letter and ensure, whatever conclusions one draws or observations one makes, that at least the factual background is agreed. Now, as I have said in the-

Q99 Chair : Did he respond and say he was wrong?

Mr Starmer: He did respond and he did not identify factual inaccuracies, and that is why I have put in the penultimate paragraph, I think, that I had included that as part of the process. Beyond that, I don't think it is for me to say.

Q100 Dr Huppert: We could conclude now that at least he accepts that this is the best factual description of what happens that exists anywhere, and that this is what we as a Committee should take as the basis for what actually happened?

Mr Starmer: I specifically asked him in terms to identify any factual inaccuracies, and he responded to me with a number of observations but with no factual inaccuracies. That was specifically what I was wanting.

Chair : I think what Dr Huppert is looking for is a definitive view. We know you can't speak on behalf of Mr Yates. I think he does that very well himself, and indeed has written back to us on this matter.

Q101 Dr Huppert: So we should take it now as the agreed factual basis that the legal advice given by the CPS to the Metropolitan Police, at the early stage of the investigation, did not limit the scope of that criminal investigation-your conclusion at "e"?

Mr Starmer: I am trying to be careful. I am not trying to be unhelpful. I asked Mr Yates to indicate if there were any factual inaccuracies, and he dealt with that.

Q102 Chair : His answer was, no, there were none?

Mr Starmer: No factual inaccuracies. The conclusions at "a" to "e" are mine. They are what I draw from the facts set out in the previous 10 pages. I am clear enough about that; I don't have any difficulty with that at all. What I don't want to do is to put words into the mouth of Mr Yates.

Chair : Nor do you need to, because it is open to this Committee to send him a copy of your letter and to ask him what he thinks of that.

Mr Starmer: Precisely. Thank you.

Q103 Dr Huppert: We can certainly take it then as factually clear, as on page 5, that the advice formally given, by the CPS to the Metropolitan Police, in July 2006 was that you could look at offences under the Computer Misuse Act, under RIPA and on conspiracy?

Mr Starmer: Yes. I am absolutely clear about that. It has been checked with Mr Yates, but I have personally looked at the documents and I have asked my principal legal adviser to look at much more than that. I am absolutely clear in my own mind about that.

Q104 Mark Reckless: Can I take you to the letter we have just had-basically overnight? This is on page 5 of your 1 April letter, and I believe from the context you are referring to an e-mail by the Head of SCD sent on 25 April, but correct me if I am wrong.

Mr Starmer: Yes.

Mark Reckless: I refer to the statement, "The offences under section 1 of RIPA would, as far as I can see, only relate to such messages that had not been previously accessed by the recipient". Isn't that fairly clear advice that the CPS gave for a narrow interpretation?

Mr Starmer: I accept-as I do, I think, in the first conclusion-that advice was given from an early stage that the offence might only be made out in those circumstances. My own view of the e-mail of 25 April is that it is provisional. The key words are, "As far as I can see" and then dropping down two lines, "This area is very much untested and further consideration will need to be given to this". My interpretation of that-and I can only speak of my own, because I have pieced it together-is this is provisional. It is flagging up a problem. It is undoubtedly indicating that that might be the case, and I can understand why it would be read in that way. I readily accept that. It is provisional, however, it is not definitive, and it is indicating, in a sense, "We are going to have to come back to this issue at some stage further down the line," but I accept the terms of the advice that it is identifying that that might be the case and, evidentially, that might have to be proven. I accept that.

Q105 Mark Reckless: So you defend that on the basis that it was provisional and not definitive. Yet, in July 2009, you provided written evidence to our sister Committee, the Culture, Media and Sport Committee, in which you stated, "The law: to prove the criminal offence of interception, the prosecution must prove that the actual message was intercepted prior to it being accessed by the intended recipient". You then go on, under "Conclusions on material", to say that it being intercepted prior to being accessed by the intended recipient was, "An essential element of the offence". That is fairly definitive, isn't it?

