APPENDIX: THE RFI

10. The President directed as follows:

> *"I do not consider it to be reasonable to order the Respondents to reply to the lengthy and detailed RFI, served on 18 June, by 4 July, the date suggested by the Claimants. … The Respondents should append to their skeleton argument their outline responses to the RFI (for example, indicating why they say that any request is not exigible and when they will give a substantive response to any requests that they consider exigible)."*

11. The Respondents' outline position in respect of the RFI is as follows:

a. By way of preliminary observation, depending on the Tribunal's ruling on the temporal scope of the claim, various requests would fall away. For example:
   i. If the claim is properly limited to 1 year, then Requests 5-21 and 25-31 will fall away.
   ii. If the claim is properly limited to (say) 6 years, then Requests 14-21 and 25-31 will fall away.

b. As to the various legal submissions which are framed as questions in the RFI:
   iii. The Respondents answer to Request 32 "*Is the Respondents' position that it is lawful for the Security Service to purport to authorise agent participation in criminality?*" is (save for the words "*purport to*", of which the meaning is not understood) "*yes*". The Security Service's conduct is lawful. The Respondents intend to defend the claim.
   iv. Otherwise, it is inappropriate to make legal argument by way of an RFI.

c. Further, as the President envisaged in his directions, there will be orders made for disclosure and for evidence in due course (with legal argument, against that factual background, to follow at the final hearing). Whilst the Respondents fully recognise the relevance of the CLOSED/OPEN divide in this context, nevertheless the Respondents submit that they should be permitted to develop their case in the normal sequence of events. The proper determination of the lawfulness of the

Security Service's conduct is not best served by precipitously demanding answers to a host of (evidential and legal) questions.

d. Some of the Requests may be useful in terms of indicating the Claimants' desired scope of disclosure and evidence. In the first instance, the Respondents are content to provide, as part of their disclosure, the documents sought in Requests 2, 6, 8, 20, 21, 24, 25, 28, 31 40 and 43 (insofar as they exist and insofar as they remain within the temporal limits of the claim) in CLOSED or OPEN as appropriate.

e. Finally, and in any event:

    i. there are requests in the RFI which are plainly fishing expeditions. For example, Requests 37 and 38 supposedly relate to paragraph 4 of the Guidelines. That paragraph addresses the necessity of criminal activity. However, the requests seek to use this as a springboard to ask a series of questions in respect of tortious liability. Such questions are far removed from the matters in dispute and the relevant requests should not be allowed. The same applies to Requests 52, 53, 58 and 63, which again relate to tortious conduct.

    ii. there are requests in the RFI which are absurd. For example, Request 57 asks whether the Security Service notifies a constable in Northern Ireland in respect of each instance of criminality (undertaken, it will be recalled, by agents who are undercover in terrorist organisations). The answer to that request is "*no*".