IPCO
Investigatory Powers Commissioner's Office

Gists are shown in italics and double underlined

[x – Redacted name of IPCO Inspector]

10 November 2017

Dear [REDACTION],

Thank you for your letter to [x] dated 16 October 2017. [x]'s draft inspection note was intended to provide the UKIC with a sense of our initial thoughts based on our inspections of 31 August and 5 September. The note provided no recommendations. Our intention is to follow up on these issues in our next round of inspections, including of GCHQ in December.

As you are aware, until 1 September 2017, BPD oversight was the responsibility of the Intelligence Services Commissioner and not the Interception Commissioner. Any briefings provided to Sir Stanley Burton and his inspectors would not have been seen by the Intelligence Services Commissioner. I am grateful for the information relating to Sir Stanley's oversight that you have drawn to our attention. This provides useful context, but does not touch specifically on BPD data. [REDACTION]

We have a different recollection of the discussion relating to the steps that would be taken by partners were sharing to take place. [REDACTION]

During the August inspection, we asked several members of staff about the considerations taken to minimise intrusion were sharing of datasets to take place. This question was intended to see whether officers would take steps to ensure the minimum necessary data was disclosed, as required by section 6.3 of the arrangements. This question was not answered in a way that gave us confidence that limiting intrusion would be a consideration. For assurance in this area, it would be valuable if in December GCHQ could clarify how personal data (DPA 1998) is represented within the datasets that might be shared, what considerations would be taken in relation to this data before disclosure, and what record would be kept of these considerations.

[REDACTION]

Sir Mark Waller's 2016 BPD inspections were consistent with this concern. At the first inspection of 2016 the Commissioner discussed with GCHQ an issue relating to confusion

about whether an authorisation was necessary for a subset of bulk personal data, 10% of which did not derive from communications or interception data. The authorisation was correctly obtained but the original error did constitute a breach of the handling arrangements. During the second inspection of 2016, the Commissioner questioned discrepancies between the list provided for selection and GCHQ's current holdings. Sir Mark noted that BPD holdings set for deletion, but not deleted, had not been identified on the selection list.

I recognise that GCHQ has worked to improve this issue, including revising your working definition of BPD. To improve our assurance of this area, it would helpful if in December you could provide more detail about the consultations between technical and legal officers in relation to BPD identification, and any record thereof. We are also very happy, as was suggested in August, to continue to engage with GCHQ on BPD definitions, and to do anything we can to raise awareness of this issue within GCHQ.

[REDACTION]

Finally, we raised the issue of providing relevant briefings on BPD to the Secretary of State. We do not consider that GCHQ sharing our pre-inspection choice letter with a Foreign Office official fulfils the requirement for Ministerial oversight set out in the handling arrangements (9.1). A clearer process of Ministerial engagement would give us greater confidence that the Secretary of State agrees that the activity is necessary and proportionate. We plan to raise this issue with the other agencies and Whitehall departments in more detail in due course.

I am copying this letter to [REDACTION] and [REDACTION] in the FCO, [REDACTION] in the Home Office, [REDACTION] in MI5, and [REDACTION] in SIS.

yours sincerely,

[signed]

Graham Webber