

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CO/11732/2013

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN

on the application of

DAVID MIRANDA

Claimant

-and-

(1) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

(2) THE COMMISSIONER OF POLICE FOR THE METROPOLIS

Defendants

**SECOND DEFENDANT'S DETAILED GROUNDS FOR
RESISTING THE CLAIM**

Introduction and summary

1. On Sunday 18 August 2013, at 0805, Mr David Miranda was stopped by officers of the Metropolitan Police Service (MPS) whilst in the international transit area of Heathrow Airport. He was detained for the purposes of questioning, and certain items of his property were seized and retained, under powers conferred by Schedule 7 to the Terrorism Act 2000 (TACT). He was offered food, water and legal representation and then released after nine hours. The MPS bought an airline ticket to enable him to continue his journey to Rio de Janeiro.
2. By this claim, Mr Miranda challenges the legality of his detention and of the seizure and retention of his property on three grounds. The MPS submits that the detention and the seizure and retention of property were proportionate and lawful

and that this claim should therefore be dismissed. As to the three grounds of challenge:

- 2.1. **Ground 1 (The use of Schedule 7 powers):** The MPS believed, on the basis of intelligence, that Mr Miranda might be connected to a conspiracy between Edward Snowden and others to disclose highly sensitive material unlawfully obtained from US and UK intelligence agencies. The MPS considered that past or future disclosures by Edward Snowden and/or his associates might constitute acts of terrorism as defined by s. 1 of TACT because these disclosures: (a) might endanger lives or be designed seriously to interfere with or seriously to disrupt an electronic system; (b) might be designed to influence the Government of the United Kingdom; and (c) might have been made for the purpose of advancing a political or ideological cause. Because they did not know whether Mr Miranda had any role in these disclosures, or if so what role, the MPS decided that it could not arrest him on suspicion of an offence. Instead, it decided to stop, question and detain him for the purpose specified in para. 2(1) of Sch. 7 to TACT, namely, to determine whether he appeared to be a person who was or had been concerned in the commission, preparation or instigation of acts of terrorism, as defined. In doing so, the MPS acted proportionately and lawfully.
- 2.2. **Ground 2 (Transit passengers):** Schedule 7 on its face applied to Mr Miranda because (a) he was at a port (Heathrow Airport) and (b) his presence there was connected with his entering the United Kingdom, albeit only en route to somewhere else (Rio de Janeiro). There is nothing to indicate that the special meaning of "entering" that applies in the immigration context (ie passing through immigration control) applies here. Mr Miranda's construction would lead to the anomalous position that Schedule 7 would apply to persons travelling by air internally (who are not intending to cross any border) and also to persons on ships or aircraft (even if they are in transit), but not to persons such as Mr Miranda who are in the international transit area of the airport. Such a construction would make little sense and should be rejected.
- 2.3. **Ground 3 (Convention compatibility):** The powers of detention conferred by Schedule 7 to TACT are compatible with Articles 5, 6 and 8 ECHR for the reasons given by the Divisional Court in *Beghal v Director of Public*

Prosecutions [2013] EWHC 2573 (Admin). The exercise of powers in this case did not engage either Article 10 ECHR or the protections accorded to journalistic material under Schedule 5 to TACT because (a) the MPS did not know or believe that Mr Miranda had acquired the material for the purposes of journalism; and (b) Mr Miranda did not when questioned claim to be a journalist or to be carrying the material on behalf of anyone else who was a journalist or to have acquired the material for the purposes of journalism.

The law

The power to question

3. Section 53 TACT gives effect to Schedule 7.
4. Para. 2 of Schedule 7 confers power on "an examining officer" to question a person "for the purpose of determining whether he appears to be a person falling within section 40(1)(b)": see para. 2(1). By para. 2(2), it applies to a person if:

"(a) he is at a port or in the border area; and

(b) the examining officer believes that the person's presence at the port or in the area is connected with his entering or leaving Great Britain or Northern Ireland or his travelling by air within Great Britain or within Northern Ireland."

By para. 2(3), the power to question also applies to a person "on a ship or aircraft which has arrived at any place in Great Britain or Northern Ireland (whether from within Great Britain or Northern Ireland)". By para. 2(4), an examining officer may exercise his powers under para. 2 "whether or not he has grounds for suspecting that a person falls within section 40(1)(b)".

