



Investigatory Powers Tribunal
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Graham Webber
Head / Offices of the Interception of Communications and
Intelligence Services Commissioner

Our ref IPT/15/ 110/CH

Date: 12 May 2017

Dear Mr Webber,

In the IPT's letter of 13 April 2017 the Tribunal asked for a response in open "based on assumed facts whether, if a transfer of BCD and/or BPD to another agency or organisation, including a foreign agency, had taken place, they have regarded it as within their remit, and confirm that, in that event, they would have provided active oversight."

As you know, there was a procedural hearing in this case on Friday 5 May 2017. Your letter of 27 April 2017 was considered at that hearing. Representations were made by the Claimant to the effect that the Tribunal should ask the Commissioners to provide some further information. That is the purpose of this letter whose format has been agreed between both parties to the complaint.

Two issues arise.

First, the Claimant suggested that the use of assumed facts was not necessary in the case of sharing by GCHQ with industry partners.

GCHQ has disclosed policy documentation indicating that it shares "*sets of raw Sigint Data with commercial partners and suppliers contracted to develop new systems and capabilities for GCHQ.*" The document, a copy of which is attached, also outlines the processes that GCHQ follows prior to releasing data of this sort to industry partners.

In a Response to a Request for Further Information, GCHQ has provided the following relevant information:

"The position regarding GCHQ is that BCD/BPD may be shared with industry partners where necessary for the purposes of developing and testing GCHQ's operational systems. Industry partners are required to specify the controls that they intend to apply in relation to retention, use, examination and destruction. These controls are subject to approval before sharing. The approval process is set out in a request form. [...]"

"... when operational data (which could in theory include BCD / BPD) is shared with industry partners, it is usually retained within GCHQ premises in the UK. When it is not stored within GCHQ premises, the storage will be accredited by GCHQ. In all such cases the storage has been within the UK."

The Claimant's skeleton argument of 23 February 2017 sets out the Claimant's case as to what has been placed in the public domain and avowed:

"It is common ground that GCHQ disclose entire databases of "*raw sigint data*" to "*industry partners*" who have been "*contracted to develop new systems and capabilities for GCHQ*" [attached] It is avowed that there are "*frequent releases of routine sets of raw Sigint data to industry partners*" [attached] When this occurs, there appear to be few safeguards. For

example, there appears to be no requirement for each search to be explained and justified in writing. Security clearance is required only "wherever possible" [attached]"

The Claimant queries whether there has in the past been oversight of industry sharing by the Commissioners. In particular, they wish to know whether the Commissioners carried out an audit of the transfer of data to industry partners and audited the use made of the transferred data. Have the Commissioners visited industry partners in order to check the use made of bulk data that has been shared and transferred or to which access has been given, and the systems and safeguards applied? For example, the Claimant has served a Request for Information asking:

"15. Has the Intelligence Services Commissioner or any other oversight body ever audited the sharing of BCD and/or BPD with... industry partners?

(a) If so, how was the audit conducted?

(b) What were the results of that audit?

(c) Did the audit examine the actual queries and use made of transferred data, and its storage and destruction?"

The dates, frequency and circumstances of any audit will also be relevant, as well as the procedures used to conduct the audit and information about the depth of the audit. How often do the Commissioners visit 'industry partners'? What work is carried out to audit their use of BCD/BPDs? What sort of searches and investigations are carried out?

The Tribunal would be grateful for the Commissioners' assistance with an open response to these queries as soon as possible.

Secondly, in the letter of 13 April, the Tribunal asked whether the Commissioners would have provided "active oversight". We note that the Commissioners' response is in terms of matters being within the scope of the Commissioners' oversight. It does not deal with whether "active" oversight would have been carried out.

It may be relevant to know whether the Commissioners have taken active steps to implement oversight within their remit. If a matter is within the scope of the Commissioner's remit but has never been in fact audited and no other form of active oversight has been carried out, it may be suggested by the Claimant that the oversight provided to date has not been adequate. The Tribunal would therefore be grateful for a more detailed open response to the question so that the actual application of any oversight can be understood, even if in necessarily general terms.

This letter is served pursuant to section 68(2) of RIPA 2000.

The hearing on sharing is listed for Monday 5 June 2017 and the Claimant's skeleton argument is due on Monday 15 May. We would therefore appreciate as prompt a response as possible.

Yours sincerely

Susan Cobb
Tribunal Secretary