

The first and second respondents by their solicitor says in response to the amended statement of claim dated 24 March 2015:

The parties

1. They admit paragraph 1.
2. They admit paragraph 2.
3. They admit paragraph 3.
4. They admit paragraph 4.

The applicant's journalism and sources

5. They have insufficient knowledge of paragraph 5 and therefore deny it.
6. They have insufficient knowledge of paragraph 6 and therefore deny it.
7. They have insufficient knowledge of paragraph 7 and therefore deny it.
8. They have insufficient knowledge of paragraph 8 and therefore deny it.
9. They have insufficient knowledge of paragraph 9 and therefore deny it.
10. They have insufficient knowledge of paragraph 10 and therefore deny it.
11. They have insufficient knowledge of paragraph 11 and therefore deny it.
12. They have insufficient knowledge of paragraph 12 and therefore deny it.
13. They have insufficient knowledge of paragraph 13 and therefore deny it.
14. They have insufficient knowledge of paragraph 14 and therefore deny it.
15. They have insufficient knowledge of paragraph 15 and therefore deny it.
16. They have insufficient knowledge of paragraph 16 and therefore deny it.

Dirty Politics and Rawshark

17. They have insufficient knowledge of when the applicant received the documents and if it is material to his claim, require him to prove it. They otherwise admit paragraph 17.

18. They have insufficient knowledge of paragraph 18 and therefore deny it.
19. They have insufficient knowledge of paragraph 19 and therefore deny it.
20. They admit paragraph 20.
21. They have insufficient knowledge of paragraph 21 and therefore deny it.
22. They admit paragraph 22.
23. They admit paragraph 23.
24. They admit paragraph 24.
25. They have insufficient knowledge of paragraph 25 and therefore deny it.
26. They have insufficient knowledge of paragraph 26 and therefore deny it.
27. In respect of paragraph 27:
 - 27.1 They admit that the applicant has publically stated he has been advised to return all the source materials obtained from Rawshark to him.
 - 27.2 They otherwise have insufficient knowledge of paragraph 27 and therefore deny it.
 - 27.3 They say further that the applicant has stated publically that he has had ongoing communication with Rawshark and Police believed that the applicant would therefore hold material that could identify Rawshark.
28. They have insufficient knowledge of paragraph 28 and therefore deny it.

Second respondent's investigation

29. They admit paragraph 29.
30. They deny that the second respondent knows that Rawshark and the applicant have an arrangement of confidence. They say further the second respondent is aware that that is what the applicant claims but the second respondent has no independent knowledge of it. They otherwise admit paragraph 30.

31. They admit that in order to ascertain if a document might disclose the identity of Rawshark or enable that identity to be discovered it is necessary to examine that document. They have insufficient knowledge of the remainder of paragraph 31 and therefore deny it.

The decision to search

32. They admit paragraph 32. They say further that that decision was taken by Detective Inspector David Lynch.

33. In respect of paragraph 33:

33.1 They admit that Detective Inspector Lynch was aware that the applicant had previously undertaken journalistic investigations into matters around New Zealand politics and had published some material.

33.2 They admit that Detective Inspector Lynch was aware that the applicant had been provided with illegally obtained documents from a person who became known as Rawshark and that those documents formed the basis of the book *Dirty Politics* which went on sale on 13 August 2014.

33.3 They otherwise deny paragraph 33.

34. They are not required to plead to matters of law and they do not plead to paragraph 34.

35. They are not required to plead to matters of law and they do not plead to paragraph 35.

Prior to applying for the search warrant

Bank information

- 35A. They admit paragraph 35A.

- 35B. They admit paragraph 35B.

- 35C. They admit paragraph 35C. They say further that they received information from Westpac New Zealand Limited that the applicant held accounts with them and other banks indicated that he did not.
- 35D. They admit paragraph 35D.
- 35E. They deny paragraph 35E.
- 35F. They admit paragraph 35F.
- 35G. They deny paragraph 35G.
- 35H. They deny paragraph 35H.
- 35I. They deny paragraph 35I.
- 35J. They deny paragraph 35J.

