

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Before the Honourable Mr Justice Treacy

B E T W E E N:



CAMPAIGN AGAINST ARMS TRADE

(an unincorporated association, claiming by its authorised officer, ANN FELTHAM)

Applicant

-and-

(1) PAUL MERCER

(2) LIGNEDEUX ASSOCIATES (a firm)

Respondents

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ORDER FOR AN INJUNCTION

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PENAL NOTICE

IF YOU THE WITHIN NAMED FIRST RESPONDENT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED

IF THE PARTNERS OF THE SECOND RESPONDENT DISOBEY THIS ORDER THEY MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED

**IMPORTANT**  
**NOTICE TO THE RESPONDENT**

You should read the terms of the Order very carefully. You are advised to consult a solicitor as soon as possible.

This Order prohibits you from doing certain acts, as set out below. You have a right to ask the Court to vary or discharge this Order. If you disobey this Order you may be held to be in contempt of court, and may be imprisoned, fined or have your assets seized.

**THIS ORDER**

1. This is an Order for an Injunction made against the Respondent dated 14 March 2007 by Mr Justice Treacy on the application of Campaign Against Arms Trade ("the Applicant"). The Judge read the witness statement listed in Schedule A and accepted the undertakings from the Applicant set out in Schedule B and the undertakings from Leigh Day & Co set out in Schedule C at the end of this order.
2. This Order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order.
3. There will be a further expedited hearing in respect of this order and further relief sought by the Applicant on 22 March 2007 ("the Return Date").
4. If there is more than one Respondent-
  - 4.1. unless otherwise stated references in this order to 'the Respondent' mean both or all of them; and
  - 4.2. this order is effective against any Respondent on whom it is served or who is given notice of it.

**ORDER FOR IMMEDIATE UNSWORN DISCLOSURE IN THE EVENT OF PERSONAL SERVICE BY A SOLICITOR**

5. In the event that this Order is personally served upon the First Respondent by a solicitor before 2.00pm on a weekday, the First Respondent shall immediately inform the solicitor of:

- 5.1. his full contact details and usual whereabouts including his current and intended residential and business addresses, mobile and fixed-line telephone numbers, email addresses and the location of any mail boxes or document storage used by him; and
  - 5.2. where he keeps his electronic or physical records and documents that do or may relate to CAAT.
6. In the event that this Order is personally served upon the First Respondent by a solicitor before 2.00pm on a weekday, the First Respondent shall within 4 hours of personal service of this Order upon him inform the Applicant's solicitors to the best of his information knowledge and belief of the names, addresses, email addresses and telephone numbers of the following persons (and any other information whatsoever which might help to identify, locate or contact such persons) that is to say :-
- 6.1. all persons who supplied the Respondent directly or indirectly with the email sent from Ann Feltham to the CAAT Steering Committee on 29 December 2006 ("the 29 December email").
  - 6.2. all persons who obtained or misappropriated the 29 December email from the Applicant or any of the members, employees or officers of the Applicant; and
  - 6.3. all persons who have received and/or supplied copies of the 29 December email.

#### **ORDER TO DELIVER UP DOCUMENTS**

7. The Respondent shall deliver up to the Applicant all copies of the following documents within his or its control by 4.30pm on the next working day after service of this Order upon him:
- 7.1. The 29 December email.
  - 7.2. Any document containing:
    - (i) part or all of the 29 December email; and/or

- (ii) routing and addressing information for (a) the 29 December email; and/or (b) any document containing part or all of the 29 December email; and/or
- (iii) any information showing or tending to show how the email came to be received by the Respondent; and/or
- (iv) any information identifying or tending to identify the persons who obtained or misappropriated the 29 December email from the Applicants and/or who supplied it directly or indirectly to the Respondent.
- (v) any information showing or tending to show who the Respondent has disclosed or communicated the contents of the 29 December email to, when any such disclosure or communication was made and to whom it was made; and/or
- (vi) any information relating to the circumstances in which the Respondent disclosed the 29 December email to BAE Systems Plc and/or to its Director of Security, Mr Michael McGinty including all documents relating to or evidencing any requests by BAE Systems Plc and/or its employees or officers for any privileged or confidential information belonging to the Applicant and including all documents relating to the terms upon which the Respondent was retained or requested by BAE Systems Plc to procure such documents.
- (vii) any information tending to identify the person or persons who have seen any of the documents or information referred to in sub-paragraphs (i)-(iv) above; and/or
- (viii) any privileged material belonging to the Applicant.

#### **ORDER TO PRESERVE DOCUMENTS**

8. Until the Return Date or further order of this Court, the Respondent must not delete or move any emails in any account controlled by him or it. Without prejudice to the generality of this order, this order extends to the email account davedurham417@googlemail.com, any

email account registered under or as part of the NTL account pm-home.ntlworld.com or as part of the internet account with IP address 80.46.36.232 registered with Tiscali UK Limited.

9. Until the Return Date or further order of this Court, the Respondent must not take any or any further steps to delete, destroy, damage, move out of the control of the Respondent or otherwise disable itself from being in a position to comply with any order for disclosure or delivery up of any of the following documents or records or information contained in them, or do anything which will have the effect of so doing:

- (1) Copies of the 29 December email.
  - (i) part or all of the 29 December email; and/or
  - (ii) routing and addressing information for (a) the 29 December email; and/or (b) any document containing part or all of the 29 December email; and/or
  - (iii) any information showing or tending to show how the email came to be received by the Respondent; and/or
  - (iv) any information identifying or tending to identify the persons who obtained the 29 December email from the Application and/or who supplied it directly or indirectly to the Respondent.
  - (v) any information showing or tending to show who the Respondent has disclosed or communicated the contents of the 29 December email to, when any such disclosure or communication was made and to whom it was made; and/or
  - (vi) any information tending to identify the person or persons who have seen any of the documents or information referred to in sub-paragraphs (i)-(iv) above; and/or
  - (vii) any information relating to the circumstances in which the Respondent disclosed the 29 December email to BAE Systems Plc and/or to its Director of Security, Mr Michael McGinty including all documents relating to or evidencing any requests by BAE Systems Plc and/or its employees or officers for any privileged or confidential information

belonging to the Applicant and including all documents relating to the terms upon which the Respondent was retained or requested by BAE Systems Plc to procure such documents.

