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The verdict - Press watchdog rules against private investigator who was gathering intelligence on campaigners

Here is the verdict of the Press Complaints Commission which has dismissed complaints brought by a private investigator who covertly monitored campaigners

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The background to this ruling can be found [here](#).

The [Press Complaints Commission](#) has now considered the complaint from Ms Rebecca Todd. The objections raised were reviewed within the context of the article as a whole, taking into consideration the requirements of the Editors' Code of Practice.

After assessment the Commission has decided that no matters have been raised which show a breach of the Code. The more detailed reasons for the decision are [below].

Press Complaints Commission's decision in the case of

Todd v The Guardian

The article reported on the use of private security firms by energy companies to gather information. The complainant, Ms Rebecca Todd who featured in the article, was concerned that the article was in breach of Clause 1 (Accuracy), Clause 3 (Privacy) and Clause 10 (Clandestine devices and subterfuge) of the Editors' Code of Practice.

Clause 10 states that the press "must not seek to obtain or publish material acquired by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held private information without consent. Engaging in misrepresentation or subterfuge can generally only be justified in the public interest when the material cannot be obtained by other means." The complainant said that the newspaper had relied upon emails which appeared to have been obtained by illegal means, most likely hacking. Further, the newspaper had published a photograph of the complainant which she said was private as it was behind Facebook privacy settings which could not be accessed. The complainant's solicitor had informed the

newspaper prior to publication that it seemed these documents could only have been obtained by unlawful means.

The newspaper had confirmed in correspondence that it had not accessed the complainant's emails or downloaded a photograph of the complainant - the documents had been passed to it by environmental activists who had collated this evidence as part of their own investigations into suspicious activities in their movement. Although the newspaper said it could not be sure how the emails were obtained, its sources had given an assurance that they had not intercepted the complainant's private messages, and in respect of the photograph the newspaper understood that it had been obtained at a time when the privacy settings on Facebook made the photo accessible. Further, the Indy Media website showed a screen grab of the complainant's public profile page, which showed she had certainly made at least one photograph of herself generally available at a time when concerned environmentalists were looking into her activities. The newspaper explained that, since leaked material was likely by its nature to have been obtained without authority, it had considered carefully whether there was public interest in publishing it. In this case, it had taken the view that there was.

The Commission made clear that the issue of alleged intercepted communications is a serious matter which requires careful consideration in view of all the circumstances. It has previously ruled [*St Andrews' Healthcare v The Echo and Daily Gazette*] that there is a distinction to be made between information which a newspaper or magazine has sought or obtained itself, or has commissioned, and that which comes unsolicited via a leak. In this instance, there was no suggestion that the newspaper had itself used unlawful means to acquire the documents in question; rather, the documents had been passed to it by a third party. The complainant appeared to have accepted this. The Commission was not in a position to ascertain how the information had been obtained. However, the complainant had alleged that the material had been provided without authorisation and the newspaper had made use of this material in the article. As such, the newspaper had to demonstrate a sufficient public interest justification for publishing the article.

The Commission noted that the article was reporting on undercover methods allegedly used by corporate entities to monitor the manner in which environmental activists went about their activities. The article reported that revelations about undercover police officers in protest groups had caused a "furore" the previous month and had led to "four official inquiries into their activities". Against this background, the article was reporting that police chiefs "privately claim that there are more corporate spies in protest groups than undercover police officers", and that the president of the Association of Chief Police Officers had stated that "the deployment of uncontrolled and unrestrained players in the private sector" constituted a "massive area of concern". In this context, the Commission considered that there was a legitimate public interest in revealing the

undercover methods allegedly used by private sector companies to monitor public protests. With this in mind, the Commission took the view that the revelation of the information - which the newspaper considered to demonstrate that the complainant was involved in the surveillance of environmental activism on behalf of companies in the private sector - was justified in the public interest. It could not therefore establish a breach of Clause 10 (Clandestine devices and subterfuge).

