

B E T W E E N

PRIVACY INTERNATIONAL

Claimant

- and -

**(1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH
AFFAIRS**

(2) SECRETARY OF STATE FOR THE HOME DEPARTMENT

(3) GOVERNMENT COMMUNICATIONS HEADQUARTERS

(4) SECURITY SERVICE

(5) SECRET INTELLIGENCE SERVICE

Respondents

WITNESS STATEMENT OF CAROLINE WILSON PALOW

I Caroline Wilson Palow, General Counsel of Privacy International, 62 Britton Street, London, EC1M 5UY SAY AS FOLLOWS:

1. I am the General Counsel of Privacy International and have worked for Privacy International since April 2013. I am authorised to make this statement on behalf of Privacy International.
2. I make this statement to address documents published by *The Intercept* on 7 June 2016.
3. The contents of this statement are based on identified sources.

The Telecommunications Act 1984

4. GCHQ obtains Bulk Communications Data using directions made under section 94 of the Telecommunications Act 1984 (“TA”). The Secretary of State may only give such directions when it appears to be:

“...necessary in the interests of national security or relations with the government of a country or territory outside the United Kingdom.”¹

Storage of Bulk Communications Data obtained by GCHQ

5. Bulk Communications Data obtained using section 94 directions is handled by GCHQ in the same manner as communications data obtained under section 8(4) RIPA warrants (read with section 5(6)(b) RIPA which permits the obtaining of related communications data). GCHQ stores the data together in the same database, regardless of the statutory regime under which it was obtained.²
6. The database combines the data into one resource. Interrogation of the database produces a result from all communications data within the database. It is not “immediately apparent” which elements of that result were obtained under section 94 TA, and which elements were obtained under RIPA section 8(4).³ When reporting instances of non-compliance with database access requirements to the Commissioner, GCHQ is unable to identify whether the relevant data was obtained via section 94 directions or a RIPA warrant.⁴

MILKWHITE Enrichment Service Programme

7. Documents released by Edward Snowden, published by *The Intercept* on 7 June 2016, disclosed that GCHQ had made its Bulk Communications Data available to other Government agencies through the MILKWHITE Enrichment Service (MES) Programme (“MILKWHITE”).⁵ MILKWHITE enabled agencies including HMRC to interrogate GCHQ’s communications data database for their own purposes.⁶

¹ Section 94(1) and (2) Telecommunications Act 1984

² GCHQ Witness Statement paragraph 126

³ GCHQ Witness Statement paragraph 126

⁴ GCHQ Witness Statement paragraph 152

⁵ <https://theintercept.com/2016/06/07/mi5-gchq-digint-surveillance-data-deluge/> [accessed on 15 June 2016]

⁶ <https://theintercept.com/document/2016/06/07/milkwhite/> MILKWHITE Enrichment Service (MES) Programme, 9 March 2011

8. MILKWHITE appears to have been developed as early as 2009.⁷ By November 2010 the MILKWHITE Programme included communications data about online activities, apparently including usage of smartphone messaging apps such as WhatsApp and social networking sites such as Facebook.⁸
9. As of 9 March 2011 the “MES Standard Service” was provided via a multi-agency Internet Data Unit to SOCA, HMRC, MPS (CTC), PSNI and the Scottish Recording Centre. HMRC and SOCA also received access to the “MES Advanced Service” via what is described as “established ‘business as usual’ channels”.⁹
10. MILKWHITE was so successful that by March 2011 GCHQ was planning to increase service capacity during 2011/12 to keep up with “increasing customer demand”.¹⁰ GCHQ was also seeking funding to improve the programme’s advanced analytics capabilities and maintain storage of Bulk Communications Data under MILKWHITE.¹¹
11. As a result of GCHQ’s policy of storing all Bulk Communications Data within the same database, MILKWHITE allowed Government agencies such as HMRC with no national security role to access and use data obtained in the interests of national security under section 94 TA directions, without the need for those agencies to comply with or consider the requirements of RIPA, or the RIPA oversight regime.

STATEMENT OF TRUTH

I believe that the facts set out in this statement are true.

SIGNED 

DATED 15 June 2016

⁷ <https://theintercept.com/2016/06/07/mi5-gchq-digint-surveillance-data-deluge/> [accessed on 15 June 2016]

⁸ <https://theintercept.com/document/2016/06/07/mobile-apps-checkpoint-meeting-archives/> Mobile Apps Checkpoint Meeting Archives, 2 November 2010 Project Checkpoint

⁹ <https://theintercept.com/document/2016/06/07/milkwhite/> MILKWHITE Enrichment Service (MES) Programme, 9 March 2011

¹⁰ <https://theintercept.com/document/2016/06/07/milkwhite/> MILKWHITE Enrichment Service (MES) Programme, 9 March 2011

¹¹ <https://theintercept.com/document/2016/06/07/milkwhite/> MILKWHITE Enrichment Service (MES) Programme, 9 March 2011