

SECTION 28 DATA PROTECTION ACT 1998

CERTIFICATE OF THE SECRETARY OF STATE

Whereas:

- (i) by section 28(1) of the Data Protection Act 1998 ("the Act") personal data are exempt from any of the provision of

- (a) the data protection principles;
- (b) Parts II, III and V; and
- (c) section 55

of the Act if the exemption is required for the purpose of safeguarding national security;

- (ii) by subsection 28(2) it is provided that a certificate signed by a Minister of the Crown certifying that the exemption from all or any of the provisions mentioned in subsection 28(1) is or at any time was required for the purpose there mentioned in respect of personal data shall be conclusive evidence of that fact;
- (iii) by subsection 28(3) it is provided that a certificate under subsection 28(2) may identify the personal data to which it applies by means of a general description and may be expressed to have prospective effect.

And Considering the potentially adverse repercussions for the national security of the UK were the exemptions hereafter identified not available

And for the reasons given in my public statement issued on 10 December 2001, in summary that: -

- 1 The work of the security and intelligence services of the Crown requires secrecy.
- 2 The general principle of neither confirming nor denying whether the Government Communications Headquarters (GCHQ) processes data about an individual, or whether others are processing personal data for, on behalf of, with a view to assist or in relation to the functions of GCHQ, is an essential part of that secrecy.
- 3 In dealing with subject access requests under the Data Protection Act 1998, GCHQ will examine each individual case to determine:-
 - (a) whether adherence to the general principle is required for the purpose of safeguarding national security, and
 - (b) in the event that such adherence is not required that the data subject has been informed that relevant data are being processed by or on behalf of GCHQ whether and to what extent the non-communication of such data or of any description of such data is required for the purpose of safeguarding national security.
- 4 The very nature of the work of GCHQ requires exemption on national security grounds from those parts of the Act which would prevent it for example passing data outside the European Economic Area and which would allow access to GCHQ's premises by third parties.

Now, therefore, I, the Right Honourable Jack Straw MP, being a Minister of the Crown who is a member of the Cabinet in exercise of the powers conferred by the said section 28(2) do issue this certificate and certify as follows: -

1. that any personal data processed by GCHQ as described in Column 1 of Part A in the table below are and shall continue to be required to be exempt from those provisions of the Act which are set out in Column 2 of Part A
2. that any personal data processed by any other person or body in the course of data processing operations carried out for, on behalf of, with a view to assisting or in relation to the functions of GCHQ under the Intelligence Services Act 1994 as described in Column 1 of Part B in the table below are and shall continue to be exempt from those provisions of the Act which are set out in Column 2 of Part B;
3. that any personal data processed by GCHQ as described in Column 1 of Part C of the table below are and shall continue to be required to be exempt from those provisions of the Act as are set out in Column 2 of Part C below; and
4. that any personal data processed by GCHQ as described in Column 1 of Part D of the table below are and shall continue to be required to be exempt from those provisions of the Act as are set out in Column 2 of Part D below

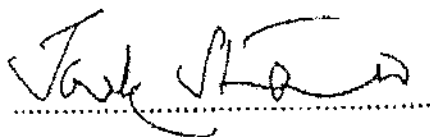
all for the purpose of safeguarding national security, provided that in respect of the data processed as described in parts A and B, in the attached Table: -

- (a) no data shall be exempt from the provisions of section 7(1)(a) of the Act if GCHQ, after examining any request by a data subject for access to relevant personal data, determines that adherence to the principle of neither confirming nor denying whether GCHQ holds data about an individual is not required for the purpose of safeguarding national security;
- (b) no data shall be exempt from the provisions of sections 7(1)(b), (c) or (d) of the Act if GCHQ, after examining any request by a data subject for access to relevant personal data, determines that non-communication of such data or any description of such data is not required for the purpose of safeguarding national security.

4. This certificate gives notice that I require GCHQ by virtue of my authority arising from Section 3(1) of the Intelligence Services Act 1994 to report to me on the operation of the exemptions described in this certificate.
5. This certificate in all respects supersedes the certificate, issued by the Secretary of State under Section 28(4) of the Act, in respect of GCHQ, dated 30th July 2000 and the said superseded certificate is hereby revoked.

