

**THE TRIAL CHAMBER**

**Case No:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis

**Date:** 10 July 2015

**Original language:** English

**Classification:** Public

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**Decision Dismissing Sabra Defence's Urgent Disclosure Motion Dated 3 July 2015**

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(Extract from Official Public Transcript of Hearing on 10 July 2015, page 106, line 1 to page 111, line 14)

On the 3rd of October, 2008, the United Nations International Independent Investigation Commission interviewed Witness PRH430. This was recorded in an investigator's note dated the 16th of October, 2008.

During the interview, the witness showed his mobile telephone contact list to the UNIIC investigators. This list contains over 1200 contacts, but investigators examined 111 of these before stopping. This is contained in an annex to the investigator's note.

In preparation for Witness 430's testimony during the week of the 13th of July, 2015, counsel for the accused Mr. Assad Hassan Sabra on the 18th of June, 2015, sent a letter to the Prosecution requesting disclosure of the full contact list.

In a letter on the 24th of June, the Prosecution responded, arguing that the full contact list did not form part of the witness statement and was therefore not subject to disclosure under Rule 110(A) (ii) , which requires the Prosecution to disclose to the Defence all material that it intends to use at trial.

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In a letter the following day, the 25th of June, 2015, counsel for Mr. Sabra reiterated their request for the full contact list, this time arguing that it was material to the Defence case under Rule 110(B) ; that is, it was material to the preparation of the Defence or it was possibly exculpatory under Rule 113, which requires the Prosecution to disclose information reasonably suggesting the innocence or mitigating the guilt of the accused or affecting the credibility of the Prosecutor's evidence due to possible contacts between the witness and telephone numbers of interest to their case.

The Prosecution sent another response letter on the 30th of June, submitting that counsel had not demonstrated how the full list was material to their case or relevant to the case at all.

Furthermore, the Prosecution argued that it had disclosed all materials subject to disclosure under Rule 113 and counsel had not demonstrated how the full contact list could possibly be exculpatory. Additionally, the Prosecution suggested that counsel could use materials already in their possession - specifically, call data records and the subscriber database - to pursue their investigations in this regard.

After receiving this response, counsel for Mr. Sabra filed a motion requesting, under Rules 110(A) (ii), 110(B), and 113, the immediate disclosure of Witness 430's full contact list. That was in filing F2045, entitled: Sabra urgent motion for disclosure re PRH430, dated 3rd of July, 2015. The letters between the parties are annexes A to D of the motion.

Counsel submitted that the contact list is material to its Defence case and it is disclosable under Rule 110(B) .Among the 111 telephone numbers annexed to the UNIIC investigator's note, counsel identified three "numbers of interest" they submit are relevant to their case as possibly -- as being possibly responsible for the assassination of the former Prime Minister Rafik Hariri in Lebanon on the 14th of February, 2005. Counsel considered it likely that the full list will contain more numbers of interest and is therefore material to their Defence preparations.

In contrast to the Prosecution's suggestion of its letter of the 30th of June, Defence counsel argued that having searched the call data records of Witness 430 and the subscriber database, they believe that the witness had contacted some of the numbers of interest that they had not yet been able to identify through the previously disclosed materials.

Essentially, counsel seek the full contact list to see whose specific numbers are listed in Witness 430's telephone and if any more are actually listed.

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Second, to the extent that the full contact list can, as described, help them identify the users of phones of interest to their case, counsel submitted that the full list is possibly exculpatory and therefore subject to full disclosure under Rule 113.

Finally, counsel submitted that the full contact list forms a part of the witness statement and should have been disclosed under Rule 110(A) (ii) . They argued that the investigator's note did not record what questions were asked about the 111 contacts and a complete interview record should be disclosed, including the full contact list.

The Prosecution filed a response on the 8th of July, 2015, after the Trial Chamber shortened the dead-line to respond to deal with the matter before the witness testifies. That is filing F2054, Prosecution response to Sabra Defence urgent disclosure motion regarding Witness 430.

The Prosecution opposed the motion, arguing that the Defence had not shown the materiality of the full list to their preparations under Rule 110( B) . They did not seek the contact list information for their specific numbers of interest but rather for the entirety of the address book. According to the Prosecution, this request amounts to a "fishing expedition" and raises privacy concerns for the numbers in the contact list not of interest to the Sabra Defence.

Secondly, the motion did not demonstrate how the full list would be exculpatory and therefore subject to disclosure under Rule 113. Nor did the Defence explain how the unidentified owners of numbers of interest may have been involved in the assassination of Mr. Hariri, how their telephone numbers would be relevant to their alleged involvement in the attack, or how the full contact list could assist in attributing telephone numbers to individuals. The claim for disclosure under Rule 113 was therefore speculative and unsubstantiated.

Finally, the Prosecution submitted that the full list was not a part of the record of interview and the witness statement and was therefore not subject to disclosure under Rule 110(A) (ii). It was neither shown to Witness 430 during his interview nor discussed with him. The parts that were discussed, that is, the 111 contacts, were annexed to the investigator's notes and disclosed to the Defence.

The Prosecution made several other observations, stating the Defence had not shown a good cause for the late urgent motion. The note had been disclosed to the Defence on the 14th of November, 2012 therefore this urgency was caused by the Defence's lack of diligence.

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Also, the Prosecution criticized the Defence's incorporation of submissions by reference to previous filings, ignoring the Trial Chamber's rulings on these submissions and improperly circumventing the Practice Directions on the word limits.

Finally, the Prosecution criticized the 1 Defence's filing a classified motion without providing a factual and legal basis for doing so.

In the Trial Chamber's view, counsel for Mr. Sabra have not demonstrated why the full contact list is material to their Defence preparations or how it could be exculpatory. Counsel seek the full list because it might contain contact details for numbers allegedly relevant to the Defence case. However, they did not ask for the contact information listed in Witness 430's phone for any specific number. Instead, they requested the entire list in case additional numbers of interest happen to appear in it. From these submissions, the Trial Chamber cannot determine the materiality to the Sabra Defence case. So the Trial Chamber will not order disclosure under Rule 110(B). Further, the Trial Chamber agrees with the Prosecution's submission on privacy, as this raises privacy concerns for everyone else in Witness 430's contact list.

In the Chamber's view, the full contact list does not establish anything beyond that they were in the witness's telephone and the information he listed for them. There is therefore no basis for its disclosure under Rule 113.

Moreover, the submission that the full list should be considered a part of the witness's statement entirely lacks merit. The relevant parts that were discussed with the witness were attached in an annex to the investigator's note. There is no basis to say that the rest of the contact list should be considered a part of the witness's statement for the purposes of Rule 110(A) (ii) .

The motion is therefore dismissed. This decision, though, does not affect counsel for Mr. Sabra's ability to put their numbers of interest to the witness on cross-examination, to see whether he recognizes any numbers or identify possible users.

On the issue of confidentiality, the Trial Chamber, having gone through thoroughly the filings of counsel for Mr. Sabra, sees no reason why the motion was filed confidentially, the witness was referred to by a PRH number throughout and the filing contained no other protected information. Without the benefit of submissions stating the factual and legal basis for filing confidentially, the Trial Chamber orders counsel for Mr. Sabra to either re-file the

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motion confidentially or to submit a redacted public version with reasons for confidentiality, and that includes the annexes attached.

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