5. Section 40(1)(b) covers a person who "is, or has been, concerned in the commission, preparation, or instigation of acts of terrorism".
6. Terrorism is defined by s. 1 as follows:

"(1) In this Act 'terrorism' means the use or threat of action where---

(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government [or an international governmental organisation] or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

(2) Action falls within this subsection if it—

(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public,

(e) is designed to interfere with or seriously to disrupt an electronic system.

The powers to detain and search persons and detain things

7. Para. 6(1) of Schedule 7 confers on an examining officer the power (a) to stop a person and (b) to detain a person "for the purpose of exercising a power under paragraph 2", but only for a maximum period of nine hours.
8. Para. 8 confers on an examining officer powers of search in relation to a person questioned under para. 2. The power may be exercised "for the purpose of determining whether he falls within section 40(1)(b)".
9. Para. 11 confers on the examining officer power to detain for 7 days anything given to the examining officer or seized during questioning.

The obligations of the person examined

10. Para. 5 imposes upon a person questioned under para. 2 the obligations, *inter alia*, (a) to give the examining officer any information in his possession which the officer requests and (d) to give the examining officer on request any document which he has with him and which is of a kind specified by the officer.

11. Para. 18 makes it an offence wilfully to fail to comply with a duty imposed under or by virtue of Sch. 7 or wilfully to obstruct or seek to frustrate a search or examination under or by virtue of Sch. 7.

The Code of Practice

12. Under powers conferred by para. 6(1) of Sch. 14 to TACT, the Home Office has issued a Code of Practice (**the Code**) for examining officers.
13. At paras 9 and 10, the Code provides:

“9. The purpose of questioning and associated powers to determine whether a person appears to be someone who is or has been concerned in the commission, preparation or instigation of acts of terrorism. The powers, which are additional to the powers of arrest under the Act, should not be used for any other purpose.

10. An examining officer may question a person whether or not he suspects that the person is or has been concerned in the commission, preparation or instigation of an act of terrorism and may stop that person for the purposes of determining whether this appears to be the case. Examining officers should therefore make every reasonable effort to exercise the powers in such a way as to minimise causing embarrassment or offence to a person who is being questioned.”

14. The accompanying Notes for guidance underline that the powers must be used “proportionately, reasonably, with respect and without unlawful discrimination”. They go on to say that “[e]xamining officers must take particular care to ensure that the selection of persons for examination is not solely based on their perceived ethnic background or religion.” The powers are not to be exercised so as to “unfairly discriminate” against anyone on the grounds, *inter alia*, of race, colour, religion or creed.

Case law interpreting Schedule 7

15. Sch. 7 was considered by Collins J in *CC v Commissioner of Police for the Metropolis* [2011] EWHC 3316 (Admin), [2012] 1 WLR 1913. Collins J made these observations about the circumstances in which the power may be used:

“14... In fact, as must be obvious, the existence of prior information is likely in many cases to mean that an examination will be considered

necessary. But the officers are able to act on an intuitive basis even if no prior information exists.

15. The wording of section 40(1)(b) is important. It in my judgment recognises that it must be open to an officer to act under Schedule 7 to determine whether a person appears to be or to have been concerned and to identify any acts constituting that concern. Thus, even if it appears that he has in the past been concerned in any such acts, it is open to the officer to examine him to determine whether he is still so concerned. Equally, it may be apparent that he is concerned in acts against a foreign government, but it must be open to officers to examine him to determine whether his acts affect this country or, indeed, any country other than that affected by his known acts...

16. It in my view goes further than those obvious requirements which are essential to fulfil the purpose of the Schedule 7 powers, namely the protection of the inhabitants of this (or indeed any other) country from acts of terrorism. If officers are informed by the Security Service or from any other source that a person, who appears to be a terrorist, is suspected of possible involvement with others in a specific terrorist plot, they may examine him for the purpose of determining whether he appears to be so involved. This is because the language of section 40(1)(b) is wide enough to allow for examination not only of whether he appears to be a terrorist but also of the way in which or the act by which he so appears. The officer is not, unless the powers are to be ineffective in their purpose to protect from terrorism, prevented from examining a person even if it appears he is a terrorist in particular respects, for example if in the past or by acts only affecting a foreign government."