Mr Starmer: Can I just explain the context of that letter, because that may help, and I dealt with it in the body of the letter that I sent on Friday? On 9 July, the Culture, Media and Sport Committee requested me to give written evidence. I did that on 16 July, giving them the conclusions of an internal review that we had done, and that was my response to the Committee. In the meantime-that is, between 9 and 16 July 2009-other witnesses had appeared before that Committee and two pieces of information had been given to that Committee: one was a contract and one was an e-mail in the name of Neville. I knew that my evidence on 16 July had not dealt with that, but I then appreciated that the Committee had raised some questions about those two pieces of information-unsurprisingly. I therefore wrote on the 30th to try and deal with that.

The context of the letter of 30 July is to explain, first-which was a critical issue-was the e-mail in the physical possession of the CPS at the time, which would lead to the question: was any advice given at the time? I looked into that and the answer was, no, it wasn't, but it was on a schedule of unused material, which would have been looked at by junior counsel, who would have gone normally to the police premises to look at the schedule of unused material. He had no recollection of seeing the specific e-mail, but accepted that, in principle, it was his task to look at the unused material and he probably would have

seen it at some stage. I then engaged in the exercise, which in retrospect may not have been as helpful as I wanted it to be, of asking leading counsel, "What approach would you have taken at the time had you known about the e-mail?" It was a hypothetical analysis, because I had already established we did not see it. That was what I was trying to convey in July 2009.

Having discussed it with leading counsel, I then tried to summarise the position that I understood he had taken-the pragmatic view-because his view was, "The law is unclear. It is capable of being read either way but for pragmatic, sensible reasons, if it becomes an issue, I would prefer to take a narrow view." I was trying to summarise that. As I have said in the body of my more recent letter, looking at it again I accept that: one, perhaps it was not as helpful as I thought it would be to engage in a hypothetical exercise at all; and, if I was going to engage in it, it would have been better to have made it clear that that was the pragmatic approach as I understood it from counsel.

To give some context to this, I was trying to reply fairly quickly to the Committee. I was talking to leading counsel, who did not have all his documents before him, and nobody at that stage went through the documents in detail. It has taken us days and weeks to go through all of these documents to get everything absolutely clear.

Q106 Chair : How many people are involved in this process at the CPS? It sounds as if an enormous number of people and resources are being used on this.

Mr Starmer: At the moment I have a small team working on this, headed up by the principal legal adviser. There is a live investigation and I don't know at the moment what further resources we will need, but this issue of the interpretation having assumed the importance it has, we have done our best in the time available to go through all the documents to produce the detailed narrative that we have. That is the context of the letter.

Q107 Mark Reckless: Mr Starmer, there are all these investigations and the input from the CPS on what the interpretation might be, but to me it seems very clear, looking at the statutory provisions. You have the section 1(1) RIPA offence, which is to intercept a communication in the course of its transmission. You then go to section 2, which goes to the meaning of interception and transmission, and at section 2(7) it says, "Transmission includes storing a message in a manner that enables the intended recipient to collect it or otherwise to have access to it". So how on earth do you justify this suggested narrow interpretation of section 1(1) in the light of section 2(7)?

Mr Starmer: David Perry, leading counsel, thinks that it is not clear. Separately instructed leading counsel that I instructed thinks it is not entirely clear. It has never been settled by the court. It is capable of more than one reading. There are conflicting statutory canons of construction where you have any ambiguity in a statute. On the one hand, with a penal statute it is to be narrowly interpreted because it is a criminal provision; on the other hand, you have Article 8 of the European Convention, which requires protection, and therefore possibly a wider interpretation. Can I just add to that, the only case law that is of any assistance so far on this is some observations of Lord Woolf in the *NTL v Ipswich* case, and they do suggest a narrow reading.

So I accept the thrust of your point but, to be fair to everybody involved in the process, two times leading counsel think it is ambiguous and can be read two ways. Lord Woolf is suggesting-I accept in relation to e-mails, but if it is read in a particular way, it has to be read in a way that makes sense for any type of communication-and indicated there that it would be a narrow interpretation; and canons of construction go either way. My own view is that it is the wider interpretation, and I have made that absolutely clear but I don't think it is right for me to criticise others for having formed the view that this provision is not clear.

