

Susan Cobb  
Head of Secretariat  
Investigatory Powers Tribunal

2 June 2017

Dear Ms Cobb,

### **INQUIRY INTO BULK COMMUNICATIONS DATA AND BULK PERSONAL DATA**

Thank you for your letter of 12 May, requesting further assistance from the Interception of Communications and Intelligence Services Commissioners regarding claims relating to the use of Bulk Communications and Personal Data (BCD and BPD). This letter is not classified, so it can be shared in open session.

Your letter refers to raw SIGINT. We would usually take this to mean the un-analysed product of an interception or equipment interference warrant. This is not the same as BCD. The tribunal and complainants may find it useful to consult IOCCO's review into directions given under section 94 of the Telecommunications Act (s.94), and the Intelligence Services Commissioner's 2015 annual report (both published last year). These provide definitions of BCD and BPD, and some description of their use. As raw SIGINT is not the focus of your enquiries, we will answer the questions as they relate to BCD and BPD.

The complainants ask whether we have audited the sharing of BCD or BPD with industry partners. In addition, you have asked, further to our letter of 26 April, what active oversight we carry out of the sharing of BCD and BPD

Neither Commissioner with responsibility for the intelligence agencies, nor their inspectors, has ever conducted a formal inspection or audit of industry in this regard. Further details regarding our inspection regime are set out below.

#### **Bulk Communications Data**

IOCCO inspectors conduct 6-monthly inspections of GCHQ and MI5's use of s.94 directions. During our inspections, inspectors consider the strength of the case made for necessity and proportionality set out in the direction authorisation process, any amendments to the conduct authorised, and intelligence officers' access to the BCD. We discuss the use of BCD with senior managers, analysts and those who conduct internal audit. The low number of s.94 directions means that we have been able to consider every one in this way. At this classification, in open, we are not permitted to confirm or deny whether active oversight of the sharing of BCD has taken place, because to do so would reveal whether there has been sharing of BCD.

Concerning inspectors' access to the BCD, in MI5 we are given direct access to the system used to authorise and enable queries against the BCD. This enables us to examine a cross-section of the applications for individual operational use of the BCD, and to consider the necessity and proportionality of that use. GCHQ's systems do not currently enable us easily to conduct a similar audit of their analysts' use of BCD. We highlighted this in our s.94 report of 2016. This

s.94 report sets out the process for the acquisition of BCD, its retention and its destruction, in detail.

## **Bulk Personal Data**

At this classification, in open, we are not permitted to confirm or deny whether active oversight of the sharing of BPD has taken place, because to do so would reveal whether there has been sharing of BPD. The Tribunal may find the chapter on BPD in the Intelligence Service Commissioner's 2015 annual report instructive. On page 31, the Commissioner says the following about sharing:

*All three agencies have an interest in acquiring and searching BPDs, but they will only seek to acquire a dataset once and will coordinate to prevent duplication of acquisition efforts. Before sharing a dataset with another agency the supplying agency must have justified that it is both necessary and proportionate to do so as well as confirming that it is for the proper discharge of their statutory functions, the receiving agency must do the same for receiving the data. These requests must be approved by a senior staff member at both agencies before any data can be shared.*

*If the agencies think there is merit in sharing datasets externally then it must meet the necessity and proportionality tests under the Security Service Act or the Intelligence Services Act as well as considering any wider legal, political or operational risks.*

In addition, on pages 32-33 the Commissioner says the following about our inspection of BPDs:

*Prior to my inspections I request a list of the BPDs held by each agency. In this list I like to see: a short description of each dataset; the date it was acquired; the date ingested onto an analytical system, the levels of intrusion and corporate risk; when the BPD was last reviewed by a review panel; and if and when I last inspected the BPD. From this list I select a number of datasets at random to inspect in further detail. At the inspection I will be provided with all of the relevant documents and records in relation these datasets to scrutinise, I also speak to the individuals responsible for the dataset. In addition to inspecting individual datasets I also review all of the policies relevant to BPD, I request to see copies of the minutes from recent review panels, as well as overseeing the protective monitoring of the BPD.*

*At SIS inspections I also make a random selection from the total number of actual searches of BPD that have been conducted by officers since my last visit. I then interview the individuals who have carried out the searches and they must explain how they justified their search to me. It is important that they demonstrate to me: the necessity of why they needed to run the search, why the information could not have been obtained using a less intrusive method; how they narrowed their search criteria to reduce collateral intrusion; as well as explaining the outcome of the search and how the results contributed to their operation. If GCHQ and MI5 could also make this possible during their inspections I would find this particularly useful.*

*In the list of BPDs provided to me to make my selection the agencies must identify which datasets have been acquired by the interception of communications. I have agreed with the Interception of Communications Commissioner that any BPD acquired via interception, which once processed into a bulk personal dataset no longer identifies itself as intercept product, will be overseen by me in line with my oversight of Bulk Personal Datasets. If the object of an interception is to obtain BPD, the BPD authorisation process will have run in parallel to seeking the warrant. The Interception of Communications Commissioner will of course continue to oversee the interception warrant for obtaining the dataset. I will then oversee the authorisation of the dataset as BPD and its handling in accordance with the BPD Handling Arrangements. If either the Interception Commissioner or I have any concerns about the parts of the process which we individually oversee we have agreed to raise those matters with one another.*

I hope this reply has been helpful. Do please let me know if I can be of any further assistance.  
yours sincerely,



Graham Webber  
Head of the Office of the Interception of Communications and Intelligence Services  
Commissioners

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