In respect of the complainant's concerns under Clause 3 (Privacy) concerning the photograph, the Commission took into account the public interest justification. It noted that the image was said to have been publicly available on the complainant's Facebook page, and that it had also been published online by other media. While the Commission was unable to establish precisely the extent to which the photograph had been publicly available, it did not consider that the publication of this photograph - which simply showed what the complainant looked like and did not show her engaged in any intimate activity - constituted an intrusion into the complainant's privacy. Taking into account all the circumstances including the public interest in publishing the story outlined above, it could not establish a breach of Clause 3 (Privacy) of the Code.

Turning to the complainant's concerns under Clause 1 (Accuracy), the complainant said she did not consider that it was reasonable to portray her as a spy or insinuate that she conducted her business by illegal means. The newspaper had explained in correspondence that the point of its story was that the complainant was not working openly and used furtive means to gain the trust of environmental groups and thereby acquire the information she needed to serve her clients. It pointed out that the article did not actually state that the complainant was acting illegally. The Commission noted that the article made clear that the complainant's firm was hired by companies who were concerned about "'potential threats' to their business". The Commission noted that the complainant had had a full opportunity to reply, and the article included the following quote from the complainant's lawyers: "Our client has not obtained any confidential information nor has she been guilty of any dishonesty". In view of this, the Commission did not consider that readers would be misled into believing that the complainant had been acting illegally. It could not establish a breach of Clause 1 (Accuracy) in respect of this point.

The complainant said she had not pretended to be an activist or organised the infiltration of any private meetings, whereas the article had stated that she "pos[ed] as a supporter". The Commission noted that the article referred to examples of the complainant instructing people on how to behave at climate groups, with quotes such as: "Do not mention that your [sic] going to Munich - obviously they hate short haul flights". The article also reported that the complainant had instructed a colleague to "forward information about activists to two companies". As it appeared that information had been acquired without the environmental groups being aware of the purpose for

which it was to be used, the Commission considered that the newspaper was entitled to report that the complainant and her colleagues had "posed" as supporters. It could not establish a breach of Clause 1 (Accuracy) on this point.

The complainant said she had not signed up to private mailing lists. The Commission noted that the article alleged that the complainant had subscribed "to activist-only mailing lists to glean information" and had included a quote - attributed to an unnamed environmental activist - which stated that "[the complainant] and her colleagues 'couldn't have gotten subscribed without attending our meetings'". The newspaper had explained in correspondence that there appeared to be two ways of subscribing to mailing lists: the first was by going to the websites of the groups and signing up, and the second category of mailing list to which people could subscribe only by attending events of the group. The Commission was not in a position to ascertain the manner in which individuals could subscribe to the mailing lists in question. However, as the article had clearly reported the complainant's position that she had "subscribed to emailing lists through the websites of the environmental groups" and that "all the information she acquires comes from public sources", the Commission considered that readers would be aware of the complainant's position in this regard. It could not establish a breach of Clause 1 (Accuracy).

The Commission considered the complainant's assertion that she had not obtained any confidential information nor had she been guilty of dishonesty. While a quote from the complainant's lawyer to this effect had been included in the article, the Commission noted that the article reported that the complainant had been "snooping" on the emails of environmental activists. The remainder of the article clarified that the complainant had signed up to the mailing lists of a series of environmental groups which gave her "access to communications and advance notice of demonstrations", and reported she had "gained access to emails and meetings where tactics and strategies were discussed". While the Commission considered that the use of this word "snooping" was strong, it was satisfied that readers of the full article would be aware of the context in which the word had been used. With this in mind, it could not establish a breach of Clause 1 (Accuracy).

With respect to the complainant's statement that the article was wrong to refer to "dozens of Vericola communications", the newspaper said it had seen sixteen emails in all, which comprised those sent from the complainant's Vericola email account to Mr Bishop, as well as those between environmental groups and the complainant's alias accounts. While the Commission did not consider that the use of the term "dozens" was significantly misleading such as to breach Clause 1 (Accuracy) of the Editors' Code, it welcomed the newspaper's offer to correct this point.

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