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GCHQ POLICY ON HANDLING MATERIAL DERIVED FROM THE INTERCEPTION OF COMMUNICATIONS OF INDIVIDUALS ENGAGED IN LEGAL PROCEEDINGS WHERE HMG HAS AN INTEREST

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Version control

An OFFICIAL-classified version of this document has also been produced and can be found with GCHQ reference ID 47519372. Any changes made to this document should be appropriately reflected in the OFFICIAL version.

Version	Date of publication	Amendments made
1.0	27 November 2015	Initial approved version.

Introduction and scope

1. This document sets out GCHQ's policy on handling material derived its operational activities¹ of individuals who are engaged in legal proceedings where HMG is a party or has an interest.
2. The term 'legal proceedings' in the context of this policy is used broadly, and includes, but is not limited to:
 - a. Civil claims;
 - b. Judicial reviews;
 - c. Coronial inquests;
 - d. Statutory Inquiries;
 - e. International legal proceedings (e.g. ECtHR claims);
 - f. Appeals against decisions in UK closed proceedings (e.g. SIAC);
 - g. Investigatory Powers Tribunal (IPT) claims;
 - h. Criminal prosecutions.

General principles for handling material related to parties involved in legal proceedings

3. In exercising its statutory function under ISA section 3(1)(a) GCHQ seeks to obtain intelligence against a wide range of targets. It is possible that some of these individuals ('subjects of interest', SOIs) may be contemplating launching, parties to or have an interest in legal proceedings, or otherwise seeking legal advice that would be covered by legal professional privilege (LPP).
4. The GCHQ Compliance Guide (Communications containing confidential information) has a full explanation of Legal Professional Privilege (LPP): LPP is broadly classified under two sub-headings. First, legal advice privilege, which attaches to communications between a professional legal adviser, acting as such, and their client where the communication is made confidentially for the purpose of legal advice. Secondly, litigation privilege, which attaches to communications between the client and his legal adviser or agent, or between one of them and a third party, if they come into existence for the sole or dominant purpose of either giving or getting legal advice with regard to the litigation or collecting evidence in the litigation. This second category is wider than the first since it is possible for litigation privilege to attach to communications other than those directly between a lawyer and their client, i.e. between a lawyer and a third party in connection with legal proceedings.

¹ Operational activities include interception of communications and material obtained by GCHQ from other sources, such as foreign partners.

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5. In UK law, the acquisition of material by GCHQ containing LPP information is not prohibited, however, the Interception of Communications Code of Practice makes clear in relation to material collected under the authority of interception warrants issued under the Regulation of Investigatory Powers Act (RIPA) that “particular consideration should also be given in cases where the subject of the interception might reasonably assume a high degree of privacy, or where confidential information is involved...[including] matters subject to legal privilege”. GCHQ applies these principles to all its collection and reporting activities, as defined in the [GCHQ Compliance Guide](#) and the [Reporting Policy for Sensitive Professions](#).
6. Although all intelligence-gathering activities which may result in the acquisition of LPP material are sensitive, there is a particular sensitivity for GCHQ where such material is relevant to legal proceedings to which HMG is a party or has an interest. In such cases, it is imperative in the interests of justice that HMG does not gain, nor tries to gain, any litigation advantage from GCHQ’s intelligence-gathering activities.
7. To avoid the risk of HMG obtaining any litigation advantage, GCHQ will always put in place appropriate controls (‘information barriers’) to ensure that no-one within GCHQ with a substantive role in any legal proceedings will have access to LPP material relating to those proceedings.

Practical implementation

8. The following basic measures apply regardless of whether a SOI is involved in any legal proceedings:
 - GCHQ legal advisers do not have access to [intelligence reports or intercepted communications databases](#).
 - Documentation relating to any legal proceeding is stored within [the appropriate data record management system](#) with appropriate Access Control Groups (ACGs) to limit access to only those staff who require it.
 - All [intelligence reports](#) containing LPP material must be checked by the [relevant policy team](#) to ensure that it is necessary and proportionate to report such material.
 - If there is any uncertainty as to whether a particular piece of reportable intelligence comprises legally privileged information, advice should be sought from a legal adviser by [the relevant policy team](#).
 - All [intelligence reports](#) containing LPP material is given a ‘rubric’ which allows recipients to easily identify these reports.
9. In relation to SOIs whom GCHQ is aware are contemplating launching, parties to or have an interest in legal proceedings to which HMG is or may become a party or otherwise

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has an interest, the following additional measures will be implemented on a case-by-case basis:

- The relevant team involved in producing intelligence reporting on the SOI will be informed of the contemplated or on-going legal proceeding by the relevant policy team in order to ensure that they are aware of the increased possibility of intercepting LPP material. However, all reports containing LPP must still be sent to the relevant policy team for approval.
- The Policy team will produce a list of policy staff and legal advisers who are either available to assist with intelligence production or are involved in the legal proceedings. Staff will not be engaged on both intelligence production and the legal proceedings. In general, intelligence production staff will not be involved in the legal proceedings, however, if they are, measures will be taken to ensure that they do not have inappropriate access to any LPP material.
- The intelligence production team will be provided with a list of customers who cannot receive reporting containing LPP on the SOI due to their involvement with the legal proceedings.
- GCHQ's 'out-of-hours team' will be informed of any contemplated or on-going legal proceedings and the limited customer list for intelligence reporting. Where possible, the 'out-of-hours team' will pass all requests for use of material related to the legal proceedings to the appropriate policy team.
- Access to documentation in GCHQ's data record management system will be further restricted by applying additional ACGs or by specifically naming staff to have access.
- Where it is known that a SOI is contemplating or engaged in two or more sets of legal proceedings involving HMG (e.g. civil litigation and an IPT complaint), information barriers will be put in place to ensure that there are separate staff (both policy and legal advisers) working on each set of legal proceedings. In addition, as appropriate such information barriers will also be put in place to ensure that staff working on the litigation do not also work on intelligence production.

Recipients of intelligence reporting

10. GCHQ trusts that customers in receipt of intelligence reporting will handle it appropriately and respect the classification, STRAP marking and any additional caveats provided. A process exists for customers to apply to GCHQ for permission to use information contained within reporting.
11. Intelligence reporting contains a distribution list of recipients. When the distribution of a report needs to be increased, the report is 'extended' to include any additional

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recipients, i.e. the distribution list will be amended appropriately. This ensures that GCHQ maintains a record of who has seen the intelligence.