(viii) any privileged material belonging to the Applicant.

(2) Any other non-public document or copies thereof prepared by or belonging to the Applicant or any of the members, employees or officers of the Applicant.

#### **ORDER TO PROHIBIT PROCURING OR COMMUNICATION OF CONFIDENTIAL INFORMATION**

10. Until the Return Date or further order of the Court, the Respondent shall not:
  - 10.1. intercept by any means the non-public communications of the Applicant or any of the members, employees or officers of the Applicant;
  - 10.2. solicit, receive or procure any confidential information or non-public document prepared by or belonging to the Applicant or any of the members, employees or officers of the Applicant;
  - 10.3. disclose to any third party (save for his legal advisors) any privileged or confidential information contained in any non-public document prepared by or belonging to the Applicant or any of the members, employees or officers of the Applicant.

#### **ORDER TO PROVIDE SWORN DISCLOSURE**

11. The First Respondent shall by 4.30pm on the working day after service of this Order upon him swear an affidavit and serve it on the Applicant's solicitors giving a full explanation as to:

- 11.1. how the 29 December email came to be received by the Respondent, identifying all persons (so far as the Respondent is aware) who have had sight of the email or who have been made aware of its content or who were involved whether directly or indirectly in the Respondent acquiring possession or control of the 29 December email and
- 11.2. identifying (to the best of his information knowledge and belief) all persons:-
- (1) who obtained or misappropriated the 29<sup>th</sup> December email from the Applicant and how they did so;
  - (2) all persons who supplied him directly or indirectly with the 29<sup>th</sup> December email and how they did so; and
  - (3) all persons who have received and/or supplied copies of the 29<sup>th</sup> December email and how they did so.
- 11.3. the steps that have been taken to comply with this Order;
- 11.4. the said Affidavit shall include (so far as the Respondent is aware) full contact details for any person referred to, including work and home addresses, email addresses and telephone numbers.

## **SECRECY**

12. Except for the purposes of obtaining legal advice, the Respondent must not directly or indirectly inform anyone of these proceedings or the contents of this Order, or warn anyone that proceedings have been or may be brought against him or it by the Applicant until the Return Date or further order of the court.

## **SELF INCRIMINATION AND PRIVILEGE**

13. If the provision of documents or information under this order is likely to incriminate the Respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the

information is a contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized.

14. Any material protected by legal professional privilege is excluded from this Order, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is a contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized.

#### **SUBSEQUENT USE OF 29 DECEMBER EMAIL AND OTHER PRIVILEGED MATERIAL**

15. The Respondent may not use, disclose or communicate the contents of the 29 December email or any other privileged material belonging to the Applicant to any other person save for the purposes of obtaining legal advice.

#### **SERVICE BY AN ALTERNATIVE METHOD**

16. The Applicant is granted permission pursuant to CPR 6.8 to serve this order and the Claim Form by email to 'davedurham417@googlemail.com'.

#### **COURT FILE**

17. Pursuant to CPR 5.4C(4), a non-party may not obtain a copy of any statement of case in the proposed claim between the Applicant and the Respondent until further Order.

#### **PROTECTIVE COSTS ORDER**

18. The Applicant is granted a protective costs order as follows:

18.1. No:

- (1) order for the costs of the application for this Order; or
- (2) for the costs of the hearing on the Return Date; or



- (3) order for damages pursuant to the undertaking given at paragraph 1 of Schedule B to this Order

shall be made that would require CAAT to pay more to the Respondent than the total aggregate sum of £8,000.

19. The Respondent is granted a reciprocal cost-capping order as follows:

19.1. No:

- (1) order for the costs of the application for this Order; or
- (2) for the costs of the hearing on the Return Date

shall be made that would require the Respondent to pay more to CAAT than the sum of £8,000 plus disbursements.

20. Save as aforesaid, the costs of the application for this Order are reserved to the Judge on the return date.

#### VARIATION AND DISCHARGE

21. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

#### INTERPRETATION OF THIS ORDER

22. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
23. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

## **PARTIES OTHER THAN THE CLAIMANT AND DEFENDANTS**

24. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

## **COMMUNICATIONS WITH THE COURT**

25. All communications to the court about this order should be sent to Room WG08, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6010. The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

**SCHEDULE A**

**WITNESS STATEMENTS**

The Applicant relied on the witness statement of Ann Feltham dated 13 March 2007

## SCHEDULE B

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

1. If the court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make, subject to an aggregate total limit of £8,000 in respect of this undertaking and any order for costs the Court may make in favour of the Respondent.
2. The Applicant will issue and serve upon the Respondent as soon as possible a Claim Form and Application Notice in the form of the draft produced to the Court.
3. The Applicant as soon as possible serve on the Respondent:
  - 3.1. copies of the Witness Statement and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application; and
  - 3.2. an Application Notice for continuation of the order and for further orders.
4. Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.

## SCHEDULE C

### UNDERTAKINGS GIVEN TO THE COURT BY LEIGH DAY & CO

1. On personally serving the order on the First Respondent, to explain in ordinary language the effect of the order, the penalties for contempt and that the First Respondent has the right to obtain legal advice.
2. Not to disclose any information received pursuant to paragraph 5 of the order to CAAT until further order of the Court.

**NAME AND ADDRESS OF CLAIMANT'S LEGAL REPRESENTATIVES**

The Claimants' solicitors are Messrs. Leigh Day & Co., Priory House, 25 St John's Lane, London EC1M 4LB, DX 53326 Clerkenwell Ref: RS/JB/CAAT, Tel: 020 7650 1200, Fax: 020 7650 1294, email: [jbeagent@leighday.co.uk](mailto:jbeagent@leighday.co.uk), Out of hours telephone: 07811 203793

IN THE HIGH COURT OF JUSTICE

HQ07X008

QUEEN'S BENCH DIVISION

Before the Honourable Mr Justice Silber

22 March 2007

B E T W E E N:



CAMPAIGN AGAINST ARMS TRADE  
(an unincorporated association, claiming by its authorised officer, ANN FELTHAM)

Applicant

- and -

(1) PAUL MERCER

(2) LIGNEDEUX ASSOCIATES (a firm)

Respondents

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CONSENT ORDER

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Upon the hearing of the return date of the order of Mr. Justice Treacy dated 14<sup>th</sup> March 2007

AND UPON the First Defendant by his Counsel undertaking by 4.00pm on Thursday 22<sup>nd</sup> March 2007 to provide as fully as he can the Claimant's Solicitors with the information requested in the letter dated 20<sup>th</sup> March 2007 (a copy of which is annexed to this Order).

