Independent
Jersey Care
Inquiry

INQUIRY RULING

APPLICATION FOR FUNDING OF LEGAL REPRESENTATON

STUART SYVRET

An application is made by Stuart Syvret by way of an email dated 22 April 2014. A copy of the email is attached to this ruling. The application is for an award in respect of legal fees for someone who is not an Interested Party. It is made pursuant to paragraph 2 of the Legal Representation Protocol. It falls to be considered under that paragraph, and under the relevant parts of the protocol dealing with applications for awards in respect of legal fees.

In his application, Mr Syvret sets out a number of matters, including his Ministerial responsibility for child-protection matters as Minister for Health and Social Services, the circumstances in which he alleges that he was dismissed from office, his role as a blogger, the proceedings against him in relation to data protection offences and other background matters. He maintains that he is the victim of a number of criminal acts associated with improper concealment of child abuse in Jersey and that he is the victim of a number of human rights abuses at the hand of the Crown apparatus in Jersey.

In making his application for funding pursuant to paragraph 2 of the Legal Representation Protocol, Mr Syvret indicates that:

(a) He is concerned that the procedural protocols published by the Inquiry may constitute further oppression against him;
(b) Of particular concern are the conditions automatically imposed by the Inquiry on anyone who takes up Interested Party status;
(c) He believes that a number of serious legal issues arise, and that those conditions engage his human rights, and he wishes to take legal advice on the same.

We understand that Mr Syvret's application is effectively for legal advice on the propriety and legitimacy of the Inquiry's protocols.

In determining the application, the Panel makes no assumptions or findings in respect of the history set out by Mr Syvret in his application.

In reaching its determination, the Panel has had regard to the particular context of applications made under paragraph 2 of the Legal Representation protocol. Applications made under this paragraph are for funding of legal representation for those who have not been designated Interested Party status. The usual procedure for any funding by the Inquiry

of legal expenses of participants is for an individual or organisation to apply for and be granted Interested Party status, then for that individual or organisation to apply for its legal representatives to be accredited. It is only following a successful application for accreditation that the Interested Party's lawyer may apply for the costs of legal representation to be met at the Inquiry's expense. At each stage of that process, the Panel is required to determine the various applications based on the criteria set out in the relevant part of the General Procedures and Legal Representation protocols. This provides a number of safeguards and ensures that funding is only granted in appropriate circumstances. An application under paragraph 2 of the Legal Representation protocol circumvents the usual procedure for applying for funding for those who have already satisfied the Panel that they merit Interested Party status. Therefore, such an application is, by definition, exceptional and will only be granted if the Panel is satisfied that there are exceptional circumstances justifying the award.

The Panel finds that the application does not demonstrate that there are exceptional circumstances justifying consideration of an award in respect of legal fees under paragraph 2 of the Legal Representation protocol. The requirement for exceptional circumstances relates to the application for funding, rather than any other matter. There is a distinction to be drawn between the exceptional circumstances that might lie behind the Applicant's involvement in matters falling within the Inquiry's Terms of Reference on the one hand and exceptional circumstances that relate to the application for funding on the other. The fact that the Applicant by his own account may have played an exceptional role in matters that could fall to be considered under the Inquiry's terms of reference is not sufficient to satisfy the requirement for exceptional circumstances in relation to his application for funding, and nor is it directly relevant to that determination.

The Panel also finds that the requirement for "exceptional circumstances" under paragraph 2 is not satisfied where an Applicant, as here, seeks funding to obtain legal advice on the Inquiry's procedures and protocols based on a perception by the Applicant that the Inquiry has adopted protocols and procedures that are oppressive and may infringe his human rights. Nor is it satisfied on the basis that the Applicant may have been the victim of criminal acts or human rights abuses in the past (and the Panel makes no finding in this respect). The Inquiry's protocols are necessary for the proper functioning of the Inquiry and they apply to all those who participate in it. The protocols have been drawn up independently of any participant, including the States of Jersey. To the extent that obligations are imposed on Interested Parties, these are to protect the confidentiality of witnesses appearing before the Inquiry and the confidentiality of written material provided to the Inquiry. This is a legitimate and necessary part of the Inquiry's work.

If and to the extent that the Applicant believes that the protocols may infringe his human rights, he is at liberty to seek legal advice on the same. However, his application does not

satisfy the requirements for exceptional circumstances within the meaning of paragraph 2 of the Legal Representation protocol and therefore the application is dismissed.

Signed:

Frances Oldham QC

Frances Oldham QC

14 May 2014

Urgent: Application for Legal Fess & Expenses Funding – Exceptional Circumstances

Stuart Syvret

Tue 22/04/2014 11:49

To: Jersey Care Inquiry <info@jerseycareinquiry.org>;

Cc:

3 attachments

Graham Power File Note re Plot Against HSS Minister July 07.doc; Redacted Correspondence Between Jersey Authorities & Google re Take Down of Stuart Syvret Blog.pdf; Police Chief Graham Power's letter to Jersey PPC.docx;

Urgent: Application for Legal Fess & Expenses Funding – Exceptional Circumstances

Dear Ms Garner & Mr Jones

I write as a key witness in the public inquiry into decades of concealed child-abuse in Jersey and the attendant concealment of the systemic and endemic governance failure by the Jersey polity.

As a member of the Jersey parliament, I had political and legal responsibility for child-protection matters from November 1999 until September 2007. From 1999 I was the President of the Health & Social Services Committee. When Jersey changed its system of governance from a Committee system to a Ministerial system in November 2005, I became the Minister for Health & Social Services.

It is plain – already shown on published evidence – that decades of concealed child-abuse – and associated child-protection failure – took place in Jersey. I became the first ever Jersey politician to identify, investigate and make public these matters.

In answer to a Jersey parliamentary question asked of me on the 16th July 2007, I said this: -

"I have serious concerns, to be honest, about the whole child protection, child welfare standards of performance of Jersey, not just within my own department, Social Services and the Children's Service, but across the board. I am aware of a number of issues, this being one of them, a number of cases, a number of incidents that lead me more and more strongly to the conclusion that we are failing badly in this area. I am probably going to be seeking to initiate a major independent review

into the whole sphere of child welfare, child protection in Jersey. So if you are asking me honestly, do I believe the performance of certain senior individuals within this field and of the departments generally is acceptable, no, it is not."

I had come to those conclusions following months of my own investigations in the face of wilful obstructions from a number of senior civil servants and the Law Officers who were "advising" them but in reality acting as a "Government within a Government". You will see that I knew then that only an external investigation would stand any chance of addressing the child-protection failures. I went on to propose that a Committee of Inquiry should be established.

Thus it is that the work of this Committee of Inquiry begins six-and-a-half years after I had intended - in my capacity as Minister for Health& Social Services – that there should be such an Inquiry.

A draft press-release, discussed at the Jersey Council of Ministers' meeting of the 26th July 2007, contained the following: -

"Thirdly, the Council has decided to accept the recommendation of the Health and Social Services Minister, that a Committee of Enquiry should be established. At its next meeting on 6th September, the Council will consider terms of reference for this much wider review of child protection procedures throughout the States."

However, unbeknown to me, but known to Jersey's Crown Law Officers, and certain other Minister, the senior civil servants were already engaged in an illegal conspiracy to engineer my dismissal. We know that to be so, because they made an attempt to suborn the Chief of Police into their plot during a meeting on the 25th July 2007. The Police Chief Graham Power QPM left the meeting and wrote a file-note (copy attached), in which he said this: -

"BO [Bill Ogley] and the others were persistent and I was left with the clear impression that they were attempting to draw me, in my capacity as Chief of Police, into a civil service led attempt to remove a Minister from Office."

The above illustrates very clearly two points: -

- I am not opposed to a meaningful, serious, objective public inquiry into Jersey's decades of child-protection failure and the attendant systemic and endemic failings of the Jersey polity. On the contrary – such an investigation was my idea – I being the first Jersey politician to have indentified and spoken-out concerning our failures to protect the vulnerable.
- **I am a central witness to those issues.**

In addition to the political role I played, I have also played a key and historic role in my journalistic capacity. As an independent journalist blogging at http://stuartsyvret.blogspot.com I provided – for the first time in Jersey's history – a media outlet for the views and concerns of the island's child-abuse victims – and evidence and testimony from many of them. I also provided – again for the first time in Jersey's history – a media outlet that was willing and able to publish documentary – public-interest – evidence; evidence of harassment, abuse, violence, battery, rape, attempted murder, murder, the incompetence, ethical bankruptcy & cover-ups that permitted such things and widespread & endemic corruption in the Crown Dependency of Jersey.

The extensive and damming nature of the evidence I have published is such that the extant Jersey power-apparatus is exposed for being a simply lawless entity – essentially, a thinly disguised feudal "court" in which power is abused by and for the "court", its courtiers, thanes and vassals – and against anyone who dare oppose them. If you are "of" the "court", you can commit approved crimes with utter impunity – if you are not "of" the "court" crimes will be committed against you and you will have no remedy or protection.

That broad truth is so plain on a reading of the evidence published on my blog that the Jersey oligarchy have subjected me to political imprisonment for blogging and the "crime" of being a political dissident. When that coercion failed to make me remove evidence for their corruption, they took the step of persuading Google to take-down my entire blog.

Of course – with the assistance of international supporters – the blog has been re-established, and it can now be read here, http://freespeechoffshore.nl/stuartsyvretblog/

We now know - only by the happenstance of the recent disclosure by Google of a letter (copy attached) - that contrary to the lies of the Jersey Attorney General - and the lies of his friend the prosecuting Advocate Stephen Baker - and the perjury of Data Protection Commissioner, the conflicted Emma Martins - that in fact the Jersey oligarchy were desperately attempting to get Google to shut down my blog - actually get the entire URL removed from the internet - from at least November 2008 - when I was opposing child-abuse cover-ups and questioning the obviously illegal suspension of Police Chief Graham Power.

In the course of his battle against that plainly unlawful suspension, Mr Power wrote to the Privileges & Procedures Committee of the Jersey parliament. It is useful to quote from that letter (copy attached): -

"It may be that I have provided sufficient information to enable the Committee to consider a way forward on this issue. However, in the hope that it may be helpful, I will offer some personal thoughts and additional information which may assist.

On a straight reading of the available evidence it may occur to many people that the most likely probability is that the former Minister for Home Affairs knowingly provided an account which is distant from the truth. That may be the case, but there are other possibilities. One is that he was not the main author of the process. The known facts allow for an alternative explanation. That is, that the decision to suspend was in fact taken by others for motives of their own, and that the then Minister was brought in at the final stages to provide his signature, and thereby appear to legitimise a process which was conceived by others. Such an interpretation would of course raise the possibility of a "Government within a Government" in which unidentified and unaccountable individuals exercise power outside the parameters of the law. If that was the case then the constitutional implications would be significant. This would be particularly true in the context of a potential impact on the independence of a part of the Criminal Justice System."

I was oppressed and suppressed in my political work – as the Police Chief was oppressed in his work - by conflicted powerful people with individual and collective interest in covering-up the facts concerning their own corruptions and the breakdown in the rule of law in Jersey.

Those same people then set about oppressing and suppressing me in my journalistic work.

Those people are the ***"Government within a Government" in which unidentified and unaccountable individuals exercise power outside the parameters of the law."***

Those individuals are the Crown Officers: – Bailiffs, Lieutenant Governors, Deputy Bailiffs, Attorney Generals, Solicitor Generals, Data Protection Commissioners.

Central to the oppression, harassment, witness-tampering and suppression directed against me have been four factors:

- The corrupt abuse of the Data Protection Law by a conflicted Data Protection Commissioner;
- **The corrupt, politicised abuse of prosecutory powers by directly conflicted, corrupt Attorney Generals;**
- **Police-state abuse & oppression carried out by a captured, corrupted, politicised policing function following the illegal suspension of Mr Power;**
- **Political-oppression via Stalinistic show-trials in front of corrupt, conflicted judges.**

That oppression has included the politicised perversion of the data protection "law" as a means of state-sponsored suppression of political opposition - illegal massed police-raids – conducted without a search-warrant following the unlawful suspension of

Police Chief Graham Power – my arrest, detention in a locked, windowless police-cell for seven-and-a-half hours – the theft of vast quantities of my then constituents' private data, the theft of my parliamentary-privileged lap-top – my prosecution on the orders of the conflicted, corrupt then Attorney General William Bailhache – coercive show-trials in front of a succession of judges axiomatically conflicted for being chosen and appointed by their friends, conflicted Bailiffs such as Philip Bailhache and Michael Birt – and a succession of on-going political imprisonments.