Chair : You are the DPP, and if you feel the wider analysis should be followed-

Mr Starmer: My own view is it is the wider view and that is why I was very keen that, as soon as this arose as a live issue on my watch, there should be no ambiguity as to my position, and that is why I wrote in the terms I did.

Q108 Mark Reckless: I am glad that leading counsel are giving some protection to your position apparently. In light of section 2(7) and it saying, "To collect or otherwise have access to", I find it very difficult to understand this narrow interpretation point, which the CPS is saying is at least arguable. We are having great difficulties on this because you have written to us, on 1 April, saying the observations of Lord Woolf in *NTL v Ipswich Crown Court 2002* pointed to a narrow view. I think that is in your letter to the CMS, copied to us. Yet on 29 October you said to us the exact opposite: you said that the company would have committed the section 1 offence, since diverting the content of the e-mails to storage-this was after they had been read-and so making them available would amount to interception.

Mr Starmer: No. What happened in NTL is: that was a production case and it was a question of what could lawfully be produced, so it was looking at a different statutory provision. The point Lord Woolf was making is that he did not consider that, after the e-mail was sent to storage, it was an interception for the purposes of RIPA. The whole point was-*[Interruption.]* I was summarising. The position is this: would the production order in NTL breach RIPA because you would be accessing a stored e-mail? Therefore, what Lord Woolf was trying to analyse is: is it a breach of RIPA to order production in the circumstances in which he was-

Mark Reckless: Unless you had the PACE authorisation.

Mr Starmer: In that context he made comments that suggested that it would not be an offence within RIPA because it had moved to the storage part. There is no inconsistency between that analysis-I have been over it many, many times-and any evidence I have given to this Committee or any other.

Chair : I do not think we are looking for inconsistencies. We are looking for clarity.

Q109 Mark Reckless: I am. What you just said to us seems to be the polar opposite of what you wrote to us on 29 October, when you said, "The company would have committed the section 1 offence, since diverting the contents of the mails to storage", and I remind you, this is after they had been read, "and so making them available would amount to interception".

Mr Starmer: No, that is what it was considering. The company argued that. Which bit are you saying is wrong here?

Q110 Mark Reckless: I am saying that you told us one thing on 29 October and the CMS another thing on 1 April.

Mr Starmer: Can you just take me to the particular passage in the letter. I have it at page 4.

Q111 Mark Reckless: On page 4, "The court held that, subject to authorisation by the making of the order, the company would have committed the section 1 offence, since diverting the content of the mails to storage, and so making them available would amount to interception" and the case related to the e-mails having already been read, so the moving to storage is after that.

Mr Starmer: "Subject to the authorisation." Listen, the best I can do is to provide the Committee with a copy of the judgment. There has never been any ambiguity in my mind on this whatsoever.

Q112 Mark Reckless: It bears out what you said in your letter on 29 October, but contradicts what you say in your letter of 1 April.

Mr Starmer: I do not accept that.

Chair: You do not accept that. Anyway, that is Mr Reckless' view.

Q113 Bridget Phillipson: As a non-lawyer, could you just clarify for me? Is it a case of you hold the view that a wider interpretation could be adopted, while others believe that that is not the case-that there is a more narrow interpretation of the law? How is that tested? Is it through prosecution?

Mr Starmer: It can be tested in any court where the issue arises. It could well, and might most probably, be tested in a criminal case where somebody takes the point. It can arise in other contexts, in civil proceedings, but there is no reason why it could not arise in an ordinary criminal court.

Q114 Bridget Phillipson: Had the wider interpretation been considered, it would have been possible to test that as a point of law?

Mr Starmer: Yes.

Q115 Bridget Phillipson: Would it have made any difference if the Met had said to you, "Look, this is a major issue. We believe there are lots of victims. We think this should be tested and we should look at how the law operates"? In the relationship the CPS has with the Met, is it that you give the advice and they act on it, or they say, "We think there is a really strong case here. Can you say whether we can proceed?"

Mr Starmer: Yes. No, I take the point. There are some cases where that might well arise, where the law is not entirely certain, it looks as though, for example, there is criminal conduct and the investigators and prosecutors decide together, "We think we have a sufficiently strong argument to test this in the case."