IT IS HEREBY ORDERED BY CONSENT as follows :-

1. The hearing of the return date provided for in the Order of Mr. Justice Treacy dated 14<sup>th</sup> March 2007 be adjourned until Wednesday 28<sup>th</sup> March 2007.
2. The Order of Mr. Justice Treacy dated 14<sup>th</sup> March 2007 be continued until after the hearing of the adjourned return date on Wednesday 28<sup>th</sup> March 2007.
3. Costs reserved.

Signed

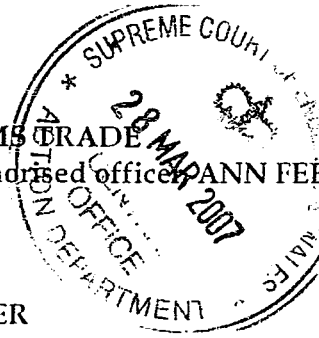
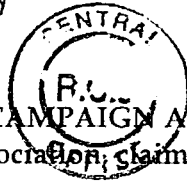
Signed

Anthony Peto (Csl Claimant)

Jonathon Caplan QC (Csl 1<sup>st</sup> Defendant)

QUEEN'S BENCH DIVISION

BETWEEN: Mr. J MACKAY



CAMPAIGN AGAINST ARMS TRADE  
(an unincorporated association) claiming by its authorised officer (ANN FELTHAM)

Applicant

-and-

(1) PAUL MERCER

(2) LIGNEDEUX ASSOCIATES (a firm)

Respondents

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CONSENT ORDER

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Upon the hearing of the adjourned return date of the order of Mr. Justice Treacy dated 14<sup>th</sup> March 2007

IT IS HEREBY ORDERED BY CONSENT as follows:-

1. The hearing of the return dated provided for in the Order of Mr. Justice Treacy dated 14<sup>th</sup> March 2007 be further adjourned until Monday 2<sup>nd</sup> April 2007.
2. The Order of Mr. Justice Treacy dated 14<sup>th</sup> March 2007 be continued until after the hearing of the adjourned return date on Monday 2<sup>nd</sup> April 2007.
3. Costs reserved.

Dated: 28-03-2007





IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

HQ07X00869

BEFORE THE HONOURABLE MR JUSTICE HOLLAND

CAMPAIGN AGAINST ARMS TRADE  
(An unincorporated association claiming by its authorised officer Ann Feltham)

Claimant

-and-

(1) PAUL MERCER  
(2) LIGNEDEUX ASSOCIATES (A firm)

Defendants

Upon hearing Counsel on behalf of the Claimant and Counsel on behalf of the Defendants  
And upon reading an Application Notice on behalf of the Claimant dated the 15<sup>th</sup> day of  
March 2007 for an Order that the Order of The Honourable Mr Justice Treacy dated the 14<sup>th</sup>  
day of March 2007 be continued until further Order and for delivery up of documents and an  
Application Notice on behalf of the Defendants dated the 30<sup>th</sup> day of March 2007 for an  
Order that the hearing of the application for Norwich Pharmacal relief on the 2<sup>nd</sup> day of April  
2007 be held in private and the identities of the parties be disguised in the Court listing

BY CONSENT

IT IS ORDERED that:

1. the hearing of the return date provided for in the Order of The Honourable Mr Justice Treacy dated the 14<sup>th</sup> day of March 2007 be further adjourned to Wednesday the 18<sup>th</sup> day of April 2007
2. the hearing of the Defendant's application number 071HQ0254 be adjourned to the same date
3. the Order of The Honourable Mr Justice Treacy dated the 14<sup>th</sup> day of March 2007 be continued until the hearing of the adjourned return date save that paragraph 12 thereof







be amended as follows:

“Except for the purposes of obtaining legal advice or for responding to any investigation conducted by a police officer the Serious Fraud Office the Attorney General or any other investigatory regulatory or prosecuting authority the Respondent must not directly or indirectly inform anyone of this Order or warn anyone that proceedings have or may be brought against him or it by the Applicant until the Return Date or further Order of the Court”

4. the Defendants do serve any further evidence in support of application 07IHQ0254 and do issue and serve any other application that they intend to make on the adjourned return date and any evidence in support by 4.30pm on the 12<sup>th</sup> day of April 2007
5. the costs of today be reserved

DATED the 2<sup>nd</sup> day of April 2007

***BY THE COURT***

1. First Respondent
2. PS Mercer
3. First
4. 19 March 2006

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

Before the Honourable Mr Justice Treacy

**BETWEEN:**

**CAMPAIGN AGAINST ARMS TRADE**  
(an unincorporated association, claiming by its authorised officer,  
**ANN FELTHAM**)

**Applicant**

-and-

**(1) PAUL MERCER**

**(2) LIGNEDEUX ASSOCIATES (a firm)**

**Respondents**

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**AFFIDAVIT OF MR PAUL SYMINGTON MERCER**  
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I, Paul Symington Mercer, of 53 Sparrow Hill, Loughborough, Leicestershire LE11 1BU, state on oath:

1. I am the **First Respondent** to these proceedings and make this affidavit in response to the Order of Mr Justice Treacy dated 14 March 2007 and served on me on Friday 16 March 2007. The facts set out in this affidavit are known to me save where otherwise indicated, in which case, they are true to the best of my knowledge and belief.
2. I graduated from Nottingham University in 1982 with an honours degree in Production Engineering and initially worked for the Adam

Smith Institute based in Westminster. I am a long-standing member of the ~~National Union of Journalists~~ and have worked as a freelance journalist and researcher since 1982. I have had published a number of books including two editions of Longman's *Directory of British Political Organisations* and six other titles. During my journalistic career, I have appeared on radio and television to discuss my area of expertise, namely political organisations. Between 1987 and 1991, I served as an elected Borough Councillor in Charnwood, North Leicestershire.