16. At [17]-[18], Collins J rejected the submission that an examination must come to an end once the examining officer determines that the person being examined is, or is not, a terrorist:

"17... First, the determination is not necessarily one for the examining officer. For example, searches may have taken place or samples taken and examination of anything obtained may show that an apparent concern in the relevant acts was not correct. It may therefore be important that all relevant information is obtained. Secondly, the apparent concern may be of past or particular acts amounting to terrorism and it may be important to see how far such concern goes. Thirdly, there may be a stage at which the officer is persuaded that the person concerned is a terrorist but further examination may dispel that view. It must be for the officer to judge when the examination should come to an end. No doubt his conclusion will then be forwarded to his superiors and the Security Service to see whether surveillance is

required or there is sufficient to arrest under section 41 . The officer himself has the power of arrest under section 41 , but I would suppose that he would not save in the clearest case exercise that power. It might be necessary if the officer were satisfied that the person concerned was a danger and needed to be kept in custody, but that could sometimes be addressed by informing the Home Office who could then impose immigration or other controls.

18... There may come a point when the officer does consider that the examinee does not appear to be a terrorist, but his conclusion may not be shared by others and may, when what has emerged from the examination or any search is put together with other material which may, for example, be in the possession of the Security Service be shown to be wrong. Equally, further examination may show that the officer's view formed at a particular point was wrong. Again, in my view he must be able to ask all questions that he reasonably believes to be needed to enable him or others to reach the necessary determination."

17. At [18], Collins J rejected a submission that the power to search was confined more narrowly than the power to question. At [20], he made plain that the existence of a power to arrest does not imply a duty to do so, nor does it imply that the Sch. 7 power is unavailable.
18. On the facts, Collins J concluded at [34] that the powers conferred by Sch. 7 had been exercised for a purpose which "had nothing to do with determining whether [the claimant] was a terrorist in any particular way". At [35], he said this:

"I have no doubt that this is a very rare case and that this decision will not damage the efficacy of the powers. They are properly given a wide construction for the reasons I have set out but cannot extend to the facts of this case."

19. More recently, in *Beghal v Director of Public Prosecutions* [2013] EWHC 2573 (Admin) the Divisional Court (Gross LJ, Swift & Foskett JJ) considered and dismissed a wide-ranging human rights challenge to the powers conferred by Sch. 7. The legislative history is set out at [35]-[52]. The views of successive Independent Reviewers of Terrorism Legislation (Lord Carlile of Berriew QC and David Anderson QC) are noted at [53]-[67]. As to the compatibility of the Sch. 7 powers with Article 8 ECHR, the Court distinguished the power considered by the House of Lords in *R (Gillan) v Commissioner of Police for the Metropolis* [2006] UKHL; [2006] 2 AC 307 and *Gillan v United Kingdom* (2010) 50 EHRR 1105. At

[90], Gross LJ (giving the judgment of the Court) referred to the Code as affording "a measure of legal protection against arbitrary interferences by the Executive". At [91], he added:

"In our judgment port and border control is very different from a power to stop and search, potentially exercisable anywhere in the jurisdiction. Conclusions as to the arbitrariness of the latter do not readily, still less necessarily, translate into conclusions as to the former. As Schedule 7, para. 2 (*supra*) makes clear, the relevant powers apply only to a limited category of people — namely those 'at a port or in the border area', where 'the examining officer believes that the person's presence... is connected with his entering or leaving...' the country and also to a person on a ship or aircraft which has arrived at any place in Great Britain or Northern Ireland. That the category of persons to whom Schedule 7 powers are applicable may itself be numerically large is neither here nor there; port and border controls cannot be simplistically assimilated with generalised powers of stop and search exercisable anywhere in any circumstances."

20. At [94], Gross LJ again stressed the importance of port and border controls. At [95], he noted that the powers were "applicable only to a limited category of people, as explained earlier: namely, travellers in confined geographical areas"; and noted that the statistics bore out the proportionate use of the powers. At [96] reliance was placed on the limited purpose for which the powers could be exercised. At [97], Gross LJ noted that:

"...the Schedule 7 powers, though principally exercised by police officers, are an aspect of port and border control rather than of a criminal investigation. Viewed in this context, it is perhaps unsurprising that there is no requirement of reasonable suspicion for the powers to be exercised (as made clear by Schedule 7, para. 2(4)). At all events, having regard to the context, the absence of a requirement of reasonable suspicion does not lend any or significant support to the Appellant's case that these powers are exercised arbitrarily. Realistically, in the present context, the requirement of reasonable suspicion would deter the proper exercise of Schedule 7 powers and render them all too easy to evade, so increasing the risk to the public."