The approach in this case of leading counsel was slightly different, which was to say, "I think it is ambiguous. I don't want to risk the whole case on this point of statutory construction, and therefore I am going to take a pragmatic view, if and when it arises." In fact it didn't, but I accept, as a general proposition, that it sometimes happens that investigators and prosecutors decide that they feel sufficiently strongly about their argument that they will test the provision in legal proceedings.

Q116 Bridget Phillipson: Do you think it would be helpful if RIPA was clarified, for avoidance of any doubt in the future, so it is far clearer what is and is not an offence?

Mr Starmer: Certainly, I think clarity of the law is a good thing, particularly when we are dealing with criminal cases. There are two ways of achieving that: one would be to amend RIPA and make it clearer; the other would be to have a definitive court ruling. It may be that if there was a definitive court ruling, and it would probably have to be the High Court, Court of Appeal or above, that that would so clarify the position that there would be no need to amend RIPA, but they would be the two routes. I don't think it is helpful to have ambiguity in the criminal law.

Q117 Chair : The problem is that the defendants on the last occasion pleaded guilty, so it really wasn't tested.

Mr Starmer: They pleaded guilty, I think at a plea and case management hearing, back in October 2006, and therefore it never became an issue for determination.

Chair: Mr Reckless has one more bite.

Q118 Mark Reckless: It seems to me that there are two problems with what you say: first, that the indictment included cases where there was no evidence to suggest the interception was before it had been read, so you would have lost those if the narrow interpretation had been taken. So why did you include them if the CPS believed the narrow interpretation? Secondly, you say the law is not clear and we need a court judgment on this, but Lord Woolf said in this NTL case at paragraph 21 that, "It seems to me that the language of the provisions of section 2 being clear, Mr Hudson's"-i.e. NTL's counsel-"submissions are correct". So that is a broad interpretation. What basis is there for CPS to have been pushing this narrower interpretation, given how clear the statutory language is?

Mr Starmer: I am very happy to provide a further analysis of the NTL case for the Committee if that would be helpful. The approach that was taken-

Chair : I am sure it would be helpful.

Mr Starmer : I will provide it. It is clear enough the view that David Perry QC, who is an eminent QC, was taking on this at the time. I will provide his analysis, so that you can see it and see whether you agree with him or whether you do not agree with him.

Chair : That would be extremely helpful.

Q119 Steve McCabe: Mr Starmer, it seems to me the big confusion in this issue is how the Metropolitan Police, and possibly Commander Yates, came to be fixated on the idea that this narrow interpretation of RIPA was crucial to their investigation. Can I be clear: what you are saying is that they were certainly advised that they could have used the Computer Misuse Act 1990 and there could have been conspiracy charges, so there is no question that the Met were told, "There is only one route you can use here to pursue this investigation and to bring charges"?

Mr Starmer: They were advised of that from an early stage, as set out in the chronology. I accept from the e-mails, that it was certainly being suggested that provisionally there might be a narrow interpretation of RIPA. For the reasons I have set out it never became an issue but, alongside that, they were aware of, advised of, and were proceeding on the basis that the other offences were to be investigated and were available.

Q120 Steve McCabe: As Mr Reckless says, it is not absolutely clear that they were quite so fixated on the narrow interpretation when they brought the charges against Mulcaire and Goodman, because in fact they brought a mixture of charges where things had been listened to and had not been listened to, so it isn't clear that what became central to their thinking subsequently was operating at that stage. Is that fair?

Mr Starmer: It is my interpretation, and leading counsel's view, that the way the charges were set out and the final indictment demonstrated that no definitive view had ever been taken that the narrow interpretation was the only interpretation.

Q121 Steve McCabe: The crucial point you make at section "e" of your letter is that, in your view, there is no way that the legal advice given to the Met by the CPS would have limited the scope of their investigation?

Mr Starmer: Yes, absolutely.

Q122 Steve McCabe: Incredibly, they seem to have interpreted that exactly the opposite way and either misheard the advice or disregarded it, because it did clearly limit their investigation, or at least that is what we are now told happened. Is that fair?