It is clear – and established on the evidence – that: -

- I am the victim of a number of criminal acts associated with the improper concealment of child-abuse and the concealment of child-protection failures – and other crimes - in Jersey. Those criminal offences included – for example – conspiracies to pervert the course of justice, and of numerous examples of corruption, and of misconduct in a public office;

- **I am the victim of a catalogue of past and continuing human rights abuses at the hands of a dysfunctional, plainly corrupted and structurally ultra vires Crown apparatus in Jersey.**

These are exceptional circumstances.

Having now read the protocols published by the Committee of Inquiry, I am far from assured that this process signals an end to the oppression I have suffered. Instead, I have concerns that it could lead to more of the same.

Not the least amongst my concerns are the range of deeply troubling conditions that are automatically imposed upon anyone who takes up "Interested Party" status.

It seems to me that a number of serious legal issues arise, and that those conditions engage my human rights. I therefore must take independent legal advice. The Inquiry has a mechanism for funding legal representation for witnesses, but that process requires that an applicant must sign-up to Interested Party status *first*, *before* legal funding will be granted.

I am not going to sign-up to any conditions until and unless I have been able to take independent legal advice on those conditions first.

Only a fool is coerced into signing a contract, which they can only take legal advice on, after they've signed it.

And in addition to the conditions attached to Interested Party status, there are a number of further significant legal issues arising from the methodology and protocols adopted by the Inquiry – issues for which I need legal representation.

Paragraph 2 of the Inquiry protocol on Legal Fees says: -

Applications for an award in respect of legal fees and expenses for someone who is not an Interested Party will only be considered in exceptional circumstances.

These circumstances are exceptional – and I herby apply for legal fees and expenses funding.

I would be grateful if the Inquiry would confirm as a matter of urgency that it agrees to my request, and that it issues to me a formal notice of agreement to fund that I may then use in my negotiations with prospective legal representation.

Thank you for your assistance.

Stuart Syvret.

Attachments:

- Police Chief Graham Power's July 2007 file-note re conspiracy against the Health & Social Services Minister;
- **Letter disclosed by Google showing sustained attempts by Jersey oligarchy to get Stuart Syvret's blog removed from the internet from at least November 2008;**
- **Police Chief Graham Power's letter to Jersey parliament's Privileges & Procedures Committee.**

APPLEBY

[redacted]

Email [redacted]

[redacted]

Your Ref

Appleby Ref 204644.0002/FR/CP

31 December 2013

BY EMAIL

Dear [redacted]

Jersey Office
PO Box 207
13-14 Esplanade
St Helier
Jersey JE1 1BD
Channel Islands

Tel +44 (0)1534 888 777
Fax +44 (0)1534 888 778

applebyglobal.com

[#722708262] Blogger – Complaint re: http://stuartsyvret.blogspot.com
Request to remove blog entries pertaining to certain individuals

I refer to the above matter. As you will be aware from previous correspondence, we act for the Jersey Data Protection Commissioner ("the **Commissioner**"), who first contacted Google Inc. ("**Google**") in November 2008, regarding her concerns in relation to a blog hosted by Google Blogger, at http://stuartsyvret.blogspot.com ("the **Blog**"). Mr Stuart Syvret is the owner and operator of the Blog.

Previous correspondence – Criminal proceedings

We last wrote to you in respect of this matter on 27 September 2011 (**enclosed**).

As you may recall Mr Syvret had, at that time, recently been involved in criminal proceedings in that on 30 August 2011, he unsuccessfully appealed his conviction in the Jersey Magistrate's Court (Act of Court dated 17 November 2010 ("the **criminal order**")) to the Royal Court. The criminal proceedings arose due to Mr Syvret having published an un-redacted copy of a confidential internal report compiled by the States of Jersey Police on his Blog and he was prosecuted under Article 15 of the Data Protection (Jersey) Law 2005 ("the **Law**"). The criminal order clearly outlined that Mr Syvret should remove offending posts which named or identified a certain individual. Mr Syvret did not comply with that order and all avenues of appeal were subsequently exhausted.

In our letter of 27 September 2011, we also referred to the voluminous previous correspondence with Mr Fleisher and/or the Blogger team requesting that the Blog (or failing this, the offending URLs within the Blog) be taken down. Despite this, in an email dated 10 October 2011 (**enclosed**), Google stated that they remained of the view that Mr Syvret had complied with the said criminal order and the request was refused.

Google has indicated however that it would remove the Blog or specific URLs, if the Jersey Court issued an order requiring Mr Syvret to do this and it is in this regard that I now write to you.

Civil proceedings

There have been significant developments since we last corresponded with you, in that further Court orders and judgments have been obtained pursuant to civil proceedings initiated against Mr Syvret.

Following Mr Syvret's conviction in the Magistrate's Court, certain individuals ("the **Representors**") served Stop Processing Notices ("the **Notices**") on Mr Syvret under Article 10 of the Law alleging that Mr Syvret's actions in connection with the Blog were causing them substantial damage and distress and requiring him to cease processing their personal data.

Mr Syvret failed to comply with the Notices and the Representors brought civil proceedings (having been provided with assistance by the Data Protection Commissioner of her powers under Art.53 of the Law) seeking orders that Mr Syvret should cease processing their personal data and that the material already on the Blog should be deleted. Those proceedings were issued on 3 August 2012.

In issuing proceedings, the Representors asserted that Mr Syvret, as "data controller" within the meaning of Article 1 of the Law, had processed very considerable personal data on the Blog, of which the Representors were "data subjects" (also under Article 1 of the Law). Such data included, in some cases, sensitive personal data, which has caused the Representors substantial damage and distress to themselves and to members of their families.

An interim injunction was granted by the Royal Court on 13 August 2013 and which provided, *inter alia* as follows:

> *"Interim Injunction*
>
> *4. The Respondent whether acting by himself or any agent is hereby restrained until further order of the Court from:*
>
> *a. Causing or permitting the posting on or in any way adding to the Respondent's Blog site, http://stuartsyvret.blogspot.com, or any other Blog, website or similar media of any material relating in any way to the Representors or any of them, whether in the form of comment, information, internet link or otherwise and whether by the Respondent himself or any other person, and;*
>
> *b. Causing or permitting any material currently stored on his Blog from being copied, down-loaded, printed or transmitted to any other location, either in whole or in part, or encouraging or facilitating any such activity by any other persons."*

The substantive hearing was held on 13 May 2013 at which time the Representors sought a final order and the confirmation of the interim injunction as previously granted. Mr Syvret did not attend. The Court reserved its judgment at that time but made an order ("the **Final Order**") on 1 August 2013 (**enclosed** but redacted to protect the identities of the Representors), including *inter alia* the following terms:

> "1. *The Respondent [Mr Syvret], whether acting by himself or any agent is hereby restrained from:*
>
> a. *causing or permitting the posting on or in any way adding to the Respondent's [Mr Syvret's] Blog site, http://stuartsyvret.blogspot.com ("the Blog"), or any other Blog, website or similar media of any material relating in any way to the Representors or any of them, whether in the form of comment, information, internet link or otherwise and whether by the Respondent himself or any other person, and;*
>
> b. *causing or permitting any material currently stored on the Blog such as it relates to the Representors, from being copied, down-loaded, printed, or transmitted to any other location, either in whole or in part, or encouraging or facilitating any such activity by other persons;*
>
> 2. *that [Mr Syvret] shall, as soon as practicable and in any event within seven days of the Court's Order, delete each and every reference to the Representors' personal data from the Blog so that such data is no longer stored on the Blog and cannot be published or disclosed to the Respondent or to any third party. For the avoidance of doubt, the reference "each and every reference" in this paragraph shall be taken solely to be a reference to those entries on the Blog such as are contained within Appendix 1 of the affidavits of the First Representor dated 13th August, 2012, the Second Representor dated 8th August, 2012, the Third Representor dated 8th August, 2012, and the Fourth Representor dated 8th August, 2012, together with the blog extracts as exhibited at "DVB1" to the Affidavit of Davida Blackmore dated 23rd April 2013;..."*

The Court delivered its judgment on 4 September 2013 ("the **substantive judgment**") (**enclosed**).

Failure to comply with the Final Order/Contempt

Since the date of the Final Order and the handing down of the substantive judgment, Mr Syvret has not removed the Representors' data from his blog and has indicated that he has no intention of doing so. Indeed, Mr Syvret has continued to process the Representors' data in breach of the Final Order.

A Representation was issued on 25 September 2013 by the Representors, inviting the court to find that Mr Syvret in contempt of court given his failure to adhere to the terms

of the Final Order. The substantive hearing was held on 4 November 2013 and Mr Syvret was found to be in contempt of court and sentenced to 3 months' imprisonment. I **enclose** copies of the Act of Court dated 4 November 2013 and the Act of Court of even date and, in particular, I would ask you to consider the Court's finding at paragraph 11 of that judgment that:

> *"11. Such being the history of these prolonged proceedings we are now in a position to set out our findings. It is abundantly clear that the respondent has determined to disregard orders made by the Court. Not only has he failed to obey orders made by the Court for the removal of the data from his blog and from the blogs of others to whom that data was provided by the respondent by means of hyperlinks, he has also made clear that he has every intention of continuing to post more data including, for example, in a post on 5th September, 2013, addressed to the fourth representor. Moreover he has directed by means of hyperlinks those who read his blogs to view the blogs of others. We are also satisfied that the respondent has allowed others to post on the respondent's blog comments by third parties which disclose the identities of one or other of the representors and contain defamatory and/or offensive material relating to the representors. We refer to paragraph 8 to 13 of the affidavit sworn by the fourth representor on 20th September, 2013.*
>
> *12. In addition we accept that the respondent has made clear by his comments when interviewed by the media that he has no intention of removing postings from his blog as he has been ordered to do by the Court. Further he has indicated an intention to publish more postings on his blog in contravention of the orders made by the Court. We refer to paragraphs 14 and 15 in the fourth representor's affidavit sworn on 20th September, 2013.*
>
> *13. We are entirely satisfied that the respondent has deliberately and persistently breached orders made by the Court and that he has indicated an intention to do so in the future".*

Removal of the Representors' personal data from the Blog and action required by Google

During the course of the contempt proceedings, the Court specifically asked Messrs. Appleby as lawyers for the Representors, to contact Google to request that Google take steps for the offending posts to be removed, given that the Mr Syvret had not, and was not likely to, comply with the terms of the Final Order.

Accordingly, we include a list of the URLs from Mr Syvret's Blog that breach the Final Order, as referred to at paragraphs 1 and 2 of the Final Order. These URLs detail the references in the Blog that we are requesting Google delete:

http://stuartsyvret.blogspot.com/2010/09/700-am-affidavit.html

http://stuartsyvret.blogspot.com/2011_08_01_archive.html

http://stuartsyvret.blogspot.com/2008/05/jersey-child-abuse-disaster.html

http://stuartsyvret.blogspot.com/2009/03/mass-murderer.html

http://stuartsyvret.blogspot.com/2009/04/banana-republic.html

http://stuartsyvret.blogspot.com/2009/04/blog-under-attack.html

http://stuartsyvret.blogspot.com/2009/04/banana-republic.html

http://stuartsyvret.blogspot.com/2009/05/no-child-abuse-in-jersey.html

http://stuartsyvret.blogspot.com/2009/05/jason-maverick.html

http://stuartsyvret.blogspot.com/2009/11/letter-from-exile-5.html

http://stuartsyvret.blogspot.com/2009/11/letter-from-exile-6.html

http://stuartsyvret.blogspot.com/2009/12/letter-from-exile-9.html

http://stuartsyvret.blogspot.com/2010/03/letter-from-exile-11.html

http://stuartsyvret.blogspot.com/2010/04/letter-from-exile-17.html

http://stuartsyvret.blogspot.com/2010/04/letter-from-exile-18.html

http://stuartsyvret.blogspot.com/2010/04/letter-from-exile-21.html

http://stuartsyvret.blogspot.com/2010/06/choices.html

http://stuartsyvret.blogspot.com/2010/09/this-is-court-of-law-young-man-not.html

http://stuartsyvret.blogspot.com/2010/12/betrayed.html

http://stuartsyvret.blogspot.com/2011/03/jon-haworth.html

http://stuartsyvret.blogspot.com/2011/04/angel-of-death.html

http://stuartsyvret.blogspot.com/2011/05/private-eye-and-jerseygate.html

http://stuartsyvret.blogspot.com/2011/06/so-be-it.html

http://stuartsyvret.blogspot.com/2011/08/lights-out-and-dressing-up-box.html

http://stuartsyvret.blogspot.com/2011/09/lights-out-and-dressing-up-box.html

http://stuartsyvret.blogspot.com/2011/10/jerseys-prosecution-system.html

http://stuartsyvret.blogspot.com/2011/10/how-law-really-works-in-hands-of.html

http://stuartsyvret.blogspot.com/2012/01/stephen-lawrence-and-daily-mail.html

http://stuartsyvret.blogspot.com/2012/08/the-end-of-beginning.html

http://stuartsyvret.blogspot.com/2013/08/judge-made-law-in-jersey.html

http://stuartsyvret.blogspot.com/2013/09/the-crown-and-newspeak-justice-part-1.html

http://stuartsyvret.blogspot.com/2013/10/the-bbc-its-hate-campaigning-and.html

In light of the foregoing, we request Google's assistance and ask that you take immediate steps to remove the offending material from the Blog and which has not been removed by Mr Syrvret. We ask that each and every reference to the Representors' personal data from the Blog be removed: either by the removal of the URLs outlined above, or the taking down of the entire Blog.

