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IPCO

Investigatory Powers
Commissioner's Office

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Investigatory Powers Tribunal
PO Box 33220
London
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19 September 2017

Open

Sirs,

Bulk Communications Data and Bulk Personal Datasets
In the matter of IPT 15/110/CH

This reply is pursuant to your letter of 2 August 2017 sent under section 68(2) of RIPA 2000.



As you are aware, from 1 September 2017, both the Intelligence Services Commissioner (ISCom) and the Interception of Communications Commissioner (IOCCO) ceased to exist. This reply, while concerning the oversight activities of the previous commissioners, is made on behalf of the Investigatory Powers Commissioner (IPC): Lord Justice Adrian Fulford. Where questions are asked as regards to the previous oversight activity of "the commissioners" our response concerns the oversight activities of ISCom and IOCCO. In respect of matters raised in these questions concerning future (i.e. intended) oversight activity our answers refer to actions undertaken by the IPC and his office under **Part 8 Investigatory Powers Act 2016**.

In an effort to simplify our response to the individual questions the following general statement is made. It should be noted that "corporate record" is the databases and records created and retained by ISCom and IOCCO.

While the letter refers specifically to the activities of GCHQ, we have responded, unless specifically identified, with reference to oversight of the agencies within the UK Intelligence Community (UKIC) as a whole.

General statement concerning the oversight of sharing of BPD and BCD bulk datasets with "Industry Partners"

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A review of the corporate record of ISCom has established that following the **Intelligence Services Commissioner (Additional Review Functions) (Bulk Personal Datasets) Direction 2015** there is no corporate record that the Commissioner audited any sharing of Bulk Personal Data sets (BPD) with UKIC "industry partners" nor is there any material in the corporate record to show that such sharing was considered during an inspection visit of UKIC undertaken by ISCom.

A review of the corporate record of the IOCCO can establish that following avowal of the use of **Section 94 Telecommunications Act 1984** there is no record that the Commissioner audited any sharing of Bulk Communications Data (BCD) with UKIC "industry partners" nor is there any evidence that such sharing was considered during any inspection visit of the UKIC undertaken by IOCCO.

Neither ISCom nor IOCCO were previously informed by GCHQ that the sharing of BPD/BCD data sets with industry partners, as described in the statement of the GCHQ witness supplied with the above letter, had occurred.

It should be noted that the term "active oversight" is not found within the relevant legislation. The oversight obligations of IOCCO and ISCom are found within Part IV of RIPA and any directions given under that act and the relevant handling arrangements.

As noted in our previous letter ISComm and IOCCO did not have statutory oversight functions in respect of the activities of non-public bodies.

Response to individual questions

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?

Answer:

The Commissioners first became aware of the (apparently very limited) sharing with industry as a consequence of the statement of the GCHQ witness described above.

The Commissioners were never informed of this sharing.

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners"

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)?

Answer:

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners" and answer to question 1.

3. Why have the Commissioners "[n]ever conducted a formal inspection or audit of industry..." (Letter of 2 June 2017)?

Answer:

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners"

4. Do the Commissioners intend to conduct such an inspection or audit in the future? If so, when?

Answer:

On being advised of the issues raised by this case the IPC immediately ordered that an inspection of those UKIC agencies that may share datasets should be undertaken. I can confirm that these inspections have now occurred.

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?

Answer:

On being advised of the issues raised by this case the IPC immediately ordered that an inspection of those UKIC agencies that may share datasets be undertaken. I can confirm these inspections have now occurred.

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners"

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?

Answer:

No.

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners" and answer to question 1.

7. Have the Commissioners ever inspected or audited whether those safeguards are complied with?

Answer:

No.

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners" and answer to question 1.

8. Are the Commissioners aware of what use has in fact been made of shared datasets by industry partners?

Answer:

No.

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners" and answer to question 1.

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?

Answer:

This is unknown.

The IPC is exploring whether powers available under the **Investigatory Powers Act 2016** or the use of voluntary arrangements would permit audit of "industry partners" and whether this is an area that requires oversight by him or whether it is more properly under the jurisdiction of another statutory body.

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?

Answer:

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners"

The IPC is exploring whether powers available under the **Investigatory Powers Act 2016** or the use of voluntary arrangements would permit audit of "industry partners" and whether this is an area that requires oversight by him or whether it is more properly under the jurisdiction of another statutory body.

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?

Answer:

This is unknown.

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners"

12. Do industry partners comply with retention, storage or destruction requirements? If so, how do the Commissioners know this?

Answer:

This is unknown.

The IPC is exploring whether powers available under the **Investigatory Powers Act 2016** or the use of voluntary arrangements would permit audit of "industry partners" and whether this is an area that requires oversight by him or another statutory body.

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?

Answer:

See general statement on oversight of UKIC sharing of BPD and BCD bulk datasets with "Industry Partners"

I trust the above answers your questions. Should you require further information please do not hesitate to contact me.



Graham Webber
Interim Chief Executive
Investigatory Powers Commissioner's Office