3. I have also been commissioned to carry out research for consumer PR companies and my clients have included Ignis Ltd. Most recently, I carried out research to assist with the UK launch of the film *Pirates of the Caribbean: Dead Man's Chest*.
4. Over the past 20 years, I have contributed articles to a range of national newspapers, including the *Observer*, *Sunday Times*, *Sunday Telegraph* and *London Evening Standard*. I have also had pictures published in national newspapers.
5. During my work for Longman's, I was responsible for researching British political organisations, over 4,500 of which I profiled for the *Directory of British Political Organisations*. The majority of these organisations received one or more letters from me asking for information about them. My name and my contact details were widely circulated and many of them continue to keep me updated about their activities.
6. I was subsequently invited by the BBC's then head of research, to carry out research into political organisations for BBC News. I subsequently signed a contract with the BBC to carry out this work.

### **Research**

7. Most of my research involves the automated searching of public websites and newsgroups. I also subscribe to a large number of publications and newsletters. Like any journalist I have a wide range of contacts to whom I can refer for assistance. I also sometimes receive material from anonymous sources, as do many journalists. It would not be unusual for individuals and organisations to send me information because they believe that I would be able to bring it to the public's attention.

### **Association with BAE Systems**

8. My contract with BAE Systems ("BAE") began two years ago. I was contacted by Rod Leeming from a management consultancy called Global Open Ltd, who said he had been approached by BAE because BAE needed someone to provide BAE's media and Internet monitoring requirement in order to examine potential threats to it. Such threats

came from a diverse range of groups including political interest groups. As a result of my knowledge of political organisations and as a consequence of my work for Reuters, I have a very good reputation for my ability to rigorously search the Internet. This knowledge has been used several times by companies who have commissioned me to advise them on which political organisations they should engage with.

9. As I preferred to have direct contact with BAE, it was decided that I would form a partnership for the purposes of my work for BAE. This partnership was given the off-the-shelf name LigneDeux Associates and, for the sake of convenience, was based at Global Open's accountants' offices.
10. In discussing the contract with BAE, it was agreed that I would use a pseudonym for transmitting messages to BAE – hence the email address “Dave Durham”. I asked to use a pseudonym because, if I used my real name, there would be a risk that protest groups and campaigners against BAE's interests might identify and target my family and me personally. I periodically alter these email addresses as a means of avoiding “spam” email.
11. On 2 January 2007, whilst clearing a backlog of Christmas post, I opened an envelope, sent via the Post Office using a UK postage stamp. I did not retain the envelope because I had no reason to think it necessary to do so at the time, nor did I notice from where it had been sent. Inside the envelope was a CD-R (i.e. a CD containing data) but no covering letter or note of any sort, and I had and still have no idea who had sent it to me.
12. I inserted the CD-R onto my PC at home. On that CD-R was a Word document file which contained a copy of the email from a woman called Anne Feltham to the Steering Committee of CAAT dated 29 December 2006 and what appeared to be an open letter sent on behalf of CAAT by Leigh Day & Co and which was addressed to The Prime Minister, The Attorney General and The Director of the Serious Fraud Office. Just as with the envelope, there was no indication on the CD-R who had sent it to me, but have no objection to CAAT examining it to see if they can ascertain any source.
13. I did not read the contents of the CD-R thoroughly, although I formed the view that, because of the apparent threat of legal action against BAE, the contents of the CD-R could present an external threat to BAE's business activities. The first half of the document appeared to me to be a discussion which had no direct relevance to BAE and there was nothing which suggested to me that I should not send it to BAE for any reason. The second half, however, appeared to be an open letter which was of relevance to BAE and fell within the criteria of my contract with them. I thought about the contents of the CD-R and decided that, based on my general knowledge of the matter from press reports, it

seemed likely to be genuine information. I am not a lawyer and have only a very general understanding of issues of legal privilege. However, there was absolutely nothing to suggest to me that the contents of the CD-R were privileged. In particular, it was not written by a lawyer, it was not on lawyer's headed paper nor was it marked as being subject to legal privilege. Since the information seemed to me to fall within the definition of the type of material which I was supposed to send to BAE, I decided that I should forward it on to Mr McGinty at BAE.

14. As my PC does not have a mailing programme, I copied the entire contents of the CD-R onto a memory stick and then transferred the contents of the memory stick to my laptop computer which is connected to the Internet. I then opened the Word document and cut and pasted its contents to an email addressed to Mr McGinty. As it was the holiday season, and Mr McGinty could be away, I also copied it to Martin Carroll at BAE to whom I was supposed to send any material which might require an urgent response. These emails were sent to Mr McGinty and Mr Carroll. Mr McGinty's email address was [REDACTED]@baesystems.com. I do not know his residential address but his work address is 1st Floor, Lancaster House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hants, GU14 6YU. His telephone number is [REDACTED]. His mobile telephone number is [REDACTED]. Mr Carroll's email address is [REDACTED]@baesystems.com. I do not know his residential address but his work address is 1st Floor, Lancaster House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hants, GU14 6YU. His telephone number is [REDACTED]. His mobile number is [REDACTED]. Shortly afterwards, I formatted the memory stick which had the effect of deleting the file.
15. On 5 January 2007 I telephoned Mr McGinty to check to see whether he had received my email. He expressed concern that it might be privileged. I expressed surprise and said that I did not think it was.
16. On 9 January 2007, I received an email from Mr McGinty, via my [davedurham417@googlemail.com](mailto:davedurham417@googlemail.com) account, informing me that "further to our conversation of last week regarding potential CAAT legal action, I would just confirm that we do not wish you to send us further unsolicited material of that nature. You may wish to know that our legal department have returned the material to CAAT's solicitors as they are obliged to do since it may contain legally privileged information".
17. At this point I contacted Mr Leeming about the contents of the CD-R to ask him whether he thought that it might be privileged. I sent him a copy of the email which I had sent to Mr McGinty and Mr Carroll in order to seek his opinion on the matter and to alert him to a potential problem. Mr Leeming's address is [REDACTED]. His email address is [REDACTED]. His telephone number is [REDACTED]. I do not have a

mobile telephone number for Mr Leeming. Mr Leeming agreed with me that the contents of the CD-R did not appear to be privileged and I understand that he subsequently deleted the email. I made no more copies of the contents of the CD-R and did not send it to anyone else.

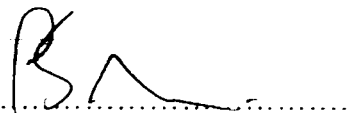
18. I wish to correct several factual points which Anne Feltham has raised in her witness statement of 14 March 2007.

