

**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL  
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE  
FREEDOM OF INFORMATION ACT**

**EA/2011/0081**

**BETWEEN:-**

**DAVID MOSS**

**And**

**THE INFORMATION COMMISSIONER**

**And**

**THE HOME OFFICE**

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**FURTHER WITNESS STATEMENT OF NICHOLAS SWAIN**  
**Open Bundle**

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I, Nicholas Swain, of IBM United Kingdom Limited, 76, Upper Ground, South Bank, London SE1 9PZ (hereinafter referred to as 'IBM') **STATE AS FOLLOWS:-**

1. I have already made a witness statement in this case on the 19<sup>th</sup> July 2011. This statement is to provide further information in response to points 4(i) and (ii) of the Tribunal's Directions dated 12<sup>th</sup> December 2012, which references paragraph 41 of my witness statement, and also to points 3(ii) and 3(iv) of those Directions.
2. The disputed report contains detailed information about IBM's methods, IBM systems design, and assessments of vendors and their products with which IBM decided not to proceed with further, as well as information relating to the supplier which it did decide to proceed with.
3. Points 4(i) and (ii) of the Tribunal's Directions of 12<sup>th</sup> December 2012 concerns the position of suppliers other than Sagem. It is apparent that the information request relates to Sagem's technology, whereas the report contains a great deal of information about technological solutions from other vendors which were not the subject of the request. Paragraph 40 of my previous witness statement referred to the harm that would be caused to IBM's business by releasing the report. In paragraph 41, I suggested that all information relating to suppliers other than the successful sub-contractor be removed and/or that the identity of the suppliers be redacted from any information released. However, I also stated that IBM's view was that this would only mitigate the harm to a very limited extent and that therefore IBM did not endorse this solution as a sufficient one.

4. IBM's position is still that the disputed document was provided to the Home Office in confidence and that release of any part of this report would harm IBM's commercial interests and the commercial interests of the biometric technology vendors who participated in the testing and contributed their proprietary and confidential information to the report. Further, IBM's view is that it is not necessary or appropriate to release the document identified above (with the resulting breach of confidence, infringement of copyright and harm to the commercial interests of IBM and the other vendors) in order that "the public can assess for themselves the reliability of the technology", as the original FOI request asked. It has made reference to the other information in the public domain about the effectiveness of such technology. This issue is further addressed below, in response to the Tribunal's points at paragraph 3 of its most recent Directions.
5. IBM's view is therefore that the entire report is protected from disclosure under the exemptions contained in sections 41(1) ("information provided in confidence") and 43(2) ("prejudice to commercial interests"), FOIA.

#### **Categories of information in the report**

6. That position notwithstanding, I have sought in this statement to identify the particular categories of information that are in the report and to briefly explain the harm that release of information in each category would cause.
7. Information in the report and annexes falls into the following categories. These categories are information about the:
  - Identities of the other vendors who were involved and were not selected by IBM as a sub-contractor ("Other Vendors");
  - Products of the above vendors ("Other Products");
  - Proprietary design information about IBM's system design or the products of the selected vendor, Sagem ("Design");
  - Performance of IBM's, Sagem's or other vendors' products ("Performance")
  - IBM's Security arrangements ("IBM Security");
  - IBM's methods ("IBM Methods");
  - IBM's pricing approach for the National Identity Scheme ("IBM Pricing").
8. The sections below address the reasons for not releasing each of the above categories of information, and relates them to the FOIA exemption engaged.

*Category: Other Vendors (sections 41 and 43(2), FOIA).*

9. Releasing the names of the vendors (other than Sagem) who were involved in these trials would harm their commercial interests. The fact that they were not selected

could imply to readers of the report that their products were inferior in a general sense to another vendors in other situations, where this may not be the case. As stated in my previous witness statement (para 30), this could be misleading as testing was performed solely to test performance in the specific context of the National Identity Scheme Requirements. When IBM wrote the report, it did not intend the results to be used for any other purpose. Furthermore, as these vendors were not chosen as part of our solution, there is no public interest in revealing their identities. It was also not requested as part of the FOI request. The information may technically be within the scope of the request, since it is contained in the report requested, but release would not, even arguably, further the purpose of assessing the reliability of the technology selected.

*Category: Other Products (sections 41 and 43(2), FOIA).*

10. My previous witness statement (paras 36-40) sets out why releasing the information relating to other vendors' products would harm both IBM's and the other vendors' commercial interests (FOI section 43(2)) and would release information that was given in confidence to IBM (FOI section 41(1)).