Should you require any further information or clarification please do not hesitate to contact us.

We look forward to hearing from you.

[redacted]

[redacted]

From: The Blogger Team <blogger-support@google.com>
Sent: 10 October 2011 22:22
To: [redacted]
Subject: Re: [#722708262] Blogger - Complaint re: http://stuartsyvret.blogspot.com

Dea[redacted]

Thank you for your letter of 27 September 2011, addressed to Google's privacy counsel William Malcolm. William has passed your letter to us, and having conferred with William we are replying to you here.

We understand that your request remains the same as in earlier correspondence, namely to:

- remove the whole blog at http://stuartsyvret.blospot.com (the "Blog"), or failing that to remove,
- the particular two URLs within the Blog that you have notified us of;

and that the legal basis of your request is the same as before - namely the Jersey court order dated 17 November 2010.

RESPONSE

As:

1) The order dated 17 November 2010 ("Order") remains drafted in the way it is;

2) The URLs you cited on 15 February 2011:

http://stuartsyvret.blogspot.com/2009/03/mass-murderer.html

http://stuartsyvret.blogspot.com/2009/11/letter-from-exile-4.html?showComment=1258723530085#c741304590815443630

still do not appear to contain content which breaches the Order;

and

3) You have not notified us of any other URLs breaching the Order,

we still do not see that the Order requires the entire Blog, or the pages at the URLs cited at (2) above, to be removed. Accordingly at this time, in line with our policy which is to remove only on receipt of valid legal process, we will not be removing the Blog or any pages within it. As we wish to assist the Jersey Data Protection Commissioner within the bounds of our policies, below we set out why this is the case (again), and explain what you can do to remedy the problem (again).

REMOVAL OF WHOLE BLOG BASED ON LEGAL PROCESS

As previously explained, Google would remove the whole blog attached to http://stuartsyvret.blogspot.com if the Jersey Court issued an order requiring Mr. Syvret to do this. In fact, the Order does not require this.
It requires that Mr. Syvret destroy or erase material that "identifies or names[redacted] as the subject of the said police investigation". If you feel that the Order does require the whole Blog to be removed, please produce:

- a court document declaring that this is what the Order means.

Alternatively please produce a new order that clearly requires Mr. Syvret to remove the entire Blog.

REMOVAL OF SPECIFIC URLS BASED ON LEGAL PROCESS

Also as previously stated, Google would remove content within the Blog that is infringing of the current Order, if you identify that content by post URL or the date/time stamp of the post.

Two notified URLs:

We have looked at the two URLs you identified and notified us of (see 2 above), and are of the view that they do not breach the Order. On those pages we see nothing which identifies or names [redacted] as the subject of the police investigation. If you are of the view that there is something on those pages which DOES identify or name [redacted] as the subject of the police investigation, then please by reference to Jersey law on identifiability, explain how you have reached this conclusion. You have not done this to date. Your explanation needs to:

- set out what is the law in Jersey on identifiability (eg perhaps, as in the UK, it is "Whether a determined person would be able to identify [redacted] from the blog, using all means reasonably likely to be used"); and

- set out how the facts fit the law (eg what public domain sources exist that would enable a determined person to identify [redacted] from the blog).

Please note that unless you provide this information, Google is not in a position to know whether [redacted] is identifiable for the purposes of Jersey law (and therefore whether the content at the two URLs appears in breach of the Order), and so cannot know whether it would be proper to remove that content in reliance on the Order.

Any other URLs:

If you maintain that any URLs breach the Order, other than the two URLs already identified, please provide us with the URL and explain how the Order requires the content at those URLs to be removed (the explanation need not be long, only to the point).

-

REMOVAL OF CONTENT BASED ON GOOGLE'S TERMS OF SERVICE

In your letter of 15 February 2011 you explained why you felt that certain content at certain URLs breached Google's terms of service.
We have looked at the Blog with your allegations in mind and have reached the conclusion that there are no such breaches.

One point of detail:
We noted that on p.27 of your letter of 15 February 2011 you alleged that the Blog reveals 'medical history'. It would be a concern for us from a terms of service point of view if there were medical documents posted in the Blog, however as you have not given enough info (eg a correct URL or means to find that content) we cannot find any private medical information and so are not in a position to consider the content for removal. If you provide the correct URL, we can look at the content and consider whether it amounts to a breach of our terms and policies. Please note that if we decide to remove the content, in line with our usual practice in the case of policy based removals, we would do so without necessarily notifying you or any other third party.

--

SUMMARY

Please do not send us another long letter restating what you have said numerous times before. Please either provide the information requested above (summarised in a check list for you below), or accept that the content will not be removed.

FOR REMOVAL OF THE WHOLE BLOG:
- procure a Jersey Court statement clarifying that the current Order requires the whole Blog to be removed; or
- procure a new order.

FOR REMOVAL OF SPECIFIC URLS WITHIN THE BLOG, PURSUANT TO THE EXISTING ORDER:
- for the two URLs already notified: explain why [redacted] is identifiable (with reference to Jersey law) from the content appearing at those URLs;
- for any other URLs: notify us of the URL and explain why [redacted] is identifiable (with reference to Jersey law) from the content appearing at those URLs.

FOR REMOVAL OF SPECIFIC URLS WITHIN THE BLOG, PURSUANT TO GOOGLE'S TERMS AND CONDITIONS:
- give us enough information to find the complained of content (eg URL), noting that:
(a) although Google reviews such allegations, for reasons of scalability it does not reply to every person who alleges a terms of service or policy violation; and
(b) Google does not remove allegedly defamatory, libelous, or slanderous material from Blogger.com or BlogSpot.com absent a court order.

Sincerely,

The Blogger Team

In the Royal Court of Jersey

Samedi Division [redacted]

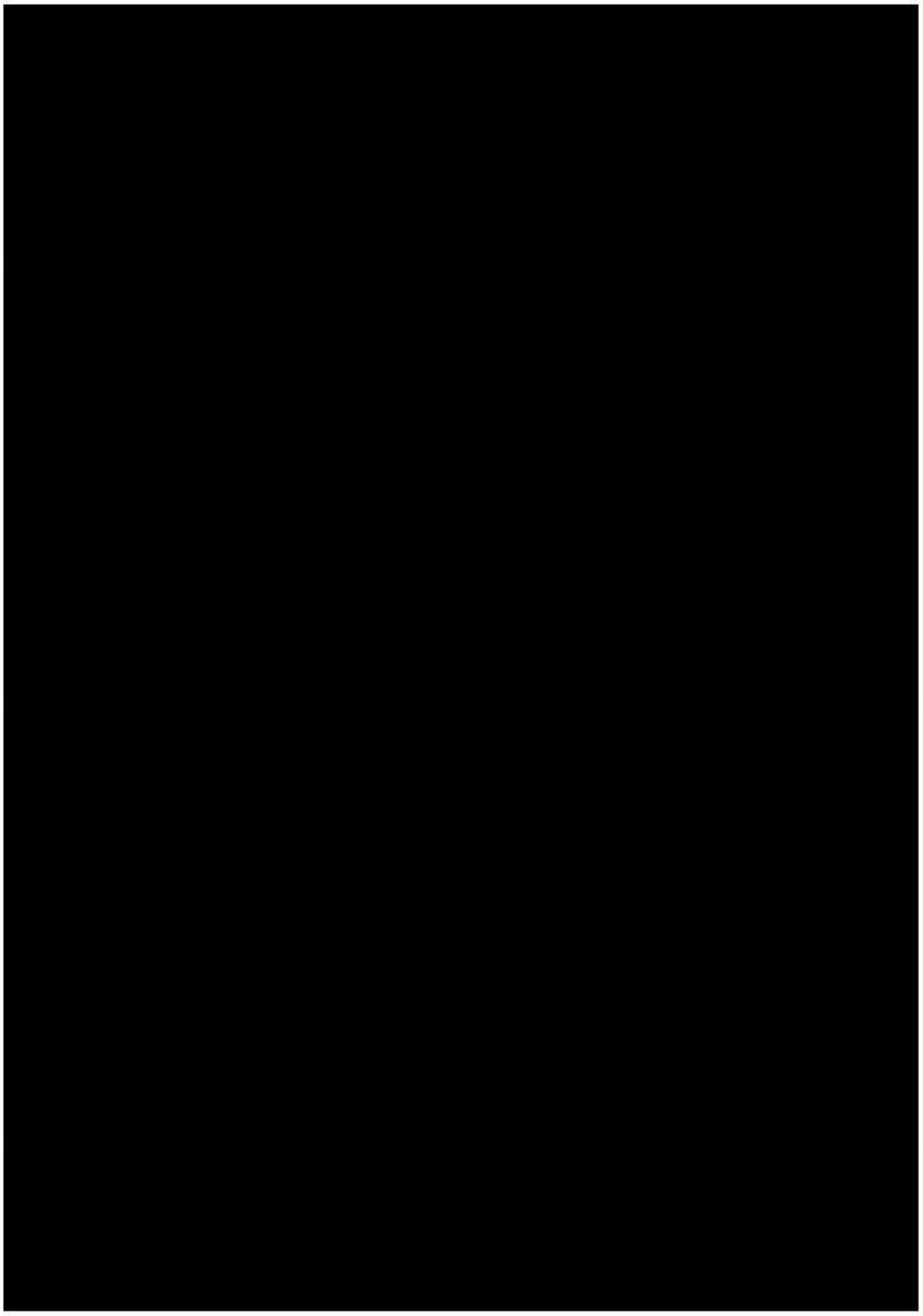
In the year two thousand and thirteen, the first day of August.

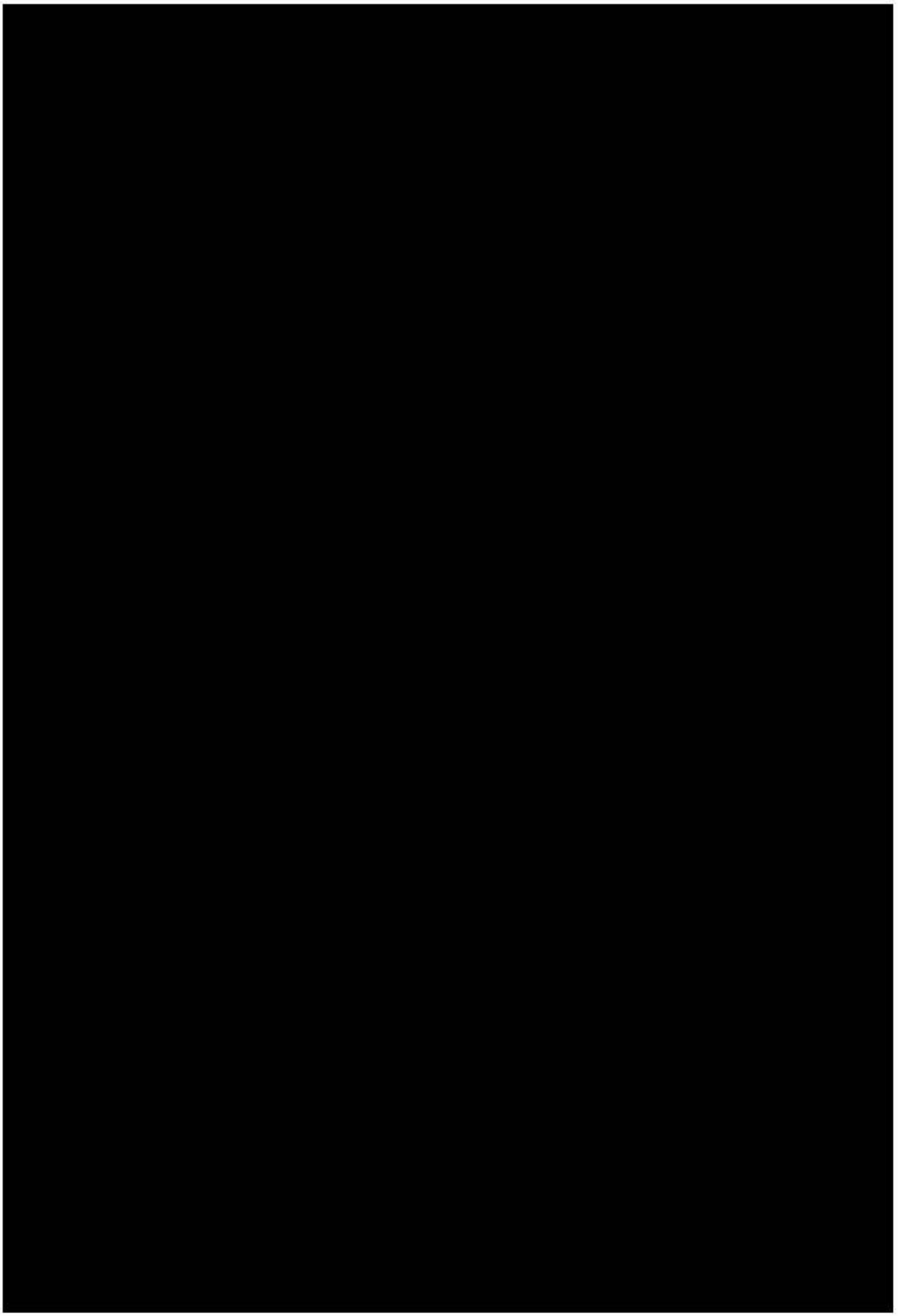
Before Sir Charles Gray, Commissioner, assisted by Jurats Robert John Kerley and Philip John de Veulle, O.B.E..