At [98], Gross LJ drew attention to the importance of the purpose served by Sch. 7, namely, protecting the public from terrorism, having regard to its international character.

21. At [112], Gross LJ concluded that the Sch. 7 powers strike "a fair balance... between the rights of the individual and the interests of the community" and that the Article 8 challenge therefore failed. At [113], he held that the conclusions reached in relation to Article 8 were also applicable to the Article 5 claim, which therefore also failed.
22. So far as Article 6 is concerned, Gross LJ held at [129] that:

"Overall, as a matter of reality, the examination of the Appellant under Schedule 7 was not an inquiry preparatory to criminal proceedings. This examination was in no sense part of the scheme under PACE. It was instead an inquiry relating to border control with the specific public interest of safeguarding society from the risk of terrorism. The purpose of the exercise of these Schedule 7 powers of examination is separate and distinct from that relating to the instigation of criminal proceedings."

For that reason, the conclusion was drawn at [133] that the examination under Sch. 7 did not engage the Claimant's rights under Article 6. Even if it had been, s. 78 of the Police and Criminal Evidence Act (PACE), which enables a criminal court to exclude evidence, provided a sufficient safeguard preventing the unfair use of material obtained pursuant to Sch. 7; so that even if Article 6 had been engaged, it would not have been violated: see at [143].

The facts of this case

23. The background to the use of the Sch. 7 powers in this case is set out in detail in the witness statements of Acting Detective Inspector "A" and Detective Superintendent "B". It is not repeated here. However, the essence can be stated as follows.
24. Mr Miranda was stopped as a result of a joint Security Service/MPS operation.
25. DSupt "B" received information from the Security Service that Mr Snowden had highly sensitive information stolen from the UK intelligence community. Mr Snowden and his associates had begun and were continuing to disseminate this information. It was known that Glenn Greenwald, a freelance journalist working for The Guardian, together with an individual in Berlin (Ms Poitras), were involved. Mr Miranda was Mr Greenwald's husband and he would be travelling from Berlin

to Rio de Janeiro through Heathrow. It was thought possible that Mr Miranda could be carrying at least some of the stolen classified material.

26. If so, the Security Service wanted to obtain the material in order to gain an insight into what UK classified material, if any, it was thought that Mr Miranda might be carrying; to deny the use of that material; and to increase their intelligence coverage in order to protect UK national security.
27. The MPS, however, considered separately what powers they could and should exercise. Consideration was given to arresting Mr Miranda, but the decision was taken that there was not enough information to justify an arrest. DSupt "B" understood that Mr Snowden had been allowed to stay in Russia for a year. He considered it possible that Mr Snowden might have passed material to a third party State or to non State actors. He thought it possible that disclosure had been or might be made by Mr Snowden and/or a third party State or to non State actors that endangered life, created a serious risk to the health or safety of the public or were designed seriously to disrupt an electronic system. He considered that such disclosure might have been made with the intention of influencing the UK Government; and that they may have been made for the purpose of advancing a political or ideological cause.
28. The decision to authorise the stop was taken by Acting Detective Inspector "A", who was responsible for the team at Heathrow Airport. The case for the stop was communicated directly by the Security Service to him. It was contained in a Ports Circulation Sheet (PCS). Initially, the PCS did not contain enough information to enable ADI "A" to authorise the stop. However, in its final form, the justification advanced by the Security Service was accepted. It was in these terms:

"Intelligence indicates that MIRANDA is likely to be involved in espionage activity which has the potential to act against the interests of UK national security. We therefore wish to establish the nature of MIRANDA's activity, assess the risk that MIRANDA poses to UK national security and mitigate as appropriate. We are requesting that you exercise your powers to carry out a ports stop against MIRANDA.

We assess that MIRANDA is knowingly carrying material, the release of which would endanger people's lives. Additionally the disclosure, or threat of disclosure, is designed to influence a government, and is made for the purpose of promoting a political or ideological cause. This

therefore falls within the definition of terrorism and as such we request that the subject is examined under Schedule 7.”