*Category: Design (sections 41 and 43(2), FOIA).*

11. The report contains information about the design of IBM's system and Sagem's products. Releasing information about these designs would be likely to harm IBM's or Sagem's commercial interests as competitors would then have access to that design information. Furthermore, this design information, particularly of IBM's systems, does not inform the public about the "*the reliability of the [multibiometric] technology*", as it does not address the subject of test results or performance.

*Category: Performance (sections 31, 41 and 43(2), FOIA).*

12. My previous witness statement (paras 22, 29 and 30), stated that releasing information relating to the performance of the products could be misleading, as the tests were carried out on a specific set of test systems, in tightly constrained conditions in order to demonstrate that a specific set of requirements were met, and those requirements have not been published. Therefore, the results do not represent the performance of these products in any other situation. In terms of the public interest requiring individuals to be able to "assess for themselves the reliability of the technology", IBM's view is that it is sufficient for the statement to be made that the requirements for the National Identity Scheme, as specified by the Home Office, were met.
13. IBM also notes that release of performance data will engage s31(1)(a) and (e), as the Home Office have identified.

*Category: IBM Security (sections 41 and 43(2), 31(1) FOIA)*

14. The report provides information about the security controls and methods that IBM used to safeguard the security of the data during the tests. Releasing information about the methods IBM uses to protect the security of its information could assist people who were trying to gain unauthorised access to IBM's information in the future and could therefore harm IBM's commercial interests. It could also assist people who were trying to gain access to Home Office data used in similar tests in the future. It is again not apparent that this information forms part of the information which the Appellant was seeking to secure access to, by his request.

*Category: IBM Methods (sections 41 and 43(2), FOIA).*

15. The report contains information about the methods that IBM used during the trials. IBM believes that its ability to carry out trials of this nature is a competitive advantage in the market and releasing details of the methods IBM employed in this testing would benefit its competitors in future situations where trials of this nature were carried out.

*Category: IBM Pricing (sections 41 and 43(2), FOIA).*

16. If information about how IBM prices its products for specific proposals were released then this could assist IBM's competitors when bidding for future work and therefore harm IBM's commercial interests. Again, even if the information is within the scope of the request, since it is contained in the document requested, release of such information plainly would not further the purpose of assessing the reliability of the technology.

#### **Other biometric trials that are in the public domain**

17. The Tribunals Direction 3 (iv) asked for more information "on other published trials" as referred to in para 60 of the Home Office submissions. My previous witness statement referred to the NIST trials. These are published on the NIST website ([www.nist.gov](http://www.nist.gov)) with a selection of papers on fingerprint, face, iris and multiple biometrics on the Biometric Evaluations Home Page ([www.nist.gov/itl/iad/ig/biometric\\_evaluations.cfm](http://www.nist.gov/itl/iad/ig/biometric_evaluations.cfm)).
18. NIST has published the results of extensive trials. The FpVTE 2003 trials on "1 to Many" matching capability involved 18 different vendors and the results were published in NISTIR 7123, available for download from the NIST website. More recently, NIST has been carrying out the PFT programme (from 2003 to February 2010) whose results are published on-line, and since February 2010 this has been carried on in the PFT II programme.
19. Since my first witness statement, there has also been a paper published by NIST in October 2011 as part of the PFT II ( NISTIR 7821 - PFT II Report - Plain and Rolled Fingerprint Matching).

20. In addition to NIST, there is the account of the Indian identity scheme (Role of Biometric Technology in Aadhaar Enrolment), published by the Unique Identification Authority of India in January 2012.
21. So it is clear that not only was there information available in the public domain at the time of the FOI request and its processing in January – March 2010, but information of this nature continues to be published and updated.
22. With this information available in the public domain for the public “to assess for themselves the reliability of the technology” and “inform the public debate on the reliability of the relevant biometric technology”, IBM sees no reason why it should be necessary to override the confidentiality agreement it had with the Home Office and bring about harm to itself and the other vendors, by the release of its report.

**The extent to which the report would inform the public debate**

23. The Tribunals Direction 3 (ii) asked for more information as to “*the extent, if any that disclosure would in fact inform public debate on the reliability of the relevant biometric technology*”. My previous witness statement in paragraph 30 stated that as the report, and the actual trials that were the subject of the report, were designed only to establish that the specific requirements of the National Identify Scheme could be met and as the relevant parts of those requirements had not been published, it would not only be of little value to the public, it would actually be misleading.

24. [CLOSED SECTION BEGINS]

TEXT REDACTED

25. [CLOSED SECTION ENDS]

The contents of this statement are true and accurate to the best of my belief and knowledge.

Signed: N. J. Swain

Dated: 20/2/2012