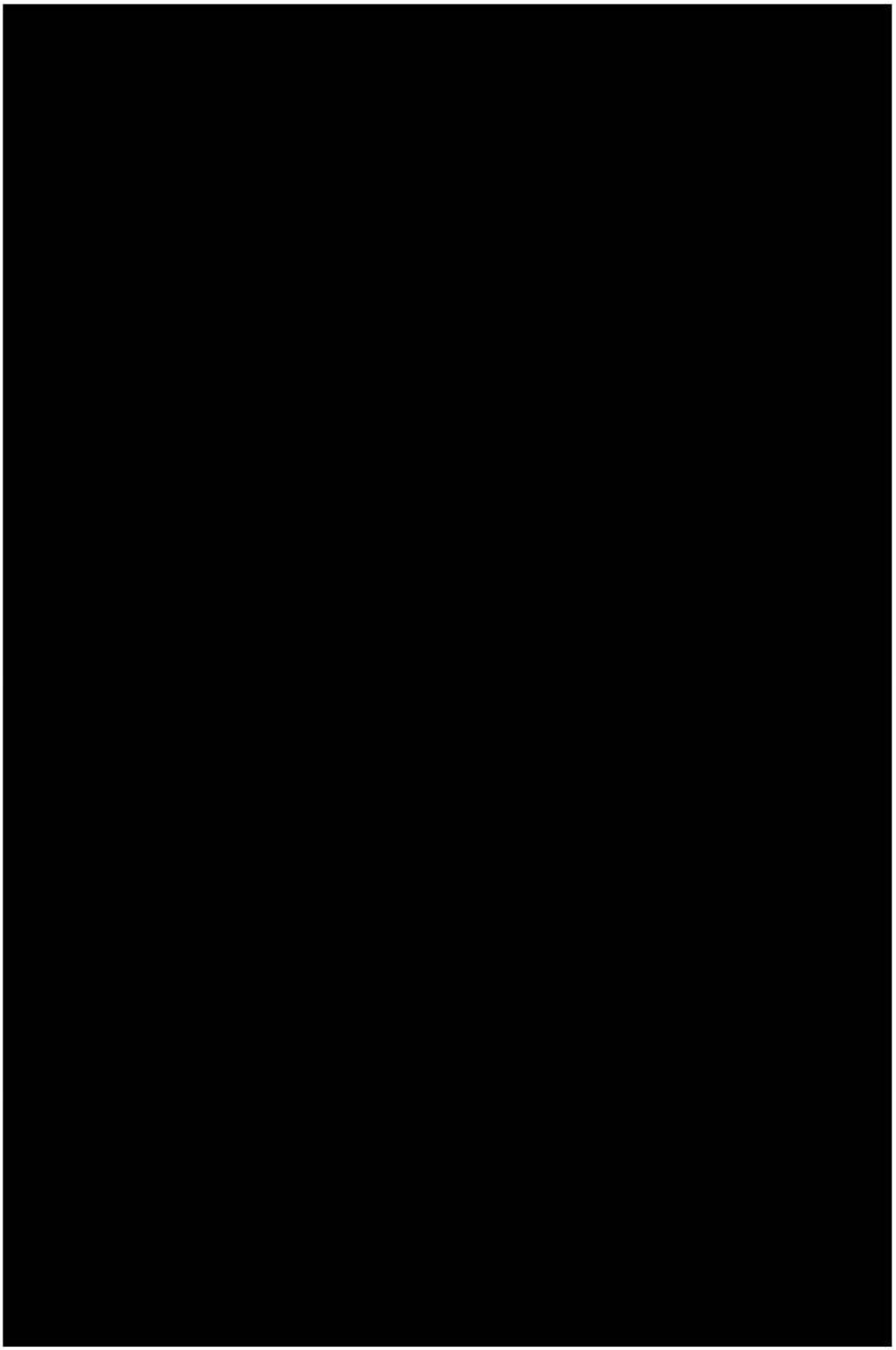
BETWEEN	[redacted]	FIRST REPRESENTOR
	[redacted]	SECOND REPRESENTOR
	[redacted]	THIRD REPRESENTOR
	[redacted]	FOURTH REPRESENTOR
AND	Stuart Syvret	RESPONDENT

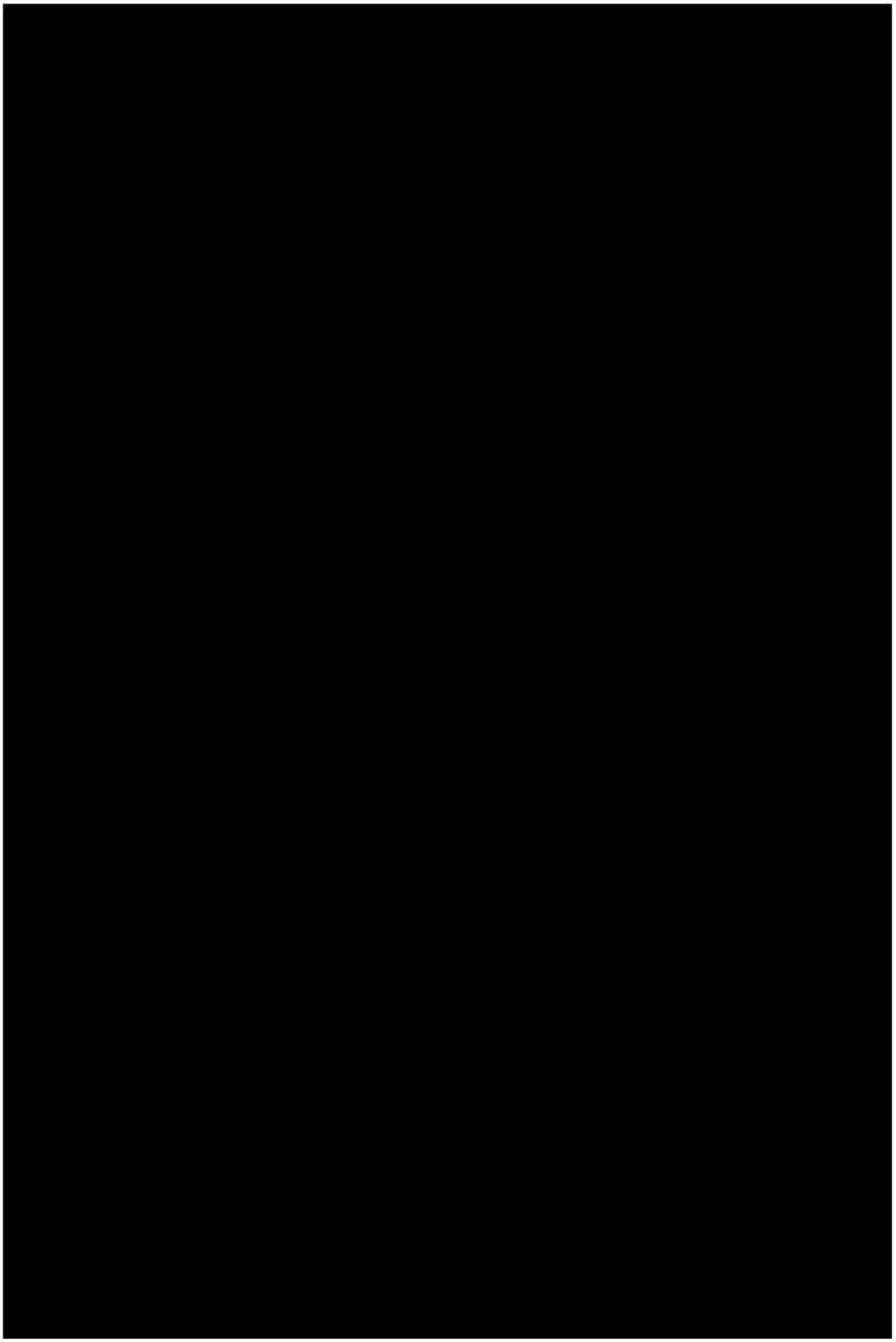
IN PRIVATE

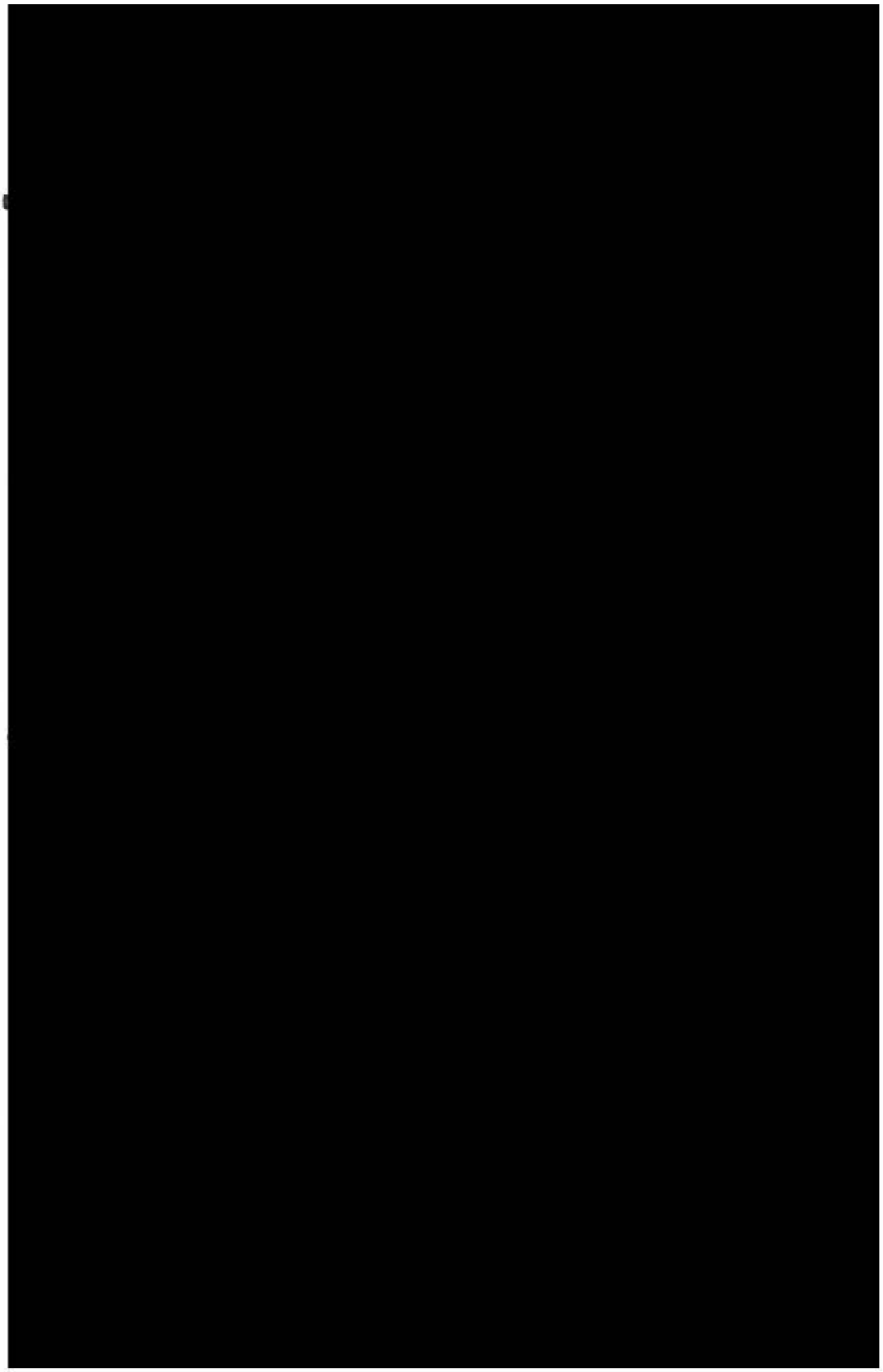
[redacted]