29. After he had been stopped, Mr Miranda was questioned and a record made of the questions posed and answers given. He was offered food and water, given the opportunity to take medication (after consulting a forensic medical examiner) and attempts (at his request) were made to contact Mr Greenwald. He was offered legal representation and in due course a representative from Bindmans attended. He was released after nine hours.

Ground 1: The use of Schedule 7

30. Mr Miranda alleges that:

- 30.1. Sch. 7 “appear[s] to have been exercised... in order to retrieve the material in his possession which may have originated from Mr Snowden; and/or to question the Claimant in relation to his involvement in those disclosures”: Grounds for Judicial Review, §49; and

- 30.2. this was done in order to “bypass the appropriate statutory regimes for obtaining confidential journalistic information and circumvented the important statutory safeguards (including the requirement to obtain a court order before seizing material) contained in those mechanisms”: Grounds for Judicial Review, §52(7). In this context, reference is made to Sch. 5 to TACT, which contains in paras 5-10 special protections for (*inter alia*) journalistic material.

31. As to the first of these points, it is true that the Security Service wanted to retrieve the material which it was thought that Mr Miranda might be carrying and to prevent its further dissemination. However, the evidence makes plain that the MPS did not unthinkingly execute a Security Service plan. Both DSupt "B" and Acting DI "A" considered separately whether the preconditions for the exercise of the Sch. 7 power were met (the focus must of course be on the decision of the officer at the Port - Acting DI "A" - that it was proper to exercise Sch. 7 powers in relation to Mr Miranda). But both he and DSupt "B" concluded that the conditions for the exercise of the Sch 7 powers were satisfied. They were right to do so because:

31.1. The purpose for which the Sch. 7 power may be exercised is determining whether it appears that the person being examined is a person falling within section 40(1)(b). To exercise the power, it was not necessary to have a reasonable suspicion, let alone a concluded view, that Mr Miranda was a person falling within s.40(1)(b).

31.2. Section 40(1)(b) is drafted broadly. It covers those who are or have been "concerned in the commission, preparation and instigation of acts of terrorism". That formulation covers any kind of participation.

31.3. All the elements of s. 1(1) TACT were satisfied. As to (a), the MPS properly took the view (on the basis of what it had been told by the Security Service) that disclosure(s) of the material which it was thought that Mr Miranda might be carrying might endanger lives and/or create a risk to public safety and, additionally, might have been designed seriously to interfere with an electronic system. As to (b), the MPS properly took the view that the disclosures might have been intended by Mr Snowden to influence the UK Government. It was known that Mr Snowden had been allowed to stay in Russia for a year. It was not known what (if anything) he had disclosed, or agreed to disclose, to a third party State or to non State actors, nor what was the intention or motivation behind any disclosures. As to (c), the MPS properly assessed that the disclosures might have been made for the purpose of advancing a political or ideological cause. In the circumstances, it was proper to exercise the Sch. 7 powers for the purposes of determining whether Mr Miranda was a person falling within s. 40(1)(b).

32. As to the second allegation, the reference to provisions according special protection for journalistic material are not relevant here because:

32.1. The powers conferred by Sch. 5 and Sch. 7 deal with different situations. Sch. 5 powers are appropriate to, and apply, only when material is sought for the purposes of a criminal investigation. Sch. 7 confers powers which apply when no criminal investigation is on foot. They are conferred for a different purpose and apply at an earlier stage: see eg *Beghal*, per Gross LJ at [97] and [129].

32.2. In any event, the evidence does not establish that the material was in fact “journalistic material” as defined in TACT (by reference to s. 13 of PACE). Mr Miranda did not and does not claim to be a journalist. He denied that he was carrying the material for anyone else. Even when his legal representative attended, no suggestion was made that the material was “journalistic material” for the purposes of PACE or TACT.

32.3. Insofar as the protections accorded to journalistic material are designed to protect sources, there is on the current evidence nothing to indicate that the material revealed any journalistic source that had not already been made public. Mr Snowden had, of course, decided to reveal his identity. Ms Poitras’ involvement was also in the public domain. Nothing in the material currently accessed indicates any other source.

32.4. Finally, even if the material was “acquired for the purposes of journalism” within the meaning of s. 13 of PACE, the protections of the special regimes applicable to such material do not apply where – as in the present case – the material was stolen or obtained unlawfully: see by analogy *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government* [2011] UKSC 15 [2011] 2 AC 304.