Mr Starmer: I have been anxious not to attempt to give evidence on behalf of the Metropolitan Police. Having gone through this myself that is the conclusion that I draw.

Q123 Steve McCabe: The point I am making is: you are absolutely clear, from the CPS, there is no way you believe they were given advice that limited the scope of their investigation?

Mr Starmer: They were not given advice that limited the scope of their investigation by the CPS.

Q124 Dr Huppert: I think this Committee is very concerned about the history and clashes between the evidence that you provide and what we have heard from the Metropolitan Police and Deputy Commissioner Yates, or whatever his correct title is. Can I look at the future, though? What is your current advice on the legal position and the advisability of bringing potential prosecutions under the Computer Misuse Act, possible conspiracy charges, and the Data Protection Act? Do you have a current view on all of those and whether they are usable?

Mr Starmer: I do but, if you will permit me, I am not going to share them with the Committee. We have two people in custody; we may be making decisions in the reasonably near future. At some stage, in some helpful way to the Committee, at an appropriate point I will obviously share anything that is of assistance to the Committee, but at the moment I think the timing would be wrong.

Q125 Chair: Mr Starmer, you have been very clear and open and transparent with this Committee today and your letter is very clear. It is a most astonishing letter, in the sense of the evidence we have received previously from Mr Yates. For completeness I think, even though you have already sent it to him for comment, the Committee will probably want to send it to him just for him to have a look at.

Mr Starmer: Of course.

Chair: You are very, very clear about the evidence given and it does, in our view, contradict what was told to this Committee by Mr Yates last week, but we will be pursuing it in our own way. We are most grateful. We know you must be extraordinarily busy. Thank you very much for coming today.

Mr Starmer: My pleasure.

Q126 Chair: Before you go, just generally on your other functions as the DPP, how is it going with the CPS these days generally? No more lost files? Everything all efficient?

Mr Starmer: We are performing well. I think since we last discussed this-I remember a similar question last time we met-we have introduced core quality standards, which allow us to gauge how well we are doing on the preparation of files across the country and we are measuring that on a consistent basis. We do prosecute about a million defendants a year, so there will always be difficulties, but performance is good and the management of that performance is good as well.

Q127 Chair: And the quality of the people you are recruiting to the service-you are happy they are of the highest possible quality? It is now seen as a career structure?

Mr Starmer: I think the CPS is in a very good place in that respect. We have very good, committed staff. We have very good senior leaders. I think that is generally accepted. As to recruitment, at the moment, obviously, we are on a recruitment freeze, but I think that the CPS has built a very sound platform for itself.

Q128 Chair: Finally, as far as independence is concerned, you are very satisfied that you remain an independent service? Obviously, we have looked at the correspondence between you and the Metropolitan Police. They consult you, they ask your advice, but at the end of the day the public can still feel confident that you are an independent service providing independent advice, and not part of the-

Mr Starmer: The public can have every confidence in the independence. It is written into everything we do. It is in the conduct of everything we do. I would not sit here as DPP if I thought independence was compromised. I would walk away. Secondly, one of the things I have done is to try and make us transparent so that people can hold us to account, and you will see much more by way of reasoning, much more put into the public domain by the CPS these days, so that everybody can look at the decisions we have made and question them. On our website, for all of our big decisions, I now insist that full reasons are given, so that people can see the basis upon which we have made our decisions and to give them confidence as to the independence by which those decisions are arrived at.

Q129 Chair : But as far as your relationship with the police is concerned, bearing in mind what you have told us today, perhaps fewer phone calls, more e-mails, more stuff in writing, so that people are clear?

Mr Starmer: I would like to go away and reflect on that. Very often, in many cases, we are working in very fast time with the police. One can only imagine the situation with, for example, a counter-terrorism operation where things happen very, very swiftly. I will reflect on what you are saying, but I would not want to formalise things to a point where the real-time, fast-speed relationship does not work effectively.

Chair: Mr Reckless has a final point. He is not going to open the discussion about interpretation. It is a quick point.

Q130 Mark Reckless: On a different matter. Given the difficulties we have seen here with the CPS working with the police, might it not be better to localise the CPS and have the various areas reporting in to the elected Commissioners we are going to have from next year?