19. In paragraph 9.9 of her witness statement, she refers to an anonymous posting on a website by someone who identified himself as 'Abdul Hussain' who was apparently researching a book on political extremists and was seeking information about me. Not only are his allegations of political extremism and of electronic espionage untrue and grossly offensive to me but I consider that they may be libellous. The emails from 'Abdul Hussain' were investigated at the time by Acting Detective Inspector Clive Blake of the Metropolitan Police's Computer Crime Unit who referred the matter to the FBI because they originated in the USA. It transpired that the emails were sent by an individual who held a grievance against me because he believed I had been responsible for an *Observer* newspaper article in 1991 about him. The message was part of an intense hate campaign of anonymous abuse: as well as me, his targets included the *Observer's* crime correspondent, my other solicitors (Ormerods) and a Member of Parliament. The latter subsequently raised his own concerns about the campaign with Commander Cressida Dick.

20. Most, if not all of Ms Feltham's information about me appears to have been obtained from searching the Internet. Yet she has managed to ignore any positive references to me, despite them being easy to find. For instance, on the uk.politics.misc newsgroup, the late Chris Tame, a leading libertarian, wrote that he had reviewed one of my books: "As I stated there, the *Directory* was undoubtedly written with "critical impartiality". It is a remarkably comprehensive and objective listing covering both the 'left', 'right' and 'centre', and it is clear that Mercer strove to be both accurate and fair. I concluded my review with the statement that 'No serious researcher will be able to do without (it)'."

21. Ms Feltham also failed to note that one can find many references to my books in the citations of various academic publications.

SWORN BY.....



Before me: JAMES MALONEY (SOLICITOR)  
66 LINCOLN'S INN FIELDS  
LONDON WC2A 3LH

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22 March 2007

Dear Sirs

### RE: CAAT –v- PAUL MERCER & LIGNEDEUX ASSOCIATES

1. Thank you for your letter dated 20 March 2007, and for your agreement to further time for us to reply to that letter.
2. We would like to begin by stating that Mr Mercer now realises it was inappropriate for him to provide the privileged material to his clients BAe and would like to apologise for this. He did not however appreciate its privileged nature at the time of its receipt because he understood privilege to be limited to correspondence between solicitors and client (and you will be aware that Mr Mercer is not legally qualified); and he did not, in any event, pay particular attention to it as the important part of the document, from his professional perspective, was the open letter from CAAT to the SFO, the Attorney-General and the Prime Minister.
3. We are sorry that you were disappointed with Mr Mercer's affidavit but would like to assure you that it represented an attempt to be as open and co-operative as possible in the limited time we had available.
4. In the circumstances, Mr Mercer is anxious to assist your enquiries and has instructed us to address in detail the matters raised in your letter in the hope that we can allay your understandable concerns.

IAN R. BURTON    HARRY A. TRAVERS    BRIAN SPIRO    MARK HASLAM    RICHARD SALLYBANKS  
JANE GLASS    ROBIN BOOTH    RACHEL HUBBARD    SAMANTHA J. MOORE    PAUL MORRIS  
Consultants:    CATHERINE M. MATHER    KAREN A. PEACOCK

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## Affidavit

5. You question Mr Mercer's assertion that he has no idea of the identity of the supplier of the CD-R, but we would remind you that Mr Mercer's professional specialism is political organisations (including pressure and campaigning groups across the political spectrum). In these circumstances, it is not unusual for unsolicited documentation relevant to his professional interests to be sent to him.
6. Further, we understand that documents indicating (inaccurately, at the time) a relationship between Mr Mercer and BAe were provided to the Sunday Times Insight team as long ago as October 2003 and that Mr Cole of CAAT (presumably, amongst others) was allowed to inspect those documents. Accordingly, you may be mistaken in your belief that the source of the leak of confidential information is someone from a small group who had been made aware of the more recent contract between LigneDeux and BAe.
7. On page 2 of your letter you make a number of requests for information under four bullet points. Mr Mercer is perfectly happy to provide the information you seek (although, for the reasons we have given, we believe that it may be of limited assistance to you).
8. The persons who are aware of the contract between LigneDeux and BAe (to the best of Mr Mercer's knowledge) are:
  - a) The six directors and shareholders of Global Open Limited whose details are set out in the Annual Return of the company at pp 106 to 113 of the exhibit marked AF1 to the statement of Anne Feltham dated 14 March 2007;
  - b) Michael McGinty of BAe;
  - c) Kate Hudson, Mr McGinty's assistant at BAe;
  - d) Martin Carroll of BAe;
  - e) Barry Jarvis, Mr Carroll's predecessor at BAe;
  - f) Peter Orwin, a partner, in and the auditor of, LigneDeux of [REDACTED] [REDACTED] (telephone: [REDACTED] [REDACTED]); and
  - g) Geoffrey Cole, Robert Melhuish, Claire McDonald, Susan (unknown), Georgina (unknown) at Geoffrey Cole & Co, the accountants for LigneDeux, of 4 Reading Road, Pangbourne, Berkshire, RG8 7LY.



9. You will appreciate that Mr Mercer will not be aware of the extent of the knowledge of the existence of the contract within Global Open, BAe or Geoffrey Cole & Co, or whether that knowledge of the existence of the contract has been imparted outside those concerns.
10. Mr Mercer collected the envelope on 30 December 2006 from Loughborough Delivery Office, Nottingham Road, Loughborough, Leicestershire LE11 1BX.
11. Mr Mercer ordinarily receives post at his newsagent's address at 53 Sparrow Hill. The reason for this arrangement is that postmen had previously found it difficult to locate Mr Mercer's home address and had occasionally simply disposed of correspondence addressed to him; and Mr Mercer's newsagent (from whom Mr Mercer purchases large numbers of publications) suggested that Mr Mercer use his address, which is easier to find, as a postal address. This arrangement continues.
12. Since the newsagent's shop was closed over the Christmas period, Mr Mercer's mail was returned to the Loughborough Delivery Office and Mr Mercer collected his mail from those premises.
13. Mr Mercer has previously received material from anonymous sources in the ordinary post, but nothing concerning CAAT.
14. You have enquired about the steps Mr Mercer took to analyse the CD-R and discover its source. He took no steps to analyse it other than to look at its physical appearance on its receipt (which merely established that it seemed to have been purchased from Tesco), and briefly check the properties of the file which it contained which failed to reveal anything of obvious significance.
15. You have also enquired about the steps taken by Mr Mercer to comply with the order of Treacy J. Those steps are set out in an annex to this letter.