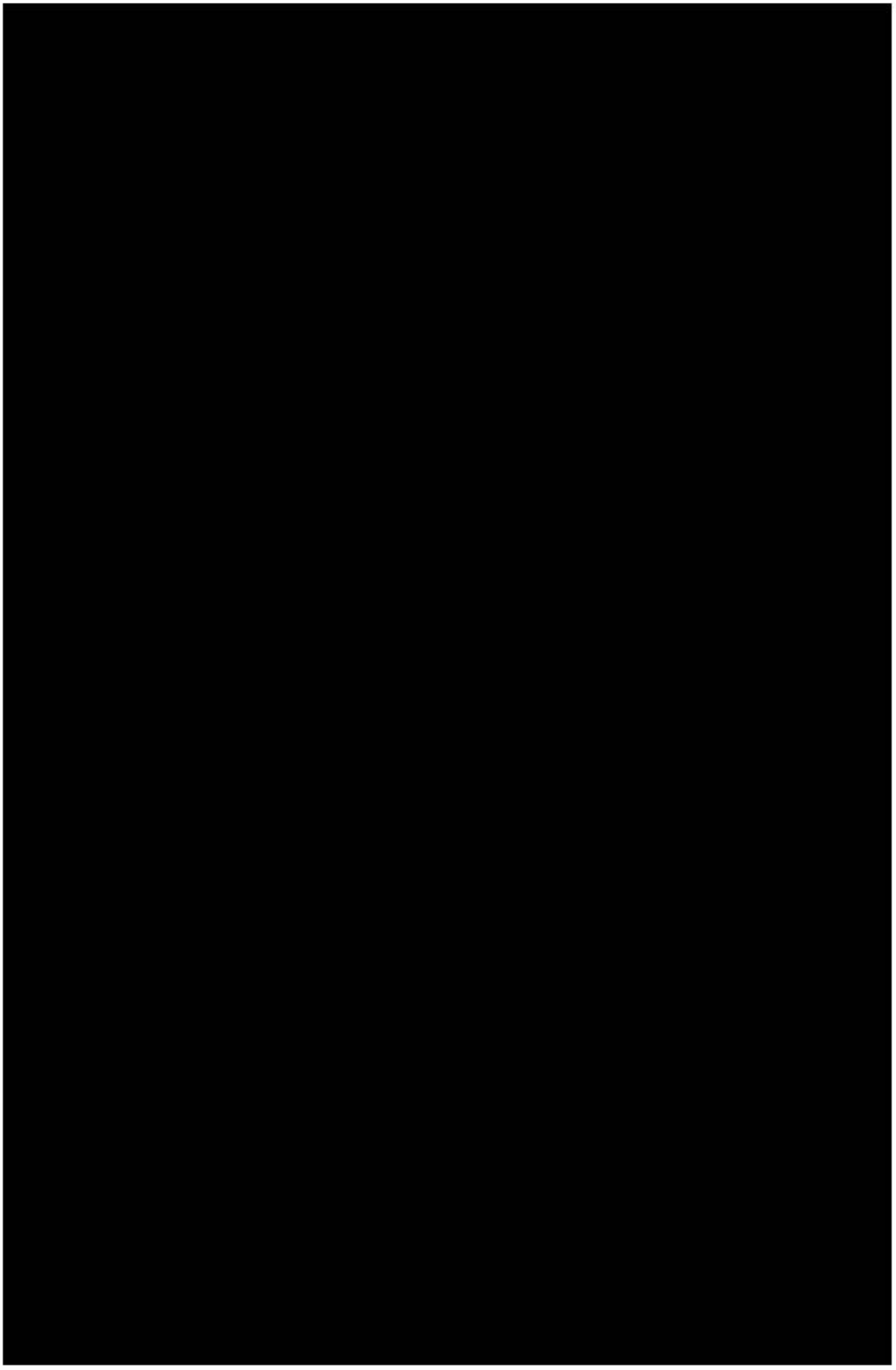












[redacted]

And whereas on the 13th August, 2012, as appears by Act of Court of that day, the Court ordered that:-

[redacted]

Interim Injunction

4. the Respondent whether acting by himself or any agent is hereby restrained until further order of the Court from:

   a. causing or permitting the posting on or in any way adding to the Respondent's Blog site, http://stuartsyvret.blogspot.com, or any other Blog, website or similar media of any material relating in any way to the Representors or any of them, whether in the form of comment, information, internet link or otherwise and whether by the Respondent himself or any other person, and;

b. causing or permitting any material currently stored on his Blog from being copied, down-loaded, printed, or transmitted to any other location, either in whole or in part, or encouraging or facilitating any such activity by other persons.

And whereas on the 13th May, 2013, upon hearing the advocate on behalf of the Representors, the Respondent not having appeared nor being represented, the Court reserved its decision.

Now this day, the Court, for the reasons set out in a judgment delivered by the Commissioner, ordered:-

1. that the Respondent, whether acting by himself or any agent, is hereby restrained from:

   a. causing or permitting the posting on or in any way adding to the Respondent's Blog site, http://stuartsyvret.blogspot.com ("the Blog"), or any other Blog, website or similar media of any material relating in any way to the Representors or any of

them, whether in the form of comment, information, internet link or otherwise and whether by the Respondent himself or any other person, and;

b. causing or permitting any material currently stored on the Blog such as it relates to the Representors, from being copied, down-loaded, printed, or transmitted to any other location, either in whole or in part, or encouraging or facilitating any such activity by other persons;

2. that the Respondent shall, as soon as practicable and in any event within seven days of the date of the Court's Order, delete each and every reference to the Representors' personal data from the Blog so that such personal data is no longer stored on the Blog and cannot be published or disclosed to the Respondent or to any third party. For the avoidance of doubt, the reference to "each and every reference" in this paragraph shall be taken solely to be a reference to those entries on the Blog such as are contained within Appendix 1 of the affidavits of the First Representor dated 13th August, 2012, the Second Representor dated 8th August, 2012, the Third Representor dated 8th August, 2012, and the Fourth Representor dated 8th August, 2012, together with the blog extracts as exhibited at "DVB1" to the Affidavit of Davida Blackmore dated 23rd April, 2013;

[redacted]

Greffier Substitute

Appleby (FBR)
Mr. S Syvret

RESTRICTED DOCUMENT

Data protection - application for an order requiring the respondent to cease processing their personal data on his personal blog site.

ROYAL COURT
(Samedi)

Before : Sir Charles Gray, Kt., Commissioner, and Jurats Kerley and de Veulle.

Between	**AB**	**First Representor**
	CD	**Second representor**
	EF	**Third Representor**
	GH	**Fourth Representor**
And	**Stuart Syvret**	**Respondent**

Advocate F. B. Robertson for the Representors.

The Respondent did not appear and was not represented.

JUDGMENT

THE COMMISSIONER:

Hearing in private

At the outset of the hearing I directed that the hearing should be in private because it seemed to us that this was necessary in order to secure the proper administration of justice: see Jersey Evening Post Limited-v-Al Thani and Ors [2002] JLR 542 at paras [14]-[15].

The nature of the Application

1. This is an application by the representors named above for an Order pursuant to Article 10 of the Data Protection (Jersey) Law 2005 ("the DPL") requiring the respondent (Mr Syvret) to cease processing their personal data on his personal blog site, ("the Blog"), and not to begin processing such data hereafter.

2. The background to the present application is as follows: Mr Syvret served as a Deputy in the States of Jersey from 1990 to 1993 and as a Senator from 1993 until 2010. During that time he was President of

the Health and Social Services Committee from 1999 until 2005 and thereafter was Minister for Health and Social Services from 2005 until September 2007. He forfeited his senatorial seat in April 2010 after he spent 6 months out of Jersey.

3. Mr Syvret set up the Blog in January 2008. The four representors are amongst those who have been repeatedly identified by name on the Blog as having, amongst other things, engaged in criminal behaviour. In order to prevent further identification of the representors, I have decided that they should be referred to in this judgment as AB, CD, EF and GH.

4. The case for the representors is that Mr Syvret is a "data controller" within the meaning of the DPL and that he has processed their personal data by uploading, publishing and storing false and offensive posts on the Blog. The representors contend that the allegations made about them on the Blog are untrue and unjustified.

5. The representors further contend that Mr Syvret is responsible for and moderates comments left on the Blog by third parties. Their case is that Mr Syvret would be able to remove such comments from the Blog but has refused to do so.

6. "Notices to Stop Processing" have been served on Mr Syvret on behalf of each of the representors. They assert that Mr Syvret has refused to stop processing their personal data which remain stored and published on the Blog.

7. On 17th November, 2010, Mr Syvret was convicted in the Magistrate's Court of two offences, one of disclosing personal data without consent and one of processing personal data without being registered as a data controller. Mr Syvret's appeal against his said conviction in the Magistrate's Court was dismissed by the Royal Court on 30th August, 2011.

8. On 13th August, 2012, the representors made an application to the Court, without notice to Mr Syvret, seeking an interim injunction restraining him from posting on the Blog or any other blog any material relating to the representors. The Royal Court granted the injunction sought. Subsequently on 17th August, 2012, the Royal Court issued a clarification which stated that the injunction granted on 13th August, 2012, did not apply to material already stored on the Blog but only restrained him from posting additional material on the Blog in the future.

9. By the present application all four representors seek a final injunction restraining Mr Syvret from processing their personal data within the meaning of the DPL.

Proceedings in private

10. Before turning to the merits of the present application, we should explain why, as was made clear at the beginning of this judgment, the hearing of this application was held in private. This is a case where we are satisfied that, if any publicity were to be given to the facts of the case (including the nature of the relief sought, the evidence given and the terms of the present judgment), the object of the application would be defeated. For the same reasons that earlier proceedings in the case have been held in private, we are satisfied that the present proceedings, including the evidence, the written argument and the terms of this judgment, should also be private. This means that no reporting of any part of the proceedings is permissible.

Delay

11. Before turning to the substantive issues which arise in the present application, we must consider whether the delay which has occurred in the present case is such as to deprive the representors of any entitlement which they might otherwise have had to injunctive relief.

12. As Advocate Robertson, who appeared for the representors on the hearing of the present application, rightly accepted in the course of his admirably clear submissions, there was some delay both before the first Notice was issued on 3rd August, 2010, as well as thereafter. His contention is that there are several reasons which explain the delay that occurred both before and after the Royal Court granted an interim injunction on 13th August, 2010.

13. The charges against Mr Syvret of offences under the DPL were laid as long ago as 3rd June and 8th July, 2009. The date initially set for the trial of those charges was 27th September, 2010. As we understand it, the principal reason why the trial did not take place earlier was that Mr Syvret left Jersey for about 6 month after being charged and did not return until April 2010.

14. In the event the criminal charges against Mr Syvret were not concluded until 17th November, 2010, when, as we have already said, he was convicted of both offences. Mr Syvret appealed against those convictions.

15. We were told by Advocate Robertson that the representors took the view that civil proceedings should not be commenced against Mr Syvret until after the outcome of the criminal proceedings in the Magistrate's Court was known. We do not feel that this was an unreasonable position for the

representors to have adopted in all the circumstances of the present case. Once Mr Syvret decided to appeal, a further postponement was inevitable. The appeal was dismissed on 30th August, 2011.

16. Advocate Robertson invited us to take into account various considerations, namely:-

(i) The fact that Mr Syvret decided to stand for election as Senator in October 2011;

(ii) The fact that the fourth representor (who had sought the assistance of the Data Protection Controller in April 2011) needed to serve on Mr Syvret a formal "Notice to Stop Processing" in order to be entitled to the relief sought in these proceedings, and

(iii) That Mr Syvret should be afforded a further opportunity to comply with the earlier requests made on behalf of the representors before proceedings were commenced.

