



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: 4th August 2017

Dear Mr Webber,

Bulk Communications Data and Bulk Personal Datasets

Thank you for your letter of 2 June 2017.

I enclose a copy of the transcript of Day 4 (9 June 2017) of the recent hearing before the Tribunal. I also enclose a copy of the amended 5th witness statement of the GCHQ witness, the Claimant's Request for Further Information of the 5th witness statement and the Respondents' Reply to that Request for Further Information (exhibited to which is an extract from the Compliance Guide published in November 2016).

Request for information

The Claimant made preliminary submissions about the oversight provided by the Commissioners in relation to BCD and BPD shared with industry partners at pp. 144-177 of the transcript. In summary, the Claimant's submission is that the Commissioners have not taken active steps to carry out audit of industry sharing and the oversight provided to date has not been adequate because the Commissioners have not in fact carried any audit or oversight of industry sharing. The Claimant contends that in the absence of *ex ante* judicial or independent approval of sharing, an active programme of audit and inspection of industry sharing is required both under the ECHR and as a matter of EU law.

The Claimant has also invited Counsel to the Tribunal to investigate and make CLOSED submissions if appropriate along the same lines in relation to sharing with foreign partners and UK law enforcement agencies.

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

Industry sharing

The Tribunal requests a response to the following queries. Please answer these questions solely by reference to the sharing of bulk datasets (i.e., BPD / BCD), as opposed to the sharing of any other intelligence material.

A bulk personal dataset means "any collection of data which... comprises personal data as defined by section 1(1) of the Data Protection Act 1998. relates to a wide range of individuals, the majority of whom are unlikely to be of intelligence interest [and] is held, or acquired for the purposes of holding, on one or more analytical systems within the Security and Intelligence Agencies" (ISC (Additional Review Functions) (Bulk Personal Datasets) Direction 2015). BPDs may be acquired by a variety of means, including by interception.

In addressing 'sharing', please bear in mind that sharing may involve the transfer of bulk data by GCHQ to a third party's premises or sharing that is effected by GCHQ providing a third party with access to bulk data while the data itself is retained within GCHQ premises. Please consider both species of sharing in your answers.

1. When did the Commissioners first become aware of the practice of GCHQ of sharing datasets with industry partners? How did the Commissioners find this out?
2. What did the Commissioners do when first informed of this type of sharing to ensure that it was subjected to active oversight (i.e. actual audit and review of the conduct of industry partners, not merely being within the scope of oversight in principle)?
3. Why have the Commissioners "[n]ever conducted a formal inspection or audit of industry..." (letter of 2 June 2017)?
4. Do the Commissioners intend to conduct such an inspection or audit in the future? If so, when?
5. Have the Commissioners ever inspected or audited what data has in fact been shared with industry partners, including the types of data and its potential intrusiveness?
6. Have the Commissioners ever inspected or audited the procedures and safeguards adopted for sharing with industry partners and the use of such data by industry partners?
7. Have the Commissioners ever inspected or audited whether those safeguards are complied with?
8. Are the Commissioners aware of what use has in fact been made of shared datasets by industry partners?
9. Do industry partners make and keep records adequate to enable the Commissioners to examine whether each search or other processing, analysis or use of bulk data by industry partners is necessary and proportionate and whether all the appropriate safeguards are complied with?
10. What steps have the Commissioners taken to audit (and ensure that industry partners minimise) what David Anderson QC calls the "privacy footprint" of data shared with and used by industry partners (Bulk Powers Review §9.23)? In particular, have the Commissioners examined whether procedures could be amended to reduce privacy intrusion by industry partners? If so, what were the results of the examination of this issue?

11. The Claimant notes that "GCHQ's systems do not currently enable us easily to conduct a similar audit of their analysts' use of BCD". Does the same apply to use of data by GCHQ's industry partners?
12. Do industry partners comply with retention, storage or destruction requirements? If so, how do the Commissioners know this?
13. Do industry partners limit their use of bulk data to work that is strictly necessary and proportionate? If so, how do the Commissioners know this?

For the reasons set out in previous correspondence, the Commissioners are asked to provide an OPEN response. To the extent that it is not possible to address any of these issues in OPEN, please provide a CLOSED response.

Sharing with UK law enforcement agencies and foreign partners

The same issues arise in relation to any sharing of BCD and BPD with UK law enforcement agencies and foreign partners. The Commissioners are asked to provide a response (initially in CLOSED) responding to the same questions about audit of use of BCD and BPD (if it occurs) by UK and foreign partner agencies.

The Tribunal asks that you respond to this request by 18th September 2017.

Yours sincerely

Sir Michael Burton
President of the Investigatory Powers Tribunal

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