## Disclosure

16. You indicate at the foot of p 2 of your letter that no documents have been provided concerning requests from BAe, its employees or officers for privileged or confidential information belonging to CAAT, and that no correspondence or other communications relating to the terms on which LigneDeux was retained to provide such information has been disclosed.
17. You will now be aware, of course, that the contract between BAe and LigneDeux did not, in fact, require the provision of privileged or confidential material; indeed, the contract specifically provided that communications or documents which were not publicly available were not required.
18. The negotiations prior to the contract were between BAe and Mr Leeming, on behalf of LigneDeux. Mr Mercer was not involved in those negotiations. He does not have, and has never had, any documents concerning the terms on

which LigneDeux was retained; save that the contract was sent to him along with a simple covering letter which he discarded.

19. Accordingly, the only document that has ever been in Mr Mercer's possession concerning the agreement between BAe and LigneDeux is the contract itself, of which you now have a copy. (In the unlikely event that you wish Mr Mercer to provide another copy he would, of course, be perfectly willing to do so.) The fees due from BAe for the services described in the contract are £2 500 per month.
20. Other than the email with which these proceedings are concerned, Mr Mercer has no knowledge of any confidential material concerning CAAT having ever been passed to BAe by him.
21. You point out, at the first bullet point on p 3 of your letter, that no documents containing part or all of the email have been delivered up in accordance with para 7.2(i) of the order of Treacy J, notwithstanding that it was forwarded to Mr Leeming. The explanation for this is that Mr Mercer does not retain sent items in his email accounts and, accordingly, does not possess such documents.
22. You point out, at the second bullet point on p 3 of your letter, that no routing or addressing information has been disclosed in accordance with para 7.2(ii) of the order of Treacy J. We think this may be mistaken as this was provided by our email to you dated 16 March 2007 sent at 13.41.
23. The email address used by Mr Mercer when sending the material from the CD-R that had been sent to him was davedurham417@googlemail.com; and the material was sent to [REDACTED]@baesystems.com (copied to [REDACTED]@baesystems.com) and to [REDACTED].
24. We understand routing information is only available from incoming emails and, since Mr Mercer received the confidential information by CD-R rather than email, routing information would not have been created.
25. You point out, at the third bullet point on p 3 of your letter, that no privileged material belonging to CAAT has been disclosed in accordance with para 7.2(viii) of the order of Treacy J. The explanation for this is that Mr Mercer does not possess any material relating to CAAT which is not publicly available. The material concerning CAAT that he holds consists of published copies of CAAT News, newspaper articles and books; he does not possess any other material relating to CAAT.

#### **Letter of 16 March**

26. In your fourth bullet point on p 3 of your letter you ask for the date on which the email account davedurham417@googlemail.com was closed. Mr Mercer cannot recollect with precision the date upon which the account was closed but confirms that it was after 12 March when Mr McGinty, in an unsolicited

telephone call to our client, informed Mr Mercer that BAe had released a copy of his email to CAAT containing the material from the CD-R. (For the avoidance of doubt, however, the account was closed before he became aware of the injunction against him.) The only email in the box when the account was closed was the email from Mr McGinty dated 9 January 2007 to which reference is made in both Mr Mercer's and Mr McGinty's affidavits.

27. Mr Mercer closed the email account because, if the email address became public, as was likely given Mr McGinty's affidavit, he anticipated that he could receive large quantities of spam and abusive emails.
28. In the fifth bullet point on p 3 of your letter, you ask us to confirm that proper steps have been taken to secure both his PC and lap top, and we are happy to do so. You have pointed out that Mr Mercer failed previously to disclose the existence of the PC pursuant to para 5.2 of the order; the explanation for this is that the PC does not contain any information regarding CAAT. The PC was simply used to open the CD-R that had been delivered and copy its contents onto the memory stick.
29. In the sixth bullet point on p 3 of your letter, you ask us to confirm whether Mr Mercer has taken any steps to disable himself from disclosing any of the documents listed in para 9 of the order of Treacy J, and we are happy to confirm that he has not done so.
30. In the first bullet point on p 4 of your letter, you ask us to inform you of any contact between Mr Mercer and BAe since 24 January 2007. There has been no such contact save for the unsolicited telephone call to which we have referred at para 26.

#### Generally

31. At p 4 of your letter, you indicate that you are concerned that Mr Mercer has not been open and, in particular, that he has not stated whether he holds any other confidential information about CAAT, or previously provided such information to BAe. The answer is that Mr Mercer believes that he holds no confidential information about CAAT, and that he has not previously provided such information to BAe (or, indeed, anyone else).
32. The explanation for the reformatting of the memory stick is simply that reformatting enhances the future performance of a memory stick (and, indeed, is a quicker process than deleting an individual item). Mr Mercer believes that he reformatted the memory stick a few days after the confidential information was sent to BAe.

33. It occurs to us that you may wish for Mr Mercer's computer to be examined. This is something which we would be prepared to consider, but an appropriate protocol for searching its contents and for funding the exercise would have to be agreed.

Yours faithfully

BCL Burk Copeland.

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30 March 2007

Dear Sirs,

**CAAT v Paul Mercer & LigneDeux Associates (IHQ07/00869)**

We write in response to your letter of the 27<sup>th</sup> of March 2007. As this letter was being completed for sending out on the evening of Thursday the 29<sup>th</sup> of March 2007, we received a further letter from you dated the 29<sup>th</sup> of March 2007 by email. In the circumstances, we respond below to both of those letters, starting with points 1 to 8 in reference to your letter of the 27<sup>th</sup> of March 2007 and then turning to the unnumbered paragraphs in your letter of the 29<sup>th</sup> of March 2007. Please note that we have had no opportunity, at the time of writing this letter, to take any instructions from our client in relation to the two attachments to your letter of the 29<sup>th</sup> of March 2007, but will do so as soon as possible.