17. We have carefully considered whether the delay which has taken place between the final determination of the criminal proceedings in August 2011 and the issue of the present proceedings in August 2012 is in all the circumstances unreasonable. We have concluded, not without some hesitation, that the delay which occurred over this period is not such as to deprive the representors of the relief sought. We accept that this period of delay was in all the circumstances excusable. In August 20112 directions were given for the substantive hearing of the present application.

The relevant law

18. We turn next to the applicable law. The starting point is to consider in what circumstances individuals such as the four representors are entitled to prevent the processing of their personal data, which is the principal relief sought in the proceedings.

19. Article 10 of the DPL provides as follows:-

"Right to stop processing that causes distress or damage

(1) An individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing, or processing for a specified purpose or in a specified manner, any personal data in respect of which the individual is the data subject, on the ground that, for reasons specified in the notice –

(a) the processing of those data or their processing for that purpose or in that manner is causing or is likely to cause substantial damage or substantial distress to the individual or to another individual; and

(b) that damage or distress is or would be unwarranted."

(We need not set the terms of paragraph 10(2) because it appears to us that none of the conditions in paragraphs 1-4 of Schedule 2 is applicable)

"(3) The data controller shall within 21 days of receiving notice under paragraph (1) give the individuals who gave it a written notice –

(a) stating that the data controller has complied or intends to comply with the individuals notice; or

(b) stating the data controller's reasons for regarding the individual's notice as to any extent unjustified and the extent (if any) to which the data controller has complied or intends to comply with it.

(4) If a court is satisfied, on the application of any person who has given notice under paragraph (1) –

(a) that the notice is justified to any extent; and

(b) that the data controller in question has failed to comply with the notice to that extent, the court may order the data controller to take such steps as it thinks fit for complying with the notice to that extent.

(5) The failure by a data subject to exercise the right conferred by paragraph (1) does not affect any other right conferred on the data subject by this Part."

20. Mr Syvret having chosen not to take part in the present proceedings, Advocate Robertson drew our attention to the arguments which Mr Syvret might have advanced if he had been present. He accepted that, where the circumstances in which the data is processed are clearly in the public interest and must necessarily be carried out without the consent of the individual concerned, then the processing of the information will be lawful. He drew our attention to the Data Protection (Sensitive Personal Date)(Jersey) Regulations 2005, which contain a list of additional circumstances in which the processing of sensitive personal data is permitted. He also referred us to Article 32 of the DPL which provides a number of additional exemptions.

21. However, it is in our judgment clear that none of these provisions are applicable in the circumstances of the present case. There is no suggestion that any of the claimants consented to the processing of their personal data. Nor is the data in the public domain. We do not accept that the data with which this case is concerned could be exempted on the ground it was reasonable in the public interest for it to be published; see the decision of the English Court of Appeal in Campbell-v-Mirror Group Newspapers [2003] QB 633 at paragraph 120-1.

22. Mr Syvret has sought to rely on Article 10 of the European Convention on Human Rights. It is however, established law that the right to freedom of expression contained in Article 10 has to be balanced against the right to respect for private and family life contained in Article 8 of the Convention. Whilst we accept that Article 8 does not encompass a right to privacy as such, there is ample authority that the Court is required in cases such as the present one to have regard to the rights of individuals such as the representors in the present case to respect for their private and family life. We are in no doubt that the right of Mr Syvret to freedom of expression is outweighed by the right of the representors to protection under Article 8.

Applicability of the DPL to blog sites

23. Although Mr Syvret has chosen not to appear before us we have nevertheless considered whether the provisions of section 10 of the DPL apply to blog sites. There is no Jersey authority, so far as we are aware, on this point. We were therefore invited by Advocate Robertson to consider the position under English law.

24. We accept that section 1 of the English Data Protection Act 1998 defines ***"data"*** in broad terms.

25. We were referred by Advocate Robertson to Carter-Ruck on Libel and Privacy (6th edition), paragraph 22.14 of which reads as follows:-

"Given the now near-ubiquitous retention and processing of information in electronic form on digital devices by those working in the media – and many

[redacted]

other – contexts, the scope of the first two of these concepts is extremely broad. They would extent, for example, to information captured and/or held in audio, visual and textual file formats on computers, video cameras, voice recorders, disks and so on."

26. It appears to us that Jersey law should likewise give a wide meaning to the term "data". Since posts on the Blog are disseminated to others by computers and/or the internet, we consider that posts on blogsites fall within the scope of the DPL.

Interaction between the DPL and other causes of action such as defamation and harassment.

27. Given that, so far as we are aware, there is no Jersey authority as to the interaction between data protection law and other parallel concepts such as defamation, we think it right that we should consider the English authorities which bear on the point. We feel that we are justified in doing so since the English Data Protection Act is in very similar terms to the Jersey DPL.

28. We were referred by Advocate Robertson to two English authorities, namely Campbell-v-Mirror Group Newspapers [2004] 2 WLR 1232 and The Law Society-v-Kordowski [2011] EWHC 3185. Whilst we accept that it is the practice in England for claimants to advance claims for defamation and harassment with a claim for data protection in the same proceedings, we are satisfied that there is no reason why a claim for data protection should not stand alone as a separate and distinct cause of action.

29. In Kordowski, Tugendhat J observed at paragraph 172:-

"I note with interest that an injunction preventing the processing of personal data in relation to a website was granted in representative proceedings in SHG-v-Baines [2006] EWHC 2359... The terms of the injunction were to restrain publication of defamatory words and harassment as well as processing personal data."

Tugendhat J granted a perpetual injunction in Kordowski restraining the defendant from processing personal data as well as from publishing defamatory words and harassment.

30. Whilst we are not of course obliged to follow English authority, which is no more than persuasive as far as the Courts of Jersey are concerned, we think it right that the Courts of Jersey should follow English law. Accordingly we take the view that the court may in an appropriate case grant relief under Article 10 of the DPL independently of any other cause of action.

The first question: do the posts on the Blog constitute "sensitive personal data" as defined in the DPL?

31. We now turn to the questions which arise in relation to the concepts which are to be found in the DPL, starting with the definition of "sensitive personal data".

32. Article 1 of the DPL defines ***"data"*** as:-

"information which is being processed by means of equipment operating automatically in response to instructions given for that purpose, is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or forms part of an accessible record."

Given that posts on the Blog are both stored and disseminated via computers and/or the internet, we consider that they fall within the definition of ***"data"*** in the DPL.

33. The next question is whether the data with which the case is concerned qualifies as ***"personal"*** data. Article 1 of the DPL defines such data as being:-

"data that relates to a living individual who can be identified [either] from those data, or [else] from those data and other information that is in the

[redacted]

possession of, or is likely to come into the possession of, the relevant data controller, and includes any expression of opinion about an individual who can be so identified and any indication of the intentions of the data controller or any other person in respect of an individual who can be so identified."

34. The material criteria are:-

    (i) The identifiability of the individual concerned and

    (ii) The possession or likely possession of the data.

    It is to be noted that data includes ***"any expression of opinion about an individual".*** We have noted the hostile and abusive opinions expressed by Mr Syvret on the Blog.

35. In Durant-v-Financial Services Authority [2003] EWCA Civ 1746 the English Court of Appeal indicated two ways in which it might be determined whether data qualifies as personal data about an individual: firstly, by considering whether the information is ***"biographical to a significant degree"*** and, secondly, by considering whether the person concerned is ***"the focus of the information".*** We are satisfied on the basis of Durant that the data with which this case is concerned qualifies as ***"personal"*** data for the purposes of the DPL.

36. Finally we consider next whether the personal data concerning the representors qualify as ***"sensitive"*** personal data? The term is defined in Article 2 of the DPL as comprising *inter alia* information about an individual's physical or mental condition, sexual life, commission or alleged commission of criminal offences and any related legal proceedings.

37. The reason why it is material to consider whether the information with which the case is concerned qualifies as ***"sensitive"*** is that the DPL imposes an additional requirement that sensitive personal data should be processed ***"fairly and lawfully".***

38. It appears to us to be clear that many of the posts on the Blog complained of do come within the statutory definition of ***"sensitive personal data"*** in Article 2 of the DPL. In particular we are satisfied that some posts contain data about the commission or alleged commission of criminal offences and proceedings regarding such offences.

39. We note that in his response to the notices to stop processing issued on behalf of the first, second and third representors, Mr Syvret contended that the information published on the Blog consists of *"generally known, public information, hearsay, opinions, and other such, much of which was conveyed to me by my former constituents. It thus constitutes material that falls squarely within the bounds of free speech as guaranteed by the ECHR."*

40. As it appears to us, Mr Syvret is implicitly accepting in the description he gives of the material contained on the Blog that it does contain ***"personal data"*** which is ***"sensitive"*** within the meaning of Article 2 of the DPL.

Is Mr Syvret the "data controller" of material published on the Blog?

41. We are satisfied that Mr Syvret comes with the definition of "Data Controller" in Article 1 of the DPL which defines a data controller as meaning:-

"a person who (either alone or jointly or in common with other persons) determines the purpose for which and the manner in which any personal data are, or are to be, processed".

We accept that Mt Syvret falls fair and square within this definition; on his own case it was he who decided what personal data should be processed and his purpose and manner of doing so.

42. An allied question is whether Mr Syvret "processed" data on the Blog. We note that ***"processing"*** is defined in Article 1 of the Law as follows:-

""Processing", in relation to information or data, means obtaining, recording or holding the information or data, or carrying out any operation or set of operations on the information or data, including –

(a) organising, adapting, or altering the information or data;

(b) retrieving, consulting or using the information or data;

(c) disclosing the information or data by transmission, dissemination or otherwise making it available; or

(d) aligning, combining, blocking, erasing or destroying the information or data."

43. We are satisfied on the evidence that Mr Syvret carried out most, if not all, of the operations on the information or data published on the Blog which are set out in (a) to (d) inclusive. In consequence we find that he is the *"data controller"* of the material on the Blog.

Substantial damage or distress

44. The principal relief sought against Mr Syvret by the representors is an injunction. We consider that each of the representors is plainly entitled to the injunctive relief sought.

45. The representors also claim that they have suffered substantial damage and substantial distress. Given the nature of the allegations made by Mr Syvret against each of the representors, we readily accept that each of them will have been distressed and angered by the postings on the Blog.

46. The statutory requirement sit at the representors must establish substantial distress. There is little help to be derived from the English authorities as to the meaning in the present context of the word "substantial". We consider that, when used to qualify distress, substantial bears the meaning that the distress caused is more than merely trivial.

47. As to the requirement that the damage suffered must be substantial we take the view that the word ***"substantial"***, when applied to the level of damage, bears the same meaning as it does when applied to distress, namely that to qualify as substantial the damage suffered must be more than merely trivial. We reject the notion that damage needs to involve financial loss or physical harm in order to qualify as substantial.

48. Each of the four representors describes both in that Notice to Stop Processing and in that witness statements the nature of the damage and distress they claim to have suffered.

49. One of the representors explains in the Stop Notice the nature of the substantial distress and substantial damage he claims to have suffered. He asserts that the distress arises mainly from the statements accusing him of most serious criminal wrongdoing. As to damage, his case is that the unwarranted imputations made by Mr Syvret about him have caused substantial damage to his business interests as well as damage to his health and reputation. The other representors advance comparable claims as to the damage suffered.

50. We are satisfied that the distress and damage suffered by each of the four representors are ***"substantial"*** in the sense which we have indicated.

51. Accordingly for the reasons set out above we are satisfied that each of the applicants has established his entitlement to the relief sought.

Authorities

Jersey Evening Post Limited-v-Al Thani and Ors [2002] JLR 542.

Data Protection (Jersey) Law 2005.

Data Protection (Sensitive Personal Date)(Jersey) Regulations 2005.

Campbell-v-Mirror Group Newspapers [2003] QB 633.

European Convention on Human Rights.

Data Protection Act 1998.

Carter-Ruck on Libel and Privacy (6th edition).

Campbell-v-Mirror Group Newspapers [2004] 2 WLR 1232.

The Law Society-v-Kordowski [2011] EWHC 3185.

Durant-v-Financial Services Authority [2003] EWCA Civ 1746.

RESTRICTED DOCUMENT

[redacted]

In the Royal Court of Jersey

Samedi Division [redacted]

In the year two thousand and thirteen, the fourth day of November.

Before Sir Charles Gray, Commissioner, assisted by Jurats Robert John Kerley and Philip John de Veulle, O.B.E.