Ground 2: Transit passengers

33. Under his second ground, the Claimant contends that Schedule 7 confers no power to question or detain transit passengers because a transit passenger’s presence at a port or airport is not “connected with his entering or leaving Great Britain or Northern Ireland” for the purposes of para. 2(2)(b) of Schedule 7.

34. The basis for this contention is that the phrase "entering... Great Britain or Northern Ireland" is to be understood by reference to the case law on the concept of entering the United Kingdom under the Immigration Act 1971.
35. The short answer to the point is that there is nothing in TACT to indicate that the phrase "entering... Great Britain and Northern Ireland" was intended to have the same meaning as the equivalent phrase in the Immigration Act 1971. The two Acts are not *in pari materia*.
36. It is easy to see that, in creating immigration offences of illegally entering the United Kingdom, Parliament would not have wished to catch transit passengers. That explains the decision of the House of Lords in *R v Naillie* [1993] 1 AC 674, 680. But the Schedule 7 power is not concerned with immigration. It is applicable to travellers using ports and airports even when they are travelling internally and to travellers on board ships or aircraft even when they are simply using a UK port or airport to transit.
37. If the Claimant were correct, Schedule 7 would confer power to question and detain:
 - 37.1. passengers at ports or airports who have no intention of crossing any borders because they are travelling internally (see the final words of para. 2(2)(b), inserted by the Anti-Terrorism, Crime and Security Act 2001);
 - 37.2. passengers who are on ships or aircraft that have arrived in the United Kingdom from abroad, even if they are in transit to another country and do not intend to go through passport control (para. 2(3));but not:
 - 37.3. transit passengers who have disembarked from their aircraft.
38. In other words, on this construction, the Police could have detained Mr Miranda while he was on the aircraft (even though he had only arrived for the purposes of transit) but not once he left it.
39. It is difficult to see why Parliament should have intended such a construction. The context suggests that para. 2(2)(b) serves an altogether different purpose: ensuring

that the Schedule 7 power is not used in respect of persons whose presence at the port or airport is not connected with travelling at all (eg port or airport staff).

Ground 3: Convention compatibility

40. As to the alleged breach of Articles 5, 6 and 8 ECHR, the powers conferred by Sch. 7 have been held by the Divisional Court to be lawful and proportionate: see *Beghal*. This Court should follow *Beghal*: see *R v Greater Manchester Coroner ex p Tal* [1985] QB 67, 79e-81e.
41. As to the alleged breach of Article 10:
 - 41.1. It is unclear whose Article 10 rights are being asserted here. Mr Miranda did not claim when questioned to be a journalist or to be carrying the material seized on behalf of any other person. He did not assert (and nor did his representative) that the material had been acquired for the purposes of journalism.
 - 41.2. In any event, the focus of the Strasbourg authorities on Article 10 is the protection of journalistic sources: see eg *Telegraaf Media Nederland Landelijke Media BV et al v Netherlands*, application No.39315/06 (2012) 34 BHRC 193, at [86]; *Goodwin v United Kingdom* (1996) 22 EHRR 123, at [39]; *Roemen and Schmit v Luxembourg*, application No.51772/9, at [47]; *Financial Times Ltd et al v United Kingdom*, application No.821/03, at [70]-[71]. There is no evidence that the material seized reveals any journalistic source who was not already prominently in the public domain.
 - 41.3. In any event, there is no principle to be derived from the Article 10 case law that journalistic material cannot be seized by a procedure which does not involve a judicial decision. In particular, *Sanoma v Netherlands*, application 38224/03 does not establish any such general principle. It can be distinguished on its facts because it concerned a seizure in the context of criminal proceedings and did not concern terrorism.

Conclusion

42. For the reasons set out above, the court is respectfully invited to dismiss this claim.

Post-script: Relief

43. If, contrary to the Second Defendant's position outlined above, the Court were to find that the exercise of Schedule 7 powers in this case was not lawful, then the Second Defendant would wish to advance further, separate submissions on the issue of relief having regard, in particular, to the nature of the contents of the material in issue, and the progress (at that stage) of the investigations which are being conducted into the material.

Jason Beer QC

Ben Brandon

Ben Watson

24th September 2013