We consider that Mr Mercer has complied very fully with the Order of the 14<sup>th</sup> of March 2007. Indeed, Mr Mercer has been keen to assist to the fullest extent possible. Notwithstanding his compliance but in the continued spirit of cooperation, we set out below answers to the various questions that you have now raised in your letter dated the 27<sup>th</sup> of March 2007.

## **1. CD-Rom Properties**

We understand this point to concern the ability of a user of some software packages (for example, "Microsoft Word") to use a function which displays, on a computer screen, certain information about a document, for example, the identity of the author and the number of characters or words in the document. Since you now have the electronic file, you are in a position to do exactly what Mr Mercer did, which is to utilise the "properties" function of whatever software package you open the document in. We do not understand a viewing of the "properties" function to create any file, nor to leave any record on the computer. Hence, there is nothing more in this respect for Mr Mercer to provide you with.

## **2. Pre-Contract Discussions**

At the outset, we should say that the use of the terminology "evasion and falsehood" is unfortunate. We feel sure that you do not intend to accuse Mr Mercer of any deliberate dishonesty in respect of a difference of opinion between Mr Mercer and Mr McGinty of BAe as to the degree to which Mr Mercer was involved in any pre-contract negotiations. Mr Mercer remains of the view that, as set out in prior correspondence, "the negotiations prior to the contract were between BAe and Mr Leeming, on behalf of LigneDeux. Mr Mercer was not involved in those negotiations". However, Mr Mercer did attend a single meeting with Mr McGinty and Mr Leeming at which he informed Mr McGinty of the services that he was capable of providing and how those services would be provided (including his use of an anonymous email address). Mr Mercer recollects that there may have been a short subsequent telephone call but does not believe that there was any other pre-contract contact. Mr Mercer did not view this as a part of the "negotiations" (which in his view were conducted by Mr Leeming). We trust that this explains any confusion that has arisen. There can be no suggestion of any "evasion" or "falsehood" here and it would have been pointless for Mr Mercer to seek to deceive on this issue, given its minimal significance.

We hope that, having carefully considered the above paragraph, you will not seek to pursue any further a request for the disclosure of details of "all communications between BAe and your client relating to CAAT". Even if the factual basis of your request (i.e. dishonesty) was made out, the information sought would be needlessly wide and would not in fact illuminate the issue upon which you base the application (the extent to which Mr Mercer was involved in pre-contract negotiations). Notwithstanding our desire to provide you with the fullest assistance, we refuse this request as being unreasonable.

### **3. Retention of Sent Items**

The wording of paragraph 21 was not intended to convey any meaning other than as expressed. Mr Mercer does not normally retain copies of messages that he has sent by email, either electronically or in hard copy. Mr Mercer is not aware that the deleted, sent messages are recoverable, but Mr Mercer is not and does not claim to be a computer expert. You are of course aware that Mr Mercer has already offered to make his computer available for analysis and that offer remains open. This would seem to deal entirely with your concern as to whether deleted messages might be recoverable because you have the opportunity to attempt to do so, if you wish.

### **4. Unsolicited Telephone Conversation**

Mr McGinty telephoned Mr Mercer between 4 and 5 p.m. on the 12<sup>th</sup> of March 2007. Mr McGinty informed Mr Mercer that he had been unable to speak to him (Mr Mercer) because legal proceedings had been in progress. Mr McGinty said that he was now able to do so because BAe had complied with certain orders in those proceedings. Mr McGinty said that he had provided an affidavit, could not remember the precise details but did say that it included Mr Mercer's name and other details, together with information about the contract between LigneDeux and BAe.

Mr Mercer commented to Mr McGinty that he had seen media reports about the litigation. Mr Mercer told Mr McGinty that he was surprised that BAe had not asked him for information as to how he had received the document and said that he would have been willing to provide the CD-R if asked. Mr Mercer told Mr McGinty that he thought that he might receive a letter from CAAT's solicitors which might be followed by CAAT tipping off the Guardian or the Sunday Times.

At that point, the conversation ended. Mr Mercer has done his best to reconstruct this conversation from memory and is content that this is as accurate a summary as is possible in the circumstances.

### **5. Google-Mail**

Mr Mercer can provide you with no more information from his own memory than he currently has provided. Mr Mercer has made some informal enquiries of Google as to the possibility of obtaining the information but has so far not been encouraged by the responses. However and to satisfy your concerns, Mr Mercer is prepared to agree to write and send a formal written request to Google, copied to you. You will therefore have complete satisfaction in knowing that Mr Mercer has done everything possible to obtain the information that you seek.

## **6. Paragraph 29**

Unfortunately, you have misunderstood this assertion. Mr Mercer has taken no steps to disable himself in the sense that he has not deliberately introduced any obstacles to disclosure. That is not a reference to the problems with disclosure not of Mr Mercer's making (for example, deleted emails). Mr Mercer cannot himself recover deleted emails.

## **7. Contact Since the 24<sup>th</sup> of January.**

We note that you do not challenge Mr Mercer's assertion, nor do you rely upon any evidence to the contrary. In the circumstances, we can see no utility in the production of telephone records. Whilst we are anxious to be as reasonable as is possible, we must also afford some measure of protection to Mr Mercer's confidentiality. We are not therefore prepared to grant access to Mr Mercer's telephone records. However, if you wish to provide us with details of the telephone number/s that you believe would show contact between Mr Mercer and BAe, together with a satisfactory explanation of why those numbers will assist in this process, we are prepared ourselves to examine the telephone records and inform you of the dates upon which there were calls to the telephone number/s (since the 24<sup>th</sup> of January), if any.

In the context of this question, Mr Mercer has sought to reappraise himself of the chronology of events. Mr Mercer recollects and wishes to bring to your attention that he was scheduled, on the 1<sup>st</sup> of February 2007, to meet with Mr McGinty. That meeting did not take place. When Mr Mercer arrived at the offices of BAe for the meeting, he was told by reception staff that Mr McGinty was out of the country. Mr Mercer telephoned Mr McGinty with the intention of asking him why he had not cancelled the meeting in advance. Mr McGinty did not answer his phone. Mr Mercer was telephoned later in the day by Mr Martin Carroll who apologised and said that Mr McGinty had been called away on urgent business. There was no discussion about CAAT's application.

## **8. Computer Imaging**

We note your position and look forward to a response on this point.

We turn next to your letter of the 29<sup>th</sup> March 2007. We propose to deal with the content of that letter under a number of headings below. We will use consecutive numbering following from (8) above for ease of reference.