BETWEEN (1) [redacted]
(2) [redacted]
(3) [redacted]
(4) [redacted] REPRESENTORS

AND Stuart Syvret RESPONDENT

Whereas on the 16th October, 2013, as appears by Act of Court of that day, upon hearing the advocate on behalf of the Representors, the Respondent not having appeared (the Viscount having been unable to effect personal service upon the Respondent), the Court, *inter alia*, upon the application of the Representors supported by affidavit and being satisfied that it is impracticable to effect personal service upon the Respondent:-

1) granted leave for service of the Representation and the Fourth Representor's affidavit in support to be effected upon the Respondent by substituted service, pursuant to Rule 5(10) of the Royal Court Rules, as amended, and this by:-
   (a) leaving the said documents (and a copy of this Act of Court) at the address of the Respondent, namely, [redacted]
   (b) transmitting the said documents (and a copy of this Act of Court) by way of e-mail transmission to the Respondent's e-mail address [redacted]
2) directed that the Respondent is required to appear before the Court on the 4th November, 2013 at 10.00 a.m.; and
3) directed that the orders made on the 1st October, 2013, shall remain in force, in particular, that the names of the Representors are to be anonymised and that, should

the media wish to publicise the Representation, they may do so on the basis that they maintain the anonymity of the Representors.

Now this day, upon hearing the advocate on behalf of the Representors, the Respondent not having appeared, the Court, being satisfied that the Respondent had been served with the documentation referred to at paragraph 1) above, for the reasons set out in a judgment to be delivered at a later date:-

1. held that the Respondent was in contempt of Court;
2. ordered that the Respondent shall be imprisoned for a period of three months from the date hereof;
3. directed that the Viscount or one of his officers shall be entitled to call upon the assistance of the States of Jersey Police to arrest the Respondent;
4. ordered that the Representors' costs of and incidental to the said Representation shall be paid by the Respondent on an indemnity basis.

[redacted]

[redacted]ier Substitute

Appleby (FBR)✓

Data protection – application for a finding that the respondent has failed to comply with court order.

[redacted]

ROYAL COURT
(Samedi)

[redacted]

Before : Sir Charles Gray, Kt., and Jurats Kerley and de Veulle.

Between	**AB**	**First Representor**
	CD	**Second Representor**
	EF	**Third Representor**
	GH	**Fourth Representor**
And	**Stuart Syvret**	**Respondent**

Advocate F. B. Robertson for the Representors.

The Respondent did not appear and was not represented.

JUDGMENT

THE COMMISSIONER:

1. This is an application by the four representors for a finding that the respondent, Mr Stuart Syvret, has failed to comply with an order of the Court made on 1st August, 2013. The representors further seek a finding that the respondent has been guilty of contempt of court by reason of his non-compliance with the orders of the Court.

2. It is necessary for us to set out as briefly as possible the relevant history of the proceedings which can be summarised as follows. On 13th August, 2012, Commissioner Page granted an injunction restraining the respondent from posting on, or in way adding to, his blog or any other blog website or similar media of any material relating in any way to the representors or any of them.

3. At a hearing held in private on 13th May, 2013, the Court refused an application by the respondent that the injunction granted by Commissioner Page be discharged. Although the respondent had notified the Court that he wished to apply for the injunction to be discharged, he did not in the event appear at the hearing of the application.

4. On 1st August, 2013, the Court refused the application of the respondent for the discharge of the injunction granted on 13th May, 2013. The Court continued the injunction previously granted against the

[redacted]

respondent and made a Final Order that the respondent delete forthwith reference to the representors' personal data from his blog.

5. In the judgment of the Court dated 1st August, 2013, I dealt, at paragraphs 26 to 28, with the question as to what action should be taken in regard to the persistent failure of the respondent to adhere to the previous orders of the Court and, in particular, breaches which had occurred since the date of the substantive hearing. I concluded for the reasons set out in paragraph 28 that no further action should be taken at that time in relation to the flouting by the respondent of the Orders made by the Court.

6. By the present application the representors seek from the Court a finding that the respondent has been guilty of contempt by failing to comply with the order of 1st August, 2013, that he remove the data of the representors from his blog and that he has continued to process more of the data of the representors on his own blog as well as by posting or linking such data to other blog sites. The Final Order was served on the respondent on 13th August, 2013, and the final judgments were handed down on 4th September, 2013.

7. Not only did the respondent fail to comply with the Final Order, he included in his posts the names of the four representors and accused them of gross misconduct. The representors will rely in support of this contention upon the contents of paragraph 12 of the affidavit sworn by the fourth representor on 20th September, 2013.

8. The grounds of the application now before the Court are that since the handing down of the Order made on 1st August, 2013, the respondent has:-

   (i) failed to remove the representors' data from his blog and has indicated that he has no intention of doing so; and

   (ii) continued to process the representors' data in breach of the order of 1st August, 2013.

9. The representors accordingly now seek:-

   (i) a finding that the respondent is in contempt of court in that he has breached the terms of the Final Order of the Court made on 1st August, 2013, as referred to in paragraph 5 above;

   (ii) such orders as are appropriate for the contempt alleged; and

   (iii) an order for costs on an indemnity basis.

10. The respondent did not appear at the hearing which took place on 4th September, 2013, although we are satisfied he had previously been notified of the date and time of the hearing.

11. Such being the history of these prolonged proceedings we are now in a position to set out our findings. It is abundantly clear that the respondent has determined to disregard orders made by the Court. Not only has he failed to obey orders made by the Court for the removal of the data from his blog and from the blogs of others to whom that data was provided by the respondent by means of hyperlinks, he has also made clear that he has every intention of continuing to post more data including, for example, in a post on 5th September, 2013, addressed to the fourth representor. Moreover he has directed by means of hyperlinks those who read his blogs to view the blogs of others. We are also satisfied that the respondent has allowed others to post on the respondent's blog comments by third parties which disclose the identities of one or other of the representors and contain defamatory and/or offensive material relating to the representors. We refer to paragraph 8 to 13 of the affidavit sworn by the fourth representor on 20th September, 2013.

12. In addition we accept that the respondent has made clear by his comments when interviewed by the media that he has no intention of removing postings from his blog as he has been ordered to do by the Court. Further he has indicated an intention to publish more postings on his blog in contravention of the orders made by the Court. We refer to paragraphs 14 and 15 in the fourth representor's affidavit sworn on 20th September, 2013.

13. We are entirely satisfied that the respondent has deliberately and persistently breached orders made by the Court and that he has indicated an intention to do so in the future.

14. The question which we have to decide is what penalty we should impose upon the respondent. Advocate Robertson invites us on behalf of the representors to punish the respondent for what we are satisfied amounts to persistent and wilful contempt of the Court and deliberate breaching of orders made by the Court for which no apology or expression of regret has been made by the respondent.

15. On behalf of his clients Advocate Robertson rightly indicated in the course of his oral submissions that for the continued and deliberate flouting of orders made by the Court, it was a matter for us to decide what punishment should be imposed.

16. In that regard we were referred to Taylor-v-Chief Officer of States of Jersey Police and anor [2004] JLR 494, at paragraphs 29 & 30, for the proposition, which we accept, that the test for determining whether an alleged contemnor has been guilty of contempt is an objective one. Intention is relevant only to the question of penalty. As we have made clear we are satisfied beyond doubt in the present case that the respondent has deliberately breached orders of the court over a prolonged period.

17. Amongst other authorities cited by Advocate Robertson was Caversham Trustees-v-Patel and ors [2007] JLR N 60. The court in that case indicated that a custodial sentence would be imposed for ***"a blatant and aggravated contempt"*** particularly in cases where the contemnor has been clearly warned as to the possible consequences of defying an order.

18. We were also referred to A-v-G [2009] JRC 116, where a sentence of 8 weeks' imprisonment was imposed on a father who removed his child to Italy in breach of an order of the Jersey Court. We note that in paragraph 22 of that case the Court referred to an observation made by Sir Thomas Bingham M.R. (as he then was) in Delaney-v-Delaney [1996] QB 387 at 400 where a judge is uncertain what sentence he should impose, he can impose a sentence at the top of the appropriate bracket while at the same time directing that the matter be restored for further hearing. At that further hearing it would be open to the judge to:-

    (i) affirm the original sentence;

    (ii) order the immediate release of the contemnor; or

    (iii) set a further date for the release of the contemnor.

    As the court in Delaney observed this course enables the Court to review the sentence whilst at the same time giving the contemnor every incentive to purge his contempt.

19. Advocate Robertson also referred us to an English authority namely Burton-v-Winters [1993] 3 All ER 847. Whilst we see the benefit of adopting the course suggested in Delaney, namely that a sentence at the top of bracket coupled with an opportunity for the court subsequently to review that sentence would or might coerce a defendant to comply with a court order, we are doubtful if the respondent in the present case would be coerced by such an order into obedience in the future.

20. In the present case we are satisfied that the contempts committed by the respondent have been persistent and deliberate and have, we are satisfied, caused real distress to the representors. No apology or expression of regret has been forthcoming. We cannot avoid the conclusion that a custodial sentence is essential in the circumstances of this case.

21. We have concluded that the only appropriate sentence in all the circumstances of this case is a custodial one. The sentence of the court is one of 3 months' imprisonment.

22. As regards the costs of the application to commit we accept that the appropriate order is that the costs of the representors are paid by the respondent on an indemnity basis, to be taxed if not agreed.

Authorities

Taylor-v-Chief Officer of States of Jersey Police and anon [2004] JLR 494.

Caversham Trustees-v-Patel and ors [2007] JLR N 60.

A-v-G [2009] JRC 116.

Delaney-v-Delaney [1996] QB 387.

Burton-v-Winters [1993] 3 All ER 847.

[redacted]

“Note book entry made of 25th July, 2007

16.00. I am at HQ having just returned from a meeting of the CMB (Corporate Management Board.) During the meeting BO (Bill Ogley) said that he would wish some of us to remain afterwards to discuss the comments of the Health Minister Senator Syvret in relation to child protection issues. He told the full meeting that it was possible that the COM (Council of Ministers) would pass a notice of “no confidence” tomorrow and ask this to be confirmed by a full meeting of the States specially convened for that purpose. This would result in Senator Syvret having to leave Office. It was also mentioned that the island’s Child Protection Committee (C.P.C) was meeting that afternoon and I was asked if we would be represented. I got the impression that those present saw that meeting as particularly significant, and felt that “something was going on” which others knew about but I did not.

I said that I did not know about the meeting (I would not usually know) and that I assumed Insp. Fossey (Detective Inspector Alison Fossey) who BO knows and we both referred to as “Alison” would be representing the force.

After the meeting, myself, TMcK (Tom McKeon, Chief Officer Education, Sport & Culture) and MP (Mike Pollard, Chief Officer, Health & Social Services) and Ian C (Ian Crich, Director, States HR Department) remained behind. I was handed a copy of a report to Ministers and associated papers, which I have stamped and initialled. The discussion was led by BO who disclosed that the C.P.C would, this afternoon be discussing a vote of no confidence in the Minister. MP and TMcK did not seem surprised at this. MP seemed to be fully signed up to this course of action.

Attempts were made by BO to draw me into this. I was told that my people were “part of” the island’s arrangements and I should show collective support by opposing the criticism made by the Minister. I was taken aback by this but responded in two ways. Firstly I said leaving aside issues of style and manner the questions raised by the Minister were valid. Particularly in respect of the time it had taken for the abuse of a [child] in [a] case to come to the notice of the police and the apparent failure of child protection to give it priority. I said that the SCR (Serious Case Review) was a poor effort which missed the hard questions and I was not surprised that the Minister was not impressed. I

conceded that all of the questions might have answers, I just thought they were good questions and ones which a Minister could validly ask. There was also some discussion of the Victoria College and Holland cases which was not central to the issue.

BO and the others were persistent and I was left with the clear impression that they were attempting to draw me, in my capacity as Chief of Police, into a civil service led attempt to remove a Minister from Office.

Having concluded this I then moved on to my second point which was that even if I agreed with everything they said I would still have nothing to do with it. They were engaging in what I saw as political activity and it was entirely inappropriate that I should be involved one way or the other. The fact that "I will have nothing to do with this" was made clearly. At this point BO said "in that case, goodbye", or something very similar. I picked up my papers. There was no bad feeling or bad words, we just disagreed. As soon as I was outside I rang SDV (Shaun Du Val, Head of Operations) and alerted him to the possible problems at the C.P.C. AF rang me not long afterwards and told me that she had abstained. I told her to put this beyond all doubt by a follow-up e-mail to the Chair. I made this notebook entry then walked over to Ops for it to be timed in the relevant machine.

Graham Power, 16.39, Wed. 25th July 2007."