Other information

- 35K. In respect of paragraph 35K they say:
- 35K.1 They deny that the request did not otherwise explain the basis for asserting that Principles 11(e)(i) and 11(e)(ii) as found in s 6 of the Privacy Act applied.
- 35K.2 They otherwise admit paragraph 35K.
- 35K.3 They say further that in response to this request Trademe indicated that a production order would be required before information could be released.
- 35L. They admit paragraph 35L.
- 35M. They admit paragraph 35M.
- 35N. They admit paragraph 35N.
- 35O. They deny that a request was made to Air New Zealand on or about 29 September and say that it was made on 8 October 2014. They otherwise admit paragraph 35O.
- 35P. They admit paragraph 35P.

- 35Q. They deny paragraph 35Q.
- 35R. They admit paragraph 35R.
- 35S. They deny paragraph 35S.
- 35T. They deny paragraph 35T.
- 35U. They deny paragraph 35U.

Applying for the search warrant

- 36. They admit paragraph 36. They say further that the application was made by Detective Sergeant Simon Beal on 30 September 2014.
- 37. In respect of paragraph 37 they say:
 - 37.1 They admit that Detective Sergeant Beal was aware that the applicant had previously undertaken journalistic investigations into matters around New Zealand politics and had published some material.
 - 37.2 They admit that Detective Sergeant Beal was aware that the applicant had been provided with illegally obtained documents from a person who became known as Rawshark and that those documents formed the basis of the book *Dirty Politics* which went on sale on 13 August 2014.
 - 37.3 They otherwise deny paragraph 37.
- 38. They are not required to plead to matters of law and they do not plead to paragraph 38.
- 39. They deny paragraph 39.
 - 39.1 To the extent that paragraph 39.1 pleads a matter of fact, they deny it. They are not required to plead to matters of law and do not plead to the remainder of paragraph 39.1.
 - 39.2 To the extent that paragraph 39.2 pleads a matter of fact, they deny it. They are not required to plead to matters of law and do not plead to the remainder of paragraph 39.2.

- 39.3 To the extent that paragraph 39.3 pleads a matter of fact, they deny it. They are not required to plead to matters of law and do not plead to the remainder of paragraph 39.3.
- 39.4 To the extent that paragraph 39.4 pleads a matter of fact, they deny it. They are not required to plead to matters of law and do not plead to the remainder of paragraph 39.4.
- 39.5 To the extent that paragraph 39.5 pleads a matter of fact, they deny it. They are not required to plead to matters of law and do not plead to the remainder of paragraph 39.5.
- 39.5A They admit paragraph 39.5A
- 39.5B They admit the search warrant sought the power to access certain email accounts. They otherwise deny paragraph 39.5B.
- 39.6 They are not required to plead to matters of law and they do not plead to paragraph 39.6.
- 39.7 They are not required to plead to matters of law and they do not plead to paragraph 39.7.

The issuing of the search warrant

40. They admit paragraph 40.
41. They have insufficient knowledge of paragraph 41 and therefore deny it.
42. They admit paragraph 42.
43. They deny paragraph 43.
- 43.1 They deny paragraph 43.1.
- 43.2 They deny paragraph 43.2.
- 43.3 They deny paragraph 43.3
- 43.4 They deny paragraph 43.4

43.4A They admit the search warrant authorised the second respondent to access “The email account nicky@paradise.net.nz and/or any other such email accounts identified as being accessed by Nicky Hager.” They otherwise deny paragraph 43.4A.

43.5 They are not required to plead to matters of law and they do not plead to paragraph 43.5.

43.6 They are not required to plead to matters of law and they do not plead to paragraph 43.6.

Execution of the search warrant

44. They admit paragraph 44.

45. They admit paragraph 45. They say further that as a result of the applicant's privilege claim, those physical files and electronic devices were not examined.

45A. They deny the members of the second respondent executing the warrant began their search without giving the applicant a reasonable opportunity to claim privilege. They otherwise admit paragraph 45A.

46. They admit paragraph 46. They say further that privilege was not claimed in respect of [REDACTED] cell phone.

46A. In respect of paragraph 46A they say:

46A.1 they admit that members of the second respondent took photographs during the search and that the applicant's counsel asked to review the photographs before they were removed due to concerns about privilege and that that was done. Some photographs were deleted and those on a memory card added to the material to be sealed.