## **9. Written Authority for Google-Mail Account**

We trust that we have already dealt with this matter to your satisfaction at point (5) above. The mechanism proposed, though slightly different, is to the same effect.

## **10. Consent in Relation to NTL and/or Tiscali Internet Accounts**

You provide no explanation to justify this request. There must be reasonable boundaries as to the intrusion into Mr Mercer's privacy that is acceptable in order to assist you to identify the person responsible for the leaking of the privileged information and this request trespasses significantly upon those boundaries. We would remind you that Mr Mercer has given you a full and frank explanation as to how the privileged document came into his possession. The content of his email accounts will not assist you in any way to take that explanation further. If you are not satisfied with the explanation and believe that the email accounts that you identify will take matters further, we would expect to see a cogent explanation of why that is so (particularly where such an unusual and extensive breach of Mr Mercer's privacy is sought). We refuse this request, though if you are able to identify any particular email that you have interest in and we are satisfied that your interest is pertinent to the issues on this application, we will give careful consideration to its provision to you.

## **11. Loughborough Post Office**

To the best of Mr Mercer's recollection, he visited the post office to pick up his mail on Saturday the 30<sup>th</sup> of December 2006 during the mid morning.

## **12. The Return Date**

We note that you are preparing a bundle of documents and a skeleton argument for the return date on Monday the 2<sup>nd</sup> of April 2007. In your letter of the 27<sup>th</sup> of March 2007, you reserved your position on applying for supplementary relief. At the time of writing this letter, we have had no indication from you as to whether you intend to do so. It may be, and we certainly hope, that the content of this letter is sufficient to dispose of any intention on your part (if you currently have such an intention) to apply for any further relief. We would therefore be grateful for an indication by return of whether you do intend to apply for any further relief and if so, the nature of that relief.

However, on any analysis Mr Mercer will not know until Friday the 30<sup>th</sup> of March 2007 what relief you seek against him. Mr Mercer will have little, if any opportunity to provide any further instructions. Counsel for Mr Mercer will have no opportunity to prepare a skeleton argument for filing in good time, nor

will Mr Mercer have any opportunity to file supplementary evidence if required. It is not appropriate to make any further applications without giving Mr Mercer sufficient notice to allow him to make proper representations. In the circumstances, we invite you to agree to an adjournment of the hearing listed on Monday the 2<sup>nd</sup> of April 2007. That will allow you to reflect carefully on the further information provided in this letter in relation to your specific questions and to consider whether in the light of this letter, you seek any further relief. Mr Mercer will then be able to respond properly to any residual matters. Indeed, the result of a careful consideration of this letter may be that no further hearings in this matter are required at all.

Having responded to both of your recent letters, we now turn to three issues that we wish to raise. Again, they are numbered consecutively for ease of reference.

### **13. Full and Frank Disclosure**

It has come to our attention, in the course of discussions with Mr Mercer, that he is known to CAAT, not only as a result of his publicised interest in this area but also because CAAT has, in the past, asked Mr Mercer to perform activities for it in July 1998 of a similar nature to those contemplated by his agreement with BAe (i.e. the provision of information). It does not appear to us that this information was presented to the court on the ex-parte application. It does appear to us that this information may have had considerable relevance for 2 reasons:

- (a) it is suggested by CAAT that any "mole" in the organisation would have had to have knowledge of the BAe contract in order to identify Mr Mercer as being an appropriate and useful recipient of the privileged document. The fact that Mr Mercer was sufficiently well known as active and interested in this area to be asked to assist CAAT in 1998 and indeed, the fact that he had assisted them, provides a very plausible explanation as to why the privileged document may have been sent to him.
- (b) it appears that the application against Mr Mercer seeks to raise an inference that there is something inappropriate or reprehensible in the activities that Mr Mercer has contracted to perform for BAe. The information that appears not to have been provided to the court on the ex-parte application would certainly show that CAAT have, at least on this occasion, engaged in not-dissimilar information gathering exercises of their own.

We would be grateful if you could clarify whether this information was drawn to the attention of the court on the ex-parte application and, if not, why not.

On the basis of this clarification, we will decide whether to rely upon this matter on the return date.

#### **14. Confidentiality**

By letter dated 19<sup>th</sup> of March 2007, you invited the court office to anonymise the title of the proceedings when listing the return date. Your reasoning for doing so was that it would frustrate the terms of the order to publicise the identify of the parties. By letter dated the 28<sup>th</sup> of March 2007, you appear to have entirely changed your position. Your justification appears to be that the return date hearing will be heard in public and that you will not be applying for privacy. However, the third bullet point in your letter (acknowledging the confidentiality of the order) is directly contrary to this assertion. It seems obvious that if the proceedings must be in private (because the terms of the order are confidential), the names of the parties ought to be anonymised. We will be writing to the court office today to make those points. We invite you to agree (in so far as it is not already clear) that the proceedings on Monday will be heard in private. If not, Mr Mercer will issue an application notice under CPR r39.3(a), (c) and (g), or r39.2(4) for the hearing to be heard in private or for his identity not to be disclosed, returnable at the hearing itself.

#### **15. Communication with Mr Mercer**

Though we have yet to take instructions from Mr Mercer in relation to your transcript of a telephone conversation between your Mr Stein and Mr Mercer on the 7<sup>th</sup> of March 2007, we note the following extract from that transcript:

*This is Richard Stein, I am solicitor I have got a High Court Order to serve on you do not hang up this telephone call until I have explained what it is or a High Court Judge may find you in contempt of Court for trying to evade this Order.*

We do not understand why a threat of contempt was made to Mr Mercer in circumstances where he could not possibly, at this time, have been aware of the nature of the court's order and in particular, that the order included a penal notice. We would be grateful for an explanation of the basis of this assertion.

Mr Mercer wishes to reemphasise the apology that he has already given to you for his inadvertent transmission of the privileged document to BAe and hopes to now draw a line under the matter. In our view, any residual concerns that you have ought to be entirely satisfied by this letter. There is no utility for either party in pursuing this matter further (without prejudice to the issue of full and frank disclosure that we raise above).

We seek your urgent response as to your proposals for the hearing on Monday, in the light of the content of this letter.

Yours faithfully

*BCL Burton Copeland*

**BCL BURTON COPELAND**