PART A	
Column 1	Column 2
1. Personal data processed in the performance of the functions described in section 3 of the Intelligence Services Act 1994 ("ISA") or personal data processed in accordance with section 4(2)(a) ISA.	i) Sections 7(1), 10 and 12 of Part II; ii) Sections 16(c), 16(e), 16(f), 17, 21, 22 and 24 of Part III; iii) Part V; iv) the first data protection principle; v) the second data protection principle;
2. Personal data relating to the vetting of candidates, staff, contractors, agents and other contacts of GCHQ in accordance with the Government's security and vetting guidelines and policy including but not limited to:	vi) the sixth data protection principle to the extent necessary to be consistent with the exemptions contained in this certificate; and vii) the eighth data protection principle.
i) personal data obtained from other government departments or agencies, banks and financial institutions, personal referees and others;	
ii) personal data recorded, held, organised, adapted, altered, retrieved by or otherwise available to GCHQ;	
iii) personal data disclosed to or received from the Security Service, SIS, Civil Service departments, Government Agencies and others.	
PART B	
Column 1	Column 2
1. Personal data processed for, on behalf of, or with a view to assisting GCHQ in relation to the exercise of its functions as described in section 3 of the Intelligence Services Act 1994 ("ISA") or personal data processed for or on behalf of GCHQ in accordance with section 4(2)(a) ISA.	i) Sections 7(1), 10 and 12 of Part II ii) Sections 16(c), 16(e), 16(f), 17, 21, 22 and 24 of Part III to the extent that those provisions require any reference to GCHQ or data processing operations carried out by or in support of GCHQ; iii) Part V;
2. Personal data relating to the vetting of candidates, staff, contractors, agents and other contacts of GCHQ in accordance with the Government's security and vetting guidelines and policy including but not limited to:	iv) section 55; v) the first data protection principle; vi) the second data protection principle; vii) the sixth data protection principle to the extent necessary to be consistent with the exemptions contained in this certificate.
i) personal data obtained from other government departments or agencies, banks and financial institutions, personal referees and others;	viii) the eighth data protection principle.
ii) personal data recorded, held, organised, adapted, altered, retrieved by or otherwise available to GCHQ;	
iii) personal data disclosed to or received from the Security Service, SIS, Civil Service departments, Government Agencies and others.	

PART C	
Column 1	Column 2
Personal data processed by GCHQ and/or its authorised contractors for the purposes of administration of human resources (including that related to former members of staff) and staff pay, tax and national insurance contributions including but not limited to: i) personal data obtained from data subjects, their line managers and personnel officers and other members of GCHQ staff; ii) personal data disclosed to GCHQ management and personnel officers; iii) personal data recorded, held, organised, adapted, altered, retrieved by or otherwise available to GCHQ.	i) Sections 16(1)(f), 47 and 50 and Schedule 9. ii) the eighth data protection principle.
PART D	
Column 1	Column 2
Personal data obtained or processed by GCHQ and/or its authorised contractors and agents: (a) for the purposes of or pursuant to commercial agreements (including under HMG Private Finance Initiative) (whether concluded or otherwise), or other arrangements with third parties, in relation to which GCHQ supplies goods or services or under which GCHQ receives goods or services, whether or not the goods or services are supplied or received under those agreements or otherwise; (b) for the purposes of management, financial accounting and financial administration of the activities of GCHQ; (c) for the purposes of marketing, advertising and the promotion of public relations in connection with the activities of GCHQ; (d) for the purposes of security, crime prevention and detection and the apprehension and prosecution of offenders (including the use of CCTV) (and to the extent that the said data referred to in paragraphs (a), (b), (c) and (d) do not comprise data to which Part A or part B applies).	i) Section 16(1)(f), 47 and 50 and Schedule 9. ii) the eighth data protection principle.



dated the 8th day of December 2001

The Right Hon Jack Straw MP