POLICE CHIEF GRAHAM POWER'S LETTER OF COMPLAINT TO JERSEY PARLIAMENT'S PRIVILEGES & PROCEDURES COMMITTEE

Dear Chairman,

Outcome of my appeal under the Administrative Decisions (Review) (Jersey) Law 1982. Complaint arising from the disclosure of information regarding the events preceding my suspension.

This letter arises from the recent disclosure of information regarding the times and dates on which documents relating to my suspension from duty were actually created. You will be aware that this information was first requested by me in November 2008, and that its release has been consistently opposed by the Chief Minister and others. You will also be aware that as a result of a hearing before the Complaints Board under the above law, the information has now been released.

Enclosed with this letter are documents relevant to the complaint which will be set out below. It is believed that the documents are largely self explanatory and that it is not necessary to repeat the content in any detail. The relevant documents are:

1: A copy of the document bundle setting out details of my appeal to the Complaints Board at a hearing on 16 September 2009, which was conducted in accordance with the law set out in the heading to this letter. My application to the Board related to the refusal of the Chief Minister to disclose details of the times and dates on which certain documents relating to my suspension from duty were actually created.

2: A copy of the findings of the Board published on 14 October 2009 and presented to the States on 20 October 2009.

3: A copy of a letter from the Director of Information Services dated 19 October 2009 providing the information requested in the initial application.

It is requested that the Committee study all of the attached documents in conjunction with this letter.

In my application to the Board I summarised what I described as the "Official Version" of the events which led to my suspension. I can find no record of any claim on behalf of the Chief Minister or others that the "Official Version" was not effectively summarised in my application. In brief, the "Official Version" of the sequence of events is that on 10 November 2008 the Deputy Chief Officer, Mr David Warcup, wrote to the Chief Executive, Mr Bill Ogley, expressing concerns regarding aspects of the management of the Historic Abuse Enquiry, (document bundle page

28.) This was received on 11 November 2008 by Mr Ogley who, the same day, wrote to the then Minister for Home Affairs, Deputy Andrew Lewis, enclosing a copy of Mr Warcup's letter. (Statement of W Ogley, document bundle page 30.) In his statement to Wiltshire Police Mr Lewis states "Up until I received the letter from David WARCUP, I had no reason to believe that they were not managing the investigation well." (Statement of A Lewis, document bundle page 33.) The Minister for Home Affairs and the Chief Executive along with other Ministers and Civil Servants attended a presentation and briefing the same evening, given by Mr Warcup and the then Senior Investigating Officer, Mr Mick Gradwell. The briefing on 11 November 2008 is said to have given details of the content of a press briefing which was to take place the following morning.

Ministers and others have consistently put forward the claim that the decision to initiate the disciplinary process was taken in consequence of information which came to the notice of the Minister for Home Affairs in the form of the correspondence received, and the briefing given, on Tuesday 11 November 2008. I understand from States Members that this line has been repeated during "in camera" discussions of the suspension. I also understand that it is the line taken in response to States members who have made individual enquiries.

Following almost a year of requests and applications, information has now been disclosed in relation to the times and dates when documents relevant to the suspension were created. It is self-evident that the facts now disclosed are incompatible with the "Official Version" of events.

The Disciplinary Process relating to the Chief Officer is set out in Article 9 of the Police Force (Jersey) Law 1974 and in the Disciplinary Code for the Chief Officer of Police, which sets out the process to be applied in the exercise of powers under Article 9. A copy of the relevant Disciplinary Code is at page13 of the document bundle.

It will be noted that no person other than the Minister for Home Affairs has any disciplinary powers in respect of the Chief Officer of Police, and that the disciplinary process can only be initiated by a letter from the Minister to the Chief Executive under paragraph 2.1.1 of the Code. The code does not appear to permit action on any other basis. Suspension powers are set out in paragraph 2.3.3 of the Code and are again, vested entirely in the Minister for Home Affairs.

It might now be appropriate to examine the information which has subsequently been disclosed. In the interests of consistency I have followed the sequence set out in the letter of the Director of Information Services dated 19 October 2009. All of the three letters referred to are dated 12 November 2008 and refer to information received on 11 November 2008. They can be found at page 21 of the document bundle. (It may be noted that the letters make reference to a review by the

Metropolitan Police. The comments made in the review were subsequently withdrawn by that force in respect of their use for suspension or disciplinary purposes.) The information which has now been provided in relation to the three letters is as follows:

(a) The letter from then Deputy Andrew Lewis to Mr Ogley initiating disciplinary action under paragraph 2.1.1 of the Disciplinary Code.

It is now disclosed that this was created at 1400hrs on Tuesday 11 November 2008.

This is the day on which it is stated that Mr Ogley received the letter from Mr Warcup, which he forwarded to the Minister for Home Affairs the same day. The time of the letter does however precede the presentation and briefing which took place later that day.

(b) Letter from the Minister for Home Affairs notifying me that the disciplinary process had been commenced.

It is now disclosed that this was created at 0844hrs on Saturday 8 November 2008.

This is three days before the receipt of the information which is claimed to have led to the decision to commence the disciplinary process, and three days before the creation of the letter from the Minister instructing the Chief Executive to take action under the Code. Former Deputy Andrew Lewis in his statement to the Wiltshire Police investigation claims that he instructed that the letter be drawn up on Wednesday 12 November 2008 and he is supported in this claim by Mr Ogley. (Document bundle pages 32 and 31.) The disclosure reveals that these statements are untrue.

(c) Written notification that I was suspended from duty

It is now disclosed that this letter was created at 0848hrs on Saturday 8 November 2008.

This date is three days prior to the receipt of the information which is alleged to have given rise to the suspension, and four days before the disciplinary meeting at which the Minister allegedly “decided” that I was to be suspended from duty. It should also be noted that the suspension letter was created three days prior to the letter which, under paragraph 2.1.1 of the code, is required to commence the disciplinary process.

While there remains uncertainty regarding some of the events surrounding the creation of the documents, it is evident that the “Official Version” of the decision-making process cannot now be sustained. The claim that the decision to suspend was a result of a proper process entered into in consequence of evidence viewed on 11 November 2008 is plainly false. Against this background and in the absence

of evidence to the contrary, the following questions would appear to fall within the remit of the Committee:

Whether any person in Government has made false and misleading statements to myself or persons enquiring on my behalf, during the suspension and disciplinary process which could have denied me my entitlement to fair treatment under the Disciplinary Code?

Whether the proper preparation of my defence has been wilfully impeded by false information provided from within the Island's Government?

Whether false and misleading statements have been made to the States and to those States members who have enquired about the integrity of the process?

Whether any person has made a false statement to the disciplinary enquiry?

Whether any person currently in office has been a party to a "cover up" of the facts which have now come to light?

Whether any person who had a duty to ensure that processes conducted under the law and the disciplinary code were carried out in a proper and lawful manner, failed in that duty?

In the light of the disclosures, the real reasons for the suspension must be regarded as uncertain. Clearly this is an unsatisfactory position to be in after a year, and places me at an unfair disadvantage in the preparation of my defence. The 1974 Police Law and the Disciplinary Code set out arrangements for the Political Oversight of the Chief Officer. There is a widely held view that these arrangements are imperfect. The absence of a Police Authority and of the checks and balances common in other jurisdictions are seen as significant defects. Nevertheless the Law and the Code, taken together, clearly identify the intention of legislators that the power of suspension should be vested entirely with the Minister for Home Affairs, and that this power should only be exercised through due process and the proper consideration of evidence.

If Ministers and others have colluded in a common endeavour to frustrate the intentions of the Law and the Code and to produce a misleading account of events, then this would be a serious matter. In the course of the Complaints Board Hearing, which was held in public, I had an opportunity to respond to the Chief Ministers submissions on the question of public interest. In doing so I said ***"Mr Chairman, if Ministers, assisted by Civil Servants, have, for whatever motive, put together a false account of events, and have produced paperwork and made statements to support that false account, and if others have subsequently become aware of what has been done, and have used their***

position to cover up the truth and attempt to prevent it from becoming known, then there is certainly an issue of public interest." In setting out the reasons why I believed that the Board should support disclosure I said ***"Finally on this issue, but certainly not least, there is the question of the integrity of government, and the degree of trust we can place in the statements made, and assurances given, by those in executive positions."*** The Committee will be aware that the Board found in my favour.

The Code of Conduct for Ministers requires them to act in accordance with the relevant laws and procedures and emphasises the importance of providing "accurate and truthful information to the States" (paragraph 3ii.) Additionally Ministers are required by the Code to be "as open as possible about all the decisions and actions that they take" (paragraph 3) and to "conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Jersey," (paragraph 8.) The Committee will be aware that the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, PAC and PPC) (Jersey) Regulations 2006, provides the Committee with the relevant powers to investigate any alleged breach of the Code.

It may be that I have provided sufficient information to enable the Committee to consider a way forward on this issue. However, in the hope that it may be helpful, I will offer some personal thoughts and additional information which may assist. On a straight reading of the available evidence it may occur to many people that the most likely probability is that the former Minister for Home Affairs knowingly provided an account which is distant from the truth. That may be the case, but there are other possibilities. One is that he was not the main author of the process. The known facts allow for an alternative explanation. That is, that the decision to suspend was in fact taken by others for motives of their own, and that the then Minister was brought in at the final stages to provide his signature, and thereby appear to legitimise a process which was conceived by others. Such an interpretation would of course raise the possibility of a "Government within a Government" in which unidentified and unaccountable individuals exercise power outside the parameters of the law. If that was the case then the constitutional implications would be significant. This would be particularly true in the context of a potential impact on the independence of a part of the Criminal Justice System.

In considering these issues the Committee might find it helpful to be alerted to the apparent relationship between the suspension, and what was said to the media and the outside world in general on Wednesday 12 November 2008. During the course of his enquiries on behalf of the Minister, the Chief Constable of Wiltshire has disclosed to me a number of documents. The two most relevant in respect of this issue are the draft media presentation script which was shown to me by Mr Warcup on 5 November 2008, my last working day before a short period of leave, and the

script actually used on 12 November 2008. There are significant differences between the two which must have resulted from changes made between 5 and 11 November 2008. For example, the draft script says "It has never been suggested by the States of Jersey Police that Child Murder took place at Haut de la Garenne." The script actually used in the briefings on 11 and 12 November 2008 says "Statements which were issued by the States of Jersey Police suggested that serious criminal offences had been perpetrated against children and also that there was a possibility that children had been murdered, bodies had been disposed of and buried within the home." Other differences between the scripts are of a similar nature. Against this background it is legitimate to consider another possible explanation for the actual sequence of events. That is, the decision to suspend was taken on or before 8 November 2008 by persons unknown for reasons at present unknown. The media script was then subjected to significant changes (I believe that "sexed up" is a popular term used to describe this type of process) in order to enable the Minister to claim that he took a decision after being shown the content of the presentation on 11 November 2008, and in order to conceal the real reason or purpose behind the action taken. This may or may not be what actually occurred. Until the truth is known we cannot be sure.

Finally, in assessing the integrity of Government actions in this matter the Committee may find it helpful to be reminded of the following:

Although the Royal Court, in considering my application for Judicial Review, was not able to formally pass judgement on the initial suspension, it did say "we feel constrained to voice our serious concern as to the fairness of the procedure apparently adopted by the Previous Minister." (Published judgement of the Royal Court, paragraph 19.)

It is a matter of public record that the Chief Executive has admitted destroying the original notes of the suspension meeting on 12 November 2008.

Although there may be insufficient information to formulate specific complaints against named individuals at this stage, I hope that the Committee will agree that there is a sufficient basis to provide reason to believe that one or more persons at the heart of Government have used their positions in order to engage in a deliberate abuse of process, and have made false and misleading statements to conceal their actions.

I am aware that complaints which are specific against serving Ministers should be addressed to the Council of Ministers. However, given the difficulty in identifying who is responsible for what, and the possibility that one or more members of the Council of Ministers may or may not be implicated, the Committee may agree that the general complaint against the conduct of Government falls within its remit and merits further enquiry.

Although some of the facts remain in contention it is believed that the following are not in dispute:

The suspension is almost one year old.

The public cost is reported to be in excess of half a million pounds and rising.

No disciplinary charges have been brought.

No hearing has been called.

No conclusion is in sight.

This matter is placed in the hands of the Committee in the belief that its remit covers the circumstances of this complaint and that the Committee will see the need to take further action. However, if the Committee considers that I should progress this matter by some other route then I will of course consider whatever is recommended, in consultation with my professional advisors.

I hope this is sufficient for your purposes at this time, and that you will ask if you need any further information.

Yours sincerely

Graham Power

Cc Dr I Brain, Chairman, Chief Police Officers Staff Association.
The Connétable of St Helier