Mr Starmer: I don't personally think that that would be the right way forward. I think the independence is clear. The relationship works very well. I understand the issues that the Committee are looking into but, day in, day out, hundreds of thousands of cases in and out day in, day out, we have a good relationship and it works very well. That is a good position to be in.

Chair : Thank you very much, and the Committee will write to Mr Yates.



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Our ref:

John Whittingdale OBE MP
Culture, Media & Sport Committee

13th April 2011

Dear Mr Whittingdale,

Further to my appearance before your Committee on 24th March and your subsequent letter dated 28th March, I am writing to provide answers to the questions raised. Where I am constrained from providing a full response I will of course explain why, but I hope that the following is helpful to your Committee.

- In relation to Q26 and Q119 I can confirm that following the media reporting in autumn last year four men were interviewed under caution and by appointment. Interviews (not under caution) were sought with a number of other people who were intended to treat as potential witnesses. It is contrary to MPS policy to release an overall figure as to do so may lead to unhelpful speculation as to their identities.
- In response to Q50, it was approximately December 2009 when the list of 91 was generated in response to a Freedom of Information Act request.
- In Q70, the venue of my dinner with the Editor of the News of the World is requested. As the head of Counter Terrorism policing in the UK, and in common with other people who are subject to specific threat assessments in their own right, it would not be our normal practice to disclose the locations of appointments in my diary. However, on this occasion and in the interests of transparency I am able to tell the Committee that the location was The Ivy.
- I have now considered the request at Q88. I would refer you here to our recent response to the Metropolitan Police Authority when asked for details of meetings between senior MPS officers and senior executives of News International between 2006 and 2011. I had dinner with the Editor of the Sunday Times in September of 2007 and again in September 2008, and in November that year I also had dinner with the Editor and Crime Editor of the News of the World. It may

be helpful to know that in that same period I also met with representatives from other media outlets, including The Guardian, The Telegraph, the BBC, ITN and Channel 4. I do not keep a separate list of my social engagements.

- I can confirm that in answer to Q108, 26 people were notified in 2009/7 that they may have been affected. In 2009 we revisited this issue resulting in an additional 8 people being contacted and in a number of attempts being made to contact others. As I acknowledged in my evidence to your Committee, I have accepted that more could and should have been done in relation to those who may have been potential victims. This is now a matter for the new investigation.
- In relation to Q130, I was not aware of this development before it came into the public domain.
- With respect to Q140, I can confirm that Chris Bryant MP wrote to the Commissioner of the MPS on 9th July 2009. No trace has been found of any prior correspondence from Mr Bryant in relation to this issue. A meeting did take place between myself and Mr Bryant on a totally unrelated matter in 2004. This meeting was over 7 years ago. To my recollection, no issue was raised in relation to the security of his mobile phone at that time.
- I attach a copy of the letter dated 7th September 2006 from the original investigation team to the solicitors representing News of the World in keeping with your request at Q43. You will recall that I referenced this letter in my evidence to your Committee in 2009.
- In terms of our Hospitality Register (Q69 and 72), we are required to keep a record of the gifts and hospitality offered and to record whether the offer was accepted or declined. This is scrutinised regularly by the Metropolitan Police Authority (MPA). When I provided my evidence to you, my understanding was that this was published on the MPA website. I have since learned that whilst the expenses of Management Board members are indeed declared in this way, those relating to gifts & hospitality are only included in relation to the Commissioner and the Deputy. A redacted version is placed on the MPS Publication Scheme at http://www.met.police.uk/foi/foi_lists_and_registers.htm. Details in relation to gifts and hospitality relating to myself have only recently been requested and made public by the MPA and this was fresh in my mind when I provided my evidence.
- In relation to Q90, since assuming responsibility in July 2009 for dealing with the legacy of this case, relevant senior officers have been made aware that Mr Wallis and I know each other. The meeting referred to during my evidence was a private

engagement attended by a number of others. There would be no reason to declare this.

- Q105 is a matter for AC Dick and it would be inappropriate for me to comment further.

I hope you find this useful

Yours sincerely,



John Yates
Acting Deputy Commissioner