46A.2 They otherwise deny paragraph 46A.

46A.3 They say further that the applicant's counsel and daughter were not told that the photographs they were viewing were all the photographs and say that the applicant's counsel and daughter were aware that there were photographs on a memory card used by ECL officer Ian Donovan that they had not seen.

- 46B. They say that any undertaking given was only in respect of items where there was a claim of privilege. They say further that it was necessary to conduct a filtering of material at the house in order to determine what would need to be seized but an undertaking was given that all material that was claimed to be privileged and was seized would be sealed and not examined further until a Judge had determined the privilege question. They otherwise admit paragraph 46B.
- 46C. They admit paragraph 46C.
- 46D. They deny paragraph 46D.
- 46E. They admit that disclosure was resisted by the second respondent at a general level but deny that disclosure of the alleged breaches was resisted in particular. They otherwise admit paragraph 46E.0.
- 46E.1 They admit paragraph 46E.1.
- 46E.2 They admit paragraph 46E.2. They say further:
- 46E.2.1 that the search warrant allowed for the seizure of email accounts identified as being accessed by the applicant.
- 46E.2.2 it was believed that the applicant would have accessed an account that he had both the username and password for.
- 46E.2.3 an attempt was made to download the accounts and secure them on the hard drive as with other privileged material.
- 46E.3 They admit paragraph 46E.3.
- 46E.4 They have insufficient knowledge of paragraph 46E.4 and therefore deny it.
- 46E.5 They have insufficient knowledge of paragraph 46E.5 and therefore deny it.

- 46E.6 They deny that members of the second respondent had not identified the account as being accessed by the applicant and say that that was the conclusion they drew from the fact that he had the user name and password. They otherwise have insufficient knowledge of paragraph 46E.6 and therefore deny it.
- 46E.7 They deny paragraph 46E.7 and say that the search warrant allowed for the seizure of email accounts identified as being accessed by the applicant and that the warrant therefore gave the second respondent authority.
- 46E.8 They admit paragraph 46E.8.
- 46E.9 They admit paragraph 46E.9.
- 46E.10 They have insufficient knowledge of paragraph 46E.10 and therefore deny it.
- 46E.11 They admit paragraph 46E.11.
- 46E.12 They admit a member of staff at the National Cyber Crime Centre responded by email but otherwise deny paragraph 46E.12.
- 46E.12.A. They admit paragraph 46E.12.A. They say further that this was only for the purposes of determining if the site was active and a remote access search warrant should be obtained.
- 46E.12.B. They admit paragraph 46E.12.B.
- 46E.12.C They admit that Detective Abbott photographed the piece of paper. They otherwise deny paragraph 46E.12.C.
- 46E.13 They have insufficient knowledge of paragraph 46E.13 and therefore deny it.
- 46E.14 They admit paragraph 46E.14.
- 46E.15 They admit paragraph 46E.15.

- 46E.16 They admit paragraph 46E.16.
- 46E.17 They admit paragraph 46E.17. They say further that that these inquiries had to be made promptly due to time parameters telecommunications companies have for keeping their data and if information had been obtained then they would have asked Vodafone to secure and seal the information and deliver it to the High Court.
- 46E.18 They have insufficient knowledge of paragraph 46E.18 and therefore deny it.
- 46E.19 They admit paragraph 46E.19.
- 46E.20 They admit paragraph 46E.20.
- 46E.21 They admit paragraph 46E.21. They say further that the information has not been acted on, save as admitted at paragraphs 46E.21A-46E.21F below.
- 46E.21A. They admit paragraph 46E.21.A.
- 46E.21B. They admit paragraph 46E.21.B.
- 46E.21C. They admit paragraph 46E.21.C.
- 46E.21D. They admit paragraph 46E.21D.
- 46E.21E. They deny paragraph 46E.21E. They say further that investigations continue in to matters already known by the second respondent before the execution of the search warrant.
- 46E.21F. They admit paragraph 46E.21F.
- 46E.22 They admit paragraph 46E.22. They say further that this was done solely for the purpose of diagnosing internet connection issues.
- 46E.23 They admit paragraph 46E.23.
- 46E.24 They admit paragraph 46E.24. They say further that the relevant members of the second respondent believed that in order to comply

with the terms of the warrant, access was required to be via the applicant's own internet connection.

- 46E.25 They admit paragraph 46E.25. They say further that those notes were shown to the applicant's counsel during the execution of the warrant and he made no objections.
- 46F. They deny paragraph 46F.
47. They admit paragraph 47.
48. They have insufficient knowledge of whether the computers were the usual means by which the applicant conducted his work and therefore deny it. They otherwise admit paragraph 48.
49. They admit paragraph 49.
50. They admit paragraph 50. They say further that where material was not subject to a privilege claim it was copied and returned promptly.
51. In respect of paragraph 51:
- 51.1 They admit that the members of the second respondent who attended the execution of the search warrant were aware that the applicant had previously undertaken journalistic investigations into matters around New Zealand politics and had published some material.
- 51.2 They admit that the members of the second respondent who attended the execution of the search warrant were aware that the applicant had been provided with illegally obtained documents from a person who became known as Rawshark and that those documents formed the basis of the book Dirty Politics which went on sale on 13 August 2014.
- 51.3 They otherwise deny paragraph 51.
52. They admit paragraph 52.
53. In respect of paragraph 53 they say:

- 53.1 They are not required to plead to matters of law and do not plead to paragraph 53.1.
- 53.2 They are not required to plead to matters of law and do not plead to paragraph 53.2.
- 53.3 They are not required to plead to matters of law and do not plead to paragraph 53.3.
- 53.3A They deny paragraph 53.3A.
- 53.4 They are not required to plead to matters of law and do not plead to paragraph 53.4.
- 53.4A They deny paragraph 53.4A.
- 53.4B They deny paragraph 53.4B.
- 53.4C They deny paragraph 53.4C.
- 53.4D They deny paragraph 53.4D.
- 53.5 They are not required to plead to matters of law and do not plead to paragraph 53.5.
- 53.6 They are not required to plead to matters of law and do not plead to paragraph 53.6.

Nature of the privileged documents seized

54. They have insufficient knowledge of paragraph 54 and therefore deny it.
55. They have insufficient knowledge of paragraph 55 and therefore deny it. They say further that the second respondent had reasonable grounds to believe that material at the applicant's property would include evidential material relating to illegal access to Mr Slater's computer.
56. They have insufficient knowledge of paragraph 56 and therefore deny it.
57. They deny paragraph 57.
58. They have insufficient knowledge of paragraph 58 and therefore deny it.

59. They have insufficient knowledge of paragraph 59 and therefore deny it.
60. They are not required to plead to matters of law and do not plead to paragraph 60.

Impossible to particularise claim of privilege

61. They have insufficient knowledge of paragraph 61 and therefore deny it.
- 61.1 They admit paragraph 61.1
- 61.2 They have insufficient knowledge of paragraph 61.2 and therefore deny it. They say further that the applicant has said that he has a hard drive with copies of some material.
- 61.3 They have insufficient knowledge of paragraph 61.3 and therefore deny it.
- 61.4 They say further:
- 61.4.1 They deny paragraph 61.4.
- 61.4.2 The applicant in his affidavit deposes that some of the material was contained on a backup hard drive that he still has access to. They otherwise have insufficient knowledge of what access the plaintiff might have to his electronic records.
- 61.4.3 The applicant's counsel photographed the physical documents seized and the applicant accordingly has a copy of them or access to a copy of them.
- 61.5 They have insufficient knowledge of paragraph 61.5 and therefore deny it.

Property sought to be returned

62. They admit paragraph 62. They say further that some property belonging to [REDACTED] has been returned. They say further that a variation to the original Court order for the cloning and return of the applicant's property has not been able to be agreed between the parties.

63. They admit paragraph 63. They say further that some property belonging to [REDACTED] has been returned and a variation to the original Court order for the cloning and return of the applicant's property has not been able to be agreed between the parties.
64. They have insufficient knowledge of paragraph 64 and therefore deny it.
65. They are not required to plead to matters of law and do not plead to paragraph 65.